

**TITLE 9**

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

<b>CHAPTER</b>	<b>PAGE</b>
1. MISCELLANEOUS .....	9-1
2. PEDDLERS, ETC .....	9-6
3. SEXUALLY ORIENTED BUSINESSES .....	9-10
4. TAXICABS .....	9-27
5. CABLE TELEVISION ORDINANCE .....	9-31
6. FOOD ESTABLISHMENTS ORDINANCE .....	9-62
7. SWIMMING POOLS AND PUBLIC AMUSEMENTS .....	9-63

**CHAPTER 1**

**MISCELLANEOUS**

**SECTION**

- 9-101. Second hand merchandise sales.
- 9-102. Outdoor sales on commercial property regulated.
- 9-103. Regulations of liquidation sales.

**9-101. Second hand merchandise sales.** (1) It shall be unlawful for any licensed business to buy from the general public any music CD's, DVD, play stations, Sega equipment, video games, or electronic equipment without recording identification of the owner of said property. The information recorded will list name, address, social security number, date of birth, phone number, and thumbprint of the person selling the product. The business may not sell or transfer the recorded information to another business without the seller's permission. The business will fill out form BPD 2000-01<sup>2</sup> to identify said products with description of product and serial numbers when applicable.

(2) If the person is under the age of eighteen (18), written consent of the guardian will be required with the contact phone number of the guardian to verify. The identification information from the minor will also be recorded.

---

<sup>1</sup>Municipal code references

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

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

<sup>2</sup>Available at the police department.

(3) Two (2) copies of form BPD 2000-01<sup>1</sup> will be completed. One (1) shall be retained at the place of business to be inspected by the chief of police or his designee during regular business hours. The remaining copy will be delivered to the police department within five (5) working days. Form BPD 2000-01 will be maintained as a permanent record of second hand merchandise transactions.

(4) Penalty violation. Violation of this section shall subject the violator a fine of not more than fifty dollars (\$50.00) for each violation. Nothing in this section will prohibit or affect the power of the chief of police and/or his designee to suspend or revoke the permit as herein provided. (Ord. #00-04, March 2000)

**9-102. Outdoor sales on commercial property regulated.** (1) A permit to conduct said outdoor sales must be obtained from the City of Bartlett Tax Department, and a permit fee paid in the amount of twenty-five dollars (\$25.00), by the company, organization or individual conducting said outdoor sale. This fee is waived for non-profit organizations and is waived for any permanent business located in the City of Bartlett, but is payable by any business which is not permanently located in the City of Bartlett.

(2) Outdoor sales shall include, but not be limited to, tent sales, truckload sales, sidewalk sales and parking lot sales on commercial property.

(3) Such outdoor sales must be conducted by an existing permanent business adjacent to and on the property of the location of the permanent business. Itinerant peddlers that travel from site to site and set up on street corners and vacant lots are expressly prohibited by this section. The outdoor sales are to be conducted as an adjunct to the existing permanent business. This section does not apply to non-profit organizations.

(4) The duration of outdoor sales shall not exceed ten (10) days in length for those businesses zoned other than Highway Commercial. The duration of outdoor sales for non-profit organizations shall not exceed thirty (30) days in length.

(5) The City of Bartlett Board of Mayor and Aldermen, may in its discretion waive the payment of the permit fee or may extend the length of time of any outdoor sale. (Ord. #85-23, Oct. 1985)

**9-103. Regulations of liquidation sales.**<sup>2</sup> (1) Definitions. As used in this section, unless the context otherwise requires:

(a) "Inspector" means an inspector of the code enforcement department;

(b) "License" means a license issued pursuant to this section;

---

<sup>1</sup>Available in the office of the city clerk.

<sup>2</sup>State law reference

Tennessee Code Annotated, §§ 6-55-401 through 6-55-413.

(c) "Licensee" means any person to whom a license has been issued pursuant to this section;

(d) "Municipality" means any incorporated city or any incorporated town;

(e) "Official" means the director of code enforcement or his designee.

(f) "Publish," "publishing," "advertisement," or "advertising" includes any and all means of every kind of conveying to the public notice of sale or notice of intention to conduct a sale, whether by word of mouth, by newspaper advertising, by magazine advertisement, by handbill, by written notice, by printed notice, by printed display, by billboard display, by poster, by radio announcement and any and all means including oral, written or printed; and

(g) "Sales" means the sale or any offer to sell to the public goods, wares and merchandise of any and all kinds and descriptions on hand and in stock in connection with a declared purpose, as set forth by advertising, on the part of the seller that such sale is anticipatory to the termination, closing, liquidation, revision, windup, discontinuance, conclusion or abandonment of the business in connection with such sale. It also includes any sale advertised to be a "fire sale," "adjustment sale," "creditor's sale," "trustee's sale," "liquidation sale," "reorganization sale," "insurance salvage sale," "administrator's sale," "insolvent sale," "mortgage sale," "assignee's sale," "adjuster's sale," "receiver's sale," "loss-of-lease sale," "wholesaler's close-out sale," "creditor's committee sale," "forced-out-of-business sale," "removal sale" and any and all sales advertised in such manner as to reasonably convey to the public that upon disposal of the stock of goods on hand, the business will cease and be discontinued.

(2) License requirement. No person, firm or corporation shall hereafter publish or conduct any sale of the type defined in Tennessee Code Annotated, § 6-55-401, without a license for the publication or conduct of such sale.

(3) Application for license. (a) The official is hereby authorized and empowered to supervise and regulate sales or special sales defined in Tennessee Code Annotated, § 6-55-401, and to issue appropriate licenses or license for such sales.

(b) Such licenses or license shall be issued in the discretion of the official of licenses upon the written application in a form approved by the official and verified by the person who, or by an officer of the corporation which, intends to conduct such sale.

(c) Such application shall contain:

(i) A description of the place where such sale is to be held, the nature of the occupancy, whether by lease or sublease and the effective date of the termination of such occupancy, the

means to be employed in publishing such sale, together with the proposed language content in any advertisements;

(ii) An itemized list of the goods, wares and merchandise to be offered for sale, the place where such stock was purchased or acquired, and if not purchased, the manner of such acquisition; and

(iii) Any additional information as the official may require.

(4) Issuance of license. Upon receipt of such application and payment of the fee prescribed in Tennessee Code Annotated, § 6-55-406, the official shall cause the same to be examined and investigated. If after such investigation the official is satisfied as to the truth of the statements contained in such application and as to the form and content of the advertising to be used in connection with such sale, the official may then issue a license permitting the publication and conduct of such sale. Such license shall be for a period of not exceeding thirty (30) days.

(5) Renewal license. Upon satisfactory proof by the licensee that the stock itemized in the original application has not been disposed of, the official may renew such license for an additional thirty (30) day period upon payment of the prescribed renewal fee. Such proof for a renewal license shall be furnished in a form to be issued by the official. The renewal application shall contain an itemized list of stock on hand and the same shall be verified by the applicant. The official shall cause the same to be examined and investigated, and if satisfied as to the truth of the statements therein contained, the official may issue a renewal license for a period not exceeding thirty (30) days; provided, that not more than three (3) such renewals shall be granted for any such sale for the same location within a period of one (1) year from date of issuance of the first license.

(6) Application fee. Upon filing an original application or a renewal application for a license to advertise and conduct a sale or special sale, as defined in Tennessee Code Annotated, § 6-55-401, the applicant shall pay to the official a fee in the sum of twenty-five dollars (\$25.00). If any application or renewal application is disapproved, such payment shall be forfeited to the official of licenses as and for the cost of investigating the statements contained in such application or renewal application.

(7) Contents of advertising. (a) All advertisements or advertising and the language contained therein shall be in accordance with the purpose of the sale as stated in the application pursuant to which a license was issued and the wording of such advertisements shall not vary from the wording as indicated in the application.

(b) Such advertising shall contain a statement in these words and no others:

"Sale held pursuant to permit No. \_\_\_\_\_ of code enforcement department granted the \_\_\_\_ day of \_\_\_\_\_."

and in such blank spaces shall be indicated the permit number and the requisite dates.

(8) Display of licenses--books and records. (a) Upon commencement of any sale, as hereinbefore defined, the license issued by the official shall be prominently displayed near the entrance of the premises.

(b) A duplicate of the original application and stock list pursuant to which the license was issued shall at all times be available to the official or to inspectors of the code enforcement department, and the licensee shall permit such inspectors to examine all merchandise on the premises for comparison with such stock list.

(c) Suitable books and records as prescribed by the official shall be kept by the licensee and shall be at all times available to the inspectors of the code enforcement department.

(d) At the close of the business day the stock list attached to the application shall be revised and those items disposed of during such day shall be marked thereon.

(9) Rules and regulations. The official is further empowered to make such rules and regulations for the conduct and advertisement of such sale or special sale as in the official's opinion will serve to prevent deception and to protect the public.

(10) Suspension or revocation of license. The official has the power to suspend or revoke at any time any license granted in accordance with this chapter.

(11) Violations. Any person who violates, neglects or refuses to comply with any of the provisions of this section commits a civil offense punishable by a fine of up to fifty dollars (\$50.00).

(12) Application of chapter. The provisions of this chapter shall not apply to or affect the following persons:

(a) Persons acting pursuant to an order or process of court of competent jurisdiction;

(b) Persons acting in accordance with their powers and duties as public officers, such as sheriffs and marshals; or

(c) Duly licensed auctioneers, selling at auction.

(13) Adoption of chapter. Any municipality desiring to adopt the provisions of this chapter may do so and in addition shall have the necessary power to take whatever additional steps are required to carry out the purposes of this chapter. (Ord. #92-11, July 1992, modified)

## CHAPTER 2

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

#### SECTION

- 9-201. General.
- 9-202. Definitions.
- 9-203. Selling prohibited.
- 9-204. Panhandling in roadway, street, or median.
- 9-205. Mobile frozen dessert vehicles.
- 9-206. Exceptions.
- 9-207. Enforcement.
- 9-208. Violation and penalty.

**9-201. General.** This chapter is enacted to provide for the safety, health and welfare of the citizens of the City of Bartlett. It is the intent of this chapter to regulate:

- (1) Commercial activity on city streets and street right-of-ways and
- (2) The conduct of business by peddlers and transient vendors in and around private residences. (Ord. #01-12, July 2001, as amended by Ord. #02-03, March 2002)

**9-202. Definitions.** Except as specifically defined herein, all words used in this chapter shall have customary dictionary definitions. In case of conflict between the dictionary definitions and the definitions contained in this chapter, the definitions herein shall prevail.

(1) "Goods, wares, or merchandise" means any and all variety of merchandise items, whether handmade or manufactured, or services, whether personal or professional, categorized as, but not necessarily limited to, food products, landscaping products, trees, garden farm products, firewood, cleaning products, books, magazine subscriptions, souvenirs, gifts, prizes, art/school supplies, cloth, clothing or wearing apparel, novelties, appliances, works of arts or crafts, street photographers, tools or mechanical devices of any nature, directional information, service for hire of any nature, or donations for any cause.

(2) "Mobile frozen desserts vendor" shall mean any person who offers for sale or sells to another, ice cream or other frozen dessert products from motor vehicles, human-powered vehicles, bicycles, three-wheeled vehicles, or any other form of mobile transportation conveyance, on the street right-of-ways within the City of Bartlett.

---

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

(3) "Peddlers" shall include the words "hawker" and "huckster." Peddler as used herein shall include any person, whether a resident of the City of Bartlett or not, traveling by foot, automotive vehicle, wagon, or any other type of transportation conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, and offering and/or exposing the same for sale, or making sales without traveling from place to place or who shall sell or offer the same for sale from any type of transportation conveyance or temporary display stands. One who solicits orders and as a separate transaction, makes deliveries to purchasers, as a part of a scheme or design to evade the provisions of this chapter shall be deemed a peddler and subject to the provisions of this chapter.

(4) "Person" shall include any person, firm, corporation, association, club, co-partnership, society, or any other organization.

(5) "Public designated park" shall mean an open space set aside for public passage, use, recreation or simply enjoyment in the nature of a park.

(6) "Transient vendor" shall mean any person who brings into temporary premises and exhibits stock of merchandise, goods or wares to the public for the purpose of selling or offering to sell these items to the public.

(7) "Temporary premises" shall mean premises as to which a business license for such vendor has not previously been issued, including, but not limited to, any public place, parking lots, motor vehicles, trailers, vacant lots, tents, streets, or any private property. ( Ord. #01-12, July 2001, as amended by Ord. #02-03, March 2002, and Ord. #02-06, June 2002)

**9-203. Selling prohibited.** It shall be unlawful anywhere in the City of Bartlett, Tennessee, for any person, peddler, huckster, hawker or transient vendor to sell or offer for sale on streets and street right-of-ways, private residences, from motor vehicles, and all types of transportation conveyances, except as allowed elsewhere in this chapter, any goods, wares and merchandise of any nature. (Ord. #01-12, July 2001, as amended by Ord. #02-03, March 2002)

**9-204. Panhandling in roadway, street or median.** It shall be a violation of this chapter to stop a vehicle or to approach a stopped vehicle on a public street or roadway and ask for donations of any kind or sell any product while standing on said street, roadway, sidewalk or median. (Ord. #01-12, July 2001, as amended by Ord. #02-03, March 2002)

**9-205. Mobile frozen dessert vehicles.** (1) Mobile frozen dessert vendors (in this section, some are referred to as "vendor" or "vendors") are allowed to sell ice cream and other frozen dessert products under the following conditions:

- (a) Vendors must comply with any license required by the state, county, and city.

(b) Vendors must comply with health department regulations.

(c) Vendors must carry the minimum amount of insurance required by state and county laws.

(d) Vehicles used to transport and dispense frozen desserts must meet all state and county regulations for such vehicles.

(e) Vendors shall not sell or dispense of their products from stationary locations in the city, including, but not limited to, streets, city-owned property, parking lots, private property, and vacant lots.

(f) Vendors shall not park or stop to sell their products within one-quarter (.25) mile of any boundary of a school zone area during the period from one (1) hour before the start of school until one (1) hour after the school day officially ends.

(g) Vendors shall not sell their products after sunset.

(h) A vendor shall make no sales until the vehicle is stopped and lawfully parked.

(i) A vendor shall sell only from the side of his vehicle away from moving traffic and as near as possible to the curb or side of the street.

(j) A vendor shall not sell to a person standing in the roadway.

(k) The driver of a vehicle shall not stop and back the vehicle to make or attempt to make a sale.

(l) The driver of every mobile frozen dessert vehicle shall at all times when the vehicle is in motion or at a stop take every reasonable precaution to protect the safety of his customers against traffic and other hazards.

(m) Vendors shall not operate in congested areas where the selling of his products will impede, cause a safety hazard or inconvenience the public.

(2) For the purpose of this chapter, the judgment of a police officer, code enforcement officer, city traffic engineer or any other appropriate city official acting in good faith shall be deemed conclusive to determine that an area is congested or unsafe for a mobile frozen dessert vendor to sell his products. (Ord. #01-12, July 2001, as amended by Ord. #02-03, March 2002)

**9-206. Exceptions.** (1) The provisions of this chapter shall not apply to newspaper delivery or to bona fide merchants who deliver goods in the regular course of business.

(2) Solicitors for charitable, non-profit or religious organizations who go from dwelling to dwelling, business to business, street to street, taking or attempting to take orders for goods, wares and merchandise are exempt from these provisions, provided these organizations meet the Internal Revenue Service criteria to qualify as a charitable, non-profit or religious organization.

(3) The dispensing of religious pamphlets or other literature which is protected by the United States Constitution under Freedom of Speech, Religion or Press is exempt from this chapter.

(4) Campaigning for public office shall be exempt from this chapter. (Ord. #01-12, July 2001)

**9-207. Enforcement.** The provisions of this chapter shall be enforced by any police officer, code enforcement officer or other duly authorized official of the City of Bartlett. (Ord. #01-12, July 2001, as amended by Ord. #02-03, March 2002)

**9-208. Violation and penalty.** Violations shall be punishable as a misdemeanor including but not limited to a fine not to exceed fifty dollars (\$50.00) per day per violation. This chapter may also be enforced by injunctive relief through the Chancery Court of Shelby County Tennessee. (Ord. #01-12, July 2001, as amended by Ord. #02-03, March 2002)

## CHAPTER 3

### SEXUALLY ORIENTED BUSINESSES

#### SECTION

- 9-301. Purpose and intent.
- 9-302. Definitions.
- 9-303. Classification.
- 9-304. Permit required.
- 9-305. Issuance of permit.
- 9-306. Fees.
- 9-307. Inspection.
- 9-308. Expiration of permit.
- 9-309. Suspension.
- 9-310. Revocation.
- 9-311. Appeal.
- 9-312. Transfer of permit.
- 9-313. Location of sexually oriented business.
- 9-314. Exemption from location restrictions.
- 9-315. Additional regulations for escort agencies.
- 9-316. Additional regulations for nude model studios.
- 9-317. Additional regulations for adult theaters and adult motion picture theaters.
- 9-318. Additional regulations for adult motels.
- 9-319. Regulations pertaining to exhibition of sexually explicit films or videos.
- 9-320. Display of sexually explicit material to minors.
- 9-321. Enforcement.
- 9-322. Injunction.

**9-301. Purpose and intent.** It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city and county and to establish reasonable and uniform regulations to prevent the continued concentrations of sexually oriented businesses within the city and county. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction of the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment at their intended market. (Ord. #90-21, Jan. 1991)

**9-302. Definitions.** (1) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture

machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(2) "Adult bookstore" or "adult video store" means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations, which depict or describe "specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

(3) "Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

(a) Persons who appear in a state of nudity; or

(b) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(4) "Adult motel" means a hotel, motel or similar commercial establishment which:

(a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and may have a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions. This definition shall not include "R-rated" films so defined by the Motion Picture Association; or

(b) Offers a sleeping room for rent more than two (2) times in a period of ten (10) hours; or

(c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours; or

(d) Offers or allows a discount or refund which is less than half the normal daily rate.

(5) "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical area." This definition shall not include "R-rated" films so defined by the Motion Picture Association.

(6) "Adult telecommunications business" means a commercial establishment where, by the descriptions of "specified anatomical areas" or "specified sexual activities" is made for commercial purposes to any person, regardless of whether the maker of such communication placed the call. Adult telecommunication businesses are exempt from the permit requirements of this chapter but shall comply with its locational requirements.

(7) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(8) "Police chief" means the police chief of the City of Bartlett or his designated agent.

(9) "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(10) "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary purposes, for a fee, tip, or other consideration.

(11) "Establishment" means and includes any of the following:

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

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

(c) The addition of any sexually oriented business to any other existing sexually oriented business; or

(d) The relocation of any sexually oriented business.

(12) "Landmark district" means a geographically definable area with a concentration of landmark buildings, objects or sites.

(13) "Nude model studio" means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(14) "Nudity" or a "state of nudity" means:

(a) The appearance of a human bare buttock, anus, male genitals, female genitals, or female breasts; or

(b) A state of dress which fails to cover opaquely a human buttock, anus, male genitals, female genitals, or areola of the female breast.

(15) "Operates or causes to be operated" means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operating a sexually oriented business whether or not that person is an owner, part-time owner, or permittee of the business.

(16) "Permittee" means a person in whose name a permit to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit. "Permittee" shall include an operator of an adult telecommunications business only for purposes of § 9-307.

(17) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(18) "Residential district" means a district whose designation begins with the letter "R" according to the City of Bartlett Zoning Ordinance.<sup>1</sup>

(19) "Residential use" means any building or portion of a building used as a dwelling unit.

(20) "Semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

(21) "Sexual encounter center" means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(22) "Sexually oriented business" means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center or, for the purposes noted in § 9-303(6) adult telecommunications business.

(23) "Sheriff" means Sheriff of Shelby County or his designated agent.

(24) "Specified anatomical areas" means:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic regions;

(ii) Buttock; and

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

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

(c) Use of artificial devices or inanimate objects to depict any of the items described above.

(25) "Specified sexual activities" means:

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

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

---

<sup>1</sup>The City of Bartlett Zoning Ordinance is included in this municipal code as Appendix A.

(c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast;

(d) Acts of bestiality;

(e) Use of artificial devices or, inanimate objects to depict any of the activities described in this section.

(26) "Substantial enlargement" of a sexually oriented business means the increase in floor area occupied by more than twenty-five percent (25%), as the floor area exists on January 22, 1991.

(27) "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

(a) The sale, lease or sublease of the business;

(b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (Ord. #90-21, Jan. 1991)

**9-303. Classification.** Sexually oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult telecommunications businesses, but only for purposes of §§ 9-307, 9-313, 9-314, 9-321, and 9-322;

(7) Adult theaters;

(8) Escort agencies;

(9) Nude model studios; and

(10) Sexual encounter centers. (Ord. #90-21, Jan. 1991)

**9-304. Permit required.** (1) A person commits an offense if he operates a sexually oriented business without a valid permit, issued by the city or county for the particular type of business.

(2) For purposes of this chapter, the issuance, suspension, and revocation of a permit for a sexually oriented business located within the City of Bartlett shall be handled by the police chief. The issuance, suspension, and revocation of a permit for a sexually oriented business located in the unincorporated areas of Shelby County shall be handled by the sheriff.

(3) An application for a permit must be made on a form provided by the police chief or sheriff of the county. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram

need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who must comply with § 9-319 of this chapter shall submit a diagram meeting the requirements of § 9-319.

(4) The applicant must be qualified according to the provisions of this chapter.

(5) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual who has any interest in the business must sign the application for a permit as applicant. Each applicant must be qualified under § 9-305 hereof and each applicant shall be considered a permittee if a permit is granted.

(6) The fact that a person possesses a valid theater permit, dance hall permit, or public house of amusement permit does not exempt him from the requirement of a sexually oriented business permit. A person who operates a sexually oriented business and possesses a theater permit, public house of amusement permit or dance hall permit shall comply with the requirement and provisions of this chapter, as well as the requirements and provisions of all other Bartlett and Shelby County building, fire, health and other permit codes.

(7) A permit may be issued only in the name of a natural person.

(8) Every permittee shall, before employing any person or using the services of an independent contractor in the operation of or entertainment at a sexually oriented business, secure from the police chief, an employee or oriented business permittee to ensure that each person so employed in permittee's place of business has a permit as above required, which permit must be upon the sexually oriented business premises at all times subject to inspection by the police chief or his duly authorized agents.

No employee's permit may be issued for any person who has been convicted of an offense listed in § 9-305(1)(h)(i) for which the time period required in § 9-305(1)(h)(ii) has not elapsed. An employee's permit issued pursuant to the provisions of this section shall be valid for a three (3) year period and shall be subject to suspension or revocation for breaches described in §§ 9-304 and 9-305 of this chapter.

An employee's permit shall be revoked upon the employee's or independent contractor's conviction of an offense listed in § 9-305(1)(h)(i). Applications for renewal shall be made in the same manner as applications for original permits upon forms to be prescribed by the police chief within five (5) days from the date the holder thereof ceases to work for or at a sexually oriented business, and it shall be the duty of the sexually oriented business permittee to notify the police chief within five (5) days of the termination of the employment for which such permit was issued. (Ord. #90-21, Jan. 1991)

**9-305. Issuance of permit.** (1) The police chief shall approve the issuance of a permit to an applicant within thirty (30) days after receipt of an

application unless the police chief finds one (1) or more of the following to be true:

- (a) An applicant is under eighteen (18) years of age.
- (b) An applicant is overdue in payment to city and/or, City of Memphis and/or Shelby County taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.
- (c) An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.
- (d) An applicant has been convicted of a violation of a provision of this chapter, other than the offense of operating a sexually oriented business without a permit, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (e) The permit fee required by this chapter has not been paid.
- (f) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (12) months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating a law-abiding action by law enforcement officers.
- (g) An applicant or the proposed establishment is in violation of or is not in compliance with §§ 9-307, 9-311, and 9-313 through 9-320 of this chapter.
- (h) An applicant has been convicted of a crime:
  - (i) Involving any of the following offenses as described in Tennessee Code Annotated, title 39, or juvenile laws of Tennessee, or corresponding offenses of other, including federal, jurisdictions:
    - (A) Prostitution;
    - (B) Promoting prostitution;
    - (C) The obscenity laws;
    - (D) Sale, loan, distribution, or exhibition to one or more minors of material which is harmful to minors;
    - (E) Use of minors for obscene purposes;
    - (F) Promotion of performances including sexual conduct by minors;
    - (G) Indecent exposure;
    - (H) Statutory rape;
    - (I) Rape, aggravated rape, sexual battery, or aggravated sexual battery;
    - (J) Incest;
    - (K) Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses.

(ii) For which:

(A) Less than two (2) years have elapsed since the date of conviction or the release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(B) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(C) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

(2) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(3) An applicant who has been convicted or whose spouse has been convicted of any offense listed in § 9-305 (1)(h)(i) hereof may qualify for a sexually oriented business permit only when the time period required by § 9-305(1)(h)(ii) hereof has elapsed.

(4) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the street address and any post office address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. (Ord. #90-21, Jan. 1991)

**9-306. Fees.** (1) The annual fee for a sexually oriented business permit is five thousand dollars (\$5,000.00).

(2) The annual fee for a permit issued on a date other than the annual expiration date shall be prorated according to the number of days until the expiration date.

(3) The applicant for an employee's permit shall pay to the police chief the sum of fifteen dollars (\$15.00) therefor.

(4) Fees shall be collected by the director of police services at the time of issuance of the permit. All fees for sexually oriented businesses located within the City of Bartlett shall be collected by the police chief. (Ord. #90-21, Jan. 1991)

**9-307. Inspection.** (1) An applicant or permittee shall permit representatives of the police chief, sheriff's department, health department, fire services division, housing and neighborhood services department, and building inspection division to inspect the premises of a sexually oriented business for the

purpose of insuring compliance with the law, at any time it is occupied or open for business.

(2) A person who operates a sexually oriented business or his agent, employee or independent contractor, commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the police chief, sheriff's department or health department at any time it is occupied or open for business. (Ord. #90-21, Jan. 1991)

**9-308. Expiration of permit.** Each permit shall expire December 31 of each year and may be renewed only by making application as provided in § 9-304 of this chapter. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the permit will not be affected. (Ord. #90-21, Jan. 1991)

**9-309. Suspension.** The police chief shall suspend a permit for a period not to exceed thirty (30) days if he determines that a permittee or an employee or agent of a permittee or independent contractor employed at the licensed premises has:

(1) Violated or is not in compliance with §§ 9-307, 9-312, 9-313 or 9-315 through 9-320 of this chapter;

(2) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;

(3) Refused to allow an unimpeded inspection of the sexually oriented business premises as authorized by this chapter;

(4) Knowingly permitted gambling by any person on the sexually oriented business premises;

(5) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers. (Ord. #90-21, Jan. 1991)

**9-310. Revocation.** (1) The police chief shall revoke a permit if a cause of suspension in § 9-309 occurs and the permit has been suspended within the preceding twelve (12) months.

(2) The police chief shall revoke a permit if he determines that:

(a) A permittee gave false or misleading information in the material submitted to the police chief during the application process;

(b) A permittee or an employee, agent, or independent contractor employed on the premises has allowed possession, use, or sale of controlled substances on the premises;

(c) A permittee or an employee, agent, or independent contractor employed on the premises has allowed prostitution on the premises;

(d) A permittee or an employee, agent, or independent contractor employed on the premises operated the sexually oriented business during a period of time when the permittee's permit was suspended;

(e) A permittee has been convicted of an offense listed in § 9-305(1)(h)(ii) has not elapsed;

(f) On two or more occasions within a twelve (12) month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in § 9-305(1)(h)(i) for which a conviction has been obtained, and the person or persons were employees, agents or independent contractors employed on the premises of the sexually oriented business at the time the offenses were committed;

(g) A permittee or an employee, agent or independent contractor employed on the premises has allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensee's premises. The term "sexual contact" shall have the same meaning as it is defined in Tennessee Code Annotated, § 39-13-501(6); or

(h) A permittee is delinquent in payment to the city for hotel occupancy taxes; ad valorem taxes, or sales taxes to the sexually oriented business.

(3) The fact that a conviction is being appealed shall have no effect on the revocation of the permit.

(4) § 9-310(2)(g) hereof does not apply to adult motels as a ground for revoking the permit unless permittee, employee, agent or independent contractor employed at the premises allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(5) When the police chief revokes a permit, the revocation shall continue five (5) years and no sexually oriented business permit shall be issued to that permittee for five (5) years from the date the revocation became effective. If, subsequent to revocation, the police chief finds that the basis for the revocation has been corrected or abated, a permit may be granted to the permittee if at least ninety (90) days has elapsed since the date the revocation became effective. If the permit was revoked under § 9-310(2)(e) hereof, an applicant may not be granted another permit until the appropriate number of years under § 9-304(1)(h)(ii) has elapsed. (Ord. #90-21, Jan. 1991)

**9-311. Appeal.** If the police chief denies the issuance of a permit, or an applicant believes it should be exempt, or a permittee applicant or business desires to appeal a revocation or suspension, it shall be done in the following manner:

(1) Written notice of the denial or proposed suspension or revocation shall be sent to the permittee by certified mail, return receipt requested, or have delivered by process server.

(2) The appeal of revocation, suspension or exemption request must be filed with the Office of the Mayor of the City of Bartlett within ten (10) days of receipt of notice.

(3) The hearing must be scheduled before the City of Bartlett Board of Mayor and Aldermen within sixty (60) days. Only members of said board may participate in the hearing and at least four (4) members must be present for the hearing to proceed.

(4) Where a permit is suspended or revoked, the suspension of the permit shall not occur within sixty (60) days of notice or prior to the date of the hearing, whichever is less, unless the health officer determines there is to be a health hazard or risk of disease at said location. No issuance of a new permit shall occur until after the hearing.

(5) A decision of the City of Bartlett Board of Mayor and Aldermen must be made in writing to all parties within five (5) days of the conclusion of the hearing.

(6) Any appeal of the decision of the City of Bartlett Board of Mayor and Aldermen shall be made by Common Law Writ of Certiorari to the Chancery Court of Shelby County, Tennessee.

(7) No permit shall be extended during this appeal without a court ordered writ of supersedes. Said appeal shall be filed within thirty (30) calendar days after receipt of a written decision by the City of Bartlett Board of Mayor and Aldermen. (Ord. #90-21, Jan. 1991)

**9-312. Transfer of permit.** A permittee shall not transfer his permit to another, nor shall a permittee operate a sexually oriented business under the authority of a permit at any place other than the street address designated in the application. (Ord. #90-21, Jan. 1991)

**9-313. Location of sexually oriented businesses.** (1) A person commits an offense if he operates or causes to be operated a sexually oriented business within one thousand five hundred (1,500) feet of:

- (a) A duly organized and recognized church;
- (b) A public or private elementary or secondary school;
- (c) A boundary of a residential or landmark district as defined in the City of Bartlett Zoning Ordinance;
- (d) A public park; or
- (e) The property line of a lot devoted to a residential use as defined in the City of Bartlett Zoning Ordinance.

(2) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand five hundred (1,500) feet of another sexually oriented business.

(3) A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business

in the same building, structure, or portion thereof, or the increase of floor, area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(4) For the purpose of subsection (1) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or local historic district.

(5) For purposes of subsection (2) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(6) Any sexually oriented business lawfully operating on January 22, 1991, that is in violation of subsections (1), (2), or (3) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued. In the event of termination of such a sexually oriented business, anyone applying for a reopening or for another sexually oriented business establishment at the premises, will be considered a new applicant. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one thousand five hundred (1,500) feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

(7) A sexually oriented business lawfully operating as a use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a church, or public or private elementary or secondary school, public park, residential or residential lot within one thousand five hundred (1,500) feet of the sexually oriented business. This provision applies only to the renewal of a valid permit, and does not apply when an application for a permit is submitted after a permit has expired or has been revoked. (Ord. #90-21, Jan. 1991)

**9-314. Exemption from location restrictions.** (1) If the chief of police denies the issuance of a permit to an applicant because the location of the sexually oriented business establishment is in violation of § 9-313 of this chapter, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the office of the mayor a written request for an exemption from the location restrictions of § 9-313. The hearings shall be handled according to the procedures set out in § 9-311.

(2) If the written request is filed with the Office of the Mayor of the City of Bartlett within the ten (10) day limit, the City of Bartlett Board of Mayor and Aldermen shall consider the request. The City of Bartlett Board of Mayor and Aldermen shall set a date for the hearing within sixty (60) days from the date the written request is received, and shall give notice to the public of such hearing according to the provisions of Tennessee Code Annotated, § 8-44-103.

(3) A hearing by the City of Bartlett Board of Mayor and Aldermen may proceed if at least four (4) of the board members are present. The board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(4) The City of Bartlett Board of Mayor and Aldermen may, in its discretion, grant an exemption from the locational restrictions of § 9-313 if it makes the following findings:

(a) That the location of the proposed or existing sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public welfare;

(b) That the granting of the exemption will not violate the spirit and intent of this section;

(c) That the location of the proposed or existing sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

(d) That the location of an additional sexually oriented business or the continued location of an existing sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and

(e) That all other applicable provisions of this chapter will be observed.

(5) The City of Bartlett Board of Mayor and Aldermen shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall be decided on the basis of a preponderance of the evidence. The decision of the City of Bartlett Board of Mayor and Aldermen is final. Appeal shall be by common law writ of certiorari to chancery court.

(6) If the City of Bartlett Board of Mayor and Aldermen grants the exemption, the exemption is valid for one (1) year from the date of the board's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of § 9-313 until the applicant applies or receives another exemption.

(7) If the City of Bartlett Board of Mayor and Aldermen denies the exemption, the applicant may not re-apply for an exemption until at least twelve (12) months have elapsed since the date of the board's action.

(8) The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of § 9-313. (Ord. #90-21, Jan. 1991)

**9-315. Additional regulations for escort agencies.** (1) an escort agency permittee shall not employ, use or allow the services of any person under the age of eighteen (18) years in the operation of such establishment.

(2) A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years. (Ord. #90-21, Jan. 1991)

**9-316. Additional regulations for nude model studios.** (1) A nude model studio shall not employ, use or allow the services of any person under the age of eighteen (18) years in the operation of such establishment.

(2) A person under the age of eighteen (18) years commits an offense if he appears in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view or persons of the opposite sex.

(3) A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

(4) There shall be no bed, sofa, or mattress in any room on the premises of a nude model studio except that a sofa may be placed in a reception room open to the public. (Ord. #90-21, Jan. 1991)

**9-317. Additional regulations for adult theaters and adult motion picture theaters.** (1) The requirement and provisions of other sections of this chapter remain applicable to adult theaters and adult motion picture theaters.

(2) A person commits an offense if he knowingly allows a person under the age of eighteen (18) years to appear in a state of nudity in or on the premises of an adult theater or motion picture theater.

(3) A person under the age of eighteen (18) years commits an offense if he knowingly appears in a state of nudity or on the premises of an adult theater or adult motion picture theater.

(4) It is a defense to prosecution under subsections (2) and (3) of this section if the person under eighteen (18) years was in a restroom not open to public view or persons of the opposite sex. (Ord. #90-21, Jan. 1991)

**9-318. Additional regulations for adult motels.** Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter. (Ord. #90-21, Jan. 1991)

**9-319. Regulations pertaining to exhibition of sexually explicit films or videos.** (1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in

a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction which depicts "specified sexual activities" or "specified anatomical areas," shall comply with the following requirement:

(a) Upon application for a sexually oriented business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The police chief may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(b) The application shall be sworn to be true and correct by the applicant.

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the police chief or his designee.

(d) It is the duty of the owners and operators of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct sight from the manager's station.

(f) It shall be the duty of the owners and operators, and it shall also be the duty of any agents employees and independent contractors employed at the premises present in the premises to ensure that the view

area specified in subsection (e) remains obstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a) of this section.

(g) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) footcandle as measured at the floor level.

(h) It shall be the duty of the owners and operators and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(2) A person having a duty under subsections (a) through (h) of subsection (1) above commits an offense if he fails to fulfill that duty. (Ord. #90-21, Jan. 1991)

**9-320. Display of sexually explicit material to minors.** (1) A person commits an offense if, in a business establishment open to persons under the age of eighteen (18) years, he displays a book, pamphlet, newspaper, magazine, film or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain, or to exploit sexual lust or perversion for commercial gain, any of the following:

(a) Human sexual intercourse, masturbation, or sodomy;

(b) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;

(c) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breasts below the top of the areola; or

(d) Human male genitals in a discernibly turgid state, whether covered or uncovered.

(2) In this section "display" means to locate an item in such a manner, that without obtaining assistance from an employee of the business establishment:

(a) It is available to the general public for handling and inspection; or

(b) The cover or outside packaging on the item is visible to members of the general public. (Ord. #90-21, Jan. 1991)

**9-321. Enforcement.** (1) Except as provided in subsection (2), any person violating § 9-313 of this chapter upon conviction, is punishable by a fine not to exceed fifty dollars (\$50.00) per day per violation. It shall be the duty of the police chief, for sexually oriented businesses located within the City of

Bartlett, to enforce the provisions of this chapter. Said chapter may also be enforced by injunctive relief through the Chancery Court of Shelby County.

(2) If the sexually oriented business involved is a nude studio or sexual encounter center, then violation of § 9-313 of this chapter is punishable as a misdemeanor.

(3) Except as provided by subsection (2), any person violating a provision of this chapter other than § 9-313, upon conviction is punishable by a fine not to exceed fifty dollars (\$50.00) per day per violation.

(4) It is a defense to prosecution under §§ 9-304, 9-313, or 9-317(4) that a person appearing in a state of nudity did so in a modeling class operated:

(a) By a school licensed by the State of Tennessee; a college, community college, or university supported entirely or partly by taxation;

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

(c) In a structure:

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

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

(iii) Where no more than one (1) nude model is on the premises at any one (1) time.

(5) It is a defense to prosecution under §§ 9-304 or § 9-313 that each item of descriptive, printed, film, or video material offered for sale or rental, taken as whole, contains serious literary, artistic, political, or scientific value.

(6) No alcohol permit may be issued for any sexually oriented business premises within the prescribed areas of § 9-313. (Ord. #90-21, Jan. 1991)

**9-322. Injunction.** A person who operates or causes to be operated a sexually oriented business without a valid permit or in violation of § 9-313 of this chapter is subject to a suit for injunction as well as prosecution for criminal violations. (Ord. #90-21, Jan. 1991)

## CHAPTER 4

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

#### SECTION

- 9-401. Taxicabs regulated--certificate of convenience.
- 9-402. Application and hearing required.
- 9-403. Contents of application.
- 9-404. Interested parties to be heard.
- 9-405. Certificates issued to owners only.
- 9-406. Granting of additional taxi service discretionary.
- 9-407. Hearing required for transfer of certificate.
- 9-408. Denial of certificate may be reviewed.
- 9-409. Revocation of certificate.
- 9-410. Board may amend rules and regulations.
- 9-411. Owner to be insured.
- 9-412. Rates to be posted in cab.
- 9-413. Drivers to furnish personal information.
- 9-414. Consent of board required for parking of taxi.
- 9-415. Location of business and garages.

**9-401. Taxicabs regulated--certificate of convenience.** The operation of any motor vehicle transporting persons for compensation on the streets of the City of Bartlett shall be subject to the conditions, regulations and restrictions hereinafter set forth, and it shall be unlawful to operate or cause to be operated in the city any such vehicle unless a certificate of public convenience and necessity has been issued to the owner thereof; and unless the conditions, regulations and restrictions herein prescribed are complied with. (Ord. #97-11, Nov. 1997)

**9-402. Application and hearing required.** No person shall hereinafter operate such vehicle in the city without having first applied for and received from the mayor and aldermen a permit therefor. Such permit shall be in the form of a certificate of public convenience and necessity and granted only after a public hearing by the board of mayor and aldermen after ten (10) days' notice, by publication in the official newspaper of the City of Bartlett, the cost thereof to be paid for by the applicant. (Ord. #97-11, Nov. 1997)

**9-403. Contents of application.** The application for a certificate of public convenience and necessity shall be made to the board of mayor and

---

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

aldermen, and shall set forth the name and address of the applicant, the trade name under which the applicant does or proposes to do business, where proposed stands and garages are to be located, the number of vehicles the applicant desires to operate, the type and make of vehicles to be used, and the lettering and marks to be used thereon, whether the applicant has been convicted of the violation of any state or municipal law, and an agreement or a stipulation that the applicant will operate and continue to operate during the time the certificate shall remain in effect, and any other information required by the board of mayor and aldermen. (Ord. #97-11, Nov. 1997)

**9-404. Interested parties to be heard.** At the hearing of any application made pursuant to this chapter, any person holding a certificate or otherwise interested shall have a right to be heard in favor of or in opposition to the granting of such certificate. (Ord. #97-11, Nov. 1997)

**9-405. Certificates issued to owners only.** No certificate for the operation of such vehicle under the provisions of this chapter shall be granted to any person unless such person shall be the bona fide owner of such vehicle and, at the time of the issuance of such certificate, such person so applying shall deposit with the finance director or his designees a photostatic or true copy of the certificate of title. (Ord. #97-11, Nov. 1997, modified)

**9-406. Granting of additional taxi service discretionary.** (1) In determining whether public convenience and necessity require the licensing of any additional companies or additional vehicles for companies now operating, the board of mayor and aldermen will take into consideration whether the demands of the public require such proposed or additional service and, in addition to the other requirements of this chapter, there shall be taken into consideration the increased traffic congestion and demand for increased parking space upon the streets of the city which may result, and whether the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such additional certificates.

(2) No person who may be granted a certificate shall be allowed to increase the number of vehicles therein designated or to enlarge upon the authority granted him by such certificate, but every increase in the number of vehicles operated shall be subject to the approval of the board of mayor and aldermen in the same manner and to the same extent as is herein provided for the original issuance of the certificate.

(3) In case any vehicle licensed under the provisions of this chapter should be retired by the owner because it is worn out or damaged, or not worthy of repair, no other vehicle shall be put in its place by the owner without compliance with section five (5) hereof, but a public hearing in this event shall be dispensed with.

(4) The City of Bartlett Tax Department shall collect an annual permit fee of eighty dollars (\$80.00) per cab. (Ord. #97-11, Nov. 1997)

**9-407. Hearing required for transfer of certificate.** No certificate of public convenience and necessity granted under the provisions of this chapter shall be assigned, transferred or alienated to any person except after public hearing before the board of mayor and aldermen as hereinbefore prescribed, and if at such hearing it is found that public convenience and necessity warrants the transfer, the transferee shall be issued a certificate of public convenience and necessity as in case of original application, and the transferor's certificate voided. (Ord. #97-11, Nov. 1997)

**9-408. Denial of certificate may be reviewed.** In the event the board of mayor and aldermen denies or fails to issue a certificate to any person, firm, or corporation, the party so aggrieved may avail himself of all process of review as is now prescribed for by the laws of the State of Tennessee. (Ord. #97-11, Nov. 1997)

**9-409. Revocation of certificate.** The board of mayor and aldermen shall have the power to revoke certificates of public convenience and necessity after a hearing upon ten (10) days notice to the holder of such certificate, and opportunity given such holder to be heard, and when it has been proved that such certificate holder has discontinued operation or has violated, refused or neglected to observe any of the proper orders, rules or regulations as may be promulgated by the board of mayor and aldermen, or willfully or persistently violated any ordinances of the city, or laws of the State of Tennessee relative to the operation of such vehicles. (Ord. #97-11, Nov. 1997)

**9-410. Board may amend rules and regulations.** The board of mayor and aldermen is entitled to make and enforce such additional rules as that body deems proper to regulate the operation of motor vehicles transporting persons for compensation, provided no regulation shall be made or enforced in conflict with this or any other chapter of the code of the City of Bartlett. (Ord. #97-11, Nov. 1997)

**9-411. Owner to be insured.** Before any certificate of public convenience and necessity is issued, the owner, as defined herein, shall file with the finance director or his designees a copy of a policy of insurance in some good and solvent incorporated insurance company, licensed to do business in the State of Tennessee, covering separately or in a schedule attached to such policy each taxi cab sought to be licensed and operated hereunder. Such policy shall insure the owner and operator in amounts of not less than one hundred thousand dollars (\$100,000.00) for each person and three hundred thousand dollars (\$300,000.00) for each accident for personal injury, and in amounts of not

less than fifty thousand dollars (\$50,000.00) for injury or damage to property, or a three hundred thousand dollars (\$300,000.00) combined single limit policy. Such policy shall further provide that it may not be canceled without at least five (5) days' written notice to be sent by registered mail to the finance director or his designees of the City of Bartlett. (Ord. #97-11, Nov. 1997, modified)

**9-412. Rates to be posted in cab.** Rates shall be conspicuously posted in each and every cab so as to be readily seen by passengers riding in the rear seat thereof, and the name of the person or company owning the cab shall be clearly designated on the outside of the cab. (Ord. #97-11, Nov. 1997)

**9-413. Drivers to furnish personal information.** All chauffeurs or operators shall file with the finance director or his designees on a form prescribed for and furnished by the city such personal information and data as to name, age, address, previous occupations, and a list of all criminal charges and convictions, if any, that may have been made theretofore, including the disposition of same. (Ord. #97-11, Nov. 1997, modified)

**9-414. Consent of board required for parking of taxi.** No taxicabs or vehicles for hire shall park upon or maintain stands on the public streets and thoroughfares of the city without first obtaining the written consent and approval of the board of mayor and aldermen. (Ord. #97-11, Nov. 1997)

**9-415. Location of business and garages.** All taxicab businesses and/or garages shall be located in either the C-H, Highway Business or I-O, Wholesale and Warehouse Zoning Districts. (Ord. #97-11, Nov. 1997)

**CHAPTER 5****CABLE TELEVISION ORDINANCE****SECTION**

- 9-501. General authorization.
- 9-502. Title of ordinance.
- 9-503. Definitions.
- 9-504. Rights and privileges of company.
- 9-505. Agreement and incorporation of application by reference.
- 9-506. Franchise territory.
- 9-507. Duration and acceptance of franchise.
- 9-508. Franchise renewal.
- 9-509. Police powers.
- 9-510. Broadband telecommunications franchise required.
- 9-511. Use of company facilities.
- 9-512. Costs.
- 9-513. Notices.
- 9-514. Letter of credit/security deposit.
- 9-515. Performance bond.
- 9-516. Liability and insurance.
- 9-517. Indemnification.
- 9-518. Rights of individuals.
- 9-519. Public notice.
- 9-520. Severability.
- 9-521. Service availability and record request.
- 9-522. System construction.
- 9-523. Construction and technical standards.
- 9-524. Use of streets.
- 9-525. Operational standards.
- 9-526. Continuity of service mandatory.
- 9-527. Complaint procedure.
- 9-528. Company rules and regulations.
- 9-529. Franchise fee.
- 9-530. Transfer of ownership or control.
- 9-531. Availability of books and records.
- 9-532. Other petitions and applications.
- 9-533. Fiscal reports.
- 9-534. Removal of broadband telecommunications system.
- 9-535. Required services and facilities.
- 9-536. Rules and regulations.
- 9-537. Rate change procedures.
- 9-538. Advisory commission on cable television.
- 9-539. Forfeiture and termination.

- 9-540. Foreclosure.
- 9-541. Approval of transfer and right of acquisition by the city.
- 9-542. Receivership.
- 9-543. Compliance with state and federal laws.
- 9-544. Landlord/tenant.
- 9-545. Applicant bids.
- 9-546. Financial, contractual, shareholder and system disclosure.
- 9-547. Penalties.
- 9-548. Periodic review and evaluation sessions.
- 9-549. Bid fees.

**9-501. General authorization.** The Board of Mayor and Aldermen of the City of Bartlett are hereby authorized to create, grant, establish and renew non-exclusive franchises for a period of twenty (20) years for the installation, operation, and maintenance of a broadband telecommunication system within the City of Bartlett. In the event the FCC or state government acquires or assumes jurisdiction over the issuing of any broadband telecommunications system franchise, the grantee hereby agrees that this franchise shall remain in full force and effect as a binding contract between the grantee and City of Bartlett. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-502. Title of ordinance.** This ordinance shall be known and may be cited as the "Bartlett Telecommunications Franchise Ordinance," (hereafter "Ordinance"), and it shall become a part of the Ordinances of the City of Bartlett. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-503. Definitions.** For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning:

(1) "Basic service." All subscriber services provided by the company is one (1) or more service tiers, which includes the delivery of local broadcast stations, and public, educational and government access channels. The basic service does not include optional program and satellite service tiers, a la cart services, per channel, per program, or auxiliary services for which a separate charge is made. However, grantee may include other satellite signals on the basic tier if they wish.

(2) "Board." The Board of Mayor and Aldermen of the City of Bartlett.

(3) "Broadband telecommunications system." A system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, data, and

other forms of electronic, electrical or optical signals, located in the city. The definition shall not include any such facility that serves or will serve only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, and does not use city rights-of-way.

(4) "Class IV channel." A signaling path provided by a broadband telecommunication system to transmit signals of any type from a subscriber terminal to another point in the broadband telecommunications system.

(5) "City." The City of Bartlett, a municipal corporation, in the County of Shelby, State of Tennessee.

(6) "Company." The grantee of rights under this chapter awarding a franchise, or the successor, transferee or assignee.

(7) "Converter." An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permitting a subscriber to view more than twelve (12) channels delivered by the system at designated converter dial locations.

(8) "FCC." The Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(9) "Gross revenues." All revenue derived directly or indirectly by the company, from the city installation, including but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment, personnel fees, and advertising commissions; provided, however, that this shall not include any taxes on services furnished by the company herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the company on behalf of the governmental unit.

(10) "Initial service area." All areas in the city having at least fifty (50) dwelling units per street mile, and as set forth in the company's applications as incorporated herein.

(11) "Installation." The connection of the system from feeder cable to subscribers' terminals.

(12) "Monitoring." Observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include systemwide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.

(13) "Street." The surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the city for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the city which shall, within their proper use and meaning entitle the franchisee and its company to the use thereof for the purposes of installing poles, wires, cable,

conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a telecommunications system.

(14) "Subscriber." Any person, firm, company, corporation, or association lawfully receiving basic and/or additional service from grantee.

(15) "User." A party utilizing a broadband telecommunication system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-504. Rights and privileges of company.** The franchise granted by the city pursuant to this ordinance shall grant to the company the right and privilege to erect, construct, operate and maintain in, upon, and along, across, above, over and under the streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a broadband telecommunications system for the interception, sale, transmission and distribution of television programs and other audio, visual and data signals and the right to transmit the same to the inhabitants of the city on the terms and conditions hereinafter set forth. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-505. Agreement and incorporation of application by reference.**

(1) Upon the granting of a franchise and execution hereof by the company, the company agrees to be bound by all the terms and conditions contained herein.

(2) The company also agrees to provide all services specifically set forth in its application to provide broadband telecommunications service within the confines of the city; and by its acceptance of the franchise, the company specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise and this ordinance. In the event of a conflict between such proposals and the provisions of this ordinance, that provision which provides the greatest benefit to the city, in the opinion of the board of mayor and aldermen shall prevail. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-506. Franchise territory.** The franchise is for the present territorial limits of the City of Bartlett, and for any area henceforth added thereto during the term of the franchise. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-507. Duration and acceptance of franchise.** The franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in

force and effect for a term of twenty (20) years, provided that within fifteen (15) days after the date of final passage of the franchise the company shall file with the city mayor its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the company before a notary public or other officer authorized by law to administer oaths. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-508. Franchise renewal.** A franchise may be renewed by the city upon application of the company pursuant to the procedures established by applicable federal law. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-509. Police powers.** (1) In accepting a franchise, the company acknowledges that its rights hereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the city pursuant to such power.

(2) Any conflict between the provisions of this ordinance and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the company or broadband telecommunications system which contains provisions inconsistent with this ordinance shall prevail only if upon such exercise the city finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-510. Broadband telecommunications franchise required.** No telecommunications system shall be allowed to occupy or use the streets, i.e., rights-of-way, for system installation and maintenance purposes, of the city or be allowed to operate without a franchise. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-511. Use of company facilities.** The city shall have the right, during the life of a franchise, to install and maintain free of charge upon the poles of the company any wire or pole fixtures that do not unreasonably interfere with the broadband telecommunications system operations of the company. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-512. Costs.** Costs to be borne by the company shall include, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to this ordinance, and any costs not covered by application

fees, incurred by the city in its study, preparation of proposal documents, evaluation of all applications, and examinations of applicants' qualifications. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-513. Notices.** All notices from the company to the city pursuant to this ordinance shall be directed to the Mayor of the City of Bartlett. The company shall maintain with the city, throughout the term of a franchise, an address for service of notices by mail. The company shall maintain an office in Shelby County, Tennessee to address any issues relating to operating under this broadband telecommunications ordinance. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-514. Letter of credit/security deposit.** (1) Within fifteen (15) days after the award of a franchise, the company shall deposit with the city, either a letter of credit from a financial institution or a security deposit in the amount of ten percent (10%) of the estimated construction cost to build the system, with a minimum payment of not less than fifty thousand dollars (\$50,000.00) with the form to be established by the board of mayor and aldermen. The deposit held by the city shall be reviewed every three (3) years to make certain the company is in compliance with this section. The form and content of such letter of credit or security deposit shall be approved by the city attorney. These instruments shall be used to insure the faithful performance of the company of all provisions of its franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the city having jurisdiction over its acts or defaults under this ordinance and the payment by the company of any claims, liens, and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

(2) The letter of credit or security deposit shall be maintained at the amount established by the board of mayor and aldermen for the entire term of a franchise, even if amounts have to be withdrawn pursuant to subsections (1) or (2) of this section.

(3) If the company fails to pay to the city any compensation within the time fixed herein; or fails after fifteen (15) days notice to pay to the city any taxes due and unpaid; or fails to pay the city within fifteen (15) days, any damages, costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with its franchise, or fails, after three (3) days notice of such failure by the city to comply with any provisions of its franchise which the city reasonably determines can be remedied by demand on the letter of credit or security deposit, the city may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit or security deposit. Upon such request for payment, the city shall notify the company of the amount and date thereof.

(4) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by this ordinance

or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the city may have.

(5) The letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit or security deposit may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the city, by registered mail, a written notice of such intention to cancel or not to renew."

(6) Upon receipt of the thirty-day notice, this shall be construed as a default granting the city the right to call on the bank for either the security deposit, or letter of credit.

(7) The city may at any time during the term of this ordinance, waive grantee's requirement to maintain a letter of credit or security deposit. The invitation to waive the requirements can be initiated by the city or grantee. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-515. Performance bond.** (1) Within thirty (30) days after the award of a franchise, the company shall file with the city a performance bond in the amount of not less than fifty (50) percent of costs to install the system contained in the application in favor of the city. This bond shall be maintained throughout the construction period and until such time as determined by the city.

(2) If the company fails to comply with any law, ordinance or resolution governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, as it relates to the conditions relative to the construction of the system, including the company's proposal which is incorporated herein by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the company, plus a reasonable allowance for attorney's fees, including the city legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in § 9-514.

(3) The city may, upon completion of construction of the service area as approved by the board of mayor and aldermen, waive or reduce the requirement of the company to maintain the bond. However, the city may require a performance bond to be posted by the company for any construction subsequent to the completion of the initial service areas, in a reasonable amount and upon such terms as determined by the city.

(4) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the city, by registered mail, a written notice of such intent to cancel and not to renew."

(5) Upon receipt of a thirty-day notice, this shall be construed as default granting the city the right to call in the bond.

(6) The city may at any time during the term of this ordinance, waive grantee's requirement to maintain a performance bond. The invitation to waive the requirement can be initiated by the city or grantee. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-516. Liability and insurance.** (1) The company shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the city and the company in the minimum amount of:

- (a) One million dollars (\$1,000,000.00) for property damage to any one person;
- (b) One million dollars (\$1,000,000.00) for property damage in any one accident;
- (c) One million dollars (\$1,000,000.00) for personal injury to any one person; and
- (d) One million dollars (\$1,000,000.00) for personal injury in any one incident.

(2) The insurance policy obtained by the company in compliance with this section must be approved by the city attorney and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the city mayor during the term of the franchise, and may be changed from time to time to reflect changing liability limits. The company shall immediately advise the city attorney of any litigation that may develop that would affect this insurance.

(3) Neither the provisions of this section nor any damages recovered by the city thereunder, shall be construed to or limit the liability of the company under any franchise issued hereunder or for damages.

(4) All insurance policies maintained pursuant to this ordinance shall contain the following endorsement: "It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the city, by registered mail, a written notice of such intention to cancel or not to renew." (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-517. Indemnification.** (1) The company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the city, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgements for damages (including, but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the city in connection therewith):

- (a) To persons or property, in any way arising out of or through the acts or omissions of the company, its servants, agents, or employees, or to which the company's negligence shall in any way contribute;

(b) Arising out of any claim for invasion of the right of privacy, for defamation of any person, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or any other right of any person (excluding claims arising out of or relating to city programming); and

(c) Arising out of the company's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the company in its business hereunder.

(2) The foregoing indemnity is conditioned upon the following: The city shall give the company prompt notice of the making of any claim or the commencement of any action suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the city from cooperating with company and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the city of any sum by reason of the letter of credit required in § 9-514, hereof shall be any limitation upon the liability of the company to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery which the city might have against the company under the terms of this section. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-518. Rights of individuals.** (1) The company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin or sex. The company shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.

(2) The company shall strictly adhere to the equal employment opportunity requirements of the federal communications commission, state and local regulations, and as amended from time to time.

(3) No signals of a class IV broadband telecommunication system shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is allowing the permission in full knowledge of its provision. Such written permission shall be for a limited period of time not to exceed one (1) year, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type or classification of class IV broadband telecommunication system activity planned; provided however, that the company shall be entitled to conduct systemwide or individually addressed

"sweeps" for the purpose of verifying system integrity, controlling return-path transmission, or billing for services.

(4) The company, or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, sell, or otherwise make available to any party:

(a) Lists of the names and addresses of such subscribers; or

(b) Any list which identifies the viewing habits of subscribers.

(Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-519. Public notice.** Minimum public notice of any public meeting relating to a franchise shall be by publication at least once in a local newspaper of general circulation at least ten (10) days prior to the meeting, posting at city municipal center, by announcement on at least two (2) channels of the company's broadband telecommunications system between the hours of 7:00 P.M. and 9:00 P.M., for five (5) consecutive days prior to the meeting. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-520. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-521. Service availability and record request.** The company shall provide broadband telecommunications service throughout the entire franchise area pursuant to the provisions of this ordinance and shall keep a record for at least three (3) years of all requests for service received by the company. This record shall be available for public inspection at the local office of the company during regular office hours. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-522. System construction.** (1) Construction timetable. (a) Within two (2) years from the date of the award of a franchise, the company must make broadband telecommunications service available to every dwelling unit within the initial service area.

(i) The company must make broadband telecommunications services available to at least twenty (20) percent of the dwelling units within the initial service area within six (6) months from the date of the award of the franchise.

(ii) The company must make broadband telecommunications service available to at least fifty (50) percent of the dwelling units within the initial service area within one (1) year from the date of the award of the franchise.

(b) The company, in its application, may propose a timetable of construction which will make broadband telecommunications services available in the initial service area sooner than the above minimum requirements, in which case the company's application will be incorporated by reference pursuant to § 9-505 and will be binding upon the company.

(c) Any delay beyond the terms of this timetable, unless specifically approved by the city, will be considered a violation of this ordinance for which the provisions of §§ 9-539 or 9-547 shall apply, as determined by the city.

(d) In special circumstances the city can waive one hundred (100) percent completion within the two (2) year time frame provided substantial completion is accomplished within allotted time frame, substantial completion construed to be not less than ninety-five (95) percent and justification for less than one hundred (100) percent must be submitted subject to the satisfaction of the city.

(2) Line extensions. (a) In areas of the franchise territory not included in the initial services area, the company shall be required to extend its system pursuant to the following requirements:

(i) The company must extend and make broadband telecommunication system available to every dwelling unit within one (1) year of any unserved area reaching the minimum density of at least twenty-five (25) dwelling units per street mile, as measured from the existing system.

(ii) The company must extend and make broadband telecommunication system available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred and fifty (150) foot aerial drop line.

(3) Early extension. In areas not meeting the requirements for mandatory extension of service, the company shall provide, upon the request of a potential subscriber desiring service, an estimate of the costs required to extend service to the subscriber. The company shall then extend service upon request of the potential subscriber. The company may require advance payment or assurance of payment satisfactory to the company. The amount paid by subscribers for early extensions shall be non-refundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.

(4) New development undergrounding. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the company reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the company's installation of conduit, pedestals and/or

vaults, and laterals to be provided at the company's expense. The company shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the company fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the company. Except for the notice of the particular date on which trenching will be available to the company, any notice provided to the company by the city of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the company prior to approval of the preliminary plat request.

(5) Special agreements. Nothing herein shall be construed to prevent the company from serving areas not covered under this section upon agreement with developers, property owners, or residents provided that five (5) percent of those gross revenues are returned to the city.

(a) The company, in its application, may propose a line extension policy which will result in serving more residents of the city than as required above, in which case the company's application will be incorporated by reference pursuant to § 9-505, and will be binding on the company.

(b) The violation of this section shall be considered a breach of the terms of this ordinance for which the provisions of either §§ 9-539 or 9-547 shall apply, as determined by the city. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-523. Construction and technical standards.** (1) Compliance with construction and technical standards. The company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, Federal Communications Commission technical standards, and detailed standards submitted by the company as part of its application, which standards are incorporated by reference herein. In addition, the company shall provide the city, upon request, with a written report of the results of the company's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

(2) Additional specifications. (a) Construction, installation and maintenance of the broadband telecommunications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(b) The company shall at all times comply with:

- (i) National Electrical Safety Code (National Bureau of Standards);
- (ii) National Electrical Code (National Bureau of Fire Underwriters);
- (iii) Bell System Code of Pole Line Construction; and
- (iv) Applicable FCC or other federal, state and local regulations.

(c) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the company may have equipment located.

(d) Any antenna structure used in the broadband telecommunications system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.

(e) All working facilities and conditions used during construction, installation and maintenance of the broadband telecommunications system shall comply with the standards of the occupational safety and health administration.

(f) RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. Federal Communications Commission rules and regulations shall govern.

(g) The company shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers for a minimum of two (2) hours.

(h) In all areas of the city where the cables, wires, and other like facilities of public utilities are placed underground, the company shall place its cables, wires, or other like facilities underground. When public utilities relocate their facilities from pole to underground, the broadband telecommunication system operator must concurrently do so. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-524. Use of streets.** (1) Interference with persons and improvements.

The company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the streets and public ways, or interfere with any improvements the city may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(2) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the company shall, at its own

cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the city.

(3) Erection, removal and common uses of poles:

(a) No poles or other wire-holding structures shall be erected by the company without prior approval of the city with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the company shall be a vested interest and such poles or structures shall be removed or modified by the company at its own expense whenever the city determines that the public convenience would be enhanced thereby.

(b) Where poles or other wire-holding structures already existing for use in serving the city are available for use by the company, but it does not make arrangements for such use, the city may require the company to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the company are just and reasonable.

(c) Where the city or a public utility serving the city desires to make use of the poles or other wire-holding structures of the company, but agreement thereof with the company cannot be reached, the city may require the company to permit such use for such consideration and upon such terms as the city shall determine to be just and reasonable, if the city determines that the use would enhance the public convenience and would not unduly interfere with the company's operations.

(4) Relocation of the facilities. If at any time during the period of a franchise the city shall lawfully elect to alter, or change the grade of any street, alley or other public ways, the company, upon reasonable notice by the city, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(5) Cooperation with building movers. The company shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(6) Tree trimming. The company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the city. The city shall have the right to do the trimming requested by the company at the cost of the company. Regardless of who performs the work requested by the company, the company shall be responsible, shall defend and hold city harmless for any and all damages to any

tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-525. Operational standards.** (1) The company shall put, keep and maintain all parts of the system in good condition throughout the entire franchise period.

(2) Upon the reasonable request for service by any person located within the franchise territory, the company shall, within thirty (30) days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has as yet been installed.

(3) The company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(4) The company shall not allow its cable or other operations to interfere with television reception of persons not served by the company, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the city.

(5) The company shall have knowledgeable, qualified company representatives available to respond to customer telephone inquiries Monday through Friday between the hours of 8:00 A.M. and 6:00 P.M., and Saturday between the hours of 9:00 A.M. and 5:00 P.M.

(6) The company will establish supplemental hours on week days and weekends that fit the needs of the community. Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety percent (90%) of the time as measured on an annual basis.

(7) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the total time that the office is open for business.

(8) Customer service centers and bill payment locations will be open for customer transactions Monday through Friday from 8:00 A.M. to 5:00 P.M., unless there is a need to modify those hours because of the location or customers served. The system will establish supplemental hours on weekdays and weekends if it would fit the needs of the community. The company shall provide service locations in the City of Bartlett for subscribers who wish to visit and conduct business.

(9) Under normal operating conditions, each of the following standards will be met no less than ninety five percent (95%) of the time as measured on an annual basis.

(a) Standard installations will be performed within seven (7) business days after an order has been placed. A standard installation is one that is within one hundred fifty feet (150') of the existing broadband telecommunications system.

(b) Excluding those situations which are beyond the control of the broadband telecommunication system, the company will respond to any service interruption (area or neighborhood outage affecting two (2) or more customers) promptly and in no event later than twenty-four (24) hours from the time of initial notification. All other regular service requests will be responded to within thirty six (36) hours during the normal work week for that system. The appointment window alternatives for installations, service calls and other installation activities will be: "morning"; "afternoon"; and "all day," during normal business hours for that system. The system will schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(10) The company will provide written information in each of the following areas at the time of installation and at any future time upon the request of the customer:

- (a) Product and services offered;
- (b) Prices and service options;
- (c) Installation and service policies;
- (d) How to use the broadband telecommunication system.

(11) Bills will be clear, concise and understandable.

(12) Refund checks will be issued promptly, but no later than the customer's next billing cycle following the receipt of the request and the return of the equipment to the company if service has been terminated.

(13) Customers will be notified a minimum of thirty (30) days in advance of any rate or channel change, provided that the change is within the control of the company.

(14) The company shall maintain and operate its network in accordance with the rules and regulations as are incorporated herein or may be promulgated by the Federal Communications Commission, the United States Congress, or the state.

(15) The company shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this ordinance. Should the city find, by resolution, that the company has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the company shall make such improvements. Failure to make such improvements within three (3) months of such resolution will constitute a breach of a condition for which the remedy of § 9-547(2) is applicable. The company shall keep a service log which

will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be made available for periodic inspection by the city. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-526. Continuity of service mandatory.** (1) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the company are honored. If the company elects to overbuild, rebuild, modify or sell the system, or the city gives notice of intent to terminate or fails to renew a franchise, the company shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

(2) If there is a change of franchise, or if a new operator acquires the system, the company shall cooperate with the city, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, the company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(3) If the company fails to operate the system for seven (7) consecutive days without prior approval of the city or without just cause, the city may, at its option, operate the system or designate an operator until such time as the company restores service under conditions acceptable to the city or a permanent operator is selected. If the city is required to fulfill this obligation for the company, the company shall reimburse the city for all reasonable costs or damages in excess of revenues from the system received by the city that are the result of the company's failure to perform. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-527. Complaint procedure.** (1) The city mayor is designated as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(2) During the terms of a franchise and any renewal thereof, the company shall maintain a business office in Shelby County for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipment malfunctions and similar matters. The company will use its best efforts to arrange for one or more payment locations within the City of Bartlett where customers can pay bills or conduct other business activities.

(3) As subscribers are connected or reconnected to the system, the company shall by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed,

and furnish information concerning the city office responsible for administration of the franchise with the address and telephone number of the office.

(4) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the city, casts doubt on the reliability or quality of broadband telecommunication service, the city shall have the right and authority to require the company to test, analyze and report on the performance of the system. The company shall fully cooperate with the city in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (a) The nature of the complaint or problem which precipitated the special tests;
- (b) What system component was tested;
- (c) The equipment used and procedures employed in testing;
- (d) The method, if any, in which such complaint or problem was resolved;
- (e) Any other information pertinent to the tests and analysis which may be required.

The city may require that tests be supervised, at the company's expense, by a professional engineer, not on the permanent staff of the company. The engineer should sign all records of special tests and forward to the city such records with a report interpreting the results of the tests and recommending actions to be taken.

The city's right under this section, shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the city has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard broadband telecommunication system service. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-528. Company rules and regulations.** The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under its franchise, and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-529. Franchise fee.** (1) For the reason that the public streets used by the company in the operation of its system within the boundaries of the city are valuable public properties acquired and maintained by the city at great expense

to its taxpayers, and that the grant to the company to the streets is a valuable property right without which the company would be required to invest substantial capital in right-of-way costs and acquisitions, the company shall pay to the city an amount that shall not exceed five percent (5%) of the company's gross annual revenue from the operations of the company within the confines of the city or contract area. If it is determined that the Federal Communications Commission lacks jurisdiction to impose the five percent (5%) limitation on franchise fees, or that the limit is or the Federal Communications Commission deletes the franchise fee limitation entirely, then the franchise fee may be changed by the city.

(2) This payment shall be in addition to any other tax or payment owed to the city by the company.

(3) The franchise fee and any other costs or penalties assessed shall be payable quarterly, to the city and the company shall file a complete and accurate verified statement of all gross receipts within the city during the period for which the quarterly payment is made. Said statement shall be filed within forty-five (45) days after the quarter is established between the city and the grantee.

(4) The city shall have the right to inspect the company's income records and the right to audit and to recompute any amounts determined to be payable under this ordinance provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the company's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice to the company by the city which notice shall include a copy of the audit report. The city will pay for any audit conducted on the company's income record. However, if there is a discrepancy found and it totals more than five percent (5%), the company will in turn be responsible for paying auditor's cost for service rendered.

(5) If any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the legal maximum rate. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-530. Transfer of ownership or control.** (1) A franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the city. The company may, however, transfer or assign the franchise to a wholly-owned subsidiary of the company and such subsidiary may transfer or assign the franchise back to the company without such consent. The proposed assignee must show financial responsibility as determined by the city and must agree to comply with all provisions of the franchise. The city shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the company within one hundred

twenty (120) days following receipt of written notice of the proposed transfer or assignment. The city shall not unreasonably withhold such consent to the proposed transfer.

(2) The company shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the company. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent (10%) of the voting shares of the company. Every change, transfer or acquisition of control of the company shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the city may inquire into the qualification of the prospective controlling party, and the company shall assist the city in such inquiry.

(3) The consent or approval of the city to any transfer of the company shall not constitute a waiver or release of the rights of the city in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this ordinance.

(4) In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of the franchise prior to substantial completion of construction of the proposed system.

(5) In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to the franchise agreement.

(6) The board of mayor and aldermen reserves the right to review the purchase price of any transfer or assignment of the broadband telecommunications system. Any assignee to this franchise expressly agrees that any negotiated sale value which the board (acting upon professional advice) deems unreasonable will not be considered in the rate base for any subsequent request for rate increases. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-531. Availability of books and records.** The company shall fully cooperate in making available at reasonable times, and the city shall have the right to inspect the books, records, maps, plans and other like materials of the company applicable to the broadband telecommunications system, at any time during normal business hours; provided where volume and convenience necessitate, the company may require inspection to take place on the company premises. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-532. Other petitions and applications.** Copies of all petitions, applications, communications and reports submitted by the company to the Federal Communications Commission, Securities and Exchange Commission,

or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting broadband telecommunication system operations authorized pursuant to the franchise, shall be provided simultaneously to the city. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-533. Fiscal reports.** (1) Upon request, the company shall file annually with the city no later than one hundred twenty (120) days after the end of the company's fiscal year, a copy of a financial report applicable to the broadband telecommunications system including an income statement applicable to its operations during the preceding twelve (12) month period, a balance sheet, and a statement of its properties devoted to system operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation.

(2) These reports shall be certified as correct by an authorized officer of the company and there shall be submitted along with them such other reasonable information as the city shall request with respect to the company's properties and expenses related to its operations within the city. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-534. Removal of broadband and telecommunications system.** At the expiration of the terms for which a franchise is granted, or upon its termination as provided herein, the company shall forthwith, upon notice by the city, remove at its own expense all designated portions of the broadband telecommunication system from all streets and public property within the city. If the company fails to do so, the city may perform the work at the company's expense. A bond shall be furnished by the company in an amount sufficient to cover this expense. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-535. Required services and facilities.** (1) The broadband telecommunications system shall have a minimum channel capacity of fifty (50) channels available for immediate use for the totality of broadband telecommunications services to be offered.

(2) Such system shall maintain a plant having the technical capacity for communications.

(3) The company may maintain the following:

(a) At least one (1) specially-designated, channel for use by non-commercial public access available on a first-come, non-discriminatory basis, and by local educational authorities and/or the county;

(b) At least one (1) specially-designated channel for local governmental uses;

(c) At least one (1) specially-designated channel for leased access uses;

(d) Provided, however, these uses may be combined on one or more channels until such time as additional channels become necessary in the opinion of the board of mayor and aldermen.

(4) The company shall incorporate into its broadband telecommunications system the capacity which will permit the city, in times of emergency, to override by remote control, the audio of all channels simultaneously. The company shall designate a channel which will be used for emergency broadcasts of both audio and video. The company shall cooperate with the city in the use and operation of the emergency alert override system.

(5) The company may be required to interconnect its system with other broadband communication facilities. Such interconnection shall be made within the time limit established by the city. The interconnection shall, at the city's discretion, be accomplished according to the method and technical standards determined by the city and generally accepted in industry practices. "Broadband communications facility," as used herein, means any network of cable, optical, electrical or electronic equipment, including broadband telecommunication systems, used for the purpose of transmitting telecommunications signals.

(a) Interconnection procedure. Upon receiving the directive of the city to interconnect, the franchisee shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among companies for both construction and operation of the interconnection link.

(b) Relief. The franchisee may be granted reasonable extensions of time to interconnect or the city may rescind its order to interconnect upon petition by the franchisee to the city. The city shall grant the request if it finds that the franchisee has negotiated in good faith and has failed to obtain an approval from the operator or franchising authority of system to be interconnected, or the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

(c) Cooperation required. The franchisee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of broadband telecommunication systems beyond city boundaries.

(d) Initial technical requirements to assure future interconnection capability:

(i) All broadband telecommunication systems receiving franchises to operate within the city shall use the standard frequency allocations for television signals.

(ii) The city urges franchisees to provide local origination equipment that is compatible throughout the area so that videocassettes or videotapes can be shared by various systems.

(6) The company shall provide such additional services and facilities as are contained in its application, which is incorporated by reference herein. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-536. Rules and regulations.** (1) In addition to the inherent powers of the city to regulate and control a franchise, and those powers expressly reserved by the city, or agreed to and provided for herein, the right and power is hereby reserved by the city to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of a franchise.

(2) The city may also adopt such regulations at the request of company upon application. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-537. Rate change procedures.** Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, the City of Bartlett is currently certified to regulate the basic service rates charged by grantee. Under these rules, a grantee is required to obtain approval from the city for a rate increase for any change to the rates for basic service. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-538. Advisory commission on cable television.** (1) There may be established a citizens advisory commission entitled the Advisory Commission On Telecommunications. The telecommunications commission shall consist of ten (10) members. The members shall be appointed by the board of mayor and aldermen. Appointments to the telecommunications commission shall be made in conformity with applicable federal, state, and local laws regarding discrimination. Appointees may not be employed by, or have any interest in, the broadcasting, cable, or telephone business. One of the members of the commission shall be a member of the board of mayor and aldermen.

(2) Members shall serve for two (2) year staggered terms so that half the members shall have served the previous year with appointment beginning on January first and shall serve until their successors are appointed. Members may be reappointed by the board of mayor and aldermen with vacancies on the commission filled by the board of mayor and aldermen.

(3) The commission shall have the following duties and responsibilities:

(a) Advising the government regarding general policy relating to services provided subscribers and users by the telecommunications providers;

(b) Advising the government regarding general policy relating to the operation and uses of access channels with a view toward maximizing the diversity of programs and services to subscribers and users;

(c) Encouraging the use of access channels among the widest range of institutions, groups and individuals within the city;

(d) Advising the government concerning proposed rate increases;

(e) Submitting an annual report to the government including, but not limited to, a written appraisal of the performance of the company over the entire length of the franchise with regard to the provisions of the franchise, a summary and recommendations of the utilization of access channels, a review of any plans submitted during the year by the company for the development of new services, and a summary report of the commission's deliberations throughout the year in connection with its assigned functions, and any recommendations for revisions or additional provisions of the franchise. A copy of the report shall be sent within thirty (30) days of its submission to the board of mayor and aldermen and to the company;

(f) Advising the government on matters which may constitute grounds for revocation and/or termination of the franchise granted herein;

(g) Advising the government as to the granting or denying applications for new franchises or for authorization to transfer ownership of an existing franchise;

(h) Advising the government on the establishment of additional advisory commissions to address specific issues relating to the operation of the franchise. Nothing in this franchise is intended to prohibit the establishment of such advisory commissions to supervise the accessibility and operation of access channels.

(4) The telecommunications commission shall have the authority to submit proposed rules and regulations for the conduct of its business to the governments for approval and upon approval, shall have the right to hold hearings and make recommendations to the company and to the educational and governmental communities on the coordination of the educational and government access channels. All such actions shall only be advisory. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-539. Forfeiture and termination.** (1) In addition to all other rights and powers retained by the city under this ordinance or otherwise, the city reserves the right to forfeit and terminate a franchise and all rights and privileges of the company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the company shall include, but shall not be limited to the following:

(a) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the city made pursuant to the franchise;

(b) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the city or its subscribers or customers;

(c) Failure to begin or complete system construction or system extension as provided under § 9-522;

(d) Failure to provide the services promised in the company's application as incorporated herein by § 9-505;

(e) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the city; or

(f) Material misrepresentation of fact in the application for or negotiation of the franchise.

(2) The foregoing shall not constitute a major breach if the violation occurs but is without fault of the company or occurs as a result of circumstances beyond its control. The company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

(3) The city may make a written demand that the company comply with any such provision, rule, order or determination under or pursuant to this ordinance. If the violation by the company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the city may place the issue of termination of the franchise before the board of mayor and aldermen. The city shall cause to be served upon the company, at least twenty (20) days prior to the date of such board meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue which the board is to consider.

(4) The board of mayor and aldermen shall hear and consider the issue and shall hear any person interested therein (including the report of the advisory commission), and shall determine in its discretion whether or not any violation by the company has occurred.

(5) If the board of mayor and aldermen shall determine the violation by the company was the fault of the company and within its control, the board may, by resolution declare that the franchise of the company shall be forfeited and terminated unless there is compliance within such period as the board may fix, such period shall not be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(6) The issue of forfeiture and termination shall automatically be placed upon the board agenda at the expiration of the time set by it for compliance. The board then may terminate the franchise forthwith upon finding that the company has failed to achieve compliance or may further extend the

period, in its discretion. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-540. Foreclosure.** Upon the foreclosure or other judicial sale of all or a substantial part of the broadband telecommunications system, or upon the termination of any lease covering all or a substantial part of the broadband telecommunications system, the company shall notify the city of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this ordinance governing the consent of the city to such change in control of the company shall apply. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-541. Approval of transfer and right of acquisition by the city.** Upon the expiration of the term of the franchise or upon any other termination thereof as provided herein or by application for approval of transfer of the entire franchise or a majority interest thereof, the city at its election and upon the payment of the grantee of a price equal to the fair market value shall have the right to purchase and take over the network or interest thereof. In the event of dispute between the city and the grantee of what is fair market value, the dispute shall be submitted to arbitration pursuant to the provisions of Tennessee Code Annotated, § 29-5-301, et seq., and if the city has exercised its option to purchase at fair market value, it shall have the right to assume operation of the system even though the final award has not been made by the arbitrators or as approved by the court. This right of the first refusal for purchase shall also include the right to purchase for the price offered to the grantee. In the event of the contemplated sale of the system or majority interest thereof, or upon the termination as provided herein or by law, the city must exercise its option within thirty (30) days. If the grantee has petitioned the city for renewal and renegotiation of its franchise as provided by § 9-508, the city must exercise its option to purchase the system within sixty (60) days after the requested renewal or renegotiation or at least six (6) months prior to the end of the franchise. Nothing shall prohibit the grantee in the event of the election of the city to purchase the system from requesting the court to set a reasonable bond of the city to secure the purchase price. The grantee shall execute such warranty deeds and other instruments as may be necessary. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-542. Receivership.** The city shall have the right to cancel a franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and

(2) Such receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to the company. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-543. Compliance with state and federal laws.** (1) Notwithstanding any other provisions of this ordinance to the contrary, the company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies provided, however, if any such state or federal law or regulation shall require the company to perform any service, or shall permit the company to perform any service, or shall prohibit the company from performing any service, in conflict with the terms of this ordinance or of any law or regulation of the city, then as soon as possible following knowledge thereof, the company shall notify the city of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or this ordinance.

(2) If the board of mayor and aldermen determines that a material provision of this ordinance is affected by any subsequent action of the state or federal government, the board shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-544. Landlord/tenant.** (1) Interference with broadband telecommunications service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive broadband telecommunication system service, cable installation or maintenance from a broadband telecommunication system company regulated by and lawfully operating under a valid and existing franchise issued by the city.

(2) Gratuities and payments to permit service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a broadband telecommunications service to the dwelling unit occupied by a tenant or resident requesting service.

(3) Penalties and charges to tenants for service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident, or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any

way against such tenant or resident who requests or receives broadband telecommunications service from a company operating under a valid and existing franchise issued by the city.

(4) Reselling service prohibited. No person shall resell, without the expressed, written consent of both the company and the city, any broadband telecommunication system, program or signal transmitted by a broadband telecommunications system company under a franchise issued by the city.

(5) Protection of property permitted. Nothing in this ordinance shall prohibit a person from requiring that broadband telecommunication system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

(6) Risks assumed by company. Nothing in this ordinance shall prohibit a person from requiring a broadband telecommunications company from agreeing to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of broadband telecommunication system facilities. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-545. Applicant bids.** (1) All bids received by the city from the applicants for a franchise will become the sole property of the city.

(2) The city reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the city may be served.

(3) All questions regarding the meaning or intent of this ordinance or application documents shall be submitted to the city in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the city as having received the application documents.

The city reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of bids will not be answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgment of receipt of all addenda.

(4) Bids must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.

(5) Before submitting his bid, each applicant must:

(a) Examine this ordinance and the application documents thoroughly;

(b) Familiarize himself with local conditions that may in any manner affect performance under the franchise;

(c) Familiarize himself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and

(d) Carefully correlate his observations with the requirements of this ordinance and the application documents.

(6) The city may make such investigations as it deems necessary to determine the ability of the applicant to perform under the franchise, and the applicant shall furnish to the city all such information and data for this purpose as the city may request. The city reserves the right to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the city that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

(7) All bids received shall be placed in a secure depository approved by the city and not opened nor inspected prior to the public opening. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-546. Financial, contractual, shareholder and system disclosure.**

(1) No franchise will be granted to any applicant unless all requirements and demands of the city regarding financial, contractual, shareholder and system disclosure have been met.

(2) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to a franchise and the proposed broadband telecommunication system. The grantee of a franchise shall disclose all other contracts to the city as the contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.

(3) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified true by the applicant.

(4) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

(5) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other broadband telecommunication systems in which they hold an interest of any nature, including, but not limited to, the following:

(a) Locations of all other franchises and the dates of award for each location;

(b) Estimated construction costs and estimated completion dates for each system;

(c) Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and

(d) Date for completion of construction as promised in the application for each system.

(6) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other broadband telecommunication systems, including but not limited to, the following:

(a) Location of other franchise applications and date of application for each system;

(b) Estimated dates of franchise awards;

(c) Estimated number of miles of construction; and

(d) Estimated construction costs.

(Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-547. Penalties.** For the violation of any of the following provisions of this franchise, penalties shall be chargeable to the letter of credit as follows:

(1) For failure to complete system construction and provide service in accordance with § 9-522, unless the city specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond the company's control, the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the deficiency continues.

(2) For failure to provide data, documents, reports, information as required by §§ 9-521, 9-531, 9-532, and 9-533, the company shall pay fifty dollars (\$50.00) per day each violation occurs or continues.

(3) For failure to test, analyze and report on the performance of the system following a request pursuant to § 9-527, the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.

(4) For failure to comply with the operational standards following the city's resolution directing the company to make improvements pursuant to § 9-525, the company shall forfeit fifty dollars (\$50.00) per day or part thereof that the violation continues. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995, modified)

**9-548. Periodic review and evaluation sessions.** (1) The city and company shall hold scheduled performance evaluation sessions within thirty (30) days of the fifth, tenth, and fifteenth anniversary dates of the company's award of the franchise and as may be required by federal and state law. All such evaluation sessions should be open to the general public.

(2) Special evaluation sessions may be held at any time during the term of the franchise at the request of the city or the company.

(3) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. The company shall notify its subscribers of all evaluation sessions by announcements on at least two (2) channels of its system between the hours of 7:00 P.M. and 9:00 P.M., for five (5) consecutive days preceding each session.

(4) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; penalties; free or disconnected services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and FCC rulings; line extension policies; and company or city rules.

(5) Under no circumstance is the city authorized to make unilateral amendments to the franchise agreement. Any amendments resulting from a periodic review must be mutually agreed upon by the city and company.

(6) Members of the general public may add topics either by working through the regulating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents in the city the proposed topic or topics should be added to the list of topics to be discussed at the evaluation session. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

**9-549. Bid fees.** All applicants for a franchise, upon submission of each bid, shall concurrently pay, in cash, to the City of Bartlett, a non-refundable fee of five thousand dollars (\$5,000.00) which shall be applied to defray the cost of bid review and builder capability certification. Should the cost to the city for bid review and builder capability certification exceed the total amount of bid fees received, the successful bidder shall be required to pay all such excess before issuance of the franchise. Further, the city shall charge a fee of twenty-five dollars (\$25.00) to all persons for each copy of bid documents and specification upon receipt of same. (Ord. #80-26, Jan. 1981, as amended by Ord. #95-2, May 1995)

## CHAPTER 6

### FOOD ESTABLISHMENTS ORDINANCE

#### SECTION

9-601. Food establishments to be governed by Shelby County Ordinance.

9-602. Violations and penalty.

**9-601. Food establishments to be governed by Shelby County Ordinance.** Food establishment operation and health regulations within the City of Bartlett shall be governed by the Shelby County Food Ordinance and any amendments thereto.

**9-602. Violations and penalty.** Violations of the food establishments ordinance shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

## CHAPTER 7

### SWIMMING POOLS AND PUBLIC AMUSEMENTS

#### SECTION

- 9-701. Definitions.
- 9-702. Permit.
- 9-703. Approval of plans and specifications.
- 9-704. Design of pool area.
- 9-705. Water requirements generally; recirculation system.
- 9-706. Disinfecting agent.
- 9-707. Gaseous chlorine equipment.
- 9-708. Dressing rooms; maintenance of premises.
- 9-709. Toilet facilities.
- 9-710. Lighting system.
- 9-711. Drinking water.
- 9-712. Safety of bathers generally.
- 9-713. Attendants.
- 9-714. Diseased persons not to use pool; spitting, spouting water, etc., prohibited.
- 9-715. Common use of suits and towels.
- 9-716. Records and reports.
- 9-717. Rules and regulations of health department.
- 9-718. Publication of grades of sanitary condition.

**9-701. Definitions.** The term "public swimming pool," as used in this chapter shall mean any body of water used for public or semipublic swimming or recreative bathing, which is artificial or semiartificial construction, including all appurtenances concerning its use, whether operated for the public in general or for a portion of the public, as a member of clubs, associations or other organizations. Other terms used in this chapter shall have the meanings usually accorded to them by the health department of this and other cities regulating swimming pools. (Ord. #83-4, April 1983)

**9-702. Permit.** (1) No person shall operate or maintain a public swimming pool until a permit therefor has been issued by the county health department, which permit shall not be valid for longer than one year. A new permit shall be secured at the first of each year or season of operation. All permits shall be in writing and shall state the conditions under which operation shall be maintained and the term for which the permit is allowed.

Before a permit is issued by the health department, an annual permit fee of one hundred and fifty dollars (\$150.00) shall be paid to the Shelby County Health Department. Said fee shall be due on January 1 of each calendar year and shall be paid by January 31, commencing January 1, 1969.

(2) Any permit granted by the health department under the provisions of this section may be revoked by the health department, acting through the health officer, for failure to comply with any of the provisions of this chapter, or whenever, under such permit becomes a menace to the health and safety of bathers; provided, that the holder of any permit which has been revoked, feeling aggrieved at the action of the health officer, shall have the right to appeal to the board of mayor and aldermen and have tried before the board the question of the legality or reasonableness of the action of the health officer. No such appeal shall entitle the continued operation of the pool pending the action of the board of mayor and aldermen. (Ord. #83-4, April 1983, modified)

**9-703. Approval of plans and specifications.** No person shall begin construction of a public swimming pool or substantially alter or reconstruct any such swimming pool, unless plans and specifications therefor have been submitted to and approved by the health department. Such plans and specifications shall be accompanied by supporting data, such as shop drawings of equipment, fittings, skimmers, filters, disinfectant feeders, pump rating curves, etc. The plans shall be prepared by an architect or engineer licensed to practice in the State of Tennessee. (Ord. #83-4, April 1983)

**9-704. Design of pool area.** Each public swimming pool area shall be designed in such a manner as to permit the installation of all equipment necessary for the proper operation of same, and so as to give the proper routing and segregation of bathers and spectators. (Ord. #83-4, April 1983)

**9-705. Water requirements generally; recirculation system.**

(1) No natural body of water which contains sewage or other waste, rendering it dangerous to public health, shall be used as a public swimming pool.

(2) Every public swimming pool shall be provided with a sufficient quantity of fresh water which meets the drinking water standards of the health department as to physical, bacteriological and chemical quality. The water shall show an alkaline reaction at all times when the pool is in use. Frequent tests shall be made when the pool is in use, the water shall be sufficiently clear to permit the entire bottom of the pool to be clearly visible from the walkways.

(3) A complete recirculating system for swimming pools consist of circulating pumps, chemical dosing equipment (alum and soda ash) or surge tank, float valve control on water supply, gauges, piping connections to inlets and outlets. (Ord. #83-4, April 1983)

**9-706. Disinfecting agent.** Some means of disinfecting the water in a public swimming pool shall be used which provides a residual of a disinfecting agent in the pool water. (Ord. #83-4, April 1983)

**9-707. Gaseous chlorine equipment.** Where gaseous chlorine equipment is provided in a filter room at a public swimming pool, or in any part of a building which provides housing, the mechanical proportioning and cylinders of chlorine shall be housed in a reasonably gas-tight, corrosion-resistant and mechanically vented enclosure. (Ord. #83-4, April 1983)

**9-708. Dressing rooms; maintenance of premises.** All public swimming pools shall be provided with dressing rooms which shall be so constructed and maintained that they will be clean and in a sanitary condition at all times. The buildings and grounds shall be kept free from garbage, trash and other refuse. (Ord. #83-4, April 1983)

**9-709. Toilet facilities.** All public swimming pools shall be provided with a sanitary method of excreta disposal, including one or more separate toilets for each sex, and their number and location will be determined by the health department. (Ord. #83-4, April 1983)

**9-710. Lighting systems.** A complete system of artificial lighting shall be provided for all indoor public swimming pools and for all public swimming pools which are to be used at night. (Ord. #83-4, April 1983)

**9-711. Drinking water.** Drinking water furnished at any public swimming pool shall be of a quality approved by the health department and shall be made available by means of sanitary drinking fountains. The use of common drinking cups is forbidden. (Ord. #83-4, April 1983)

**9-712. Safety of bathers generally.** All reasonable precautions shall be taken at public swimming pools to protect the bathers from injury or accident. Convenient means of ingress and egress shall be provided. The depth of the water and any irregularities of the bottom shall be clearly indicated. Safety appliances such as life buoys, life hooks, bamboo poles or ropes, and equipment, including first aid kits, shall be provided and be readily accessible. (Ord. #83-4, April 1983)

**9-713. Attendants.** A sufficient number of attendants shall be on duty when a public swimming pool is in use. Such attendants shall be capable swimmers competent in life saving methods and trained in methods of artificial resuscitation. (Ord. #83-4, April 1983)

**9-714. Diseased persons not to use pool; spitting, spouting water, etc., prohibited.** No person having any skin eruptions or abrasions, sore or infected eyes, cold, nasal or ear discharge, or any communicable disease shall be permitted to use any public swimming pool. Spitting, spouting of water, or blowing the nose in the pool shall be strictly prohibited. Suitable placards

embodying such personal regulations and instructions shall be conspicuously posted. (Ord. #83-4, April 1983)

**9-715. Common use of suits and towels.** Suits and towels for common use at a public swimming pool shall be thoroughly laundered and dried after each usage in such manner as to meet the requirements of the health department. (Ord. #83-4, April 1983)

**9-716. Records and reports.** Such records concerning the operation of a public swimming pool shall be kept as may be required by the health department and reports shall be submitted to the health department as required. (Ord. #83-4, April 1983)

**9-717. Rules and regulations of health department.** The health department shall make such rules and regulations as may be necessary in its judgment to meet the requirements of public swimming pool sanitation, and to preserve the safety and health of the bathers. Such rules and regulations, when adopted by the health department, shall be printed and copies thereof delivered to all operators of public swimming pools and to such other persons as may request the same. When such rules have been duly adopted and printed, they shall constitute a part of the requirements imposed upon operators of public pools by this chapter, and for any violation of such rules and regulations or any failure to comply therewith, any permit to operate may be revoked by the health officer. (Ord. #83-4, April 1983, modified)

**9-718. Publication of grades of sanitary condition.** The health department may, from time to time, publish grades of the sanitary condition of public swimming pools. (Ord. #83-4, April 1983)