

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

1. MISCELLANEOUS.
2. PEDDLERS, ETC.
3. CHARITABLE SOLICITORS.
4. TAXICABS.
5. POOL ROOMS.
6. CABLE TELEVISION.
7. ADULT ORIENTED ESTABLISHMENTS.

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

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

**9-101. "Going out of business" sales.** It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1997 Code, § 9-101)

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<sup>1</sup>Municipal code references

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

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

## 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. Appeal.
- 9-206. Bond.
- 9-207. Loud noises and speaking devices.
- 9-208. Use of streets.
- 9-209. Exhibition of permit.
- 9-210. Policemen to enforce.
- 9-211. Revocation or suspension of permit.
- 9-212. Reapplication.
- 9-213. Expiration and 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 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. (1997 Code, § 9-201)

**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. (1997 Code, § 9-202)

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

- (1) Name and physical description of applicant.
- (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.

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

(4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.

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

(6) A recent clear photograph approximately two (2) inches square showing the head and shoulders of the applicant.

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

(8) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed therefor.

(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) At the time of filing the application, a fee of five dollars (\$5.00) shall be paid to the municipality to cover the cost of investigating the facts stated therein. (1997 Code, § 9-203)

**9-204. Issuance or refusal of permit.** (1) Each application shall be referred to the police department for investigation. The department shall report its findings to the town recorder.

(2) If as a result of such investigation the department reports the applicant's moral reputation and/or business responsibility to be unsatisfactory the town recorder shall notify the applicant that his application is disapproved and that no permit will be issued.

(3) If, on the other hand, the police report indicates that the moral reputation and business responsibility of the applicant are satisfactory the town recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The town recorder shall keep a permanent record of all permits issued. (1997 Code, § 9-204, modified)

**9-205. Appeal.** Any person aggrieved by the action of the police department and/or the town recorder in the denial of a permit shall have the right to appeal to the board of commissioners. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or

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. (1997 Code, § 9-205)

**9-206. Bond.** Every permittee shall file with the town recorder a surety bond running to the Town of Englewood in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the municipal code 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 town 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 municipality 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. (1997 Code, § 9-206)

**9-207. 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 town 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. (1997 Code, § 9-207)

**9-208. Use of streets.** No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of the streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1997 Code, § 9-208)

**9-209. Exhibition of permit.** Permittees are required to exhibit their permits at the request of any policeman or citizen. (1997 Code, § 9-209)

**9-210. Policemen to enforce.** It shall be the duty of all policemen to see that the provisions of this chapter are enforced. (1997 Code, § 9-210)

**9-211. 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 crime or misdemeanor.

(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.

(2) Notice of the hearing for revocation of a permit shall be given by the town recorder in writing, setting forth specifically the grounds of complaint and the time and place of 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 mayor may suspend a permit pending the revocation hearing. (1997 Code, § 9-211)

**9-212. 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. (1997 Code, § 9-212)

**9-213. Expiration and renewal of permit.** Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1997 Code, § 9-213)

## CHAPTER 3

### CHARITABLE SOLICITORS

#### SECTION

9-301. Permit required.

9-302. Prerequisites for a permit.

9-303. Denial of a permit.

9-304. Exhibition of permit.

9-305. Number of permits per month; soliciting at intersections.

**9-301. Permit required.** No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the town recorder authorizing such solicitation. 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. (1997 Code, § 9-301)

**9-302. Prerequisites for a permit.** The recorder shall issue a permit authorizing charitable or religious solicitations when, after a reasonable investigation, he finds the following facts to exist:

(1) The applicant has a good character and reputation for honesty and integrity, or if the applicant is not an individual person, that every member, managing officer or agent of the applicant has a good character or reputation for honesty and integrity.

(2) The control and supervision of the solicitation will be under responsible and reliable persons.

(3) The applicant has not engaged in any fraudulent transaction or enterprise.

(4) The solicitation will not be a fraud on the public but will be for a bona fide charitable or religious purpose.

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1997 Code, § 9-302)

**9-303. Denial of a permit.** Any applicant for a permit to make charitable or religious solicitations may appeal to the board of commissioners if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1997 Code, § 9-303)

**9-304. Exhibition of permit.** Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any policeman or person solicited. (1997 Code, § 9-304)

**9-305. Number of permits per month; soliciting at intersections.** Permits for charitable or religious solicitations within the town's corporate limits shall be issued on a first to apply basis, to be conducted on the particular day of the month by the requesting charitable or religious organization. All charitable or religious solicitation permits issued shall allow no more than four solicitors from the permittee to be within the streets at any one time and all solicitations shall take place at the intersection of Highway Thirty Nine and Athens Street and Niota Road within the town corporate limits. Any violation of this section will be subjected to a fine of not less than fifty dollars (\$50.00) per incident. (1997 Code, § 9-305)

## CHAPTER 4

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

#### SECTION

- 9-401. Taxicab franchise and privilege license required.
- 9-402. Requirements as to application and hearing.
- 9-403. Liability insurance required.
- 9-404. Revocation or suspension of franchise.
- 9-405. Mechanical condition of vehicles.
- 9-406. Cleanliness of vehicles.
- 9-407. Inspection of vehicles.
- 9-408. License and permit required for drivers.
- 9-409. Qualifications for driver's permit.
- 9-410. Revocation or suspension of driver's permit.
- 9-411. Drivers not to solicit business.
- 9-412. Parking restricted.
- 9-413. Drivers to use direct routes.
- 9-414. Taxicabs not to be used for illegal purposes.
- 9-415. Miscellaneous prohibited conduct by drivers.
- 9-416. Transportation of more than one passenger at the same time.
- 9-417. Fares.

**9-401. Taxicab franchise and privilege license required.** It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the municipality and has a currently effective privilege license. (1997 Code, § 9-401)

**9-402. Requirements as to application and hearing.** No person shall be eligible to apply for a taxicab franchise if he has a bad character or has been convicted of a felony within the last ten (10) years. Applications for taxicab franchises shall be made under oath and in writing to the police. 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 said cabs, and such other pertinent information as the chief of police may require. The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good character and reputation of the applicant. Within ten (10) days after receipt of an application the chief of police shall make a thorough investigation of the applicant; determine if there is a public need for additional taxicab

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

service; present the application to the board of commissioners; and make a 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 deciding whether or not to grant the franchise the board of commissioners shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional taxicab franchise. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (1997 Code, § 9-402)

**9-403. Liability insurance required.** No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy for each vehicle authorized in the amount of three hundred thousand dollars (\$300,000.00) for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and not less than seven hundred thousand dollars (\$700,000.00) for bodily injury or death of all persons in any one (1) accident, occurrence or act, and one hundred thousand dollars (\$100,000.00) for injury or destruction of property of others in any one (1) accident, occurrence, or act. The insurance policy required by this section shall contain a provision that is shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the town. (1997 Code, § 9-403, modified)

**9-404. Revocation or suspension of franchise.** The board of commissioners, after a public hearing, may revoke or suspend any taxicab franchise for traffic violations or violations of this chapter by the taxicab owner or any driver. (1997 Code, § 9-404)

**9-405. Mechanical condition of vehicles.** It shall be unlawful for any taxicab to operate in the Town of Englewood unless it is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and 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 condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (1997 Code, § 9-405)

**9-406. Cleanliness of vehicles.** All taxicabs operated in the municipality shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (1997 Code, § 9-406)

**9-407. Inspection of vehicles.** All taxicabs shall be inspected at least semiannually by the police department to insure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (1997 Code, § 9-407)

**9-408. License and permit required for drivers.** No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the chief of police. (1997 Code, § 9-408)

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

- (1) Makes written application to the chief of police.
- (2) Is at least eighteen (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 him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the Town of Englewood who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent minor traffic offenses.
- (7) Is familiar with the state and local traffic laws. (1997 Code, § 9-409)

**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 traffic violations or violation of this chapter. (1997 Code, § 9-410)

**9-411. Drivers not to solicit business.** All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising

upon the streets of the municipality for the purpose of obtaining patronage for their cabs. (1997 Code, § 9-411)

**9-412. Parking restricted.** It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the Town of Englewood for the use of 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 manner as not to unreasonably interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1997 Code, § 9-412)

**9-413. Drivers to use direct routes.** Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (1997 Code, § 9-413)

**9-414. Taxicabs not to be used for illegal purposes.** No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (1997 Code, § 9-414)

**9-415. Miscellaneous prohibited conduct by drivers.** It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise disturb the peace, quiet and tranquility of the Town of Englewood in any way. (1997 Code, § 9-415)

**9-416. Transportation of more than one passenger at the same time.** No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (1997 Code, § 9-416)

**9-417. Fares.** A flat rate for the following taxicab service shall be fixed by the board of commissioners by resolution:

(1) Transporting one passenger from any one place to any other place within the town limits;

(2) An additional fare for more than one passenger carried on the same trip;

(3) For an origin or destination outside of the town limits, the fare shall be the flat rate plus an additional rate for each mile or fraction thereof the taxicab is required to travel outside of the town limits. (1997 Code, § 9-417)

## CHAPTER 5

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

#### SECTION

9-501. Prohibited in residential areas.

9-502. Hours of operation regulated.

9-503. Minors to be kept out; exception.

**9-501. Prohibited in residential areas.** It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire on any premises located in any block where fifty percent (50%) or more of the land is used or zoned for residential purposes. (1997 Code, § 9-501)

**9-502. Hours of operation regulated.** It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire at any time on Sunday or between the hours of 11:00 P.M. and 6:00 A.M. on other days. (1997 Code, § 9-502)

**9-503. 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; or if the minor be in attendance as a student at some literary institution, then the written consent of the principal or person in charge of such school; provided that this section shall not apply to the use of billiards, bagatelle, and pool tables in private residences. (1997 Code, § 9-503)

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

**CHAPTER 6****CABLE TELEVISION****SECTION**

9-601. To be furnished under franchise.

**9-601. To be furnished under franchise.** Cable television service shall be furnished to the Town of Englewood and its inhabitants under franchise as the board of commissioners shall grant. The rights, powers, duties and obligations of the Town of Englewood 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> (1997 Code, § 9-601)

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<sup>1</sup>For complete details relating to the cable television franchise agreement see Ord. #030795 in the office of the town recorder.

## CHAPTER 7

### ADULT ORIENTED ESTABLISHMENTS

#### SECTION

- 9-701. Findings and purpose.
- 9-702. Definitions.
- 9-703. License required.
- 9-704. Application for license.
- 9-705. Standards for issuance of license.
- 9-706. Permit required.
- 9-707. Application for permit.
- 9-708. Standards for issuance of permit.
- 9-709. Fees.
- 9-710. Display of license or permit.
- 9-711. Renewal of license or permit.
- 9-712. Revocation of license or permit.
- 9-713. Hours of operation.
- 9-714. Responsibilities of the operator.
- 9-715. Prohibitions and unlawful sexual acts.
- 9-716. Penalties and prosecution.
- 9-717. Severability clause.

**9-701. Findings and purpose.** (1) The Board of Commissioners of the Town of Englewood, Tennessee, finds:

(a) That homogenous and heterogenous masturbatory acts and other sexual acts, including oral sex acts, could occur in adult-oriented establishments in the Town of Englewood;

(b) That offering and providing such space, areas, and rooms where such activities may take place creates conditions that generate prostitution and other crimes;

(c) That the unregulated operation of adult-oriented establishments would be detrimental to the general welfare, health, and safety of the citizens of the Town of Englewood.

(2) It is the purpose of this chapter to promote and secure the general welfare, health, and safety of the citizens of the Town of Englewood. (1997 Code, § 9-701)

**9-702. 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-orient establishment" shall include, but not be limited to, "adult bookstores," "adult motion picture theaters," "adult mini motion picture establishments," or "adult cabaret" and further means any premises to

which the public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainments are held, conducted, operated or maintained for a profit, direct or indirect. Any "adult-oriented establishment" further includes, without being limited to any "adult entertainment studio" or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

(2) "Adult bookstore" means an establishment having as a substantial or significant portion of its stock and trade in books, films, video cassettes, or magazines and other periodicals which are distinguished or characterized by the emphasis on matter.

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

(5) "Adult cabaret" is defined to mean an establishment which features as a principal use of its business, entertainers, and/or waiters and/or bartenders 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, strippers, male or female impersonators, or similar entertainers.

(6) "Board of commissioners" means the Board of Commissioners of the Town of Englewood, Tennessee.

(7) "Employee" means any and all persons, including independent contractors, who work in or at or render 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, display 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 area, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

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

(11) "Specified sexual activities" means:

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Acts of human masturbation, sexual intercourse, or sodomy;
- (c) Fondling or erotic touching of human genitals, public region,

buttock, or female breasts.

(12) "Specified anatomical areas" means:

- (a) Less than completely and opaquely covered;

- (i) Human genitals, pubic region;

- (ii) Buttocks;

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

- (b) Human male genitals in a discernibly turgid state, even if completely opaquely covered. (1997 Code, § 9-702)

**9-703. License required.** (1) Except as provided in subsection (5) below, from and after the effective date of this chapter, no adult-oriented establishment shall be operated or maintained in the Town of Englewood without first obtaining a license to operate issued by the Town of Englewood.

(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 each.

(3) No license will be issued for any adult-oriented establishment within 1,000 feet of any structure currently occupied by a religious, child care, or educational facility, as measured in a straight line from the nearest corner of the two structures.

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

(5) 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 operations of any unlicensed adult-oriented establishment.

(6) All existing adult-oriented establishments at the time of the passage of this chapter<sup>1</sup> must submit an application for a license within one

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<sup>1</sup>The ordinance comprising this chapter (Ord. #031102.38) was passed May (continued...)

hundred twenty (120) days of the passage of this chapter on third and final reading. If a license is not issued within said one-hundred-twenty-day period, then such existing adult-oriented establishment shall cease operations. (1997 Code, § 9-703)

**9-704. Application for license.** (1) Any person, partnership or corporation desiring to secure a license shall make application to the town recorder. The application shall be filed in triplicate with and dated by the Town of Englewood. A copy of the application shall be distributed promptly by the town recorder to the Englewood Police Department and to the applicant.

(2) The application for a license shall be upon a form provided by the town 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, shall furnish the following information under oath:

- (a) Name and address, including all aliases.
- (b) Written proof that the individual is at least eighteen (18) years of age.
- (c) All residential addresses of the applicant for the past three (3) years.
- (d) The applicant's height, weight, color of eye 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 previously operated in this or any other county, city, or state under an adult-oriented establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.
- (g) All criminal statutes, whether federal or state, or town ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all chargers, 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 address of the adult-oriented establishment to be operated by the applicant.
- (j) The names and addresses of all persons, partnerships, 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 contact 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 the applicant has been a resident of the Town of Englewood or its environs immediately preceding the date of the application.

(m) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent and the name and address of all principal shareholders, officers, and directors of the corporation.

(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, another 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's business name, address, phone number, and representative's name.

(3) Within ten (10) days of receiving the results of the investigation conducted by the Englewood Police Department, the town recorder shall notify the applicant that his application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the town 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 town recorder shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of the receipt of notification of denial, a public hearing shall be held thereafter before the board of commissioners at which time the applicant may present evidence as to why is license should not be denied. The board of commissioners shall hear evidence as to the basis of the denial and shall affirm or reject the denial of an application at the hearing. If any application for an adult-oriented establishment license is denied by the board of commissioners and no agreement is reached with the applicant concerning the basis for denial, the town attorney shall institute suit for declaratory judgment in the Chancery County of McMinn 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 town recorder. (1997 Code, § 9-704)

**9-705. 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 § 9-704(2) shall be at least eighteen (18) years of age.

(ii) No officer, director, or stockholder required to be named under § 9-704 (2) 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 officer, director, or stockholder required to be named under § 9-704 (2) shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.

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

(i) 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 of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

(ii) No persons have 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 Englewood Police Department has investigated the applicant's qualification to be licensed. The results of that investigation shall be filed in writing with the town recorder no later than twenty (20) days after the date of the application. (1997 Code, § 9-705)

**9-706. Permit required.** In addition to the license requirement 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 town recorder. (1997 Code, § 9-706)

**9-707. Application for permit.** (1) Any person desiring to secure a permit shall make application to the town recorder. The application shall be filed in triplicate with and dated by the town recorder. A copy of the application shall be distributed promptly by the town recorder to the Englewood Police Department and to the applicant.

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

#### BUSINESS, TRADES AND OCCUPATIONS

- (a) Name and address, including all aliases.
- (b) Written proof that the individual is at least eighteen (18) years of age.
- (c) All residential addresses of the applicant for the past three (3) years.
- (d) The applicant's height, weight, color of eyes and hair.
- (e) The business, occupation, or employment of the applicant for five 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 or where the applicant was employed or associated at the time of the suspension or revocation.
- (g) All criminal statutes, whether federal, state, or town ordinance violation, convictions, forfeiture of bond and pleadings or 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 Town of Englewood 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 Englewood Police Department, the town recorder shall notify the applicant that his application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigations, the town recorder shall advise the applicant in writing within ten (10) days whether the application is granted or denied.

(4) Whenever an application is denied or held for further investigation, the town 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 board of commissioners at which time the applicant may present evidence bearing upon the question. If the board of commissioners denies a license application, the town attorney shall within ten (10) days after the denial institute a suit for declaratory judgment in state court for review of the denial.

(5) Failure or refusal of the applicant to give 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 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 town recorder. (1997 Code, § 9-707)

**9-708. Standards for issuance of permit.** (1) To receive a permit as an 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 other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

(2) No permit shall be issued until the Englewood Police Department has investigated the applicant's qualifications to receive a permit. The result of that investigation shall be filed in writing with the town recorder no later than twenty (20) days after the date of the application.

(3) Whenever an application for a permit as an employee is denied, the applicant may within ten (10) days of receipt of notification of denial request a hearing before the board of commissioners, at which the applicant may present evidence bearing upon the question. This hearing shall be held by the board of commissioners at the next regularly scheduled meeting of the board of commissioners which occurs more than five (5) days after the request for a hearing has been filed. If the board of commissioners denies the applicant a permit as an employee, the town attorney shall within ten (10) days after the

denial institute suit for declaratory judgment in state court for review of the denial. (1997 Code, § 9-708)

**9-709. Fees.** (1) A license fee of five hundred dollars (\$500.00) shall be submitted with the application for a license. If the application is denied, one-half (½) of the fee shall be returned.

(2) A permit fee of one hundred dollars (\$100.00) shall be submitted with the application for a permit. If the application is denied, one-half (½) of the fee shall be returned. (1997 Code, § 9-709)

**9-710. Display of license or permit.** (1) The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

(2) The permit shall be carried by an employee upon his or her person and shall be displayed upon request of a customer, any member of the Englewood Police Department, or any person designated by the board of commissioners. (1997 Code, § 9-710)

**9-711. Renewal of license or permit.** (1) Every license issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before the operation is allowed in the following year. Any operator desiring to renew a license shall make application to the town recorder. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the town recorder. A copy of the application for renewal shall be distributed promptly by the town recorder to the Englewood Police Department and to the operator. The application for renewal shall be upon a form provided by the town recorder and shall contain such information and date, given under oath or affirmation, as may be required by the board of commissioners.

(2) A license renewal fee of five hundred dollars (\$500.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of one hundred dollars (\$100.00) shall be assessed against the applicant who files for a renewal less than (60) days before the license expires. If the applicant is denied, one-half (½) of the total fees collected shall be returned.

(3) If the Englewood Police Department is aware of any information bearing on the operator's qualifications, the information shall be filed in writing with the town recorder.

(4) Every permit issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance unless sooner revoked, and must be renewed before an employee is allowed to continue employment in an adult-oriented establishment in the following calendar year. Any employee desiring to renew a permit shall make application to the town recorder. The application for renewal shall be filed in triplicate with and dated by the town

recorder. A copy of the application for renewal shall be distributed promptly by the town recorder to the Englewood Police Department and to the employee. The application for renewal shall be upon a form provided by the town recorder and shall contain such information and data, given under oath or affirmation, as may be required by the town recorder.

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

(6) If the Englewood Police Department is aware of any information bearing on the employee's qualification, that information shall be filed in writing with the town recorder. (1997 Code, § 9-711)

**9-712. Revocation of license or permit.** (1) The town 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 provisions of this chapter or any rule or regulation adopted by the board of commissioners pursuant to this chapter, provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the board of commissioner shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise due diligence have had such actual or constructive knowledge.

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

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

(e) An operator employs an employee who does not have a permit or provide space on the premises, whether by lease or otherwise, to an independent contract 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 materials are displayed or sold.

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

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

(2) The town recorder, before revoking or suspending any license or permit, shall give the operator or employee at least ten (10) days written notice of the charges against him or her and the opportunity for a public hearing before the board of commissioners, at which time the operator or employee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing. Whenever a license or permit is revoked by the town recorder, the party holding the license or permit may within ten days of the notice of revocation request a hearing before the board of commissioners, at which time the party holding the license or permit may present evidence bearing upon the question. This hearing shall be held by the board of commissioners at the next regularly scheduled meeting of the board of commissioners that occurs more than five (5) days after the request for a hearing is filed. If the board of commissioners sustains the revocation, the party holding the license or permit may within ten (10) days thereafter institute suit in state court.

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

(4) Any operator or employee whose license or permit is revoked shall not be eligible to receive a license or permit for five (5) years from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for two (2) years from the date of revocation of the license. (1997 Code, § 9-712)

**9-713. Hours of operation.** (1) No adult-oriented establishment shall be open between the hours of 1:00 A.M. and 8:00 A.M. on weekdays or between the hours of 1:00 A.M. and 12:00 midnight on Sundays.

(2) All adult-oriented establishments shall be open to inspection at all reasonable times by the Englewood Police Department or such other persons as the board of commissioners may designate. (1997 Code, § 9-713)

**9-714. Responsibilities of the operator.** (1) The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, and duties of each employee and such other information as may be required by the board of commissioners. The above information of each

employee shall be maintained in the register on the premises for a period of three (3) years following termination.

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

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

(4) An operator shall be responsible for the conduct of all employees while on the licensed premises and any act or omission of any employee 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 pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the Englewood Police Department at all reasonable times.

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

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

(8) The operator shall be responsible for and shall provide that any room or area used for the purpose of viewing adult-oriented motion pictures or other types of live adult-oriented 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 Englewood Municipal Code, Title 9, Chapter 7, §§ 9-701 through 9-717. Entertainers are:

- (a) Not permitted to engage in any type of sexual conduct;
- (b) Not permitted to expose their sex organs;
- (c) Not permitted to demand or collect all or any portion of a fee for entertainment before its completion. (1997 Code, § 9-714)

**9-715. Prohibitions and unlawful sexual acts.** (1) No operator, entertainer, or employee of an adult-oriented establishment shall permit it to be performed, offer to perform, perform or allow customers, employees or entertainers to perform sexual intercourse of oral or anal copulation or other contact stimulation of the genitals.

(2) No operator entertainer or employer 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, 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.

(4) 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 eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest entertainer, employee, and/or customer. (1997 Code, § 9-715)

**9-716. Penalties and prosecution.** (1) Any person, partnership, or corporation who is found to have violated this chapter shall be fined a definite sum not exceeding five hundred dollars (\$500.00) 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. (1997 Code, § 9-716)

**9-717. Severability clause.** If any section, subsection, paragraph, sentence, clause, or phrase of this chapter is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the chapter. (1997 Code, § 9-717)