

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

1. PEDDLERS, ETC.
2. CHARITABLE SOLICITORS.
3. TAXICABS.
4. CABLE TELEVISION.
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CHAPTER 1

PEDDLERS, ETC.

SECTION

- 9-101. Definitions.
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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

¹Municipal code references

Beer: title 8.

Building: title 12.

Plumbing: title 12.

Housing code: title 12.

Junkyards: title 13.

Privilege taxes: title 5.

Refuse: title 17.

Water and sewer: title 18.

Utilities: title 19.

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 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 Rutherford 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 town, or from door to door, business to business, place to place, or from street to street, and who offers for sale subscriptions to magazines or other materials protected by provisions of the Constitution of the United States.

(5) "Transient vendor" means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "merchandise" means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-public place including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those

premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months.¹

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

9-102. Permit required. It shall be unlawful for any peddler, street barker, solicitor, or transient vendor to ply his trade within the corporate limits without first obtaining a permit therefor in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1991 Code, § 9-101, modified)

9-103. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to persons selling agricultural products, who in fact, themselves produced the products being sold, or bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic, or philanthropic organizations. (1991 Code, § 9-102, modified)

9-104. Application for permit. Applicants for a permit under this chapter must file with the town clerk a sworn written application containing the following:

- (1) Name 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;

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).

(4) The dates for which the applicant intends to do business or make solicitations;

(5) Length of time for which the right to do business is desired;

(6) Complete name and permanent address of the business or organization the applicant represents;

(7) 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;

(8) At the time of filing the application, a non-refundable fee as set forth in the fee schedule adopted with the annual budget ordinance shall be paid to the town clerk to cover processing of the application.

(9) Each applicant for a permit as a transient vendor shall submit with his application a tax set in accordance with Tennessee Code Annotated, § 67-4-709(a) for each fourteen (14) day period in which the vendor sells or offers merchandise for which they are issued a business license. (1991 Code, § 9-103, modified)

9-105. 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 such operation might impede or inconvenience the public use of such 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. (1991 Code, § 9-108)

9-106. Exhibition of permit. Permittees are required to have in their possession a valid permit while making sales or solicitations, and shall be required to exhibit their permits at the request of any police officer or code enforcement officer. (1991 Code, § 9-109, modified)

9-107. Police to enforce. It shall be the duty of all police officers to see that the provisions of this chapter are enforced. (1991 Code, § 9-110, modified)

9-108. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be suspended or revoked by the town council 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.

(2) Notice of the hearing for revocation or suspension of a permit shall be given by the town clerk 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 town manager may temporarily suspend a permit pending the revocation hearing. (1991 Code, § 9-111, modified)

9-109. 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. (1991 Code, § 9-112)

9-110. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the town. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days.

9-111. Violation and penalty. In addition to any other action the town may take against a permit holder in violation of this chapter, such violation shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense.

CHAPTER 2

CHARITABLE SOLICITORS¹

SECTION

- 9-201. Permit required.
- 9-202. Requirements as to application and hearing.
- 9-203. Prerequisites for a permit.
- 9-204. Denial of a permit.
- 9-205. Exhibition of permit.
- 9-206. Violation and penalty.

9-201. 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 clerk 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. (1991 Code, § 9-201)

9-202. Requirements as to application and hearing. (1) No person shall be eligible for a charitable solicitors permit if he has been convicted of a felony within the last ten (10) years or if he has been convicted of any misdemeanor involving theft or fraud. Applications shall be made under oath and in writing to the town manager. The chief of police or his designee shall perform a criminal background check.

- (2) The application shall state the:
 - (a) Name and address of the applicant;
 - (b) The name and address of the charity for which contributions shall be sought;
 - (c) The name and address of the representative official of the charity for which contributions shall be sought;
 - (d) Documentation showing registration with the State of Tennessee and the most recent annual report, if any;
 - (e) The dates for which contributions shall be solicited within the town;

¹Municipal code references

Contributions to non-profit charitable and non-profit civic organizations: title 5, chapter 6.
Roadblocks: § 16-114.

(f) A copy of any and all literature which shall be provided to citizens by the solicitors at the time of solicitation, which documentation shall not be used as a basis for denial of a permit; and

(g) Such further information as the town manager may require.

(3) The application shall be submitted at least ten (10) business days prior to the date solicitation is scheduled to begin. Within five (5) days after receipt of an application, the town manager shall make a thorough investigation of the applicant and recommend to the town clerk whether or not such charitable solicitor permit shall be granted considering the information in the application and the considerations of § 9-203 herein. If an applicant is denied a permit, the applicant may request a hearing by the town council. Such request for a hearing must be received within five (5) days of the denial for the permit. The hearing shall be conducted at the next regularly scheduled town council meeting. The discussion of the town council as to whether or not to grant or deny the permit shall be final.

9-203. Prerequisites for a permit. The town clerk 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. (1991 Code, § 9-202)

9-204. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the town council if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1991 Code, § 9-203)

9-205. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any police officer or person solicited. (1991 Code, § 9-204, modified)

9-206. Violation and penalty. In addition to any other action the town may take against a permit holder in violation of this chapter, such violation

shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense.

CHAPTER 3

TAXICABS¹

SECTION

- 9-301. Taxicab franchise and privilege license required.
- 9-302. Requirements as to application and hearing.
- 9-303. Liability insurance or bond required.
- 9-304. Revocation or suspension of franchise.
- 9-305. Mechanical condition of vehicles.
- 9-306. Cleanliness of vehicles.
- 9-307. Inspection of vehicles.
- 9-308. License and permit required for drivers.
- 9-309. Trademark and permit number displayed.
- 9-310. Identification card required.
- 9-311. Qualifications for driver's permit.
- 9-312. Revocation or suspension of driver's permit.
- 9-313. Drivers not to solicit business.
- 9-314. Parking restricted.
- 9-315. Drivers to use direct routes.
- 9-316. Taxicabs not to be used for illegal purposes.
- 9-317. Miscellaneous prohibited conduct by drivers.
- 9-318. Transportation of more than one passenger at the same time.
- 9-319. Violation and penalty.

9-301. Taxicab franchise and privilege license required. (1) It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the town and has a currently effective privilege license. For purposes of this section, the definition of taxicab shall include limousine.

(2) Before a franchise will be granted, the franchisee shall pay a one-time franchise application fee, to the town treasurer, the rate of which is established in the fee schedule adopted in the annual budget ordinance. Annually thereafter, on or before September 1, the franchisee shall pay a franchise renewal fee per taxicab registered for operation in the town, such franchise renewal fee to be established in the fee schedule adopted in the annual budget ordinance. It is the duty of the franchisee to provide the number and identifying information for each taxicab operating in the town. All taxicabs and drivers operating under a franchise hereunder must be registered with the town

¹Municipal code reference
Privilege tax: title 5.

treasurer within ten (10) days of being added to the taxicab fleet or as a driver for the franchisee. (1991 Code, § 9-301, modified)

9-302. Requirements as to application and hearing. No person shall be eligible 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 chief of 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 service; present the application to the town council; and make a recommendation to either grant or refuse a franchise to the applicant. The town council 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 town council 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 application under this section, but shall be required to comply with all of the other provisions hereof. (1991 Code, § 9-302, modified)

9-303. Liability insurance or bond required. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy or bond for each vehicle authorized in an amount equal to that required by the state's financial responsibility law as set out in Tennessee Code Annotated, title 55, chapter 12. The insurance policy or bond required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days written notice is given by the insurer to both the insured and the town clerk of Smyrna. (1991 Code, § 9-303)

9-304. Revocation or suspension of franchise. The town council, after a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (1991 Code, § 9-304)

9-305. Mechanical condition of vehicles. It shall be unlawful for any person to operate any taxicab in the town unless such taxicab 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 motor vehicle 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 intervention or assistance of the driver. The motor and all the 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. (1991 Code, § 9-305)

9-306. Cleanliness of vehicles. All taxicabs operated in the town 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. (1991 Code, § 9-306)

9-307. Inspection of vehicles. All taxicabs shall be inspected at least semiannually by the chief of police or his designee to insure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (1991 Code, § 9-307, modified)

9-308. License and permit required for drivers. (1) 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.

(2) A person seeking a taxicab driver's permit must submit an application as herein below provided and submit to the town treasurer a one-time taxicab driver application fee, the rate of which is established in the fee schedule adopted in the annual budget ordinance. Said taxicab driver's permit shall be effective for one year from the date of issuance. A taxicab driver's permit may be renewed on or within ten days of the expiration of the taxicab driver's permit upon the completion of a renewal application and payment of the taxicab driver's renewal fee to the town treasurer, the rate of which is established in the fee schedule adopted in the annual budget ordinance. Failure to renew a taxicab driver's permit within the stated time will require the applicant to apply for a new permit and pay the taxicab driver application fee. (1991 Code, § 9-308, modified)

9-309. Trademark and permit number displayed. It shall be unlawful for any person to operate a passenger motor vehicle for hire in the town unless said vehicle shall have the name of the company operating such vehicle and permit number painted on each side and on the back in lettering of at least three (3) inches in height.

9-310. Identification card required. Each driver must have an identification card with a picture of the driver, certified by the chief of police, posted in a conspicuous place in each passenger vehicle during the time said vehicle is driven by the authorized driver.

9-311. Qualifications for driver's permit. No person shall be issued a taxicab driver's permit unless he pays an annual permit fee as adopted by the town council in the fee schedule to the town and complies with the following to the satisfaction of the chief of police:

- (3) Makes written application to the chief of police;
- (4) Is at least eighteen (18) years of age and holds a state special chauffeur's license;
- (5) 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;
- (6) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs;
- (7) Produces affidavits of good character from two (2) reputable citizens of the town who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application;
- (8) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent traffic offenses;
- (9) Is familiar with the state and local traffic laws.
- (10) Such other information as may be reasonably required. (1991 Code, § 9-309, modified)

9-312. Revocation or suspension of driver's permit. The town manager or his designee, after a public hearing, may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-311. (1991 Code, § 9-310)

9-313. Drivers not to solicit business. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the town for the purpose of obtaining patronage for their cabs. (1991 Code, § 9-311)

9-314. 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 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 so as not to unreasonably interfere with or

obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1991 Code, § 9-312, modified)

9-315. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route, unless directed otherwise by the customer. (1991 Code, § 9-313)

9-316. 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. (1991 Code, § 9-314)

9-317. 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 unreasonable disturb the peace, quiet, and tranquility of the town in any way. (1991 Code, § 9-315)

9-318. 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. (1991 Code, § 9-316)

9-319. Violation and penalty. In addition to any other action the town may take against a permit holder in violation of this chapter, such violation shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense.

CHAPTER 4

CABLE TELEVISION¹

SECTION

- 9-401. Preamble.
- 9-402. To be furnished under franchise.
- 9-403. Definitions.
- 9-404. Applicability of policies and procedures.
- 9-405. Application for franchise.
- 9-406. Information required in application.

9-401. Preamble. Modern telecommunications policy, law and regulations encourage the emergence of competition in all telecommunications markets. Increased competition in the provision of all telecommunications services is expected, including in the provision of cable television service. The emergence of such competition could increase the quality and availability of enhanced telecommunications services via cable systems, encourage lower rates, encourage better customer service, and generally benefit consumers. Policies and procedures regarding application for and review of applications for competitive cable franchises will streamline the processing of requests to provide such competitive telecommunications services.

In view of the foregoing, the town has formulated a franchise application and review process for entities seeking competitive franchises with the town. Pursuant to this process, the town has delineated the information which must be provided in an application for a competitive franchise, detailed a process for the review of such an application and the negotiation of franchise terms and conditions, and provided for the presentation of a formal recommendation regarding the grant of a competitive franchise to the town. (1991 Code, § 9-501)

9-402. To be furnished under franchise. Cable television shall be furnished to the Town of Smyrna and its inhabitants under franchise granted by the Town Council of the Town of Smyrna, Tennessee. The rights, powers, duties and obligations of the Town of Smyrna and its inhabitants are clearly stated in the franchise agreement executed by, and which shall be binding upon the parties concerned.

9-403. Definitions. (1) "Applicant" shall mean a cable company that files an application with the town.

¹For complete details relating to the cable television franchise agreement see Ord. #04-20 dated June 8, 2004 in the office of the town clerk.

(2) "Application" shall mean the information, documentation, and data of the form and substances required herein, filed by a cable company with the town requesting the town's consideration regarding any recommendation to grant a competitive franchise.

(3) "Application fee" shall mean a fee which is intended to cover all costs incurred by the town related to processing applications up to and including the grant of a franchise (if any) including, but not limited to, staff's and attorney's time in reviewing and considering an application and related information, negotiating the terms and conditions of franchises, and preparing recommendations, franchises and other documentation related to such applicant.

(4) "Cable company" shall mean any person or entity owning a significant interest in, controlling, operating, managing or leasing a cable system (or any components thereof in the public rights-of-way) within the town or the state, or any person seeking a franchise to do so.

(5) "Cable service" shall mean

(a) The one-way transmission to subscribers of video programming or other programming services; and

(b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services. For purposes of these policies and procedures, "cable service" includes, but is not limited to, the provision of internet service over a cable system.

(6) "Cable system" shall mean the facility of a cable company consisting of a set of closed transmission paths and associated signal generations, reception and control equipment that is designed to provide cable service, and includes video programming and which is provided to multiple subscribers within the town, but such terms do not include:

(a) A facility that only serves to retransmit the television signals of one or more television broadcast stations;

(b) A facility that serves subscribers without using any public rights-of-way;

(c) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a system if such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interaction on-demand services;

(d) An open video system that complies with 47 U.S.C. § 573; and

(e) Any facilities of any electric utility used solely for operating its electronic utility system.

A reference to a cable system in these policies and procedures refers to any part of such system including, without limitation, converters. The foregoing definition of "system" shall not be deemed to circumscribe or limit the valid

authority of the town to regulate or franchise the activities of any other communications system or provider of communications service to the full extent permitted by law.

(7) "Town" shall mean the Town of Smyrna, Tennessee, and its agencies commissions and departments.

(8) "Town council" shall mean the governing body of the town or its lawful designee.

(9) "Franchise" shall mean any nonexclusive authorization granted by the town in the form of a franchise, privilege, permit, license or other municipal authorization to construct, own, control, operate, maintain, or manage a cable system within the public rights-of-way to provide cable service within the town.

(10) "Institutional network" shall mean a discrete communications network provided by a cable company to institutions designated by the town, as provided in a franchise ordinance.

(11) "Policies and procedures" shall mean these policies and procedures governing the town's processing of applications for franchises.

(12) "Public rights-of-way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the town in which the town now or hereafter holds any property interest, including, but not limited to, any riparian rights, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purposes of installing, operating and maintaining a cable system. No reference in these policies and procedures to a "public right-of-way" shall be deemed to be a representation or guarantee by the town that its interest in or other right to control the use of such property is sufficient to permit use of the property for the purpose of installing, operating and maintaining a cable system.

(13) "Subscriber" shall mean any person or entitle who receives service via a cable system. In the case of multiple office buildings or multiple dwelling units, the term "subscriber" means the lessee, tenant or occupant. (1991 Code, § 9-502)

9-404. Applicability of policies and procedures. These policies and procedures apply to every cable system and every cable company, including a cable company which constructs, operates and/or maintains a cable system or provides a cable service in whole or in part through facilities owned, controlled, managed or operated by another provider, that seeks to operate within the territorial limits of the town. (1991 Code, § 9-503)

9-405. Application for franchise. (1) In the event the town receives notice that a cable company is interested in applying for a franchise, the town

shall publish a notice of intent to franchise within a reasonable time and in accordance with this section.

(2) Notice of intent to franchise. Any notice of intent to franchise shall be published once each week for two successive weeks in a newspaper of general circulation in the town, requesting applications for a franchise. The notice must include at least the following information:

(a) The closing date for the submission of applications;

(b) The amount of the application fee charged by the town, and the method for its submission;

(c) A statement by the town of criteria and priorities against which the applicants for a franchise may be evaluated (e.g. financial, legal, technical);

(d) A statement that applications for a franchise must contain at least the information required by § 9-406 of these policies and procedures;

(e) The name, address and telephone number of the individual(s) who may be contacted for further information.

(3) Review of applicants. Applications for a competitive franchise shall contain such information as is required below in these policies and procedures and shall be submitted to the town. Review by the town of any applications pursuant to these policies and procedures and final determination by the town regarding whether to franchise such applicant(s) may be based on any relevant factors. Such relevant factors may include comparisons of the level and quality and nature of cable services proposed by the applicant to that provided by the incumbent cable company, the needs and interests of the community and institutions, as identified solely by the town, and information regarding industry trends, state-of-the-art technologies, services and other related information.

(4) Public hearing on applications. A public hearing before the town council affording reasonable notice and reasonable opportunity to be heard with respect to an application shall be scheduled by the town after the deadline for submitting applications has elapsed.

(5) Negotiation of franchise terms. During the period prior to the public hearing on an application, the responsible town employee(s), town council and applicant may negotiate specific franchise terms and conditions for recommendation and presentation to the town council. In addition, during this period the responsible town employee(s) and town council shall review the application and may request such additional information necessary to make final recommendations to the town council. An applicant shall assist the town in its review by providing all information requested by the town no later than the date(s) specified by the responsible town employee(s) or town council regardless of whether the requested information is a trade secret or is proprietary or confidential.

(6) Determination. Determinations by the responsible town employee(s) regarding the qualifications of applicant(s) and recommendations

to the town council regarding the grant of a franchise shall be made based on information provided by the applicant as required herein and such other information which the responsible town employee(s) deem relevant in their sole discretion. The responsible town employee(s) may, in their sole discretion, consider information developed during any negotiations with the applicant and any information or evidence adduced by the incumbent cable company. After the public hearing referenced in § 9-405(4) the responsible town employee(s) shall issue written recommendations to the town council regarding the application. These recommendations may include a franchise document for adoption by the town.

(7) Award of franchise. A franchise may be awarded only by an ordinance adopted by the town council, subject to Section 2.01(12) of the Charter.

(8) Cost of reviewing application and issuing franchise. The applicant shall pay the application fee required below and the application fee shall be non-refundable. The application fee is required for the purpose of reimbursing the town for all costs associated with processing applications pursuant to these policies and procedures through and including any granting of a franchise. Should the application fee not cover the expenses of the town, those unreimbursed expenses shall be reimbursed prior to any consideration of the franchise by the town. A successful applicant shall be fully responsible to reimburse the town for all costs of awarding the franchise. (1991 Code, § 9-505)

9-406. Information required in application. An application for a competitive franchise must be signed by an authorized officer or principle of the cable company and be notarized and must include at least the following:

(1) A statement that the applicant seeks to construct a cable system and to provide cable services within the town;

(2) The name, street address, e-mail address and telephone number of the individuals who are authorized to provide and certify information on behalf of the applicant.

(3) Plans for analog and digital channel capacity, including both the total number of analog and digital channels capable of being energized in the system and the number of analog and digital channels to be energized immediately;

(4) A statement of the television and radio signals for which permission to carry will be requested from the Federal Communications Commission or any other required regulatory agency;

(5) A description of the proposed system design, including at least the following terms:

(a) The general area for location of antennae and the headend;

(b) The schedule for activating two-way capacity and any other system capacity to be activated in conjunction with the cable system;

(c) The type of automated services to be provided;

(d) The minimum number of video channels, other cable services, and other kinds of services to be made available to residents;

(e) The number of channels and services to be made available for public educational and governmental access programming; and

(f) A plan for funding of facilities for public, educational and governmental access programming and/or a plan for interconnection and provision of such programming in cooperation with the incumbent cable company.

(6) Plans for the provision of institutional network capacity and services or other "in-kind" services and the terms, conditions and technical standards under which institutional network service is to be provided to governmental, educational, and other institutional entities;

(7) A list of all institutions that will receive institutional network service;

(8) A schedule of proposed rates in relation to the services to be provided, and a proposed policy regarding unusual or difficult service connections;

(9) A description of the area(s) within the town to be served, including line extension commitments;

(10) A time schedule for construction of the entire system with the time sequence for wiring the various parts of the area(s) to be served;

(11) Information supporting and indicating the applicant's financial, technical and legal qualifications and experience in the cable communications field, if any;

(12) An identification of the municipalities in which the applicant either owns or operates a cable system, directly or indirectly, or has outstanding franchises for which no system has been built;

(13) Detailed plans for financing of the proposed system, which must indicate every significant anticipated source of capital and significant limitations or conditions with respect to the availability of the indicated sources or capital;

(14) A statement of ownership detailing the corporate organization of the applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director;

(15) A description of intracompany relationships, including parent, subsidiary or affiliated companies;

(16) A statement of a form and substance acceptable to the town indemnifying the town fully against any claims or liabilities alleged as a result of the town's exercise of these policies and procedures including any such claims or liabilities alleged or asserted by the incumbent cable company;

(17) An agreement to pay the town a franchise fee at least equal to the fee paid by the incumbent providers;

(18) A notation and explanation of omissions or other variations with respect to the requirements of the application; and,

(19) Submission of an application fee in an amount set by the town council in the fee schedule adopted as part of the annual budget ordinance. (1991 Code, § 9-506, modified)

CHAPTER 5

ADULT-ORIENTED ESTABLISHMENTS¹

SECTION

- 9-501. Purpose.
- 9-502. Definitions.
- 9-503. License required.
- 9-504. Application for license.
- 9-505. Standards for issuance of license.
- 9-506. Permit required.
- 9-507. Application for permit.
- 9-508. Standards for issuance of permit.
- 9-509. Fees.
- 9-510. Display of license or permit.
- 9-511. Renewal of license or permit.
- 9-512. Revocation of license or permit.
- 9-513. Hours of operation.
- 9-514. Responsibilities of the operator.
- 9-515. Prohibitions and unlawful sexual acts.
- 9-516. Sale or exhibition to minors of indecent publications, pictures or articles.
- 9-517. Penalties and prosecution.
- 9-518. Severability.

9-501. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the town. It is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

9-502. 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 bookstore" means an establishment having as a substantial portion of its stock in trade ("substantial portion" meaning over 20% of floor area, or over 20% of inventory by units or value, or over 20% of revenues) in books, films, video cassettes, compact discs, computer software, computer

¹Municipal code reference
Alcoholic beverages: § 8-105,

generated images or text, or magazines and other periodicals or publications or reproductions of any kind which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined below, and including adult-oriented films, movies, or live entertainment, for observation by patrons therein.

(2) "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.

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

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

(5) "Adult 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.

(6) "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.

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

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

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

(10) "Specified sexual activities" means:

- (a) Human genitals in a state of actual or simulated sexual stimulation or arousal;
- (b) Acts or simulated acts of human masturbation, sexual intercourse or sodomy;
- (c) Fondling or erotic touching of human genitals, pubic region, buttock or female breasts.

(11) "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.

(12) "Town council" means the Town Council of the Town of Smyrna, Tennessee.

9-503. 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 Smyrna without first obtaining a license to operate issued by the Town of Smyrna.

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

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

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

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

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

9-504. Application for license. (1) Any person, partnership, or corporation desiring to secure a license shall make application to the Police Chief of the Town of Smyrna. The application shall be filed in triplicate with and dated by the police chief. A copy of the application shall be distributed promptly by the police chief to the town clerk and to the applicant.

(2) The application for a license shall be upon a form provided by the police chief. An applicant for a license including any partner or limited partner of the partnership applicant, and any officer or director of the corporate applicant and any stockholder holding more than five (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 three (3) years;
- (d) The applicants' height, weight, color of eyes and hair;
- (e) The business, occupation or employment of the applicant(s) for five (5) years immediately preceding the date of the application;
- (f) Whether the applicant(s) previously operated in this or any other county, 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 town ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations;

(h) Fingerprints and two (2) portrait photographs at least two (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 Town of Smyrna, 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; and

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

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

(4) Whenever an application is denied or held for further investigation, the police chief shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter before the town

council at which time the applicant may present evidence as to why his/her license should not be denied. The town council 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 town council and no agreement is reached with the applicant concerning the basis for denial, the town attorney shall institute suit for declaratory judgment in the Chancery Court of Rutherford County, Tennessee, within five (5) days of the date of any such denial and shall seek an immediate judicial determination of whether such license or permit may be properly denied under the law.

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

9-505. 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 § 9-503 shall be at least eighteen (18) years of age.
 - (ii) No officer, director or stockholder required to be named under § 9-503 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 Smyrna Police Department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the police chief no later than twenty (20) days after the date of the application.

9-506. Permit required. In addition to the license requirements previously set forth for owners and operators of "adult-oriented establishments," no person shall be an employee or entertainer in an adult-oriented establishment without first obtaining a valid permit issued by the police chief.

9-507. Application for permit. (1) Any person desiring to secure a permit as an employee or entertainer shall make application to the police chief. The application shall be filed in triplicate with and dated by the police chief. A copy of the application shall be distributed promptly by the police chief to the town clerk and to the applicant.

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

- (a) Name and address, including all aliases;
- (b) Written proof that the individual is at least eighteen (18) years of age;
- (c) All residential addresses of the applicant for the past three (3) years;
- (d) The applicant's height, weight, color of eyes, and hair;
- (e) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application;
- (f) Whether the applicant, while previously operating in this or any other 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 town ordinance violation, convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations;

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

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

(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 Smyrna Police Department, the police chief shall notify the applicant that his application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigations, the police chief shall advise the applicant in writing whether the application is granted or denied.

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

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

9-508. Standards for issuance of permit. (1) To receive a permit as an employee or entertainer, an applicant must meet the following standards:

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

(b) The applicant shall not have been convicted of or pleaded no contest to a felony or any crime involving moral turpitude or prostitution, obscenity or other crime of a sexual nature (including violation of similar adult-oriented establishment laws or ordinances) in any jurisdiction within five (5) years immediately preceding the date of the application;

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

(2) No permit shall be issued until the Smyrna Police Department has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the police chief not later than twenty (20) days after the date of the application.

9-509. Fees. (1) A non-refundable license fee as set forth in the fee schedule adopted with the annual budget ordinance shall be submitted with the application for a license.

(2) A non-refundable permit fee as set forth in the fee schedule adopted with the annual budget ordinance shall be submitted with the application for a permit.

9-510. Display of license or permit. (1) The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

(2) The permit shall be carried by an employee and/or entertainer upon his or her person and shall be displayed upon request of a customer, any member of the Smyrna Police Department, or any person designated by the town council.

9-511. Renewal of license or permit. (1) Every license issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the police chief. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the police chief. A copy of the application for renewal shall be distributed promptly by the police chief to the town clerk and to the operator. The application for renewal shall be a form provided by the police chief and shall contain such information and data, given under oath or affirmation, as may be required by the town council.

(2) A non-refundable license renewal fee as set forth in the fee schedule adopted with the annual budget ordinance shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty as set forth in the fee schedule adopted with the annual budget ordinance shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires.

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

(4) Every permit issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance unless sooner revoked, and must be renewed before an employee and/or entertainer is allowed to continue employment in an adult-oriented establishment in the following calendar year. Any employee and/or entertainer desiring to renew a permit shall make

application to the police chief. The application for renewal must be filed not later than sixty (60) days before the permit expires. The application for renewal shall be filed in triplicate with and dated by the police chief. A copy of the application for renewal shall be distributed promptly by the police chief to the town clerk and to the employee. The application for renewal shall be upon a form provided by the police chief and shall contain such information and data, given under oath or affirmation, as may be required by the town council.

(5) A non-refundable permit renewal fee as set forth in the fee schedule adopted with the annual budget ordinance shall be submitted with the application for renewal. In addition to said renewal fee, a late penalty as set forth in the fee schedule adopted with the annual budget ordinance shall be assessed against the applicant who files for renewal less than sixty (60) days before the license expires.

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

9-512. Revocation of license or permit. (1) The police chief shall revoke a license or permit for any of the following reasons:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9-513. Hours of operation. (1) No adult-oriented establishment shall be open between the hours of 1:00 A.M. and 8:00 A.M. Monday through Saturday, and between the hours of 1:00 A.M. and 12:00 P.M. on Sunday.

(2) All adult-oriented establishments shall be open to inspection at all reasonable times by the Smyrna Police Department, the Rutherford County Sheriff's Department, or such other persons as the town council may designate.

9-514. Responsibilities of the operator. (1) The operator shall maintain a register of all employees and/or entertainers showing the name, and aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, and duties of each employee and such other information as may be required by the town council. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

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

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

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

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

(6) No operator or employee of an adult-oriented establishment shall allow any minor in or on the premises, to loiter around or to frequent an adult-oriented establishment, or to allow any minor to view adult entertainment as herein defined. It is a violation of this section if any person knowingly allows a person under the age of eighteen years on or in the premises of an adult oriented establishment as herein defined.

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

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

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

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

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

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

9-515. Prohibitions and unlawful sexual acts. (1) No operator, entertainer, or employee of an adult-oriented establishment shall permit to be performed, offer to perform, perform or allow customers, employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

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

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

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

(5) No entertainer, employee or customer shall be permitted to have any physical contact with any other person on the premises during any performance and all performances shall only occur upon a stage at least eighteen (18") inches above the immediate floor level and removed six feet (6') from the nearest entertainer, employee and/or customer.

9-516. Sale or exhibition to minors of indecent publications, pictures or articles. (1) Every person who shall willfully engage in the business of selling, lending, giving away, showing, advertising for sale or distributing to any person under the age of eighteen (18) years of age or who has in his possession with the intent to engage in such business or to otherwise offer for sale or commercial distribution to any individual under the age of eighteen (18) years of age, or who shall display at a newsstand or any other business establishment frequented by minors under eighteen (18) years of age or any place where minors are or may be invited as part of the general public, any motion picture, live show or any still pictures, photographs or any book, pocketbook, pamphlet or magazine, the cover or contents of which exploits, is devoted to or is principally made up of descriptions or depictions of illicit sex or sexual immorality, or which is lewd, lascivious or indecent, or which consists of

pictures of nude or partially denuded figures posed or presented in a manner to provoke or arouse lust or passion or to exploit sex, lust or other perversion for commercial gain or any article or instrument of indecent or immoral use shall, upon conviction, be punished as provided in Article IX of the charter of the Town of Smyrna.

(2) For the purpose of this section, "description or depiction of illicit sex or sexual immorality" shall mean:

- (a) Human genitals in a state of sexual stimulation or arousal.
- (b) Acts of human masturbation, sexual intercourse or sodomy.
- (c) Fondling or other erotic touching of human genitals, pubic region, buttocks or the female breasts.

(3) For the purpose of this section, "nude or partially denuded figures" shall mean:

- (a) Less than completely or opaquely covered:
 - (i) Human genitals;
 - (ii) Pubic regions;
 - (iii) Buttocks;
 - (iv) Female breasts below a point immediately below the top of the areola; or
 - (v) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

(4) For the purpose of this section, "knowingly" shall mean having knowledge of the character and content of the publication, or failure on notice to exercise reasonable inspection which would disclose the content and character of the publication.

9-517. Penalties and prosecution. (1) Any person, partnership, corporation, or other business entity who is found to have violated this chapter shall be fined a definite sum not exceeding fifty dollars (\$50.00) for each violation and shall result in the suspension or revocation of any permit or license.

(2) Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation.

9-518. Severability clause. Each section and provision of this chapter is hereby declared to be independent sections and subsections and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such

sections and provisions would have been passed independently of such section or provision so known to be invalid.