

**TITLE 9**

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

**CHAPTER**

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**CHAPTER 1**

**MISCELLANEOUS**

**SECTION**

- 9-101. Distribution of handbills.
- 9-102. Pinball machines, etc.
- 9-103. Soliciting along U.S. Highway 441 (S.R. 71) or public ways.
- 9-104. Availability of lodging for posted lodging rates required.

**9-101. Distribution of handbills.** (1) It is hereby declared to be unlawful for any person, firm, or corporation to scatter or distribute on or along any public street or municipally owned parking lot or to distribute or place or cause to be distributed or placed on any motor vehicle on any public street or municipally owned parking lot in the City of Pigeon Forge any commercial literature, advertising material, commercial hand bill, or other advertising paper; provided, however, that nothing shall legally prevent an enforcing officer from attaching a violation notice on any such motor vehicle; provided further

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<sup>1</sup>Municipal code references

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

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

that the provisions of this section shall not apply to the advertising material of religious, fraternal, or charitable organizations.

(2) Any merchant who advertises its goods, wares, or merchandise by causing such advertising material to be scattered or distribute on or along any public street or municipally owned parking lot, or placed on or fastened to a motor vehicle located in any public street or municipally owned parking lot in the city, shall be deemed equally guilty of violating the provisions of this section along with the person actually placing such literature on such motor vehicle. (1979 Code, § 5-101)

**9-102. Pinball machines, etc.** No owner, operator, manager, or person in charge of any restaurant, cafe, filling station, beer tavern, hotel, motel, drug store, or any other store, establishment, place of business, or otherwise, shall allow any person under the age of eighteen (18) years, without written permission by parents or guardian, to play or operate any game of miniature football, golf, baseball, pinball machine, and all other miniature games, whether made playable by a mechanical device or otherwise and whether the charge for playing is collected by a mechanical device or otherwise.

It shall be the exclusive duty of the owner, operator, manager or person in charge of any such place to ascertain or determine the age of any such player and ignorance of the age or misinformation relative thereto shall not excuse the owner, operator, manager or person in charge. (1979 Code, § 5-103)

**9-103. Soliciting along U. S. Highway 441 (S.R. 71) or public ways.** No person or persons, for the purpose of soliciting business from transients, shall stand, sit, walk, run, or jump on the right-of-way of U.S. Highway 441 or any other street, road, highway, alley, sidewalk or easement in the city. Examples of solicitation of business include hawking, barking, or prolonged waving to passersby, especially while wearing a mask or costume or prolonged motioning or directing of passersby into a particular business or group of business. The terms of this section shall not be applicable to participants in parades or like activities, approved by the City of Pigeon Forge, during their participation in the approved activity. Likewise, police officers who are engaged in directing traffic or a similar activity, while serving in their official capacity, are exempt.

Any individual found to be in violation of the provisions of this section shall be guilty of a misdemeanor.

In addition to other remedies available under this code, the city manager is authorized to secure a Writ of Injunction or restraining Order, from a court of competent jurisdiction, to prohibit continued violation of the provisions of this section (1979 Code, § 5-104, as amended by Ord. #538, § 1, May 1997)

**9-104. Availability of lodging for posted lodging rates required.**

1. That it shall be unlawful for any person of legal entity or any hotel, motel or other lodging facility or lodging development to fail to make available to the public lodging for the posted rate contained in on site advertising or posted lodging rates at any time all lodging at said facility is not completely occupied.

2. A violation of this section shall be punishable upon citation to the Pigeon Forge City Court by a fine not to exceed fifty dollars (\$50.00). (as added by Ord. #850, Dec. 2007)

## CHAPTER 2

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

#### SECTION

- 9-201. Permit required.
- 9-202. Exemptions.
- 9-203. Application for permit.
- 9-204. Issuance or refusal of permit.
- 9-205. Administrative review by specified departments or the planning commission.
- 9-206. Appeal.
- 9-207. Permits available.
- 9-208. Issuance fee.
- 9-209. Bond.
- 9-210. Loud noises and speaking devices.
- 9-211. Use of streets and property.
- 9-212. Exhibition of permit.
- 9-213. Policemen to enforce.
- 9-214. Revocation or suspension of permit.
- 9-215. Reapplication.
- 9-216. Renewal of permit.

**9-201. Permit required.** It shall be unlawful for any peddler, canvasser, or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit therefor in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1979 Code, § 5-201)

**9-202. Exemptions.** The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic or philanthropic organizations. (1979 Code, § 5-202)

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

- (1) Name and physical description of applicant.

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

(2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.

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

(4) If acting as an employee of a particular business, the name and address of the employer along with a statement from said employer describing its relationship with the applicant.

(5) The length of the time for which the right to do business is desired.

(6) A clear, recent photograph showing the head and shoulders of the applicant, with said photograph measuring two (2) inches square.

(7) The names of at least two (2) reputable local property owners who will certify the applicant's business responsibility, or such other available evidence as will enable an investigator to properly evaluate the applicant's reputation as a responsible businessperson.

(8) A statement which lists any and all criminal offenses, including misdemeanors and violations of city ordinances, for which the applicant has been convicted; the nature of the offense; and the punishment received.

(9) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities.

(10) Proof of a valid Pigeon Forge business license.

(11) At the time of filing the application, a fee of twenty-five dollars (\$25.00) shall be paid to the city to cover the cost of investigating the facts stated therein. (1979 Code, § 5-203, as amended by Ord. #544, May 1997)

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

(2) If said investigation reveals that the applicant has a poor reputation as a businessperson or has been convicted of a criminal offense which reflects negatively on his business reputation, the city manager shall notify the applicant that the application is disapproved and no permit shall issue.

(3) If said investigation reveals that the applicant's business reputation is satisfactory, the city manager shall issue a permit upon the payment of all applicable fees and the filing of the bond required by section 9-206. The city manager shall keep a permanent record of all permits issued. (1979 Code, § 5-204, as amended by Ord. #544, May 1997)

**9-205. Administrative review by specified departments or the planning commission.** All special events shall have the approval of a special events administrative review conducted by specified departments. Approval

shall be required where any or all peddlers or sales booths are requested for a lot, tract or parcel. Peddlers operating on the same tract, lot or parcel must file a site plan for a special event review and receive approval prior to the event's occurrence. The planning commission will conduct an additional review of special event permits only when the applicants have requested use of government property which may include but is not limited to roads, parks, schools, libraries, city hall, community center, city owned parking lots or when a special event review is referred to the planning commission by the staff. The site plan shall include ingress/egress; number of booths and locations, parking areas (minimum of three parking spaces per booth), signage, setbacks from property lines and public right-of-ways, location of intersections, dates of the event(s) or peddling, names of event sponsors and property owners. The special event administrative review, and when appropriate, the planning commission, will review all site plans to determine the following:

- (1) Location of use in appropriate commercial zone.
- (2) Maintenance of setbacks from road intersections which will insure the safety of vehicular pedestrian traffic.
- (3) Location of booths to insure that the permittee's operations are at least ten feet (10') from any public right-of-way, sidewalks, or other city or state owned property.
- (4) Signage to insure size less than four (4) square feet, and the location of which does not visually impair traffic movement. No signs are permitted to be attached to utility/light poles or other public equipment.
- (5) Outside booths shall be limited to no more than one booth per one thousand (1,000) square feet of total parking area and located as close to buildings as possible so as not to block driveways.
- (6) Site plan approval may be denied for inadequate information, violation of zoning code, potential hazards to pedestrian or vehicular traffic, improper location or size of signs, or inadequate off-street access or failure to obtain a business license prior to issuance of a permit. (1979 Code, § 5-203, as amended by Ord. #544, May 1997, and replaced by Ord. #1015, May 2016)

**9-206. Appeal.** Any person aggrieved by a denial of an application for a permit by a special events administrative review shall have the right to appeal to the planning commission. (1979 Code, § 5-205, as amended by Ord. #544, May 1997, and replaced by Ord. #1015, May 2016)

**9-207. Deleted.** (as deleted by Ord. #1015, May 2016)

**9-208. Issuance fees.** There shall be a ten dollar (\$10.00) fee to issue a short term permit and a one hundred dollar (\$100.00) fee to issue an extended term permit. (1979 Code, § 5-207, as amended by Ord.#544, May 1997)

**9-209. Bond.** Every permittee shall file with the city manager a surety bond running to the city in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned upon the permittee complying fully with all the provisions of the ordinances of the city and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the city that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the city doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (1979 Code, § 5-208, as amended by Ord. #544, May 1997)

**9-210. Loud noises and speaking devices.** No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks or other public places of the city or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1979 Code, § 5-209, as amended by Ord. #544, May 1997)

**9-211. Use of streets and property.** No permittee shall be permitted to operate in the public streets or use any public property or right-of-way. Permittees using private property must show written permission from the property owner at the time of application for a permit. (1979 Code, § 5-210, as amended by Ord. #544, May 1997)

**9-212. Exhibition of permit.** Permittees are required to exhibit their permits when requested to do so by either public officials or private citizens. (1979 Code, § 5-211, as amended by Ord. #544, May 1997)

**9-213. Policemen to enforce.** It shall be the duty of all policemen to see that the provisions of this chapter are enforced. (1979 Code, § 5-212, as amended by Ord. #544, May 1997)

**9-214. Revocation or suspension of permit.** (1) Permits issued under the provisions of this chapter may be revoked by the board of commissioners after notice and hearing, for any of the following causes:

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

(b) Any violation of this chapter.

(c) Conviction of any criminal offense.

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

(e) Harassing the public to accept such literature. Harassment herein is defined as hawking, yelling, or forcing literature to be accepted by an individual without his/her specifically requesting it.

(f) The permittee shall violate the conditions of the permit if he/she moves from the location noted on the permit and the site plan as submitted to the planning commission.

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

(3) When reasonably necessary in the public interest the city manager may suspend a permit pending the revocation hearing. (1979 Code, § 5-213, as amended by Ord. #544, May 1997)

**9-215. Reapplication.** No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (as added by Ord. #544, May 1997)

**9-216. Renewal of permit.** Permits issued under the provisions of this chapter shall be renewed upon payment pursuant to 9-208 and if the one thousand dollar (\$1,000.00) bond remains posted, provided there have been no substantiated complaints about the applicant. (as added by Ord. #544, May 1997)



## CHAPTER 3

### CHARITABLE SOLICITORS

#### SECTION

9-301. Policy of the City of Pigeon Forge pertaining to charitable and religious contributions.

9-302. Registration of charitable or religious solicitors.

**9-301. Policy of the City of Pigeon Forge pertaining to charitable and religious contributions.** The City of Pigeon Forge recognizes the constitutional right of charitable and religious organizations to solicit contributions and to distribute information within our community. It is the policy of the City of Pigeon Forge not to impede or impair said activities. However, because of the concern of the City of Pigeon Forge in protecting its citizens from unscrupulous activities or imposters, it shall be the policy of the City of Pigeon Forge that all charitable or religious solicitations be conducted as hereinafter set forth. (1979 Code, § 5-301)

**9-302. Registration of charitable or religious solicitors.** No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without first registering with the city manager the name and addresses of said organization and any individuals so soliciting on behalf of said organization. In the event any organization or person shall solicit pursuant to this provision for more than one calendar week, said organization or individuals shall register weekly with the city manager. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1979 Code, § 5-302)

## CHAPTER 4

### TAXICABS<sup>1</sup>

#### SECTION

- 9-401. Title.
- 9-402. Definitions.
- 9-403. Franchise required.
- 9-404. Requirements as to application and hearing.
- 9-405. Liability insurance required.
- 9-406. Franchise resolution.
- 9-407. Transfer of franchise.
- 9-408. License and permit required for drivers.
- 9-409. Qualifications for a driver's permit.
- 9-410. Revocation or suspension of driver's permit.
- 9-411. Conduct prohibited.
- 9-412. Direct routes.
- 9-413. Passengers.
- 9-414. Parking restricted.
- 9-415. Uses prohibited.
- 9-416. Mechanical condition of taxicab.
- 9-417. Cleanliness of vehicles.
- 9-418. Inspection of vehicles.
- 9-419. Meter.
- 9-420. Nondiscrimination.
- 9-421. Revocation of franchise or permit.
- 9-422. Fees.

**9-401. Title.** This chapter shall be known as the taxicab franchise ordinance. (1979 Code, § 5-901)

**9-402. Definitions.** The purposes of this chapter, the following terms, phrases, words and their derivations, shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(1) "City" is the City of Pigeon Forge, Tennessee.

(2) "Commissioners" is the Board of Commissioners of the City of Pigeon Forge, Tennessee.

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

(3) "Person" means any individual, firm, co-partnership, corporation, company, association, or joint stock association; includes any trustee, receiver, assignee, or personal representative thereof.

(4) "Taxicab" means any motor vehicle operating for the transportation of passengers for hire, serving or offering to serve the public, designed and constructed to accommodate and transport not more than nine (9) adult passengers, exclusive of the driver, the operations of which are within the corporate limits of Pigeon Forge, Tennessee. (1979 Code, § 5-902)

**9-403. Franchise required.** It shall be unlawful for any person to engage in taxicab business unless he has first obtained a taxicab franchise from the city and has a currently effective privilege license. All franchises issued are non-exclusive. (1979 Code, § 5-903)

**9-404. Requirements as to application and hearing.** No person shall be eligible to apply for a taxicab franchise unless the applicant is of good moral character and has not been convicted of a felony within five (5) years prior to the application. Applications for taxicab franchises shall be made under oath and in writing to the city manager. The application shall state the name and address of the applicant, the name and address of the proposed place of business, the number of cabs the applicant desires to operate, the makes and models of each cab, and such other pertinent information as the city manager may require. The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good moral character and reputation of the applicant. Within ten (10) days after the receipt of the application, the city manager shall conduct an investigation of the credentials of the applicant and make a determination if there is a public need for additional taxicab service. Thereafter, the city manager shall present the application to the board of commissioners for the recommendation to either grant or refuse a franchise to the applicant. The board of commissioners shall thereupon hold a public hearing at which time witnesses for and against the granting of the franchise shall be heard. In determining whether or not to grant the franchise, the board of commissioners shall consider the public need for additional service, traffic congestion, parking space requirements, and safety factors with respect to the general public, both vehicular and pedestrian. All franchises awarded by the commission shall be non-exclusive to the award of any other taxicab franchises. (1979 Code, § 5-904)

**9-405. Liability insurance required.** No taxicab franchise shall be issued or continue in operation unless there is at all times in full force and effect a liability insurance policy for each vehicle authorized and not less than \$100,000.00 for injury to one person and \$300,000.00 for injuries to more than one person in any one accident, and full coverage for property damage in an amount not less than \$15,000.00. In the alternative, the operator may execute

and deliver to the board of commissioners a good and solvent corporate bond, with appropriate sureties affording the same minimal protection. No franchise shall be issued to any person until such insurance or an appropriate bond has been provided and evidence thereof filed with the board of commissioners. The insurance policy or corporate bond required by this section shall contain a provision that it shall not be cancelled except after thirty (30) days written notice by the insurance carrier to both the insured person and the city manager. (1979 Code, § 5-905)

**9-406. Franchise resolution.** The board of commissioners shall issue a franchise to operate a taxicab or taxicabs with the City of Pigeon Forge, Tennessee, upon the compliance by the applicant of all requirements set out in this chapter. Any franchise issued under the provisions of this chapter shall specify the name and address of the person to whom the franchise is granted, the date issued, service to be performed, and the number, make and model of the vehicles used as taxicabs. (1979 Code, § 5-906)

**9-407. Transfer of franchise.** No franchises issued under this chapter shall be sold, transferred, assigned, leased or otherwise disposed of in any manner. (1979 Code, § 5-907)

**9-408. License and permit required for drivers.** No person shall drive a taxicab unless he is in possession of a special chauffeur's license issued by the State of Tennessee and a taxicab driver's permit issued by the city manager. (1979 Code, § 5-908)

**9-409. Qualifications for a driver's permit.** No person shall be issued a taxicab driver's permit unless he complies with the following conditions:

- (1) Makes written application to the city manager;
- (2) Is at least 18 years of age and holds a state special chauffeur's license;
- (3) Undergoes an examination by a physician and is found to be of sound physique with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render the driver unfit for the safe operation of a public vehicle;
- (4) Maintains a neat and clean appearance and certifies that he is not addicted to the use of intoxicating liquor or drugs and shall not operate a vehicle under the influence of intoxicating liquors or drugs;
- (5) Produce affidavits of good moral character from two reputable citizens of the city who have known him personally and have observed his conduct for at least a reasonable length of time not less than ninety (90) days next preceding the date of his application;
- (6) Has not been convicted of a felony, convicted of driving while intoxicated or under the influence of an intoxicant within the five (5) years next

preceding the application for a driver's permit or convicted of frequent traffic offenses;

(7) Is familiar with the state and local traffic laws. (1979 Code, § 5-909)

**9-410. Revocation or suspension of driver's permit.** The board of commissioners, after a public hearing, may revoke or suspend any taxicab driver's permit for two (2) or more violations of traffic regulations, for a violation of any provision of this chapter or when the driver no longer meets the requirements and qualifications as set out in the preceding sections. (1979 Code, § 5-910)

**9-411. Conduct prohibited.** It shall be unlawful for any taxicab driver, while on duty, to be under the influence of or to drink any intoxicating beverages or to make use of any other intoxicating drugs; to use profane or obscene language or to shout or call to prospective passengers, make unnecessary use of the automobile horn, or to otherwise unreasonably disturb the peace, quiet and tranquility of the residents of this city. (1979 Code, § 5-911)

**9-412. Direct routes.** Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (1979 Code, § 5-912)

**9-413. Passengers.** No person shall be admitted to a taxicab already occupied by a passenger without the consent of the passenger. (1979 Code, § 5-913)

**9-414. Parking restricted.** It shall be unlawful to park any taxicab, while on duty, upon any street except in such places that have been specifically designated and marked by the city for use by taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging passengers if such stops are made in such a manner as not to unreasonably interfere with or obstruct such other traffic and provided loading or discharging is promptly accomplished. (1979 Code, § 5-914)

**9-415. Uses prohibited.** No taxicab shall knowingly be used for or in the commission of any illegal act, business or purpose. (1979 Code, § 5-915)

**9-416. Mechanical condition of taxicab.** It shall be unlawful for any person to operate any taxicab in the city unless such taxicab is equipped with four wheel brakes, front and rear lights, horn, muffler, windshield wipers, safety tires, and a rear vision mirror all of which shall conform to the requirements of state law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such

doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such good condition and repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (1979 Code, § 5-916)

**9-417. Cleanliness of vehicles.** All taxicabs operated in the city shall at all times be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once per day. At least once in every week taxicabs shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (1979 Code, § 5-917)

**9-418. Inspection of vehicles.** All taxicabs shall be inspected at least semi-annually by the city manager or his designated agent to insure compliance with the requirements of this chapter and with respect to the mechanical condition, and cleanliness of the vehicle. (1979 Code, § 5-918)

**9-419. Meter.** All taxicabs shall be equipped with metering devices which accurately and openly display to its passengers the fare to be charged based upon time and distance. (1979 Code, § 5-919)

**9-420. Nondiscrimination.** All persons, firms, or corporations awarded franchises by the terms of this chapter and their agents, employees and assigns shall not discriminate in the provision of services relative to race, creed, color, or religious background. (1979 Code, § 5-920)

**9-421. Revocation of franchise or permit.** Any violation of the terms and provisions of this chapter by persons holding a franchise or driver's permit hereunder shall authorize the board of commissioners to revoke the franchise or the driver's permit. There should be no revocation in either instance, however, without a ten (10) day prior written notice to the person holding the franchise or the driver holding the permit and that public hearing be afforded relative to the matter. (1979 Code, § 5-921)

**9-422. Fees.** Each application for a franchise under the provision of this chapter shall be accomplished by the applicable privilege tax. Each application for a taxicab driver's permit shall be accompanied by an application fee of \$25.00. Each application for an annual renewal of the driver's permits shall be accompanied by an application fee of \$10.00. The fees charged for the driver's permits shall be used to reimburse the city for its expense and costs in performing its duties under the terms of this chapter. (1979 Code, § 5-922)

## CHAPTER 5

### AUCTIONS

#### SECTION

- 9-501. Auctions regulated and excepted.
- 9-502. Permit, application, and bond requirements.
- 9-503. Board action upon application.
- 9-504. Prohibited conduct by persons conducting auctions.
- 9-505. Permits not transferable; may be suspended, etc.
- 9-506. Permits to be displayed.

**9-501. Auctions regulated and excepted.** All public or private auctions of personal property within the City of Pigeon Forge shall be controlled and governed by the provisions of this chapter, except auctions held pursuant to the order of a court of record, or to sales of executors or administrators, bona fide sales by trustees under recorded mortgages or deeds of trust, or by the holders in accordance with law. (1979 Code, § 5-401)

**9-502. Permit, application, and bond requirements.** No person firm, or corporation, directly or indirectly, through agents or otherwise, shall conduct any auction without first having obtained a permit for conducting same, through a regularly licensed auctioneer, as hereinafter provided.

(1) Any person desiring to conduct such an auction sale shall first file a written application for a permit therefor with the board of commissioners, stating:

(a) The name, address, and occupation or business of the person, firm, or corporation desiring to conduct such auction.

(b) The name, address, and occupation or business of the person, firm, or corporation for whom the auction is to be conducted, if other than the applicant.

(c) A statement showing the dates, places, and nature of merchandise sold at all other auction sales by the applicant and/or the owner of the property to be auctioned, within two (2) years next preceding the date of the application.

(d) Whether or not any other application for a permit by him or the owner of the goods has been refused and/or whether any such permit has been revoked or challenged after the issuance.

(e) The name and address of the auctioneer or auctioneers who will call or cry the auction.

(2) The applicant shall file with said application a bond in the penal sum of one thousand dollars (\$1000), with good and solvent sureties, in the following form, to wit:

STATE OF TENNESSEE  
COUNTY OF SEVIER

KNOW ALL MEN BY THESE PRESENTS That we \_\_\_\_\_,  
Principal, and \_\_\_\_\_ and \_\_\_\_\_, Sureties, are  
held and firmly bound unto the City of Pigeon Forge for its own use in the penal  
sum of one thousand dollars (1,000) for the payment whereof well and truly to  
be made, we bind ourselves respectively and our heirs and administrators.

The condition of this bond is such that whereas the above named  
\_\_\_\_\_ has obligated himself to the City of Pigeon Forge in the  
penal sum of one thousand dollars (\$1,000.00) now, therefore, if the said  
\_\_\_\_\_ does well and truly conform to the provisions of  
Ord. #25 (title 9, chapter 5, Pigeon Forge Municipal Code) then this obligation  
shall be void otherwise to remain in full force and effect for the period of one  
year from the date of this bond.

It is expressly understood that this bond is payable to and recoverable by  
the City of Pigeon Forge for its own use and for the use of all persons suffering  
loss or damage by reason of the violation of said ordinance by the above named  
principal, and to compel the principal herein to perform the obligation herein  
undertaken.

In witness whereof, we have hereunto set our hands, this \_\_\_\_\_  
day of \_\_\_\_\_ 19 \_\_\_\_\_.

\_\_\_\_\_  
Principal  
  
\_\_\_\_\_  
Surety  
  
\_\_\_\_\_  
Surety

APPROVED:

\_\_\_\_\_  
City Attorney  
(1979 Code, § 5-402)



**9-503. Board action upon application.** Upon the filing of such application and bond, the board of commissioners shall consider the application together with oral testimony of the applicant, the owner and/or other witnesses, if required by said board of commissioners. If, in the opinion of the board of commissioners, after due consideration, it appears that the auction is for legitimate business purposes and not as a fraud upon the public; that the auction is to be conducted at a suitable and proper place, considering the traffic on the street, the congestion of the sidewalk, the usual place of business of the applicant, and the businesses surrounding the proposed place of auction; that the proposed advertisements of the auction fairly represents the merchandise to the public; and that the applicant, owner, and/or auctioneer is of good character and has not violated heretofore this or similar ordinances; and that the sureties on his bond are solvent; the board of commissioners shall issue a permit for such a period as it shall be shown necessary to dispose of the property described, but in no event for a longer period than two (2) weeks from the date of issuance. If a longer time shall become necessary, additional or extension permits therefor shall be obtained in the same manner as the original permit, as hereinbefore provided. The board of commissioners shall accept or reject any application within ten (10) days of date of filing. (1979 Code, § 5-403)

**9-504. Prohibited conduct by persons conducting auctions.** It is hereby declared to be unlawful for any auctioneer, person, firm, or corporation conducting or holding a public or private auction of personal property within the City of Pigeon Forge, Tennessee, to:

(1) Mislead the public as to the reason or purpose for holding said auction by any type or method of advertisement or inducement.

(2) Offer for sale or sell at any auction held for the purpose of "going out of business" any merchandise other than merchandise in stock at the time of commencement of said auction.

(3) Have an agent or other person, designated by whatever title or in whatever manner, to sit in the audience and support the bids by making bids for the sole purpose of maintaining a high bid level and not as a bona fide offer to buy.

(4) Mislead the public by false, fraudulent, or negligent advertising concerning the quality of goods sold.

(5) Hold said auction at any time between the hours of 9:00 o'clock A.M. and 4:00 o'clock P.M., and between 8:00 o'clock and 11:00 o'clock P.M.

(6) Make any false representations or statements as to the ownership of, character or circumstances of the owner, or pretended owner, of such property for the purpose of inducing the sale thereof.

(7) Falsely advertise, state, or represent that such goods, wares, and merchandise are in whole, or in part, a bankrupt or insolvent stock, or damaged goods saved from fire, or to make any false statement, representation, or

advertisement as to the purchase, history, or character of such goods, wares, or merchandise.

(8) Substitute any article in lieu of that described and offered to and purchased by the bidder.

(9) Represent and/or sell as new or unused merchandise any second hand or used merchandise.

(10) Alter, transfer, lend, sell, or rent out any permit issued under this chapter or to use any permit not issued to the person so using.

(11) Conduct an auction sale covered by this chapter without a permit or after the expiration of the permit issued or after the revocation or suspension of such permit. (1979 Code, § 5-404)

**9-505. Permits not transferable; may be suspended, etc.** No permit issued hereunder shall be assignable or transferable. Any permit so issued may be suspended, recalled, or revoked by the board of commissioners for any violation of this chapter. (1979 Code, § 5-405)

**9-506. Permits to be displayed.** Any permit issued hereunder shall be continuously displayed where such auction sale is conducted. (1979 Code, § 5-406)

## CHAPTER 6

### FORTUNE TELLERS, ETC.

#### SECTION

9-601. Board to supervise.

9-602. Permit required, conditions, license fee, etc.

9-603. Unlawful to operate without a permit.

**9-601. Board to supervise.** There is hereby created a board which shall be composed of the city manager, city recorder and the chief of police, whose duty it shall be to supervise the issuance of permits to persons who engage in the business or occupation of telling fortunes, or practicing clairvoyance, spiritualism, palmistry, phrenology, card reading or any similar business or occupation within the city. (1979 Code, § 5-601)

**9-602. Permit required, conditions, license fee, etc.** (1) Before any person shall be authorized to engage in the business or occupation of fortune telling or any similar business as set forth in title 9, chapter 6, section 601 of the Pigeon Forge Municipal Code, he shall make application to the board for a permit and shall pay to the city all required fees for the issuance of a license or permit. No permit shall be approved and issued by the board until or unless the applicant meets the following qualifications:

(a) The applicant must show proof that he has not been convicted of any crime involving moral turpitude within the past five (5) years. For the purpose of this section, moral turpitude shall include anything done contrary to justice and honesty.

(b) The applicant shall furnish to the board a written statement setting forth his residence for the past five (5) years and the names and addresses of similar businesses which he has operated during the past five (5) years, if any.

(c) The applicant must set forth the particular place for which the permit and the license is desired and no permit shall be issued to conduct any such business within one (1) mile of any school building. No permits shall be issued for the practice of said occupation except in such areas as are zoned for commercial purposes, and the location must meet all requirements of the zoning ordinance.

(2) The board may revoke any permit issued under the provisions of this section for any violation of this section or if the applicant is convicted of any crime involving moral turpitude. (1979 Code, § 5-602, as amended by Ord. #585, Nov. 1998, and Ord. #587, Jan. 1999)

**9-603. Unlawful to operate without a permit.** Any person who engages in or undertakes to engage in such businesses or occupations within the

city without first having secured a permit therefor as herein provided, or who engages therein after such permit expires or is revoked, shall be deemed guilty of a misdemeanor. (1979 Code, § 5-603)

## CHAPTER 7

### RODEOS, CARNIVALS, ETC.

#### SECTION

- 9-701. Permit required; application for permit.
- 9-702. General conditions to issuance of permit.
- 9-703. Permit fees.
- 9-704. Occupancy of structure prohibited prior to issuance of permit.
- 9-705. Liability insurance and cash bond.
- 9-706. Inspection of premises.
- 9-707. Revocation of permit.
- 9-708. Penalties.

**9-701. Permit required; application for permit.** No person shall conduct, erect, or cause to be conducted or erected any radio, wild west show, menagerie, circus, carnival, or similar type of itinerant show within the city without a permit so to do issued by the city manager. Application for such permit shall be in writing and filed with the city manager at least fourteen (14) days prior to the opening date of any performance. The application shall state clearly the following:

- (1) Whether any open flame is intended to be used within the structure, and if so, what precautions are to be taken to render it safe.
- (2) The name of the person, firm, or corporation which will use the structure.
- (3) The location of the principal place of business of such person, firm, or corporation.
- (4) The names and addresses of the officers of such firm or corporation.
- (5) The length of time the structure is intended to be used for the purpose applied for.
- (6) The hours of the day or night during which such structure is intended to be used as a place of assembly.
- (7) The formula of the solution which is to be used to flameproof the structure, or a copy of a certificate showing the date of the last flameproof treatment and by whom performed.
- (8) What provisions have been made for sanitary facilities for persons using the premises on which such structure is to be erected or is maintained.
- (9) The name or names of the sponsoring local person or group.
- (10) That only safety film motion pictures will be used, where motion pictures are to be shown.
- (11) That the proposed operation is in compliance with the zoning ordinance, as amended.
- (12) Such other relevant information as the city manager may require.

Such application shall include the names of the owners, their addresses, and the name or names of the manager or managerial personnel of the operation. (1979 Code, § 5-701)

**9-702. General conditions to issuance of permit.** The city manager shall not issue a permit required by this chapter unless the applicant has made provision for:

- (1) Adequate aisles, seats, platforms, and poles.
- (2) Sufficient exits, well marked and properly lighted.
- (3) Lighted and unobstructed passageways to areas leading away from the structure, so that fire-fighting equipment and personnel may operate easily.
- (4) Removal, before the structure is to be used as a place of public assembly, of any pole, rope, or other obstruction in any aisle or exit.
- (5) Inspection before the opening of the show by the local electrical inspector to ascertain if any defects exist in the wiring and provision made for immediate correction of any defects which may be found.
- (6) Sufficient first-aid fire appliances to be distributed throughout the structure with operating personnel familiar with the operation of such equipment available and assigned during the use of such structure as a place of assembly.
- (7) Sufficient "NO SMOKING" signs visible at all times.
- (8) An employee at each entrance to require the extinguishing of all cigarettes, cigars, and other smoking materials.
- (9) Announcement at frequent intervals to the persons in the assembly of the fact that smoking within the structure is prohibited.
- (10) Proper safeguarding of any open flame or its use prohibited.
- (11) The prohibition of fireworks.
- (12) The clearing of straw, dry grass, sawdust, and any combustible trash from the structure before it is opened to the public and arrangements made to keep the areas where debris may be inspected to accumulate well serviced, especially under open seats.
- (13) Proper facilities for calling the city fire department.
- (14) Adequate police and fire personnel and equipment, at the applicant's expense, for the control of persons in the assembly to prevent overcrowding, obstruction of aisles and exits and such other control as may be necessary to render the occupation of such structure or its use by the public safe.
- (15) Rendering nonflammable the tent and canvas parts of the structure and all combustible decorative materials, including curtains, acoustic materials, streamers, cloth, cotton batting, straw, vines, leaves, trees, and moss. (1979 Code, § 5-702)

**9-703. Permit fees.** (1) The following fees are to be paid to the city recorder for permits required by this chapter, in addition to any other fee, tax, or payment required by any other provisions of this code or state statutes:

(a)	Rodeo and wild west show, per day . . . . .	\$150.00
(b)	Menageries, per day . . . . .	75.00
(c)	Circus and menagerie parades within the city, when circus or menagerie is located outside city, per day . . . . .	100.00
(d)	Buildings for entertainment, amusement or exhibitions of any kind or nature not enumerated above: Per day . . . . .	2.00
	Per week . . . . .	6.00
	Per month . . . . .	15.00
	Per six months . . . . .	25.00
(e)	Motor carnival, per day (first day) . . . . .	100.00
	Per day (after first day) . . . . .	75.00
	Concessions--Less Than 20'x 20', per day . . .	3.00
	Concessions--20'x 20' or more, per day . . . . .	5.00
(f)	Circus, per day (first day) . . . . .	100.00
	Per day (after first day) . . . . .	75.00
	Concessions--Less than 20'x 20', per day . . . . .	3.00
	Concessions--20'x 20' or more, per day . . . . .	5.00
(g)	Tent shows, except religious: Per day . . . . .	20.00
	Per week . . . . .	75.00
(h)	Any amusement or entertainment or show of any kind, except religious, on any lot of land in the city not included above: Per day . . . . .	20.00
	Per week . . . . .	75.00

(2) The above fees shall not apply to those activities fostered and supervised by the recreation department of the city or to permanently located amusement facilities. (1979 Code, § 5-703)

**9-704. Occupancy of structure prohibited prior to issuance of permit.** It shall be unlawful for any person to cause or permit the occupancy of a structure for purposes defined in this chapter, as a place of assembly, unless the permit required by this chapter has been issued. (1979 Code, § 5-704)

**9-705. Liability insurance and cash bond.** The applicant for a permit required by this chapter shall furnish evidence that a public liability insurance policy in the amount of not less than one hundred thousand dollars (\$100,000.00) for one person and three hundred thousand dollars (\$300,000.00) for any one accident, is in force and effect at the time such structure is to be occupied as a place of assembly by the public. The applicant shall deposit with the city finance director a cash bond in the sum of three hundred dollars

(\$300.00), conditioned that no damage will be done to the streets, sewers, trees, or adjoining property and that no dirt, paper, litter, or other debris will be permitted to remain upon the streets or upon any private property by such applicant. Such cash bond shall be returned to the applicant upon certification by the city manger that all conditions of this chapter have been complied with. (1979 Code, § 5-705)

**9-706. Inspection of premises.** The city manager shall cause an inspection to be made, at least forty-eight (48) hours prior to the first performance or to the erection of a structure for which a permit is required by this chapter, to determine if provisions of all health, safety, and zoning rules, regulations, and appropriate sections of this code are complied with or will be complied with in a satisfactory manner. (1979 Code, § 5-706)

**9-707. Revocation of permit.** If the city manager finds that a structure is being maintained in violation of any of the provisions of this chapter, or in such a manner as to constitute a fire hazard, he may revoke the permit issued under this chapter and it shall thereafter be unlawful for any person to continue to operate the activity or show covered by such permit or to allow the occupancy of such structure. (1979 Code, § 5-707)

**9-708. Penalties.** Any person found to be in violation of this chapter shall be subject to the penalties provided for in the adopting ordinance for this municipal code. (1979 Code, § 5-708)



## CHAPTER 8

### POOL ROOMS<sup>1</sup>

#### SECTION

9-801. Minors to be kept out; exception.

**9-801. Minors to be kept out; exception.** It shall be unlawful for any person engaged regularly or otherwise in keeping billiard, bagatelle, or pool rooms or tables, their employees, agents, servants, or other persons for them, knowingly to permit any person under the age of eighteen (18) years to play on said tables at any game of billiards, bagatelle, pool, or other games requiring the use of cue and balls, without first having obtained the written consent of the father and mother of such minor, if living; if the father is dead, then the mother, guardian, or other person having legal control of such minor; provided that this section shall not apply to the use of billiards, bagatelle, and pool tables kept by private persons and used in private families.

It is further provided that this section shall not apply to the use of billiards and pool tables by minors at the Pigeon Forge Community Center which are used under the supervision of city personnel at said community center. (1979 Code, § 5-102, as amended by Ord. #641, Oct. 2000)

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

**CHAPTER 9****CABLE TELEVISION REGULATIONS**<sup>1</sup>**SECTION**

9-901. Federal regulations adopted.

9-902. Franchising authority.

**9-901. Federal regulations adopted.** Pursuant to authority granted by the Cable Television and Consumer Protection Act of 1992 at 47 U.S.C. 543, and Federal Communications Commission action under the authority of said Act certifying the City of Pigeon Forge, Tennessee to regulate basic cable television service within the boundaries of the City of Pigeon Forge; and for the purposes of regulating the rates charged to customers of any cable television operator franchised by the City of Pigeon Forge, the regulations contained in Title 47 of the Code of Federal Regulations, Part 76, Subpart N, sections 76.900 through 76.985, are hereby adopted and incorporated by reference as a part of this code. (1979 Code, § 13-501)

**9-902. Franchising authority.** Whenever the regulations cited in § 9-901 refer to "franchising authority", it shall be deemed to be a reference to the Board of Commissioners of the City of Pigeon Forge, Tennessee. (1979 Code, § 13-502)

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<sup>1</sup>Municipal code reference

Cable television franchise: title 9, chapter 10.

**CHAPTER 10**

**CABLE TELEVISION**

**SECTION**

9-1001. To be furnished under franchise.

**9-1001. To be furnished under franchise.** Cable television service shall be furnished to the City of Pigeon Forge and its inhabitants under franchise as the board of commissioners shall grant. The rights, powers, duties and obligations of the City of Pigeon Forge and its inhabitants and the grantee of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.<sup>1</sup>

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<sup>1</sup>For complete details relating to the cable television franchise agreement see Ord. #90, 153, 204, 265, 300, 465, 586, 591, 601, 602, 668, and 687 in the office of the city recorder.

## CHAPTER 11

### ADULT-ORIENTED BUSINESS ESTABLISHMENTS

#### SECTION

- 9-1101. Rationale and findings.
- 9-1102. Definitions.
- 9-1103. Classifications.
- 9-1104. License required.
- 9-1105. Issuance of license.
- 9-1106. Fees.
- 9-1107. Inspection.
- 9-1108. Expiration and renewal of license.
- 9-1109. Suspension.
- 9-1110. Revocation.
- 9-1111. Hearing; license denial, suspension, revocation; appeal.
- 9-1112. Transfer of license.
- 9-1113. Hours of operation.
- 9-1114. Regulations pertaining to exhibition of sexually explicit films on premises.
- 9-1115. Loitering and exterior lighting and monitoring requirements.
- 9-1116. Penalties and enforcement.
- 9-1117. Applicability of chapter to existing businesses.
- 9-1118. Prohibited conduct.
- 9-1119. Scierter required to prove violation or business licensee liability.
- 9-1120. Failure of city to meet time frame not to risk applicant/licensee rights.
- 9-1121. Severability.
- 9-1122. Conflicting code provisions repealed.

**9-1101. Rationale and findings.** 1. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither 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. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

2. Findings and rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the city council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.* 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and *2 Deja Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 2006 WL 2882969 (6th Cir. 2006); *Sensations, Inc. v. City of Grand Rapids*, No. 1:06-cv-300, R. 73, Opinion (W.D. Mich. Oct. 23, 2006); *729, Inc. v. Kenton County*, 2006 WL 2842884 (E.D. Ky. 2006); *Deja Vu of Cincinnati, L.L.C. v. Union Township Bd. Of Trustees*, 411 F.3d 777 (6th Cir. 2005) (en banc); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *City of Chicago v. Pooh Bah Enterprises, Inc.*, 2006 WL 2827608 (Ill. 2006); *Sensations, Inc. v. City of Grand Rapids*, 2006 WL 2504388 (W.D. Mich. 2006); *Andy's Restaurant & Lounge, Inc. v. City of Gary*, 2006 WL 2873027 (7th Cir. 2006); *181 South, Inc. v. Fischer*, 454 F.3d 228 (3rd Cir. 2006); *Bronco's Entertainment, Ltd. v. Charter Twp. of Van Buren*, 421 F.3d 440 (6th Cir. 2005); *Charter Twp. of Van Buren v. Garter Belt, Inc.*, 258 Mich. App. 594 (2003); *Jott, Inc. v. Clinton Twp.*, 224 Mich. App. 513 (1997); *Michigan ex rel. Wayne County Prosecutor v. Dizzy Duck*, 449 Mich. 353 (1995); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Kentucky Restaurant Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Restaurant Ventures v. Lexington-Fayette Urban County Gov't*, 60 S.W.3d 572 (Ky. Ct. App. 2001); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Ctr. for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Bigg Wolf Discount Video Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Kentucky Restaurant Concepts, Inc. v. Metro Gov't*, Case No. 04-CI-01967 (Jefferson Circuit Court, Summary Judgment Order, Dec. 14, 2004); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywine, Inc. v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Currence v. City of Cincinnati*, 28 Fed. Appx. 438 (6th Cir. Jan. 24, 2002); *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Richland Bookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Threesome Entertainment v. Strittmather*, 4 F. Supp. 2d 710 (N.D. Ohio 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th

Cir. 2005); In re Tennessee Public Indecency Statute, 172 F.3d 873 (6th Cir. Jan. 13 1999)(table); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the city council finds:

a. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

b. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

c. Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this chapter, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this chapter are reasonably believed to be relevant to said secondary effects. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1102. Definitions.** For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

1. "Administrator" means the city clerk.
2. "Adult bookstore or adult video store" means a commercial establishment which, as one of its principal business activities, offers for sale or

rental for any form of consideration anyone or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas."

a. "Principal business activity" exists where the commercial establishment:

i. Has a substantial portion of its displayed merchandise which consists of said items, or

ii. Has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or

iii. Has a substantial portion of the retail value of its displayed merchandise which consists of said items, or

iv. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items, or

v. Maintains a substantial portion of its interior business space or, if less than thirty (30%) percent, devotes at least three hundred fifty (350) square feet of its interior business space, to the display, sale, and/or rental of the foregoing items (aisles and walkways used to access said items shall be included in "interior business space") and limits access to the premises or to the portion of the premises occupied by said items to adults only; or

vi. Offers for sale or rental at least one thousand five hundred (1,500) of the foregoing items and limits access to the premises or to the portion of the premises occupied by said items to adults only; or

vii. Maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or specified "anatomical areas."

3. "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

4. "Adult motion picture theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five (5) persons for any form of consideration.

5. "Characterized by" means describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

6. "City" means the City of Pigeon Forge, Tennessee.

7. "Employ, employee, and employment" describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

8. "Establish or establishment" shall mean and include any of the following:

a. The opening or commencement of any sexually oriented business as a new business;

b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

c. The addition of any sexually oriented business to any other existing sexually oriented business.

9. "Hearing officer" means an attorney, not otherwise employed by the city, who is licensed to practice law in Tennessee, and retained to serve as an independent tribunal to conduct hearings under this chapter.

10. "Influential interest" means any of the following:

a. The actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business;

b. Ownership of a financial interest of fifty percent (50%) or more of a business or of any class of voting securities of a business; or

c. Holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

11. "Licensee" shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

12. "Nudity or a state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

13. "Operate or cause to operate" shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the



business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

14. "Person" shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

15. "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

16. "Regularly" means and refers to the consistent and repeated doing of the act so described.

17. "Semi-nude or state of semi-nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

18. "Semi-nude model studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

a. By a college, junior college, or university supported entirely or partly by taxation;

b. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

c. In a structure:

i. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

ii. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class.

19. "Sexual device" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be

construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

20. "Sexual device shop" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to their premises by reason of age.

21. "Sexual encounter center" shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

22. "Sexually oriented business" means an "adult bookstore or adult video store," an "adult cabaret," an "adult motion picture theater," a "semi-nude model studio," a "sexual device shop," or a "sexual encounter center."

23. "Specified anatomical areas" means and includes:

a. Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

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

24. "Specified criminal activity" means:

a. Any of the following specified crimes for which less than five (5) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

i. Rape, aggravated rape, aggravated sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure;

ii. Prostitution, patronizing prostitution, promoting prostitution;

iii. Obscenity;

iv. Dealing in controlled substances;

v. Racketeering;

b. Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

c. Any crime committed in a jurisdiction other than Tennessee which, if committed in this state, would have constituted one of the crimes listed above.

Notwithstanding anything in this definition of "specified criminal activity," a conviction that is later reversed, vacated, overturned or expunged by a court of law shall not be considered a "specified criminal activity" under this section.

25. "Specified sexual activity" means any of the following:

- a. Intercourse, oral copulation, masturbation or sodomy; or
- b. Excretory functions as a part of or in connection with any of the activities described in (a) above.

26. "Substantial" means at least thirty percent (30%) of the item(s) so modified.

27. "Transfer of ownership or control" of a sexually oriented business shall mean any of the following:

- a. The sale, lease, or sublease of the business;
- b. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- c. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

28. "Viewing room" shall mean the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1103. Classification.** The classifications for sexually oriented businesses shall be as follows:

- 1. Adult bookstore or adult video store;
- 2. Adult cabaret;
- 3. Adult motion picture theater;
- 4. Semi-nude model studio;
- 5. Sexual device shop;
- 6. Sexual encounter center. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1104. License required.** 1. Business license. It shall be unlawful for any person to operate a sexually oriented business in the city without a valid sexually oriented business license.

2. Employee license. It shall be unlawful for any person to be an "employee," as defined in this chapter, of a sexually oriented business in the city without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.

3. Application. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the administrator a completed application made on a form provided by the administrator. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (4) herein and shall be notarized. An

application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (3), accompanied by the appropriate licensing fee:

a. The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.

b. Current business address or another mailing address for the applicant.

c. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

d. If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

e. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

f. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

g. A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

i. Been declared by a court of law to be a nuisance; or

ii. Been subject to a court order of closure or padlocking.

h. An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of this chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations.

The information provided pursuant to this subsection (3) shall be supplemented in writing by certified mail, return receipt requested, to the administrator within ten (10) working days of a change of circumstances

which would render the information originally submitted false or incomplete.

4. Signature. A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.

5. The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the office of the administrator on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1115. Issuance of license.** 1. Business license. Upon the filing of a completed application for a sexually oriented business license, the administrator shall immediately issue a temporary license to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the city and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business license application, the administrator shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The administrator shall issue a license unless:

- a. An applicant is less than eighteen (18) years of age.
- b. An applicant has failed to provide information required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.
- c. The license application fee required by this chapter has not been paid.
- d. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this chapter or is not in compliance with the locational requirements any part of the City of Pigeon Forge Municipal Code or the City of Pigeon Forge Zoning Code.
- e. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
  - i. Been declared by a court of law to be a nuisance; or
  - ii. Been subject to an order of closure or padlocking.

f. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.

2. **Employee license.** Upon the filing of a completed application for a sexually oriented business employee license, the administrator shall immediately issue a temporary license to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business employee license application, the administrator shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The administrator shall issue a license unless:

a. The applicant is less than eighteen (18) years of age.

b. The applicant has failed to provide information as required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.

c. The license application fee required by this chapter has not been paid.

d. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

i. Been declared by a court of law to be a nuisance; or

ii. Been subject to an order of closure or padlocking.

e. The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.

3. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1116. Fees.** The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: One hundred dollars (\$100.00) for the initial fee for a sexually oriented business license and fifty dollars (\$50.00) for annual renewal; fifty dollars (\$50.00) for the initial sexually oriented business employee license and twenty-five dollars (\$25.00) for annual renewal. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1117. Inspection.** Sexually oriented businesses and sexually oriented business employees shall permit the administrator and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1118. Expiration and renewal of license.** 1. Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this chapter.

2. Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1119. Suspension.** 1. The administrator shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter.

2. The administrator shall issue a written notice of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this chapter. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1110. Revocation.** 1. The administrator shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this chapter or has knowingly allowed an employee to violate this chapter and a suspension of the licensee's license has become effective within the previous twelve (12) month period.

2. The administrator shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

a. The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license.

b. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;

c. The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

d. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or

e. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the premises of the sexually oriented business.

3. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

4. When, after the notice and hearing procedure described in this chapter, the city council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1111. Hearing; denial, revocation, and suspension; appeal.**

1. When the administrator issues a written notice of intent to deny, suspend, or revoke a license, the administrator shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the administrator for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the city council shall conduct a hearing on the administrator's written notice of intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the administrator's witnesses. The administrator shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The city council shall issue a written decision, including specific reasons for the decision pursuant to this chapter, to the respondent within five (5) days after the hearing.



If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the city council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the city council shall, contemporaneously with the issuance of the decision, order the administrator to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the administrator shall contemporaneously therewith issue the license to the applicant.

2. If any court action challenging the city council's decision is initiated, the city council shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The city council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the administrator: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of the denial, suspension, or revocation, the administrator shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's enforcement. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1112. Transfer of license.** A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1113. Hours of operation.** No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 A.M. on any day. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1114. Regulations pertaining to exhibition of sexually explicit films or videos.** 1. A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video

cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

a. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

b. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

c. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

d. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

e. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- i. That the occupancy of viewing rooms less than one hundred fifty (150) square feet is limited to one (1) person.
- ii. That sexual activity on the premises is prohibited.
- iii. That the making of openings between viewing rooms is prohibited.
- iv. That violators will be required to leave the premises.
- v. That violations of these regulations are unlawful.

f. It shall be the duty of the operator to enforce the regulations articulated in (e)(i) through (iv) above.

g. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

2. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1115. Loitering, exterior lighting, visibility, and monitoring requirements.** 1. It shall be the duty of the operator of a sexually oriented business to:

a. Post conspicuous signs stating that no loitering is permitted on such property;

b. Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and

c. Provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

2. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

3. No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1116. Penalties and enforcement.** 1. A person who knowingly disobeys, omits, neglects, or fails to comply with or resists the enforcement of any of the provisions of this section shall be guilty of a violation and, upon conviction, shall be punishable by a fine not to exceed fifty dollars (\$50.00). Each violation of this section shall be considered a separate offense, and any violation continuing more than one-half (½) hour or reoccurring within one-half (½) hour shall be considered a separate offense for each half-hour (½) of violation.

2. Violations of this section may be restrained or enjoined, and to this end, the city may institute civil proceedings in any court of competent jurisdiction to prosecute, restrain, enjoin or correct violations of this section. Such proceedings shall be brought in the name of the city, provided, however, that nothing in this section and no action taken hereunder shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this section, or any of the laws or ordinances in force in the city or to exempt anyone violating this section or any part of the said laws from any penalty which may be incurred. (as added by Ord. #795, April 2006, as replaced by Ord. #816, Dec. 2006)

**9-1117. Applicability of chapter to existing businesses.** All existing sexually oriented businesses and sexually oriented business employees are hereby granted a de facto temporary license to continue operation or employment for a period of ninety (90) days following the effective date of this chapter. By the end of said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this chapter. (as added by Ord. #816, Dec. 2006)

**9-1118. Prohibited conduct.** It is unlawful for a sexually oriented business licensee to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

1. It shall be a violation of this chapter for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

2. It shall be a violation of this chapter for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.

3. It shall be a violation of this chapter for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

4. It shall be a violation of this chapter for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

5. It shall be a violation of this chapter for any person to knowingly allow a person under the age of eighteen (18) years on the premises of a sexually oriented business.

A sign in a form to be prescribed by the administrator, and summarizing the provisions of subsections (1), (2), (3), (4), and (5), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. (as added by Ord. #816, Dec. 2006)

**9-1119. Scienter required to prove violation or business licensee liability.** This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act. (as added by Ord. #816, Dec. 2006)

**9-1120. Failure of city to meet deadline not to risk applicant/licensee rights.** In the event that a city official is required to act or to do a thing pursuant to this chapter within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the city official under this chapter, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the city of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the city's action has passed. (as added by Ord. #816, Dec. 2006)

**9-1121. Severability.** This chapter and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such

section or provision so known to be invalid. Should any procedural aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter. (as added by Ord. #816, Dec. 2006)

**9-1122. Conflicting code provisions repealed.** Ordinance No. 795 is hereby repealed. Any other provision(s) in the City of Pigeon Forge Municipal Code in conflict with any provision in this chapter is hereby deemed inoperative and repealed. (as added by Ord. #816, Dec. 2006)