

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.

CHAPTER

1. PEDDLERS, SOLICITORS, ETC.
2. ADULT-ORIENTED ESTABLISHMENTS.
3. MASSAGE PARLORS MASSAGE TECHNICIANS AND OTHER MASSAGE PARLOR EMPLOYEES.

CHAPTER 1

PEDDLERS, SOLICITORS, ETC.¹

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

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

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

¹Municipal code references

Privilege taxes: title 5.

Trespass by peddlers, etc.: § 11-501.

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

(3) "Solicitor for charitable or religious purposes" means any person, firm, corporation or organization who or which solicits contributions from the public, either on the streets of the city or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who does not sell or offer to sell any single item at a cost to the purchaser in excess of ten dollars (\$10.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets one of the following conditions:

(a) Has a current exemption certificate from the Internal Revenue Service issued under Section 501(c)(3) of the Internal Revenue Service Code of 1954, as amended.

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

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

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

(5) "Transient vendor"¹ means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "merchandise" means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-

¹State law references

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

The definition of "transient vendors" is taken from Tennessee Code Annotated, § 62-30-101(3). Note also that Tennessee Code Annotated, § 67-4-709(a) prescribes that transient vendors shall pay a tax of \$50.00 for each 14 day period in each county and/or municipality in which such vendors sell or offer to sell merchandise for which they are issued a business license, but that they are not liable for the gross receipts portion of the tax provided for in Tennessee Code Annotated, § 67-4-709(b).

public place including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months.

(6) "Street barker" means any peddler who does business during recognized festival or parade days in the city and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade. (1993 Code, § 9-101, as replaced by Ord. #030104, May 2004)

9-102. Exemptions. The terms of this chapter shall neither apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to persons selling agricultural products, who, in fact, themselves produced the products being sold. (as added by Ord. #030104, May 2004)

9-103. Permit required. No person, firm or corporation shall operate a business as a peddler, transient vendor, solicitor or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the city unless the same has obtained a permit from the city in accordance with the provisions of this chapter. (as added by Ord. #030104, May 2004)

9-104. Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the city recorder by each applicant for a permit as a peddler, transient vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:

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

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

(c) The dates for which the applicant intends to do business or make solicitations.

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

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

(f) Tennessee State sales tax number, if applicable.

(2) Permit fee. Each applicant for a permit as a peddler, transient vendor, solicitor or street barker shall submit with his application a nonrefundable fee of twenty dollars (\$20.00). There shall be no fee for an application for a permit as a solicitor for charitable purposes or as a solicitor for subscriptions.

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

(4) Submission of application form to chief of police. Immediately after the applicant obtains a permit from the city recorder, the city recorder shall submit to the chief of police a copy of the application form and the permit. (as added by Ord. #030104, May 2004)

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

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

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

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

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

(5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located. (as added by Ord. #030104, May 2004)

9-106. Restrictions on transient vendors. A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, cancelled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth. (as added by Ord. #030104, May 2004)

9-107. Display of permit. Each peddler, street barker, solicitor, solicitor for charitable purposes or solicitor for subscriptions is required to have in his

possession a valid permit while making sales or solicitations, and shall be required to display the same to any police officer upon demand. (as added by Ord. #030104, May 2004)

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

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

(2) Suspension or revocation by the board of commissioners. The permit issued to any person or organization under this chapter may be suspended or revoked by the board of commissioners, after notice and hearing, for the same causes set out in paragraph (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (as added by Ord. #030104, May 2004)

9-109. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days. (as added by Ord. #030104, May 2004)

9-110. Violation and penalty. In addition to any other action the city may take against a permit holder in violation of this chapter, such violation shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense. (as added by Ord. #030104, May 2004)

CHAPTER 2

ADULT-ORIENTED ESTABLISHMENTS

SECTION

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- 9-203. Application for license.
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- 9-205. Permit required.
- 9-206. Application for permit.
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- 9-215. Penalties and prosecution.
- 9-216. Invalidity of part.
- 9-217. Investigation of premises prior to issuance of license or permit.
- 9-218. Right of entry.
- 9-219. et seq. Reserved.

9-201. Definitions. For the purpose of this chapter, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:

(1) "Adult-oriented establishment" shall include, but not be limited to, "adult bookstore," "adult motion picture theaters," "adult mini-motion picture establishments," or "adult cabaret," and further means any premises to which the public patrons or members (regardless of whether or not the establishment is categorized as a private or members only club) are invited or admitted and/or which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An "adult-oriented establishment" further includes, without being limited to, any "adult entertainment studio" or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

(2) "Adult bookstore" means an establishment receiving at least 20% of its gross sales from the sale or rental of books, magazines, periodicals, video tapes, DVD's, films and other electronic media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. "Adult bookstore" shall not include video stores whose primary business is the rental and sale of videos which are not distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

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

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

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

(6) "City commission" means the Mayor and City Commissioners of the City of Rockford, Tennessee.

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

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

(9) "Adult-entertainment" means any exhibition of any adult-oriented: motion pictures, live performance, computer or CD Rom generated images, displays of adult-oriented images or performances derived or taken from the Internet, displays or dance of any type, which has a significant or substantial

portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal or partial removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

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

(11) "Specified sexual activities" means:

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

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

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

(12) "Specified anatomical areas" means:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic region;

(ii) Buttocks;

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

(b) Human male genitals in an actual or simulated discernibly turgid state, even if completely opaquely covered. (as added by Ord. #120904, Jan. 2005)

9-202. License required. (1) Except as provided in subsection (5) below, from and after the effective date of this chapter, no adult-oriented establishment shall be operated or maintained in the City of Rockford without first obtaining a license to operate issued by the City of Rockford.

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

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

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

(5) All existing adult-oriented establishments at the time of the passage of this article must submit an application for a license within sixty (60) days of the passage of this chapter on the second and final reading. If a license is not issued within said sixty day period, then such existing adult-oriented establishment shall cease operations.

(6) No license may be issued for any location unless the premises are lawfully zoned for adult-oriented establishments and unless all requirements of

the zoning ordinance, building codes, electrical and plumbing codes, fire codes, and health codes are complied with. (as added by Ord. #120904, Jan. 2005)

9-203. Application for license. (1) Any person, partnership, or corporation desiring to secure a license shall make application to the City of Rockford. The application shall be filed with and dated by the city recorder.

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

- (a) Name and addresses, including all aliases.
- (b) Written proof that the individual(s) is at least eighteen (18) years of age.
- (c) All residential addresses of the applicant(s) for the past five (5) years.
- (d) The applicants' height, weight, color of eyes and hair.
- (e) The business, occupation or employment of the applicant(s) for five (5) years immediately preceding the date of the application.
- (f) Whether the applicant(s) previously operated in this or any other county, city or state under an adult-oriented establishment license or similar business license; whether the applicant(s) has ever had such a license revoked or suspended, the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.
- (g) All criminal statutes, whether federal or state, or city ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.
- (h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of each applicant.
- (i) The address of the adult-oriented establishment to be operated by the applicant(s).
- (j) The names and addresses of all persons, partnerships, limited liability entities, or corporations holding any beneficial interest in the real estate upon which such adult-oriented establishment is to be operated, including but not limited to, contract purchasers or sellers, beneficiaries of land trust or lessees subletting to applicant.

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

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

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

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

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

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

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

(4) Whenever an application is denied or held for further investigation, the city recorder shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter, before the city commission, at which time the applicant may present evidence as to why his/her license should not be denied. The city commission shall hear evidence as to the basis of the denial and shall affirm or reject the denial of any application at the hearing. If any application for an adult-oriented establishment license is denied by the city commission and no agreement is reached with the applicant concerning the basis for denial, the city attorney shall institute suit for declaratory judgment in the Chancery Court of Blount County, Tennessee, within five (5) days of the date of any such denial and shall seek an immediate

judicial determination of whether such license or permit may be properly denied under the law.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the city recorder. (as added by Ord. #120904, Jan. 2005)

9-204. Standards for issuance of license. (1) To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

(a) If the applicant is an individual:

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

(ii) The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

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

(b) If the applicant is a corporation:

(i) All officers, directors and stockholders required to be named under § 9-502 shall be at least eighteen (18) years of age.

(ii) No officer, director or stockholder required to be named under § 9-502 shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of application.

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

(i) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age.

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

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

(2) No license shall be issued unless the City of Rockford has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the city recorder no later than twenty (20) days after the date of the application. (as added by Ord. #120904, Jan. 2005)

9-205. Permit required. In addition to the license requirements previously set forth for owners and operators of "adult-oriented establishments," no person shall be an employee or entertainer in an adult-oriented establishment without first obtaining a valid permit issued by the city recorder. (as added by Ord. #120904, Jan. 2005)

9-206. Application for permit. (1) Any person desiring to secure a permit shall make application to the city recorder. The application shall be filed with and dated by the city recorder.

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

(a) Name and address, including all aliases.

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

(c) All residential addresses of the applicant for the past five (5) years.

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

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

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

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

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

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

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

(3) Within ten (10) days of receiving the results of the investigation conducted by the City of Rockford, the city recorder shall notify the applicant that his or her applicant is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigations, the city recorder shall advise the applicant in writing whether the application is granted or denied.

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

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the city recorder. (as added by Ord. #120904, Jan. 2005)

9-207. Standards for issuance of permit. (1) To receive a permit as an employee or entertainer, an applicant must meet the following standards:

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

(b) The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature (including violation of similar adult-oriented establishment laws or ordinances) in any jurisdiction within five (5) years immediately preceding the date of the application.

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

(2) No permit shall be issued until the City of Rockford has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the city recorder not later than twenty (20) days after the date of the application. (as added by Ord. #120904, Jan. 2005)

9-208. Fees. (1) A non-refundable license fee of ten dollars (\$10.00) shall be submitted with the application for a license.

(2) A non-refundable permit fee of ten dollars (\$10.00) shall be submitted with the application for a permit.

(3) A non-refundable investigation fee shall be submitted with any application for a license and/or permit. (as added by Ord. #120904, Jan. 2005)

9-209. Display of license or permit. (1) The license shall be displayed in a conspicuous public place in the adult-oriented establishment so that it may be readily seen upon entrance to the premises.

(2) The permit shall be carried by an employee and/or entertainer upon his or her person and shall be displayed upon request of a customer, the Blount County Sheriff's Department, or any other person designated duly authorized by the City of Rockford. (as added by Ord. #120904, Jan. 2005)

9-210. Revocation of license or permit. (1) The city recorder shall revoke a license or permit for any of the following reasons:

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

(b) The operator, entertainer, or any employee of the operator, violates any provision of this chapter or any rule or regulation adopted by the city commissioner pursuant to this chapter; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of one hundred and twenty (120) days if the city recorder shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

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

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

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

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

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

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

licensed premises wherein adult-oriented material is displayed or sold.

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

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

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

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

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

(4) Any operator entertainer, or employee whose license or permit is revoked shall not be eligible to receive a license or permit for ten (10) years from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for ten (10) years from the date of revocation of the license. (as added by Ord. #120904, Jan. 2005)

9-211. Hours of operation. No adult-oriented establishment shall be open between the hours of 1:00 A.M. and 8:00 A.M. Mondays through Saturdays, and between the hours of 1:00 A.M. and 12:00 P.M. on Sundays. (as added by Ord. #120904, Jan. 2005)

9-212. Responsibilities of the operator. (1) The operator shall maintain a register of all employees and/or entertainers showing the names, and aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, and duties of each employee and such other information as may be required by the city commission. The above information on each employee shall be maintained in the register on the premises for a period of five (5) years following termination.

(2) The operator shall make the register of the employees available immediately for inspection by the Blount County Sheriff or the City of Rockford upon demand at all hours of operation and any other reasonable times.

(3) Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to

supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

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

(5) There shall be posted and conspicuously displayed in the common areas of each adult-oriented establishment a list of any and all entertainment provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the Blount County Sheriff or the City of Rockford at all hours of operation and any other reasonable times.

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

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

(8) The operator shall be responsible for and shall provide that any room or area used for the purpose of viewing adult-oriented motion pictures or other types of live adult entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirety.

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

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

This Adult-Oriented Establishment is regulated by the City of Rockford Municipal Ordinance. Entertainers are:

1. Not permitted to engage in any type of sexual contact and/or conduct;
2. Not permitted to expose their sex organs;
3. Not permitted to demand or collect all or any portion of a fee for entertainment before its completion.

(as added by Ord. #120904, Jan. 2005)

9-213. Prohibitions and unlawful sexual acts. (1) No operator, entertainer, or employee of an adult-oriented establishment shall permit to be performed, offer to perform, or allow customers, employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

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

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

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

(5) No entertainer, employee or customer shall be permitted to have any physical contact with any other on the premises during any performance and all performances shall only occur upon a stage at least twenty (20") inches above the immediate floor level and removed ten feet (10') from the nearest entertainer, employee and/or customer. (as added by Ord. #120904, Jan. 2005)

9-214. Location restriction. (1) Adult-oriented business will be allowed only in a Heavy Industrial Zoning District (M-2).

(2) No adult-oriented business may be located within two thousand (2000) feet of any other adult-oriented business and/or any massage parlor. (as added by Ord. #120904, Jan. 2005)

9-215. Penalties and prosecution. (1) Any person, partnership, corporation, or other business entity that is found to have violated this chapter shall be fined a definite sum not exceeding fifty dollars (\$50.00) for each violation and shall result in the suspension or revocation of any permit or license.

(2) Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation. (as added by Ord. #120904, Jan. 2005)

9-216. Invalidity of part. Should any court of competent jurisdiction declare any section, clause, or provision of this chapter to be unconstitutional, such decision shall affect only such section, clause, or provision so declared unconstitutional, and shall not affect any other section, clause or provision of this chapter. (as added by Ord. #120904, Jan. 2005)

9-217. Investigation of premises prior to issuance of license or permit.

The city recorder, before authorizing the issuing and adult-oriented business license shall cause an investigation be made of the premises named and described in the application for a adult-oriented business license under this section of this chapter for the purpose of determining whether the adult-oriented business complies with the provisions of this chapter, the zoning ordinances, all building, fire, plumbing and electrical codes, and health codes, and for this purpose, a copy of the application shall immediately be referred to the building official(s) and health official(s) to make or cause to be made a thorough investigation of the premises and the result of this investigation and whether such premises comply with the zoning, building, fire, plumbing and electrical codes, and health codes shall be submitted to the city recorder within thirty (30) days of the request. (as added by Ord. #120904, Jan. 2005)

9-218. Right of entry. An officer of the Blount County Sheriff, city manager, and city recorder, building official, county health official, fire department official, or similar person or agency charged with the responsibility for the enforcement of particular health and safety ordinances or laws o the City of Rockford or the State of Tennessee or their duly authorized representatives are hereby authorized to enter, examine, inspect and survey any business premises in the City of Rockford for which a adult-oriented business license has been issued pursuant to this section to enforce the provisions of this chapter. Should any conducted inspections reveal condition(s) which, in the opinion of the authorized inspector, warrant a more thorough investigation, he/she shall report such condition(s) to such person or agency and request that such premises be examined and any findings be reported to the Blount County Sheriff and the city recorder. This section shall not be deemed to restrict or to limit the right of entry otherwise vested in any law enforcement of health and safety or criminal laws wherein such right is vested by other ordinances or laws. (as added by Ord. #120904, Jan. 2005)

9-219. et seq. Reserved. (as added by Ord. #120904, Jan. 2005)

CHAPTER 3

MESSAGE PARLORS MESSAGE TECHNICIANS AND OTHER MESSAGE PARLOR EMPLOYEES

SECTION

- 9-301. Definitions.
- 9-302. License required.
- 9-303. Application for license.
- 9-304. Standards for issuance of license.
- 9-305. Permit required.
- 9-306. Application for permit.
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- 9-309. Display of license or permit.
- 9-310. Investigation of premises prior to issuance of license or permit.
- 9-311. Revocation of license or permit.
- 9-312. Hours of operation.
- 9-313. Responsibilities of the owner and/or operator.
- 9-314. Public health cards required for massage technicians.
- 9-315. Examination of massage techniques and issuance of a public health card.
- 9-316. Right of entry.
- 9-317. Minimum standards for parlors.
- 9-318. Individual health requirements for massage technicians.
- 9-319. Prohibitions and unlawful sexual acts.
- 9-320. Location restrictions.
- 9-321. Penalties and prosecution.
- 9-322. Invalidity of part.
- 9-323. et seq. Reserved.

9-301. Definitions. For the purpose of this chapter, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:

(1) "Massage" the administering by any person by any method of exerting or applying pressure, friction, moisture, heat or cold to the human body, and/or rubbing, stroking, kneading, pounding, tapping, or otherwise manipulating a part or the whole of the human body or the muscles or joints thereof, by any physical or mechanical means. Massage shall also mean the giving, receiving, or administering of a bath to any person, or the application of body oils, body paint or other colorant to any person.

(2) "Massage parlor" shall include, but not be limited to, any premises, place of business, or membership club and further means any premises to which the public patrons or members (regardless of whether or not the establishment is categorized as a private or members only club) are invited or admitted and/or

which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate or not from the common areas of the premises for the purpose of conducting the business or activity of furnishing, providing or giving for a fee, or any other form of consideration, a massage, bath, body oiling, body painting, or similar massage service or procedure. This definition shall not be construed to include a hospital, nursing home, medical clinic, or office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath. Nor shall this definition be construed to include a barbershop or beauty salon operated by a duly licensed barber or cosmetologist, so long as any massage administered therein is limited to the head and neck areas of the human body.

(3) "Massage technician" shall be any person who is administering a massage to another at a massage parlor.

(4) "City commission" means the Mayor and City Commissioners of the City of Rockford, Tennessee.

(5) "Employee" means any and all person, including independent contractors, who work in or at or render any services directly related to the operation of a massage parlor.

(6) "Owner and/or operator" means any person, partnership, corporation, or entity of any type or character operating, conducting or maintaining a massage parlor. (as added by Ord. #120904-2, Jan. 2005)

9-302. License required. (1) Except as provided in subsection (5) below, from and after the effective date of this chapter, no massage parlor shall be operated or maintained in the City of Rockford without first obtaining a license to operate issued by the City of Rockford.

(2) A license may be issued only for one (1) massage parlor located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one (1) massage parlor must have a separate license for each massage parlor.

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

(4) It shall be unlawful for any technician, employee, owner and/or operator to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed massage parlor or any adult-oriented type of establishment.

(5) All existing massage parlor(s) at the time of the passage of this article must submit an application for a license within sixty (60) days of the passage of this chapter on the second and final reading. If a license is not issued within said sixty day period, then such existing massage parlor shall immediately cease operations.

(6) No license may be issued for any location unless the premises are lawfully zoned for massage parlor and unless all requirements of the zoning ordinance, building codes, electrical and plumbing codes, fire codes, and health codes are complied with. (as added by Ord. #120904-2, Jan. 2005)

9-303. Application for license. (1) Any person, partnership, or corporation desiring to secure a license shall make application to the city recorder of the City of Rockford. The application shall be filed with and dated by the city recorder.

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

- (a) Name and address, including all aliases.
- (b) Written proof that the individual(s) is at least eighteen (18) years of age.
- (c) All residential addresses of the applicant(s) for the past five (5) years.
- (d) The applicants' height, weight, color of eyes and hair.
- (e) The business, occupation or employment of the applicant(s) for five (5) years immediately preceding the date of the application.
- (f) Whether the applicant(s) previously operated in this or any other county, city or state under a massage parlor license or similar business license; whether the applicant(s) has ever had such a license revoked or suspended, the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.
- (g) All criminal statutes, whether federal or state, or city ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.
- (h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of each applicant.
- (i) The address of the massage parlor to be operated by the applicant(s).
- (j) The names and addresses of all persons, partnerships, limited liability entities, or corporations holding any beneficial interest in the real estate upon which such massage parlor is to be operated, including but not limited to, contract purchasers or sellers, beneficiaries of land trust or lessees subletting to applicant.
- (k) If the premises are leased or being purchased under contract, a copy of such lease or contract shall accompany the application.
- (l) The length of time each applicant has been a resident of the City of Rockford, or its environs, immediately preceding the date of the application.

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

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

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

(p) Evidence in form deemed sufficient to the city manager that the location for the proposed massage parlor complies with all requirements of the zoning ordinances, building codes, electrical and plumbing codes, fire codes, and health codes as now existing or hereafter amended.

(3) Within ten (10) days of receiving the results of the investigation conducted by the City of Rockford, the city recorder shall notify the applicant that his and/or her application is conditionally granted, denied or held for further investigation. Such additional investigation shall not exceed thirty (30) days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the city recorder shall advise the applicant in writing whether the application is granted or denied.

(4) Whenever an application is denied or held for further investigation, the city recorder shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter, before the city commission, at which time the applicant may present evidence as to why his and/or her license should not be denied. The city commissioner shall hear evidence as to the basis of the denial and shall affirm or reject the denial of any application at the hearing. If any application for a massage parlor license is denied by the city commission and no agreement is reached with the applicant concerning the basis for denial, the city attorney shall institute suit for declaratory judgment in the Chancery Court of Blount County, Tennessee, within five (5) days of the date of any such denial and shall seek an immediate judicial determination of whether such license or permit may be properly denied under the law.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his and/or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his and/or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the

applicant that he and/or she is ineligible for such license and shall be grounds for denial thereof by the city manager and/or city recorder.

(6) The total cost incurred by the City of Rockford, Tennessee in its investigation of the applicant(s) shall be the sole responsibility of the applicant(s) and shall be paid in full by the applicant(s) to the city recorder prior to required license investigation being conducted. (as added by Ord. #120904-2, Jan. 2005)

9-304. Standards for issuance of license. (1) To receive a license to operate a massage parlor, an applicant must meet the following standards:

(a) If the applicant is an individual:

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

(ii) The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

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

(b) If the applicant is a corporation:

(i) All officers, directors and stockholders required to be named under § 9-502 shall be at least eighteen (18) years of age.

(ii) No officer, director or stockholder required to be named under § 9-502 shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of application.

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

(i) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age.

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

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

(2) No license shall be issued unless the City of Rockford has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the city recorder not later than twenty (20) days after the date of the application. (as added by Ord. #120904-2, Jan. 2005)

9-305. Permit required. In addition to the license requirements previously set forth for owners and/or operators of a massage parlor, no person shall be a technician or employee in massage parlor without first obtaining a valid permit by the city recorder. (as added by Ord. #120904-2, Jan. 2005)

9-306. Application for permit. (1) Any person desiring to secure a permit shall make application to the city recorder. The application shall be filed with and dated by the city recorder.

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

- (a) Name and address, including all aliases.
- (b) Written proof that the individual is at least eighteen (18) years of age.
- (c) All residential addresses of the applicant for the past five (5) years.
- (d) The applicants' height, weight, color of eyes, and hair.
- (e) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application.
- (f) Whether the applicant, while previously operating in this or any other city or state under a massage parlor permit or similar business for whom applicant was employed or associated at the time, has ever had such a permit revoked or suspended, the reason thereof, and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation.
- (g) All criminal statutes, whether federal, state or city ordinance violation, convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.
- (h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of the applicant.
- (i) The length of time each applicant has been a resident of the City of Rockford, or its environs, immediately preceding the date of the application.
- (j) A statement by the applicant that he and/or she is familiar with the provisions of this chapter and are in compliance with them.

(3) Within ten (10) days of receiving the results of the investigation conducted by the City of Rockford, the city recorder shall notify the applicant that his and/or her application is granted, denied, or held for further investigations. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigations, the city recorder shall advise the applicant in writing whether the application is granted or denied.

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

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

(6) The total cost incurred by the City of Rockford, Tennessee in its investigation of the applicant(s) shall be the sole responsibility of the applicant(s) and shall be paid in full by the applicant(s) to the city recorder prior to the required license investigation being conducted. (as added by Ord. #120904-2, Jan. 2005)

9-307. Standards for issuance of permit. (1) To receive a permit as a technician or employee, an applicant must meet the following standards:

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

(b) The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or any other crime of a sexual nature (including violation of massage parlors or any adult-oriented establishment laws or ordinances) in any jurisdiction within five (5) years immediately preceding the date of the application.

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

(2) No permit shall be issued unless the City of Rockford has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the city recorder not later than twenty (20) days after the date of the application. (as added by Ord. #120904-2, Jan. 2005)

9-308. Fees. (1) A non-refundable license fee of ten dollars (\$10.00) shall be submitted with the application for a license.

(2) A non-refundable permit fee of ten dollars (\$10.00) shall be submitted with the application for a permit.

(3) A non-refundable investigation fee shall be submitted with any application for a license and/or permit. (as added by Ord. #120904-2, Jan. 2005)

9-309. Display of license or permit. (1) The license shall be displayed in a conspicuous public place in the massage parlor so that it may be readily seen by persons entering the premises.

(2) The permit shall be carried by a technician and/or any other employee, upon his and/or her person and shall be displayed upon request of any customer, officer of the Blount County Sheriff's Department, or any other person designated authorized by the City of Rockford. (as added by Ord. #120904-2, Jan. 2005)

9-310. Investigation of premises prior to issuance of license or permit. The city manager, before authorizing the issuing by the city recorder of any massage parlor license shall cause an investigation be made of the premises named and described in the application for a massage parlor license under this section of this chapter for the purpose of determining whether the massage parlor complies with the provisions of this chapter, the zoning ordinances, all building, fire, plumbing and electrical codes, and health codes and for this purpose, a copy of the application shall immediately be referred to the building official(s) and health official(s) to make or cause to be made a thorough investigation of the premises and the result of this investigation and whether such premises comply with the zoning, building, fire, plumbing and electrical codes, and health codes shall be submitted to the city manager within thirty (30) days of the request. (as added by Ord. #120904-2, Jan. 2005)

9-311. Revocation of license or permit. (1) Power, generally. The city manager and/or the city recorder shall have the power to revoke or suspend any license or permit for up to ten (10) years for any of the following reasons:

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

(b) The owner and/or operator, technician, or any employee of the owner and/or operator, violates any provision of this chapter or any rule or regulation adopted by the city commissioner pursuant to this chapter; provided, however, that in the case of a first offense by an owner and/or operator where the conduct was solely that of a technician and/or employee, the penalty shall not exceed a suspension of one hundred and twenty (120) days if the city manager shall find that the owner and/or operator had no actual or constructive knowledge of such violation and

could not by the exercise of due diligence have had such actual or constructive knowledge.

(c) The owner and/or operator, technician and/or employee shall become ineligible to obtain a license or permit.

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

(e) An owner and/or operator that employs a technician and/or employee who does not have a permit or provide space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as a massage technician and/or employee of said independent contractor without a permit.

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

(g) Any owner and/or operator, technician and/or employee sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any massage services and/or procedures as afore mentioned and described.

(h) Any owner and/or operator, technician and/or employee denies access of law enforcement personnel to any portion of the licensed premises where massage services and/or procedures are permitted or to any portion of the licensed premises within massage services and/or procedures or massage material(s) are displayed or sold.

(i) Any owner and/or operator that allows continuing violations of the rules and regulations of the Blount County Health Department.

(j) Any owner and/or operator who fail to maintain the licensed premises in a clean, sanitary and safe condition.

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

(2) The city manager and/or city recorder, before revoking or suspending any license or permit, shall give the owner and/or operator, technician and/or employee at least ten (10) days written notice of the charges against him and/or her and the opportunity for a public hearing before the city commission, at which time the owner and/or operator, technician and/or employee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

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

(4) Any owner and/or operator, technician or employee whose license or permit is revoked shall not be eligible to receive a license or permit for ten (10) years from the date of revocation. No location or premises for which a

license has been issued shall be used as a massage parlor for ten (10) years from the date of revocation of the license. (as added by Ord. #120904-2, Jan. 2005)

9-312. Hours of operation. (1) No massage parlor shall be open to provide massage services and/or procedures between the hours of 9:00 P.M. and 8:00 A.M. Mondays through Saturdays, and no massage parlor shall be open on Sundays; however, it shall be lawful for such establishments to remain open for the transaction of other lawful business.

(2) All massage parlors shall be open to inspection at all hours of operation and/or any other reasonable times by the City of Rockford, the Blount County Sheriff's Department, or any such other persons as the City of Rockford shall deem duly authorized. (as added by Ord. #120904-2, Jan. 2005)

9-313. Responsibilities of the owner and/or operator. (1) The owner and/or operator shall maintain a register of all technicians and/or employees showing the names, and aliases used by the technician and/or employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and determination, and duties of each technician and/or employee and such other information as may be required by the City of Rockford. The above information on each technician and/or employee shall be maintained in the register on the premises for a period of five (5) years following termination.

(2) The operator shall make the register of the technicians and/or employees available immediately for inspection by the City of Rockford and/or an officer of the Blount County Sheriff's Office upon demand at all reasonable times including all hours of operation.

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

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

(5) There shall be posted and conspicuously displayed in the common areas of each massage parlor a list of all services, procedures and/or products provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each service, procedure and/or product listed. The

owner and/or operator shall make the list available immediately upon demand of the City of Rockford and/or an officer of the Blount County Sheriff's Office at all reasonable times including hours of operation.

(6) No owner and/or operator, technician, and/or employee of a massage parlor shall allow any minor to loiter around or to frequent a massage parlor or to allow any minor to view any services, procedures and/or products as defined herein.

(7) No owner and/or operator, technician, and/or employee of a massage parlor shall demand or collect all or any portion of a fee for massage services and or procedures before its completion.

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

This Massage Parlor and its Technicians are regulated by the City of Rockford Municipal Ordinance. Technicians and/or employees are:

1. Not permitted to engage in any type of sexual conduct or contact;
2. Not permitted to expose their sex organs;
3. Not permitted to demand or collect all or any portion of a fee for massage services and/or procedures before its completion.

(as added by Ord. #120904-2, Jan. 2005)

9-314. Public health cards required for massage technicians. It shall be unlawful for any persons to perform the services of a massage technician at a massage parlor in the City of Rockford without a valid public health card issued pursuant to this chapter. (as added by Ord. #120904-2, Jan. 2005)

9-315. Examination of massage techniques and issuance of a public health card. (1) All persons who desire to perform the services and procedures of massage technician at a massage parlor shall first undergo a physical examination for contagious and communicable diseases which, shall include a recognized blood test for syphilis, a culture for gonorrhea, a chest X-ray which is to be made and interpreted by a trained radiologist, and shall furnish a certificate based upon and issued within thirty days of such examination by the Blount County Health Department and stating that the person examined is either free from any contagious or communicable diseases or incapable of communicating any such diseases to others. Such persons shall undergo the physical examination referred to above and submit to the city manager and/or city recorder the certificate required herein within five (5) days of the commencement of their employment and, at least once every six (6) months thereafter.

(2) When there is cause to believe that the massage technician is capable of communicating any contagious disease to others, the city manager and/or the city recorder may at any time require an immediate physical examination of any such persons.

(3) The employer of any such person shall require all such persons to undergo the examination and obtain the certification provided by this section, shall register at the place of employment of each employee, and shall have the health cards and registration of all employees available for the officer of the Blount County Sheriff, the city manager, the city recorder, or their duly authorized representatives at all hours of operation and/or any other reasonable times. (as added by Ord. #120904-2, Jan. 2005)

9-316. Right of entry. The Blount County Sheriff, city manager, city recorder, building official, county health official, fire department official, or similar person or agency charged with the responsibility for the enforcement of particular health and safety ordinances or laws of the City of Rockford or the State of Tennessee or their duly authorized representatives are hereby authorized to enter, examine, inspect and survey any premises in the City of Rockford for which a massage parlor license has been issued pursuant to this section to enforce the provisions of this chapter. Should any conducted inspections reveal condition(s) which, in the opinion of the inspector, warrants a more thorough investigation, he/she shall report such condition(s) to such person or agency and request that such premises be examined and any findings be reported to the Blount County Sheriff and the city manager. This section shall not be deemed to restrict or to limit the right of entry otherwise vested in any law enforcement of health and safety or criminal laws wherein such right of entry is vested by other ordinances or laws. (as added by Ord. #120904-2, Jan. 2005)

9-317. Minimum standards for parlors. No massage parlor shall be operated, established or maintained in the City of Rockford that does not comply with the following minimum standards:

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

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

(3) Clean linen and towels shall be provided for each massage patron. No common use of linen or towels shall be permitted.

(4) All massage tables, bathtubs, shower stalls, steam or bath areas, and floors shall have surfaces which may be readily disinfected.

(5) Oils, creams and any other preparations used in administering massages shall be kept in clean closed containers or cabinets.

(6) Adequate bathing, dressing, locker and toilet facilities shall be provided for the patrons to be served at any time. Separate bathing, dressing, locker and toilet facilities shall be provided for male and female patrons.

(7) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use. When carpeting is in use on floors, it shall be kept dry.

(8) The premises shall be equipped with a service sink for all custodial services.

(9) Eating in the massage work areas shall not be permitted.

(10) Animals, except for seeing-eye dogs, shall not be permitted in the massage work areas.

(11) No massage parlor shall employ a massage technician who does not comply with the provisions of this chapter. (as added by Ord. #120904-2, Jan. 2005)

9-318. Individual health requirements for massage technicians. No massage technician shall administer massage at a massage parlor who does not comply with the following individual health requirements:

(1) No massage technician shall administer massage if such massage technician knows or should know that he and/or she is not free of any contagious or communicable disease.

(2) No massage technician shall administer a massage to a patron exhibiting any skin fungus, skin infection, skin inflammation, or skin eruption; provided that a physician duly licensed in the State of Tennessee may certify that such person may be safely massaged, and prescribing the conditions thereof.

(3) Each massage technician shall wash his and/or her hands in hot running water, using proper soap and/or disinfectant before administering a massage to each new person. (as added by Ord. #120904-2, Jan. 2005)

9-319. Prohibitions and unlawful sexual acts. (1) It shall be unlawful for any person in a massage parlor to place his and/or her hand or hands upon or to touch with any part of his and/or her body, or to fondle in any manner, or to massage, a sexual or genital part and/or area of any other person.

(2) No owner and/or operator, technician, or employee of any massage parlor shall permit to be performed, offer to perform, or allow customers, technicians or employees to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

(3) No owner and/or operator, technician, or employee shall encourage or permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus or genitals of any other person.

(4) No owner and/or operator, technician, or employee shall encourage or permit any other person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals.

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

(6) The administering of massage shall not be conducted in private rooms or areas, but shall be conducted in separate general areas for males and females, or if the same general area is used by both male and female patrons, then different times for such use shall be designated and posted.

(7) It shall be unlawful for any person in a massage parlor to administer a massage to a person of the opposite sex.

(8) Every person owning, operating and/or managing a massage parlor shall post a copy of this section in a conspicuous place in the massage parlor so that it may be readily seen by persons entering the premises. (as added by Ord. #120904-2, Jan. 2005)

9-320. Location restrictions. (1) Massage parlors will be allowed only in a Heavy Industrial Zoning District (M-2).

(2) No massage parlor may be located within two thousand (2000) feet of any adult-oriented business establishment. (as added by Ord. #120904-2, Jan. 2005)

9-321. Penalties and prosecution. (1) Any person, partnership, corporation, or other business entity that is found to have violated this chapter shall be fined a definite sum not exceeding fifty dollars (\$50.00) for each violation and shall result in the suspension or revocation of any permit or license.

(2) Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation. (as added by Ord. #120904-2, Jan. 2005)

9-322. Invalidity of part. Should any court of competent jurisdiction declare any section, clause, or provision of this chapter to be unconstitutional, such decision shall affect only such section, clause, or provision so declared unconstitutional, and shall not affect any other section, clause or provision of this chapter. (as added by Ord. #120904-2, Jan. 2005)

9-323. et seq. Reserved (as added by Ord. #120904-2, Jan. 2005)