

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

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2. MASSAGE PARLORS, ETC.
3. SALE OF EPHEDRINE OR PSEUDOEPHEDRINE.
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CHAPTER 1

PEDDLERS, SOLICITORS, ETC.²

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9-101. Definitions. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:

(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

¹Municipal code references

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

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11, chapter 5.

Zoning: title 14.

²Municipal code references

Privilege taxes: title 5.

Trespass by peddlers, etc.: § 11-801.

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, except that the term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.

(3) "Solicitor for charitable or religious purposes" means any person, firm, corporation or organization who or which solicits contributions from the public, either on the streets of the town or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who 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 one of the following conditions:

(a) 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.

(b) Is a member of United Way, Community Chest or similar "umbrella" organization for charitable or religious organizations.

(4) "Solicitor for subscriptions" means any person who solicits subscriptions from the public, either on the streets of the town, or from door to door, business to business, place to place, or from street to street, and who offers for sale subscriptions to magazines or other materials protected by provisions of the Constitution of the United States.

(5) "Street barker" means any peddler who does business during recognized festival or parade days in the town and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade.

(6) "Transient vendor"¹ 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 the merchandise to the public. Transient vendor does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "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, storeroom, 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 those premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months. (1989 Code, § 9-101, modified)

9-102. Exemptions. The terms of this chapter shall not apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to persons selling agricultural products, who, in fact, themselves produced the products being sold. (1989 Code, § 9-102)

9-103. Permit required. No person, firm or corporation shall operate a business as a peddler, transient vendor, solicitor or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the town unless the same has obtained a permit from the town in accordance with the provisions of this chapter. (1989 Code, § 9-103)

9-104. Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the town recorder by each applicant for a permit as a peddler, transient vendor, solicitor,

¹State law reference

Tennessee Code Annotated, § 62-30-101, et seq., contains permit requirements for "transitory vendors."

The definition of "transient vendors" is taken from Tennessee Code Annotated, § 67-4-702. Note also that Tennessee Code Annotated, § 67-4-702 prescribes that transient vendors shall pay a tax of \$50.00 for each fourteen (14) day period in each county and/or municipality in which such vendors sell or offer to sell merchandise for which they are issued a business license, but that they are not liable for the gross receipts portion of the tax provided for in Tennessee Code Annotated, § 67-4-709(b).

or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:

(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 for 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) 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.

(f) Tennessee State Sales Tax Number, if applicable.

(2) Permit fee. Each applicant for a permit as a peddler, transient vendor, solicitor or street barker shall submit with his application a nonrefundable fee of fifty dollars (\$50.00). There shall be no fee for an application for a permit as a solicitor for charitable purposes or as a solicitor for subscriptions.

(3) Permit issued. Upon the completion of the application form and the payment of the permit fee, where required, the recorder shall issue a permit and provide a copy of the same to the applicant.

(4) Submission of application form to chief of police. Immediately after the applicant obtains a permit from the town recorder, the town recorder shall submit to the chief of police a copy of the application form and the permit. (1989 Code, § 9-104, modified)

9-105. Restrictions on peddlers, street barkers and solicitors. No peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions shall:

(1) Be permitted to set up and operate a booth or stand on any street or sidewalk, or in any other public area within the town.

(2) Stand or sit in or near the entrance to any dwelling or place of business, or in any other place which may disrupt or impede pedestrian or vehicular traffic.

(3) Offer to sell goods or services or solicit in vehicular traffic lanes, or operate a "road block" of any kind.

(4) Call attention to his business or merchandise or to his solicitation efforts by crying out, by blowing a horn, by ringing a bell, or creating other noise, except that the street barker shall be allowed to cry out to call attention to his business or merchandise during recognized parade or festival days of the town.

(5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located. (1989 Code, § 9-105)

9-106. Restrictions on transient vendors. A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, cancelled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth. (1989 Code, § 9-106)

9-107. Display of permit. Each peddler, street barker, solicitor, solicitor for charitable purposes or solicitor for subscriptions is required to have in his possession a valid permit while making sales or solicitations, and shall be required to display the same to any police officer upon demand. (1989 Code, § 9-107)

9-108. Suspension or revocation of permit. (1) Suspension by the recorder. The permit issued to any person or organization under this chapter may be suspended by the town recorder for any of the following causes:

- (a) Any false statement, material omission, or untrue or misleading information which is contained in or left out of the application; or
- (b) Any violation of this chapter.

The suspension of a permit by the recorder may be appealed to the board of mayor and aldermen by the permit holder giving notice of appeal in writing to the town recorder. The recorder shall schedule a hearing on the appeal within a reasonable time, and shall give the permit holder notice of the time and place set for a hearing on the appeal. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

(2) Suspension or revocation by the board of mayor and aldermen. The permit issued to any person or organization under this chapter may be suspended or revoked by the board of mayor and aldermen, after notice and hearing, for the same causes set out in subsection (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the town recorder in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1989 Code, § 9-108)

9-109. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the town. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days. (1989 Code, § 9-109)

9-110. Violation and penalty. In addition to any other action the town may take against a permit holder in violation of this chapter, such violation shall be punishable according to the general penalty provision of this municipal code of ordinances.

The town recorder shall provide to the permit holder notice in writing of the grounds for the suspension of the permit. (1989 Code, § 9-110)

CHAPTER 2

MASSAGE PARLORS, ETC.

SECTION

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9-201. Purpose and intent. It is the purpose and intent of the Town of Montegale Board of Mayor and Aldermen in adopting this chapter to protect and preserve the health, safety, and welfare of the inhabitants of this town through the enactment of standards of sanitation, professional competence, fire safety and building construction as said standards shall apply to massage establishments and massagists. (1989 Code, § 9-401)

9-202. Definitions for massage regulations. For the purpose of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section.

(1) "Employee" means any person over eighteen (18) years of age, other than a massagist, who renders any service in connection with the operation of

a massage business and receives compensation from the operator of the business or patrons.

(2) "Licensee" means the person to whom a license has been issued to own or operate a massage establishment as defined herein.

(3) "Massage" means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hand or other parts of the body, or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder creams, lotion, ointment or other such similar preparations commonly used in the practice of massage, under such circumstances that is reasonably expected that the person to whom the treatment is provided, or some third person on his or her behalf, will pay money or give any other consideration or any gratuity therefor.

(4) "Massage establishment" means any establishment having a source of income or compensation derived from the practice of massage as defined in subsection (3), and which has a fixed place of business where any person, firm, association or corporation engages in or carries on any of the activities as defined in subsection (3).

(5) "Massagist, masseur or masseuse" means any person who, for any consideration whatsoever, engages in the practice of massage as defined in subsection (3).

(6) "Outcall massage service" means any business, the function of which is to engage in or carry on massages at a location designated by the customer or client, rather than at a massage establishment as defined in subsection (3).

(7) "Patron" means any person over eighteen (18) years of age who receives a massage under circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.

(8) "Permittee" means the person to whom a permit has been issued to act in the capacity of a massagist (masseur or masseuse) as herein defined.

(9) "Person" means any individual, partnership, firm association, joint stock company, corporation or combination of individuals of whatever form or character.

(10) "Recognized school" means any school or education institution licensed to do business as a school or education institution in the state in which it is located, or any school recognized by or approved by or affiliated with the American Massage and Therapy Association, Inc., and which has for its purpose the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study not less than seventy (70) hours before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning.

(11) "Sexual or genital area" means genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female. (1989 Code, § 9-402)

9-203. Massage permit required. (1) Massage establishment permit required. No person shall engage in or carry out the business of massage unless he has a valid massage establishment permit issued by the town pursuant to the provisions of this chapter for each and every separate office or place of business conducted by such person.

(2) Massagist's permit required. No person shall practice massage as a massagist, employee or otherwise, unless he has a valid and subsisting massagist's permit issued to him by the town pursuant to the provisions of this chapter. (1989 Code, § 9-403)

9-204. Exemptions. This chapter shall not apply to the following individuals while engaged in the personal performance of the duties of their respective professions:

(1) Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the State of Tennessee.

(2) Nurses who are registered under the laws of this state.

(3) Barbers and beauticians who are duly licensed under the laws of this state, except that this exemption shall apply solely to the massaging of the neck, face, scalp and hair of the customer or client for cosmetic or beautifying purposes. (1989 Code, § 9-404)

9-205. Application for massage establishment license. Every applicant for a license to maintain, operate or conduct a massage establishment shall file an application under oath with the Town of Monteagle upon a form provided by the police department and pay a nonrefundable annual license fee, which shall be one hundred dollars (\$100.00) per year or any part thereof. The application, once accepted, shall be referred to the police department for investigation. Copies of the application shall within five (5) days also be referred to the bureau of inspections, the fire department, and the health department. The departments shall within thirty (30) days inspect the premises proposed to be operated as a massage establishment, and shall make written verification to the police department concerning compliance with the codes of the Town of Monteagle that they administer. The police department shall make investigation of the applicant's character and qualifications. Each application shall contain the following information:

(1) A definition of service to be provided.

(2) The location, mailing address and all telephone numbers where the business is to be conducted.

(3) The name and residence address of each applicant (hereinafter all provisions which refer to applicant include an applicant which may be a corporation or partnership).

(a) If the applicant is a corporation, the names and residence addresses of each of the officers and directors of said corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation, and the address of the corporation itself, if different from the address of the massage establishment.

(b) If applicant is a partnership, the names and residence addresses of each of the partners, including limited partners, and the address of the partnership itself, if different from the address of the massage establishment.

(4) The two (2) previous addresses immediately prior to the present address of the applicant.

(5) Proof that the applicant is at least eighteen (18) years of age.

(6) Individual or partnership applicant's height, weight, color of eyes and hair, and sex.

(7) Copy of identification such as driver's license and social security card.

(8) One (1) portrait photograph of the applicant at least two inches by two inches (2"x2"), and a complete set of applicant's fingerprints which shall be taken by the chief of police or his agent. If the applicant is a corporation, one (1) portrait photograph at least two inches by two inches (2"x2") of all officers and managing agents of said corporation, and a complete set of the same officers' and agents' fingerprints which shall be taken by the chief of police or his agent. If the applicant is a partnership, one front-face portrait photograph at least two inches by two inches (2"x 2") in size of each partner, including limited partners in said partnership, and a complete set of each partner or limited partner's fingerprints which shall be taken by the chief of police or his agents.

(9) Business, occupation or employment of the applicant for the three (3) years immediately preceding the date of application.

(10) The massage or similar business license history of the applicant; whether such person, in previously operating in this or another city or state, has had a business license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.

(11) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the crimes and place convicted.

(12) The name and address of each massagist who is or will be employed in said establishment.

(13) Applicant must furnish a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught; provided, however, that if the applicant will not himself engage in the practice massage as defined herein, he

need not possess such diploma or certificate or graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught.

(14) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in subsection (3) wherein the business or profession of massage is carried on.

(15) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

(16) Authorizations for the town, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application, and the qualifications of the applicant for the permit.

(17) Such other identification and information necessary to discover the truth of the matters hereinbefore specified as required to be set forth in the application.

(18) The names, current addresses and written statements of at least three (3) bona fide permanent residents of the United States that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the town, then the county, then the State of Tennessee, and lastly from the rest of the United States. These references must be persons other than relatives and business associates.

Upon completion of the above-provided form and the furnishing of all foregoing information, the police department shall accept the application for necessary investigations. The holder of a massage establishment license shall notify the police department of each change in any of the data required to be furnished by this section within ten (10) days after such change occurs. (1989 Code, § 9-405)

9-206. Application for massagist's permits. Application for a massagist's permit shall be made to the chief of police in the same manner as provided above for massage establishment licenses, accompanied by the annual nonrefundable massagist's permit fee of seventy-five dollars (\$75.00) per year or part thereof. The application shall contain but not be limited to the following:

(1) The business address and all telephone numbers where massage is to be practiced.

(2) Name and residence address, and all names, nicknames, and aliases by which the applicant has been known, including the two (2) previous addresses immediately prior to the present address of the applicant.

(3) Social security number, driver's license [number], if any, and date of birth.

(4) Applicant's weight, height, color of hair and eyes, and sex.

(5) Written evidence that the applicant is at least eighteen (18) years of age.

(6) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance, except misdemeanor traffic violations.

(7) Fingerprints of the applicant taken by the police department.

(8) Two (2) front-face portrait photographs taken within thirty (30) days of the date of application, and at least two inches by two inches (2"x2") in size.

(9) The name and address of the recognized school attended, the date attended, and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has completed not less than seventy (70) hours of instruction.

(10) The message or similar business history and experience ten (10) years prior to the date of application, including but not limited to whether or not such person in previously operating in this or another city or state under license or permit has had such license or permit denied, revoked, or suspended, and the reasons therefor, and the business activities or occupations subsequent to such action or denial, suspension or revocation.

(11) The names, current addresses and written statements of at least five (5) bona fide permanent residents, other than relatives, of the United States that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the city, then the county, then the State of Tennessee and lastly from the rest of the United States.

(12) A medical certificate signed by a physician, licensed to practice in the State of Tennessee, within seven (7) days of the date of the application. The certificate shall state that the applicant was examined by the certifying physician, and that applicant is free of any communicable disease. The additional information required by this subsection shall be provided at the applicant's expense.

(13) Such other information, identification and physical examination of the person deemed necessary by the police chief in order to discover the truth of the matters hereinbefore required to be set forth in the application.

(14) Authorization for the town, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application, and the qualifications of the applicant for the permit.

(15) Written declaration by the applicant, under penalty or perjury, that the foregoing information contained in the application is true and correct, said declaration being duly dated and signed in the town. (1989 Code, § 9-406)

9-207. Issuance of license or permit for a massage establishment.

The Town of Monteagle shall issue a license for a massage establishment or a permit for a masseur or masseuse, after ratification by the Board of Mayor and Aldermen of the Town of Monteagle, if all requirements for a massage establishment or massagist permit described in this chapter are met, unless it finds:

(1) The correct permit or license fee has not been tendered to the town, and in the case of a check, or bank draft, honored with payment upon presentation.

(2) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the town's building, zoning, fire and health regulations.

(3) The applicant, if an individual; or any of the stockholders holding more than ten percent (10%) of the stock of the corporation, any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; or the holder of any lien, of any nature, upon the business and/or the equipment used therein; and the manager or other person principally in charge of the operation of the business, have been convicted of any of the following offenses or convicted of an offense without the State of Tennessee that would have constituted any of the following offenses if committed within the State of Tennessee.

(a) An offense involving the use of force and violence upon the person of another that amounts to a felony.

(b) An offense involving sexual misconduct.

(c) An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony.

The Town of Monteagle may issue a license or permit to any person convicted of any of the crimes described in subsections (a), (b), or (c) of this subsection (c) if it finds that such conviction occurred at least five (5) years prior to the date of the application, and the applicant has had no subsequent felony convictions for crimes mentioned in this section.

(4) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith.

(5) The applicant has had a massage business, masseur, other similar permit or license denied, revoked, or suspended by the city or any other state or local agency within five (5) years prior to the date of the application.

(6) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, is not over the age of eighteen (18) years. (1989 Code, § 9-407)

9-208. Approval or denial of application. The Town of Monteagle shall act to approve or deny any application for a license or permit under this chapter within a reasonable period of time, and in no event shall the Town of Monteagle act to approve or deny said license or permit later than ninety (90) days from the date that said application was accepted by the police department. Every license or permit issued pursuant to this ordinance will terminate at the

expiration of one year from the date of its issuance, unless sooner suspended or revoked. (1989 Code, § 9-408)

9-209. Multiple massage establishments. Should any massage business have more than one (1) location where the business of massage is pursued, then a permit, stating both the address of the principal place of business, and of the other location(s), shall be issued by the chief of police upon the tender of a license fee of one hundred dollars (\$100.00) for each additional location. Licenses issued for other locations shall terminate on the same date as that of the principal place of business, regardless of the date of issuance. (1989 Code, § 9-409)

9-210. Posting of license. (1) Every massagist shall post the permit required by this chapter in his work area.

(2) Every person, corporation, partnership or association licensed under this ordinance shall display such license in a prominent place. (1989 Code, § 9-410)

9-211. Register of employees. The licensee or person designated by the licensee of a massage establishment shall maintain a register of all persons employed at any time as masseurs or masseuses and their permit numbers. Such register shall be available at the massage establishment to representatives of the Town of Monteagle during regular business hours. (1989 Code, § 9-411)

9-212. Revocation or suspension of establishment license. Any license issued for a massage establishment may be revoked or suspended by the Town of Monteagle after notice and a hearing, for good cause, or in any case where any of the provisions of this chapter are violated, or where any employee of the licensee, including a masseur or masseuse, is engaged in any conduct which violated any of the state or local laws or ordinances at licensee's place of business, and the licensee has actual or constructive knowledge by due diligence. Such permit may also be revoked or suspended by the Town of Monteagle after notice and hearing, upon the recommendation of the appropriate county health department that such business is being managed, conducted or maintained without regard to proper sanitation and hygiene. (1989 Code, § 9-412)

9-213. Revocation of masseur or masseuse permit. A masseur or masseuse permit issued by the chief of police shall be revoked or suspended where it appears that the masseur or masseuse has been convicted of any offense which would be cause for denial of a permit upon an original application, has made a false statement on an application for a permit, or has committed an act in violation of this chapter. (1989 Code, § 9-413)

9-214. Facilities necessary. No license to conduct a massage establishment shall be issued unless an inspection by the Town of Monteagle reveals that the establishment complies with each of the following minimum requirements:

(1) Construction of rooms used for toilets, tubs, steam baths and showers shall be made waterproof with approved waterproofed material, and shall be installed in accordance with the town building code. Plumbing fixtures shall be installed in accordance with the town plumbing code.

(a) Steam rooms and shower compartments shall have waterproof floors, walls and ceilings approved by the Town of Monteagle building inspector.

(b) Floors of wet and dry heat rooms shall be adequately pitched to one (1) or more floor drains properly connected to the sewer. (Exception: Dry heat rooms with wooden floors need not be provide with pitched floors and floor drains.)

(c) A source of hot water must be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

(2) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.

(3) Closed cabinets shall be provided and used for the storage of clean linen, towels and other materials used in connection with administering massages. All soiled linens, towels, and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.

(4) Toilet facilities shall be provided in convenient locations. When employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided for each sex. A single water closet per sex shall be provided for each twenty (20) or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the sex accommodated therein.

(5) Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels.

(6) All electrical equipment shall be installed in accordance with the requirement of the town electrical code. (1989 Code, § 9-414)

9-215. Operating requirements. (1) Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.

(2) Price rates for all service shall be prominently posted in the reception area in a location available to all prospective customers.

(3) All employees, including masseurs and masseuses, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas, whose use is restricted to the massage establishment. A separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing room shall open inward and shall be self-closing.

(4) All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity, and shall be laundered after each use thereof and stored in a sanitary manner.

(5) No massage establishment granted a license under the provisions of this ordinance shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture, or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services. (1989 Code, § 9-415)

9-216. Persons under age eighteen prohibited on premises. No person shall permit any person under the age of eighteen (18) years to come or remain on the premises of any massage business establishment, as masseur, employee, or patron, unless such person is on the premises on lawful business. (1989 Code, § 9-416)

9-217. Alcoholic beverages prohibited. No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage business. (1989 Code, § 9-417)

9-218. Hours. No massage business shall be kept open for any purpose between the hours of 10:00 P.M. and 8:00 A.M. (1989 Code, § 9-418)

9-219. Employment of massagist. No person shall employ as a massagist any person unless said employee has obtained and has in effect a permit issued pursuant to this chapter. (1989 Code, § 9-419)

9-220. Inspection required. The chief of police or his authorized representatives shall from time to time make inspection of each massage business establishment for the purpose of determining that the provisions of this chapter are fully complied with. It shall be unlawful for any permittee to fail to allow such inspection officers access to the premises or hinder such officer in any manner.

If in the opinion of the chief of police or his authorized representative, there is probable cause to enter a massage establishment for the purpose of

making inspections and examinations pursuant to this chapter, he shall request the owner or occupant thereof to grant permission for such entry, and if refused, he shall inform the chief of police, and he, or his designee, a police officer, shall make application to a judge why the search warrant should be issued for the purposes set forth in this chapter. (1989 Code, § 9-420)

9-221. Unlawful acts. (1) Treatment of persons of opposite sex restricted. It shall be unlawful for any person holding a permit under this section to treat a person of the opposite sex, except upon the signed order of a licensed physician, osteopath, chiropractor, or registered physical therapist, which order shall be dated and shall specifically state the number of treatment, not to exceed ten (10). The date and hour of each treatment given and the name of the operator shall be entered on such order by the establishment where such treatments are given, and shall be subject to inspection by the police pursuant to § 9-220. The requirements of this subsection shall not apply to treatments given in the residence of a patient, the office of a licensed physician, osteopath or registered physical therapist, chiropractor, or in a regularly established and licensed hospital or sanitarium.

(2) It shall be unlawful for any person in a massage parlor to place his or her hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital part of any other person. Sexual or genital parts shall include the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

(3) It shall be unlawful for any person, while in the presence of any other person in a massage parlor, to fail to conceal with a fully opaque covering, the sexual or genital parts, or any portions thereof, of any other person.

(4) It shall be unlawful for any person owning, operating, or managing a massage parlor, knowingly to cause, allow or permit in or about such massage parlor, an agent, employee, or any other person under his control or supervision to perform such acts prohibited in subsections (1), (2), or (3) of this section.

(5) It shall be further unlawful for any permittee under this chapter to administer massage on an outcall basis as defined in § 9-302(6). Such person shall administer massage solely within an establishment licensed to carry on such business under this chapter. Any violation of these provisions shall be deemed grounds for revocation of the permit granted hereunder. The restriction on outcall massage shall not apply to a permittee who performs outcall massage as defined herein upon a customer or client who, because of reasons of physical defects or incapacities, or due to illness, is physically unable to travel to the massage establishment. If any outcall massage is performed under this exception, a record of the date and hour of each treatment, and the name and address of the customer or client, and the name of the employee administering such treatment and the type of treatment administered, as well as the nature of the physical defect, incapacity or illness of said client or customer shall be kept by the licensee or person or employee designated by the licensee. Such

records shall be open to inspection by officials charged with the enforcement of public health laws. The information furnished or secured as a result of any such inspection shall be confidential. Any unauthorized disclosure or use of such information by an employee of the business or the Town or Monteagle shall be unlawful.

(6) It shall be unlawful for any massage service to be carried on within any cubicle, room, booth, or any area within a massage establishment which is fitted with a door capable of being locked. All doors or doorway covering within a massage establishment shall have an obstructed opening six inches by six inches (6"x6") in size capable of clear two-way viewing into and out of all cubicles, rooms, or booths. The opening shall be not less than four and one-half feet (4 1/2') from the floor of the establishment, nor more than five and one-half feet (5 1/2') from the floor. Toilets and cubicles used solely for the application of liquid and vapor baths shall have no such opening in the covering, door or curtain, but shall be clearly marked as to the purpose on the exterior door or curtain of said cubicle, room or booth. Nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof, whenever such inspection is deemed necessary by the police or health department. (1989 Code, § 9-421)

9-222. Sale or transfer or change of location. Upon sale, transfer or relocation of massage establishment, the license therefor shall be null and void unless approved as provided in § 9-207; provided, however that upon the death or incapacity of the licensee or any co-licensee of the establishment, any heir or devisee of a deceased licensee, may continue the business of the massage establishment for a reasonable period of time not to exceed sixty (60) days to allow for an orderly transfer of the license. (1989 Code, § 9-422)

9-223. Name and place of business. No person granted a license pursuant to this chapter shall operate the massage establishment under a name not specified in his license, nor shall he conduct business under any designation or location not specified in his license. (1989 Code, § 9-423)

9-224. Transfer of license. No license or permit shall be transferable except with the consent of the Town of Monteagle and ratified by the Board of Mayor and Aldermen of the Town of Monteagle. An application for such transfer shall be in writing and shall be accompanied by fees prescribed in §§ 9-205 and 9-206. The written application for such transfer shall contain the same information as requested herein for initial application for the license or permit. (1989 Code, § 9-424)

9-225. Violation and penalty. Every person, except those person who are specifically exempted by this chapter, whether acting as an individual

owner, employee of the owner, operator or employee of the operator, or whether acting as a mere agent or independent contractor for the owner, employee or operator, or acting as a participant or worker in any way directly or indirectly who gives massages or operates a massage establishment of any of the services defined in this chapter without first obtaining a license or permit and paying a fee to do so from the Town of Monteagle, or shall violate any provision of this chapter, shall be guilty of a misdemeanor and upon conviction such person shall be punished according to the general penalty provision of this code of ordinances. (1989 Code, § 9-425)

CHAPTER 3

SALE OF EPHEDRINE OR PSEUDOEPHEDRINE

SECTION

9-301. Definitions.

9-302. Restrictions on public access to ephedrine products.

9-303. Reporting theft of ephedrine products.

9-304. Violation and penalty.

9-301. Definitions. As used in this chapter, the following words and/or phrases shall have the following meanings as set forth herein:

(1) "Ephedrine." All forms of ephedrine, pseudoephedrine, ephedrine hydrochloride, pseudoephedrine hydrochloride, phenylpropanolamine and all other combinations of these chemicals.

(2) "Ephedrine product." Any product that contains ephedrine, its salts, isomers, or salts of isomers, as its sole active ingredient or in combination with less than therapeutically significant quantities of other active ingredients.

(3) "Package." Any number of pills, tablets, capsules, caplets or individual units of a substance held within a container intended for sale.

(4) "Person." Any individual, corporation, partnership, trust, limited liability company, firm, association or other entity selling an ephedrine product to customers.

(5) "Sell." To knowingly furnish, give away, exchange, transfer, deliver, surrender or supply, whether for monetary gain or not. (Ord. #07-13, July 2013)

9-302. Restrictions on public access to ephedrine products. It shall be illegal to sell, deliver, or distribute ephedrine, pseudoephedrine, their salts, their optical isomers or salts of their optical isomers, without a valid prescription from a physician or other healthcare professional licensed by the State of Tennessee to write prescriptions and filled by a Tennessee-licensed pharmacist. (Ord. #07-13, July 2013)

9-303. Reporting theft of ephedrine products. Any person who sells ephedrine products and who discovers a theft, disappearance or other loss of an ephedrine product shall report the theft, disappearance or other loss in writing to the Monteagle Police Department within twenty-four (24) hours of such discovery.

Any person who sells ephedrine products shall report to the Monteagle Police Department any difference between the quantities of ephedrine products shipped and the quantity of ephedrine products received within twenty-four (24) hours of discovery. (Ord. #07-13, July 2013)

9-304. Violation and penalty. (1) Penalty and injunctive relief. Each violation of this chapter shall be considered a separate offense.

The town council may institute an action for injunctive relief to enforce the provisions of this chapter.

Every act or omission constituting a violation of any of the provisions of this chapter by any agent or employee of any person shall be deemed and held to be the act of such person, and said person shall be punishable in the same manner as if said act or omission had been done or omitted by him/her or it personally, provided such an act or omission was within the scope of employment or the scope of authority of such agent or employee.

Nothing contained herein shall in any manner be deemed or construed to alter, modify, supercede, supplant or otherwise nullify any other ordinance of the town or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the town council that it would have enacted this ordinance without valid or unenforceable provisions. In the event of a subsequent change in the applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon to full force and effect without further action by the town and shall thereafter be binding.

(2) Civil penalty. Any Town of Monteagle sworn law enforcement officer is hereby empowered to issue a citation to any person for any violation of the provisions of this section. Citations so issued may be delivered in person to the violator or they may be delivered by registered mail to the person to the violator or they may be delivered by registered mail to the person so charged if the person cannot be readily found. Any citation so delivered or mailed shall direct the alleged violator to appear in town court on a specific day and at a specific hour stated upon the citation; and the time so specified shall be not less than seventy-two (72) hours after its delivery in person to the alleged violator, or less than ten (10) days of mailing of same. Citations issued for a violation of any of the provisions of this section shall be tried in the town court. The town court judge shall determine whether a defendant has committed a violation of this section. The town shall bear the burden of proof by a preponderance of the evidence. If a defendant pleads guilty or "no contest" to the alleged violation, or is found guilty by the town court judge, the town court judge shall assess a civil monetary fine as a penalty against any person found to have violated any of the provisions of this chapter, said fine to be in the amount of fifty dollars (\$50.00) for each violation. Each day of violation shall be deemed a separate violation. Each separate package containing any substance containing any ephedrine as defined herein shall be deemed a separate violation. In addition to the civil

monetary fine, any defendant who pleads guilty or "no contest" to the alleged violation, or who is found guilty by the town court judge, shall be assessed court costs as provided by law, and in addition shall be ordered to pay an administrative fee to the town in an amount to recoup the cost incurred by the town law enforcement agency for any chemical test conducted by or at the request of the law enforcement agency that is used to determine the chemical content of any substance collected from the defendant which formed the basis for any citation charge. Appeal may be had as provided by law. (Ord. #07-13, July 2013)

CHAPTER 4

MOBILE FOOD UNITS

SECTION

- 9-401. Definitions.
- 9-402. Requirements of mobile food units.
- 9-403. Permit requirements.
- 9-404. Operational requirements.
- 9-405. Compliance with health regulations.

9-401. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(1) "Mobile food unit" means any motorized vehicle or trailer attached to a motorized vehicle that includes a self-contained kitchen in which food is prepared or processed and from which food is sold or dispensed to the ultimate consumer.

(2) "Operator" means any person holding a mobile food unit permit or any person who is engaged in the selling or offering for sale, of food, beverages, fruit or like consumable products from a mobile food unit. (Ord. #04-14, June 2014)

9-402. Requirements of mobile food units. Mobile food units shall meet all applicable requirements as follows:

(1) No person shall engage in the business of a mobile food preparation vehicle within the Town of Monteagle without first having obtained all required business licenses, a mobile food unit permit, and any permits, licenses and/or certifications required by the jurisdictional county and/or the State of Tennessee.

(2) No person shall sell, or offer for sale, any food, beverage, fruit, or like consumable product from any mobile food unit unless:

(a) Such person obtains a mobile food unit permit from Monteagle Town Hall;

(b) Such sales are made from a mobile food unit under the control of a mobile food unit operator; and

(c) The mobile food unit operator has obtained written permission from the owner or lessee of the premises on which the mobile food unit is located to operate on mobile food unit from the property.

(3) Mobile food units may only operate in the C-1 Central Business District, C-2 Highway Business District, C-3 Interchange Commercial District, and I-1 Industrial District as defined by the Zoning Ordinance for the Town of

Monteagle and delineated by the accompanying zoning map.¹ Violations will be enforced by the zoning enforcement officer.

(4) Mobile food units must be mobile and on wheels at all times during operation. A trailer shall remain attached to its towing vehicle at all times.

(5) Mobile food units must be removed from authorized operating locations in permitted zones when not in use and between the hours of 12:00 A.M. and 6:00 A.M. This definition does not include vehicles operating under a special event permit.

(6) The operator shall have posted the current price per unit or measure for each type of item sold. (Ord. #04-14, June 2014)

9-403. Permit requirements. (1) The title of this permit shall be the "Mobile Food Unit Permit."

(2) A mobile food unit permit, as authorized by the State of Tennessee and the Town of Monteagle, will not be issued to a person unless the following conditions are met:

(a) The vehicle must be specially designed as a mobile food unit and be in compliance with all applicable health regulations and life safety requirements for the jurisdictional county and the State of Tennessee.

(b) The driver of the vehicle must present a valid Tennessee Driver's License, current automobile insurance (including liability insurance for the mobile food unit), and current vehicle registration as required by Tennessee law and enforced by law enforcement authorities.

(3) Any person desiring a mobile food unit permit shall make written application to the town hall stating:

(a) Name, home address, business address, and telephone number of the applicant and the name, address, and telephone number of the owner of the mobile food unit, if other than the applicant, to be used in the operator's business;

(b) A description of the type of food, beverage, fruit, or like consumable product to be sold; and

(c) The Vehicle Identification Number (VIN#), a brief description including make and model, and at least two (2) photographs of the mobile food unit.

(4) Before any permit is issued, the applicant must submit satisfactory evidence that he has complied with the state business tax act and all state statutes and regulations controlling health and dispensing of food. Nothing herein shall excuse any applicant/operator from complying with all applicable state statutes and municipal ordinances controlling health standards and requirements and the operation of businesses.

¹The zoning map of the Town of Monteagle (and any amendments) is available in the office of the town recorder.

(5) Upon compliance with the provisions of this chapter, the town shall issue to the applicant a mobile food unit permit authorizing the operator to do business upon payment of a permit fee of one hundred dollars (\$100.00); provided, the applicant complies with the other provisions of this chapter.

(6) A permit issued under this chapter shall be valid for one (1) year from the date of issuance and shall be renewed on an annual basis (concurrent with the renewal and issuance of business licenses) upon proper application and payment of the permit fee. Each permit shall be valid for only one (1) mobile food unit. Each operator and/or applicant shall file an additional application and pay an additional permit fee for each additional mobile food unit.

(7) All permits issued under this chapter shall be displayed inside the mobile food unit at all times during the operation of the mobile food unit. The permit shall be displayed in such a manner that it can be viewed from the outside. (Ord. #04-14, June 2014)

9-404. Operational requirements. (1) Mobile food units are prohibited from operating upon public streets, sidewalks or public property within the limits of the Town of Monteagle, unless having obtained prior written permission with specific time references.

(2) Mobile food units are prohibited from operating on private property, except with prior written permission from the owner or lessee on which the mobile food unit is located.

(3) Mobile food units must not be parked within ten feet (10') of a public right-of-way.

(4) Mobile food units may not sell or dispense anything between 12:00 A.M. and 6:00 A.M.

(5) No mobile food unit shall be equipped with any external electronic sound-amplifying device. No operator shall shout, make any noise, or use any device for the purpose of attracting attention to the mobile food units or the items it offers for sale.

(6) Mobile food units shall be limited to the sale of food and non-alcoholic drinks. The sale of other merchandise or services will not be permitted.

(7) Cooking must not be conducted while the vehicle is in motion.

(8) Signs which are permanently affixed to the mobile food unit shall extend no more than six inches (6") from the vehicle. All signs shall be attached to or painted on the mobile food unit. Electronic signs are prohibited, as are signs that flash, cause interference with radio, telephone, television or other communication transmissions; produce or reflect motion pictures; emit visible smoke, vapor, particles, or odor; are animated or produce any rotation, motion or movement.

(9) The operator must provide for the sanitary collection of all refuse, litter and garbage within twenty-five feet (25') of the mobile food unit which is generated by the mobile food unit operation or the patrons using that service

and shall remove all such waste materials from the location before the vehicle departs.

(10) The operation of the mobile food unit is limited to the interior of the unit. There shall be no outside seating implements in the form of benches, tables, chairs or other furniture which may be used for eating or sitting. (Ord. #04-14, June 2014)

9-405. Compliance with health regulations. (1) Operators of mobile food units shall comply with all regulations and laws governing mobile food service establishments and food service establishments adopted by the department of public health the jurisdictional county and enacted by the State of Tennessee.

(2) Operators of mobile food units shall obtain all necessary health certificates and permits. (Ord. #04-14, June 2014)