

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

1. MISCELLANEOUS.
2. PEDDLERS, ETC.
3. CHARITABLE SOLICITORS.
4. POOL ROOMS.
5. SEXUALLY ORIENTED BUSINESSES.
6. FOOD CODE.

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

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

**9-101. "Going out of business" sales.** It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1994 Code, § 5-101)

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<sup>1</sup>Municipal code references

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Shelby County codes applicable within town: § 12-101.

Zoning: title 14.

**CHAPTER 2****PEDDLERS, ETC.<sup>1</sup>****SECTION**

- 9-201. Permit required.
- 9-202. Exemptions.
- 9-203. Application for permit.
- 9-204. Issuance or refusal of permit.
- 9-205. Appeal.
- 9-206. Bond.
- 9-207. Loud noises and speaking devices.
- 9-208. Use of streets.
- 9-209. Exhibition of permit.
- 9-210. Revocation or suspension of permit.
- 9-211. Reapplication.
- 9-212. Expiration and renewal of permit.

**9-201. Permit required.** It shall be unlawful for any peddler, canvasser or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1994 Code, § 5-201)

**9-202. Exemptions.** The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic or philanthropic organizations, nor to farmers who peddle, canvass, or solicit the sale of produce grown or raised by them. (1994 Code, § 5-202)

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

- (1) Name and physical description of applicant;
- (2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made;
- (3) Tennessee sales tax number;

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

- (4) A brief description of the nature of the business and the goods to be sold;
- (5) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship;
- (6) The length of time for which the right to do business is desired;
- (7) A recent clear photograph approximately two (2) inches square showing the head and shoulders of the applicant;
- (8) The names of at least two (2) reputable local property owners who will certify as to the applicant's good moral reputation and business responsibility, or in lieu of the names of references, such other available evidence as will enable an investigator to evaluate properly the applicant's moral reputation and business responsibility;
- (9) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance, and if so, the nature of the offense and, the punishment or penalty assessed therefor;
- (10) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities;
- (11) At the time of filing the application, a fee of five dollars (\$5.00) shall be paid to the town to cover the cost of investigating the facts stated therein. (1994 Code, § 5-203)

**9-204. Issuance or refusal of permit.** (1) The recorder shall immediately refer the application to the chief of police who shall obtain the information about the applicant required in §§ 9-203(8), (9) and (10) above, put the same in writing, and return the application and information to the recorder within three (3) working days. The recorder shall also obtain such reports from the Better Business Bureau as are available on the applicant, and the business the applicant represents, and record the same on the application.

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

(3) If, on the other hand, the recorder finds that the moral reputation and business responsibility of the applicant are satisfactory, the recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The recorder shall keep a permanent record of all permits issued (1994 Code, § 5-204)

**9-205. Appeal.** Any person aggrieved by the action of the recorder in the denial of a permit shall have the right to appeal to the board of mayor and aldermen. Such appeal shall be taken by filing with the mayor within thirty (30) days after notice of the action complained of, a written statement setting

forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a law enforcement officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1994 Code, § 5-205)

**9-206. Bond.** Every permittee shall file with the recorder a surety bond running to the town in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of the Town of Arlington and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the town that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the town doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (1994 Code, § 5-206)

**9-207. Loud noises and speaking devices.** No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks or other public places of the town or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1994 Code, § 5-207)

**9-208. Use of streets.** No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of the streets. For the purpose of this chapter, the judgment of the recorder or a representative of the town designated by the recorder, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1994 Code, § 5-208)

**9-209. Exhibition of permit.** Permittees are required to exhibit their permits at the request of any citizen. (1994 Code, § 5-209)

**9-210. Revocation or suspension of permit.** (1) Permits issued under the provisions of this chapter may be revoked by the board of mayor and aldermen after notice and hearing, for any of the following causes:

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

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

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

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

(3) When it is reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (1994 Code, § 5-210)

**9-211. Reapplication.** No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1994 Code, § 5-211)

**9-212. Expiration and renewal of permit.** Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1994 Code, § 5-212)

## CHAPTER 3

### CHARITABLE SOLICITORS

#### SECTION

9-301. Permit required.

9-302. Prerequisites for a permit.

9-303. Denial of a permit.

9-304. Exhibition of permit.

**9-301. Permit required.** No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1994 Code, § 5-301)

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

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

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

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

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

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1994 Code, § 5-302)

**9-303. Denial of a permit.** Any applicant for a permit to make charitable or religious solicitations may appeal to the board of mayor and aldermen if he has not been granted a permit within thirty (30) days after he makes application therefor. (1994 Code, § 5-303)

**9-304. Exhibition of permit.** Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any person solicited. (1994 Code, § 5-304)

## CHAPTER 4

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

#### SECTION

9-401. Prohibited in residential areas.

9-402. Hours of operation regulated.

9-403. Minors to be kept out; exception.

**9-401. Prohibited in residential areas.** It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire on any premises located in any block where fifty percent (50%) or more of the land is used or zoned for residential purposes. (1994 Code, § 5-401)

**9-402. Hours of operation regulated.** It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire at any time on Sunday or between the hours of 11:00 P.M. and 6:00 A.M. on other days. (1994 Code, § 5-402)

**9-403. Minors to be kept out; exception.** It shall be unlawful for any person engaged regularly, or otherwise, in keeping billiard, bagatelle, or pool rooms or tables, or for their employees, agents, servants, or other persons for them, knowingly to permit any person under the age of eighteen (18) years to play on said tables at any game of billiards, bagatelle, pool, or other games requiring the use of cue and balls, without first having obtained the written consent of the father and mother of such minor, if they are living. If either parent is dead, then written consent must be obtained from the guardian, or other person having legal control of such minor. If the minor is in attendance as a student at some literary institution, then the written consent of the principal or person in charge of such school must be obtained. This section shall not apply to the use of billiards, bagatelle, and pool tables in private residences. (1994 Code, § 5-403)

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

## CHAPTER 5

### SEXUALLY ORIENTED BUSINESSES

#### SECTION

- 9-501. Purpose and intent.
- 9-502. Definitions.
- 9-503. Classification.
- 9-504. Permit requirements.
- 9-505. Issuance of permit.
- 9-506. Fees.
- 9-507. Inspection.
- 9-508. Expiration of permit.
- 9-509. Suspension/revocation of permit.
- 9-510. Hearings and appeals.
- 9-511. Transfer of permit.
- 9-512. Location.
- 9-513. Exemption from location restrictions.
- 9-514. Additional regulations for escort agencies.
- 9-515. Additional regulations for nude model studios.
- 9-516. Additional regulations for adult theaters and adult motion picture theaters.
- 9-517. Additional regulations for adult motels.
- 9-518. Regulations pertaining to exhibition of sexually explicit films or videos.
- 9-519. Display of sexually explicit material to minors.
- 9-520. Enforcement.
- 9-521. Injunction.

**9-501. Purpose and intent.** It is the purpose of this chapter to regulate sexually oriented business to promote the health, safety, morals, and general welfare of the citizens of the town and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on 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 to their intended market. (1994 Code, § 10-203)

**9-502. 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 or fewer persons per machine at any one time, anywhere 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;

(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 transmissions, 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 areas." 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 means of telephone, any communication characterized by the description 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) "Law enforcement authority" means the head of law enforcement for the Town of Arlington 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 business 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) "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.

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

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

(14) "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.

(15) "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 this chapter.

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

(17) "Residential district" means a district whose designation begins with the letter "R" or "FA-R" according to the Arlington Zoning Ordinances.

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

(19) "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.

(20) "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.

(21) "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 § 9-502(6) "adult telecommunications business."

(22) "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 discernable turgid state, even if completely and opaquely covered;

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

(23) "Specified sexual activities" means:

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

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

(c) Fondling or 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.

(24) "Substantial enlargement" of a sexually oriented business means the increase in floor area occupied by the business by more than twenty-five percent (25%), as the floor area exists on the date of enactment of the ordinance comprising this chapter.

(25) "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. (1994 Code, § 10-203)

**9-503. 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 this chapter;
- (7) Adult theaters;
- (8) Escort agencies;
- (9) Nude model studios; and
- (10) Sexual encounter centers. (1994 Code, § 10-203)

**9-504. Permit requirements.** (1) A person commits an offense if he operates a sexually oriented business without a valid permit, issued by the town 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 Town of Arlington shall be handled by the recorder or his/her assigned agent.

(3) An application for a permit must be made on a form provided by the town. An 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 § 9-518 of this chapter shall submit a diagram meeting the requirements of § 9-518.

(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, each individual who has any interest in the business must sign the application for a permit as applicant. Each applicant must be qualified under § 9-505 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 obtaining 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 requirements and provisions of this chapter, as well as the requirements and provisions of all other Arlington building, fire, health and other permit code.

(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 recorder or his/her assigned agent an employee's permit authorizing such person to serve as an employee or independent contractor in the place of business of the sexually oriented business permittee. It is made the duty of the sexually oriented business permittee to ensure that each person so employed in permittee's place of business has an employee's permit as above required, which permit must be upon the sexually oriented business premises at all times subject to inspection by the recorder or his/her assigned agent, or his duly authorized agents.

No employee's permit may be issued for any person who has been convicted of an offense listed in § 9-505(1)(h)(i) for which the time period required in § 9-505(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 §§ 9-509(1) and (2) of this chapter. An employee's permit shall be revoked upon the employee's or independent contractor's conviction of an offense listed in § 9-505(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 recorder or his/her assigned agent. Such permits shall not be transferable and must be surrendered to the recorder or his/her assigned agent 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 recorder or his/her assigned agent within five (5) days of the termination of the employment for which such permit was issued. (1994 Code, § 10-203)

**9-505. Issuance of permit.** (1) The recorder or his/her assigned agent shall approve the issuance of a permit to an applicant within thirty (30) days

after receipt of an application unless the recorder or his/her assigned agent finds one 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 the city of 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 action by law enforcement officers.
- (g) An applicant or the proposed establishment is in violation of or is not in compliance with §§ 9-507, 9-510 through 9-518 or 9-519 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, jurisdiction:

- (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 date of 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 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 a 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 § 9-505(1)(h)(i) hereof may qualify for a sexually oriented business permit only when the time period required by § 9-505(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. (1994 Code, § 10-203)

**9-506. Fees.** (1) The annual fee for a sexually oriented business permit is five thousand dollars (\$5,000).

(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 remaining until the expiration date.

(3) The applicant for an employee's permit shall pay to the recorder or his/her assigned agent the sum of fifteen dollars (\$15.00) therefore.

(4) Fees shall be collected by the recorder or his/her assigned agent at the time of issuance of the permit. (1994 Code, § 10-203)

**9-507. Inspection.** (1) An applicant or permittee shall permit representatives of the recorder or his/her assigned agent, health department, fire services division, housing and community development division and construction code enforcement 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 recorder or his/her assigned agent or health department at any time it is occupied or open for business. (1994 Code, § 10-203)

**9-508. Expiration of permit.** Each permit shall expire December 31 of each year and may be renewed only by making application as provided in § 9-504(1) 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. (1994 Code, § 10-203)

**9-509. Suspension/revocation of permit.** (1) Suspension. The recorder or his/her assigned agent shall suspend a permit for a period not to exceed thirty (30) days if he determines that a permittee or an agent of a permittee or independent contractor employed at the licensed premises has:

- (a) Violated or is not in compliance with §§ 9-507, 9-511, 9-512, 9-514, 9-515, 9-516 9-517, 9-518 or 9-519 of this chapter;
- (b) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (c) Refused to allow an unimpeded inspection of the sexually oriented business premises as authorized by this chapter;
- (d) Knowingly permitted gambling by any person on the sexually oriented business premises;
- (e) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

(2) Revocation. (a) The recorder or his/her assigned agent shall revoke a permit if a cause of suspension in subsection (1) occurs and the permit has been suspended within the preceding twelve (12) months.

(b) The recorder or his/her assigned agent shall revoke a permit if he determines that:

- (i) A permittee gave false or misleading information in the material submitted to the recorder or his /her assigned agent during the application process;
- (ii) 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;
- (iii) A permittee or an employee, agent, or independent contractor employed on the premises has allowed prostitution on the premises;

(iv) 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;

(v) A permittee has been convicted of an offense listed in § 9-505(1)(h)(i) for which the time period required in § 9-505(1)(h)(ii) has not elapsed;

(vi) On two (2) or more occasions with a twelve (12) month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in § 9-505(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;

(vii) 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 licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Tennessee Code Annotated, § 39-13-501(6); or

(viii) A permittee is delinquent in payment to the town for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.

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

(d) § 9-509(2)(b)(vii) hereof does not apply to adult motels as a ground for revoking the permit unless the 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.

(e) When the recorder or his/her assigned agent 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 revocation became effective. If, subsequent to revocation, the recorder or his/her assigned agent 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 have elapsed since the date the revocation became effective. If the permit was revoked under subsection § 9-509(2)(b)(v) hereof, an applicant may not be granted another permit until the appropriate number of years under § 9-504(2)(viii)(B) has elapsed. (1994 Code, § 10-203)

**9-510. Hearings and appeals.** (1) If the recorder or his/her assigned agent denies the issuance of a permit for a reason other than a violation of

§ 9-512 of this chapter, or a permittee, applicant or business desires to appeal his/her or its revocation or suspension, it shall be done in the following manner:

(a) 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.

(b) The appeal of the denial, revocation, or suspension must be filed with the recorder or his/her assigned agent within ten (10) calendar days of receipt of notice.

(c) A hearing must be scheduled and held before the recorder or his/her assigned agent within sixty (60) days, unless continued to a later date by consent of the parties.

(d) When a permit is suspended or revoked, the suspension or revocation of the permit shall not occur within sixty (60) days of receipt of notice described in subsection (a) hereof or prior to the date of the hearing, whichever is less, unless the health officer determines there to be a health hazard or risk of disease at said location. No issuance of a new permit for that permittee, business, or location shall occur until after the date set for hearing has passed.

(e) A decision of the recorder or his/her assigned agent must be made in writing to all parties within five (5) days of the conclusion of the hearing.

(f) Any appeal of the decision of the recorder or his/her assigned agent shall be made by common law writ of certiorari to a court of competent jurisdiction. Said appeal must be filed within thirty (30) calendar days after receipt of a written decision from the recorder or his/her assigned agent or offer of delivery of such decision is made.

(g) No permit shall be extended during a court appeal without a court ordered writ of supersedeas. (1994 Code, § 10-203)

**9-511. 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. (1994 Code, § 10-203)

**9-512. Location.** (1) A person commits an offense if he operates or causes to be operated a sexually oriented business within fifteen 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 this code;
- (d) A public park; or
- (e) The property line of a lot devoted to a residential use as defined in this chapter.

(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 fifteen 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), 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 effected public park, residential district, or local historic district.

(5) For purposes of subsection (2) of this section, the distance between any two (2) 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 the date of enactment of the ordinance comprising this chapter, 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 or more sexually oriented businesses are within fifteen 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 conforming 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, public or private elementary or secondary school, public park, residential district, or residential lot within fifteen 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. (1994 Code, § 10-203)

**9-513. Exemption from location restrictions.** (1) If the recorder or his/her assigned agent denies the issuance of a permit to an applicant because the location of the sexually oriented business establishment is in violation of § 9-512 of this chapter, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the comptroller a written request for an exemption from the locational restrictions of § 9-512.

(2) If the written request is filed with the recorder or his/her assigned agent within the ten (10) day limit, the Arlington Board of Mayor and Aldermen shall consider the request. The comptroller 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) The Arlington Board of Mayor and Aldermen shall hear and consider evidence offered by any interested person.

(4) The Arlington Board of Mayor and Aldermen may, in its discretion, grant an exemption from the locational restrictions of § 9-512 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 chapter of the code;

(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 Arlington Board of Mayor and Aldermen shall grant or deny the exemption by a majority vote. The vote shall be decided on the basis of a preponderance of the evidence. The decision of the Arlington Board of Mayor and Aldermen is final. Appeal shall lie by common law writ of certiorari to a court of competent jurisdiction. Such an appeal must be made within thirty (30) days of the Arlington Board of Mayor and Aldermen vote.

(6) If the Arlington Board of Mayor and Aldermen grants the exemption, the exemption is valid for one year from the date of the Arlington Board of Mayor and Aldermen's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of § 9-512 until the applicant applies for and receives another exemption.

(7) If the Arlington 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 Arlington Board of Mayor and Aldermen'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 § 9-512. (1994 Code, § 10-203)

**9-514. 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. (1994 Code, § 10-203)

**9-515. 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. (1994 Code, § 10-203)

**9-516. Additional regulations for adult theaters and adult motion picture theaters.** (1) The requirement and provisions of other sections of this code 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 adult 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 in 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. (1994 Code, § 10-203)

**9-517. 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. (1994 Code, § 10-203)

**9-518. 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 requirements:

(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 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 street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The recorder or his/her assigned agent 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 approvals of the recorder or his/her assigned agent or his designee.

(d) It is the duty of the owners and operator 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 unobstructed 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. (1994 Code, § 10-203)

**9-519. Display of sexually explicit material to minors.** (1) A person commits an offense if, in a business establishment open to a person 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 breast below the top of the areola;  
or

(d) Human male genitals in a discernible 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. (1994 Code, § 10-203)

**9-520. Enforcement.** (1) Except as provided by subsection (2), any person violating § 9-512 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 recorder or his/her assigned agent to enforce the provisions of this chapter. Said ordinance may also be enforced by injunctive relief through a court of competent jurisdiction.

(2) If the sexually oriented business involved is a nude studio or sexual encounter center, then violation of § 9-512 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 § 9-512, upon conviction, is punishable by a fine not to exceed fifty dollars (\$50.00) per day per violation, in accordance with this chapter.

(4) It is a defense to prosecution under §§ 9-504(1), 9-512, or 9-515(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 transferrable 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 nude model is on the premises at any one time.

(5) It is a defense to a prosecution under § 9-504(1) or § 9-512 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 § 9-512. (1994 Code, § 10-203)

**9-521. Injunction.** A person who operates or causes to be operated a sexually oriented business without a valid permit or in violation of § 9-512 of this chapter is subject to a suit for injunction as well as prosecution for criminal violations. (1994 Code, § 10-203)

**CHAPTER 6****FOOD CODE****SECTION**

- 9-601. Definitions.
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**9-601. Definitions.** The following definitions shall apply in the interpretation and enforcement of this chapter:

- (1) "Adulterated." The condition of a food:
  - (a) If it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;
  - (b) If it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation, or in excess of such tolerance if one has been established;
  - (c) If it consists in whole or in part of any filthy, putrid, or decomposed substance;
  - (d) If it has been processed, prepared, packed, or held under unsanitary conditions, as hereinafter set forth, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(e) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(f) If it contains anything other than claimed.

(2) "Approval." Acceptable to the health officer based on his determination as to conformance with appropriate standards and good public health practices, as hereinafter set forth.

(3) "Bakery." A plant where bread, rolls, cakes, doughnuts, pies, and similar products are processed, mixed, baked, packaged, or stored for sale and distribution to either retail or wholesale outlets.

(4) "Brewery." A plants where malt liquors or other alcoholic beverages are processed, mixed, and/or packaged in wholesale lots for distribution.

(5) "Carbonated beverage plant." A plant where non-alcoholic beverages are processed, mixed, and/or packaged in wholesale lots for distribution.

(6) "Drive-in restaurant." An eating and drinking establishment where refreshments and meals are processed, prepared, and primarily offered for sale for consumption outside the establishment within the parking area or off the premises under permit from the health department.

(7) "Easily cleanable." Readily accessible and constructed of such material and finish that any residue may be completely removed by an approved cleaning method.

(8) "Employee." Any person working in a food service establishment who transports food or food containers, engages in food preparation or service, or comes in contact with any food utensil or equipment.

(9) "Equipment." All furnishing such as stoves, ranges, hoods, cutting blocks, tables, counters, refrigerators, steam tables, sinks, dishwashing machines, and similar items, other than utensils or kitchenware which are used in the operation of a food service establishment.

(10) "Farmer's market." A place designated by a sponsoring organization where only fruits, vegetables, melons, berries, nuts, or honey produced by the sellers thereof are kept and offered for retail sale.

(11) "Food." Any raw, cooked, or processed edible substance, ice, or ingredient whether simple, mixed, or compound of plant, animal, or liquid origin containing body nutrients that are consumed and assimilated by an organism to maintain life and growth and sustain physical nourishment.

(12) "Food catering." The transporting, serving, or the dispensing of food in any way to parties, meetings, and gatherings where the food is prepared in an approved kitchen at one location and consumed at another location.

(13) "Food distributor." A person who offers food in wholesale lots to another for sale or storage.

(14) "Food environmentalist." Inspectors or any other person employed by the Memphis and Shelby County Health Department and assigned the task of food control.

(15) "Food packaging plant." A place where non-perishable food is package or re-packaged, but not processed.

(16) "Food processing." The manufacture, cooking, mixing, preparation, packaging, or handling of food which is to be stored, transported, displayed, or offered for sale in wholesale lots for consumption on another premises from which it originates.

(17) "Food salvage distributor." A person who engages in the business of distributing, selling, or otherwise dealing in any impaired product enumerated in the definition of a "food salvager."

(18) "Food salvager." A person who sorts, cleans, reconditions, labels, or re-labels, re-packages or re-coopers, culls, or by other approved methods, reclaims discarded or damaged products and sells, offers for sale, or distributes for human or animal consumption any salvaged food; beverage, including beer, wine, and distilled spirits; vitamin; food supplement; dentrifice; drug; cosmetic; single-service food container or utensil; straw or quill; paper napkin; or any other similar food or food-contact surface that has been damaged or contaminated by fire, water, smoke, chemicals, or by any other means, whether during growth, storage, or in transit, processing, or manufacture.

(19) "Food service establishment." Any bakery, restaurant, lunch stand, café, public or private market, kiosk, store, storehouse, storage warehouse, cafeteria, tea room, sandwich shop, fountain, delicatessen, tavern, lounge, nightclub, catering kitchen, commissary, food processing plant, grocery, fish market, packaged goods, drive-in grocery, or any place in or from which meat, fish, oysters, birds, fowl, vegetables, fruit, milk, ice cream, ice, beverages, or industrial feeding systems are manufactured, kept, stored, or offered for sale; or any private, public, or non-profit organization or institution routinely serving food, or where any other food intended for consumption by human beings is manufactured, kept, stored, or offered for sale, disposition, or distribution as food, with or without charge. A huckster shall not be considered a food service establishment.

(20) "Food storage warehouse." A warehouse in which food is stored.

(21) "Food vendor." A person engaged in the business of distributing or servicing vending machines which dispense food.

(22) "Grocery store." An establishment where, with the exception of fresh or raw vegetables, fruit and nuts, food that has been placed in containers or pre-packaged is stored, displayed, or offered for sale to retail customers to be prepared, cooked, or processed at another location. Other types of businesses such as a meat market, restaurant, bakery, or delicatessen may be incorporated into the area occupied by the grocery store, but will not be included in this definition.

(23) "Huckster." Any person who sells or peddles from a vehicle on the public thoroughfares of Arlington, Tennessee, only fruits, vegetables, melons, berries, or nuts, all of which may be produced by the person or purchased from another source.

(24) "Industrial catering." The transporting, dispensing, serving, or offering for sale of food on a routine scheduled route, which has been manufactured and prepared in an approved food processing plant. This type catering is where a contract is entered into by two (2) or more parties for food service and usually at schools, construction sites, industrial plants, and other similar premises.

(25) "Industrial catering stand." A food service establishment consisting of fifty (50) square feet or less, and permanently located in a shopping center or pedestrian mall where food is stored, displayed, and offered for sale from within the catering stand and for consumption outside the stand. Only prepackaged food from an approved source shall be stored, displayed, or offered for sale for the establishment to be classified as an industrial catering stand.

(26) "Industrial catering trucks." Those vehicles which contain pre-packaged food and/or individually proportioned, automatically dispensed hot coffee to one or more locations on private or public properties under contract with the approved caterer.

(27) "Kitchenware." All multi-use utensils other than tableware used in the storage, preparation, conveying, or serving of food.

(28) "Labeling." The marking, designation, or descriptive device on food containers and/or articles of food denoting the name of the product, ingredients thereof, and name and address of the manufacturer and/or distributor. Other information regarding labeling may be required by the health officer.

(29) "Meat, vegetable, and fish." "Meat" includes every part of any land animal and the eggs thereof; "Vegetable" includes every article of human consumption as food which is not meat, fish, or milk; "Fish" includes every part of any of the numerous cold-blooded aquatic vertebrates or invertebrates when either of these foods is held or offered or intended for sale or consumption as food for human beings at any place within the town.

(30) "Meat market." A place of business or an area within a grocery store in which raw meats and/or prepared cold cuts or cheeses are stored, processed, displayed, or offered for retail sale.

(31) "Misbranded." The presence of, or the lack of, any written, printed, or graphic matter upon or accompanying any food or container of food, which is found to be false or misleading, or which violates any applicable federal, state, or local labeling requirements.

(32) "Package goods store." A food establishment in which food is stored, displayed, or offered for sale in the packaged form and is intended for consumption off the premises under permit from the health department. No other type of business such as a meat market, restaurant, bakery, delicatessen,

or any other type food service establishment shall be located in the area occupied by the package goods store.

(33) "Pedestrian vendor." A person who engages in the business of dispensing food from a mobile vehicle which operates within the confines of a pedestrian mall, shopping center, or a city park.

(34) "Perishable food." Any food of such type, or in such condition as may spoil.

(35) "Person in charge." The individual present in a food service establishment at the time of the regulatory inspection. If no individual is the apparent delegated supervisor or responsible person in charge, then any employee present shall be considered the person in charge.

(36) "Potentially hazardous food." Any perishable food which consists in whole or in part of milk or milk products, eggs, meat, cheese, poultry, fish, mollusk or crustacea, or other foods capable of supporting pathogenic microorganisms.

(37) "Reciprocal inspection." An inspection made, a laboratory analysis produced, or the conducting of a sanitation program by a health department or approved official agency thereof, in the area where a certain product is processed for shipping in conjunction with another health department or approved official agency thereof, in the receiving area of that particular product.

(38) "Restaurant." Any establishment where food is processed, prepared by cooking or served raw, and offered for sale primarily for consumption on the premises.

(39) "Retail bakery." A place of business where bread, rolls, cakes, doughnuts, pies, and similar pastries are processed, mixed, baked, packaged, and sold to consumers for the primary consumption on the premise currently under permit from the health department.

(40) "Safe temperatures." As applied to perishable food, temperature of 45 degrees F. (7.222 degrees C.), or below, and 140 degrees F.(60.000 C.), or above provided that eggs in the shell shall be kept at a temperature that is not conducive to spoilage.

(41) "Salvageable merchandise." Any item listed under the definition of "food salvager" which can be sorted, cleaned, reconditioned, labeled, or re-labeled, re-packaged or re-cooped, culled, or reclaimed or salvaged by other approved methods to the satisfaction of the health officer.

(42) "Sanitize." An effective bactericidal treatment of equipment, utensils, and kitchenware by a process which has been approved by the health officer, as provided by the rules, regulations, or policies of the health department, as being effective in destroying microorganisms, including pathogens.

(43) "Shopping center." A group of two (2) or more commercial establishments that occupies at least fifty thousand (50,000) square feet of gross leasable area, located in a building or buildings that are planned, developed, owned, and managed as a unit.

(44) "Single-service articles." Cups, containers, lids or closures, plates, knives, forks, spoons, stirrers, paddles, straws, placemats, napkins, doilies, grocery bags, wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic, or other readily destructible materials, and which are intended by the manufacturer and generally recognized by the public as for one usage only, and then to be properly discarded.

(45) "Snack bar." Any food service establishment, other than a "Restaurant" or "Drive-In Restaurant", where food is processed, prepared, cooked, or served raw, and offered for sale primarily for the consumption off the premise.

(46) "Sponsoring organization." Any church, school, or non-profit organization or association devoting its efforts and property to the improvement of human rights, or conditions, in the community.

(47) "Tableware." All multi-use eating and drinking utensils including flatware (knives, forks, and spoons).

(48) "Temporary food service establishment." Any food service establishment which operates at an approved and fixed location for a temporary period of time, not to exceed two (2) weeks. There shall be no more than two (2) temporary permits issued for the same location within any six (6) month period.

(49) "Utensil." Any tableware and kitchenware used in the storage, preparation, conveying, or serving of food.

(50) "Wholesale meat plant." A place of business where meat, meat products, fish, poultry, or other similar products are processed, packaged, or stored for distribution to retailers.

(51) "Wholesale." When applied to food for human consumption, a product that is in sound condition, clean, and free from adulteration. (1994 Code, § 8-601)

**9-602. Approval of plans for construction, alteration, etc., of food service establishment.** When a food service establishment is constructed or remodeled, or when an existing structure is converted for use as a food service establishment, properly prepared plans and specifications for the construction, remodeling, or alteration, showing layout, arrangement, and construction materials of the work area, and the location size and type of fixed equipment and facilities shall be submitted to the health officer for approval before the work is begun. No building permit to construct or remodel a food service establishment shall be issued until plans have been approved by the health department. (1994 Code, § 8-602)

**9-603. Permit required; fees.** No person shall engage in the manufacture, sale, or distribution of any food without a permit from the health department. No business license shall be issued to any person to engage in the

manufacture, sale, or distribution of food, until a copy of a permit to engage in that business has been issued by the health department.

The health officer shall determine which type of permit each establishment must obtain. If an establishment does not fit into any type of business listed, the health officer shall have the authority to assign it to one of those listed which is in his judgment most reasonable.

The temporary permit shall be issued for a period not to exceed two (2) weeks, beginning from the date of operation, at a fee which will be fifty (50) percent of the annual rate.

Permit fees for food service establishments shall be according to the following schedule:

<u>Type of Establishment</u>	<u>Annual Fees</u>
From 1 - 25 seats	\$ 25.00
From 26 - 50 seats	\$ 40.00
From 51 - 75 seats	\$ 60.00
Over 75 seats	\$ 75.00
<u>Grocery Stores:</u>	
Under 1,200 square feet	
Grocery store	\$ 25.00
With a meat market	\$ 10.00
With a bakery	\$ 10.00
Between 1,200 and 10,000 square feet	
Grocery store	\$ 37.50
With a meat market	\$ 15.00
With a bakery	\$ 15.00
Between 10,000 and 20,000 square feet	
Grocery store	\$ 75.00
With a meat market	\$ 30.00
With a bakery	\$ 30.00
Over 20,000 square feet	
Grocery store	\$112.50
With a meat market	\$ 37.50
With a bakery	\$ 37.50
<u>Other:</u>	
Caterer, food	\$150.00
Caterer, industrial (per truck, vehicle or stand)	\$ 30.00
Distributor, food	\$ 37.50
Beverage plant, carbonated	
Brewery	\$150.00
Bakery, retail	\$ 37.50

Bakery, wholesale	\$150.00
Huckster	\$ 22.50
Farmer's market	\$ 7.50
Meat market, retail	\$ 37.50
Meat plant, wholesale	\$ 75.00
Package goods	\$ 22.50
Packaging plant, food	\$ 30.00
Processing plant, food	\$150.00
Restaurant, drive-in	\$ 37.50
Snack bar	\$ 25.00
Salvager, food, - or food salvage distributor	\$150.00
Vendor, food	\$ 75.00
Vendor, pedestrian (per truck or vehicle)	\$ 22.50
Vendor, frozen dessert - motorized	\$ 22.50
Vendor, frozen dessert - pushcart	\$ 7.50
Warehouse, food storage	\$ 75.00
Care home	\$ 22.50
Nursing homes (same as restaurant, number of seats = capacity number of patients)	
Boarding homes (same as restaurant, number of seats = capacity number of boarders)	

(1994 Code, § 8-603)

**9-604. Permit application.** Any owner or manager or their legal designee who wants a permit required by this chapter shall make a written application therefor at the Memphis and Shelby County Health Department on forms provided by that department. (1994 Code, § 8-604)

**9-605. Issuance of permit.** A permit required by this chapter will be granted only after an inspection is made and approval given by the health department and the payment of the appropriate fee by the applicant. The inspection and approval shall be of the appropriateness of the location where food may be manufactured, stored, exposed for sale, or sold, and the appropriateness of the methods to be used in the handling of the food, together with the health of the persons engaged in the manufacture, sale, or distribution of the food, as hereinafter set out in this chapter and according to zoning regulations. (1994 Code, § 8-605)

**9-606. Display of permit.** Every permit issued under this chapter shall be conspicuously displayed in the establishment where food is manufactured,

sold, or distributed. No permit shall be transferable from one location to another, or from one person to another, and change of location or ownership shall require issuance of a new permit. (1994 Code, § 8-606)

**9-607. Revocation or suspension of permit.** The health officer shall have the power, and it shall be his duty to suspend or revoke any permit issued under this chapter where it appears that the provisions of this chapter have been violated by the person engaging in the manufacture, sale, or distribution of food. The person holding the permit shall be given reasonable notice and an opportunity to be heard as to why the permit should not be revoked or suspended. The notice may be given by the environmentalist on the regular inspection form or may be in the form of an official letter from the health department.

In each violation, where a permit is suspended or revoked, the holder of the permit may appeal the health officer's decision to the board of health whose decision on the matter shall be binding. (1994 Code, § 8-607)

**9-608. Sale of food or drinks on streets or from vehicles, etc.** It shall be unlawful for any person to sell or offer for sale on any street or road in the town or from any vehicle thereon, or from any vacant lot or temporary or improvised stand or structure in the town, any fruits, vegetables, ice cream, or other food or drinks except as provided in §§ 9-610, 9-658, and 9-664. (1994 Code, § 8-608)

**9-609. Food processors and distributors outside Arlington, Tennessee.** Food processors and/or distributors located outside the town may, at the discretion of the health officer, sell potentially hazardous food products within Arlington under a reciprocal direct inspection arrangement, after first securing a food permit, as required by this chapter, from the health officer. All food processors and/or distributors located outside Arlington shall meet the sanitary standards, definitions, and requirements of this chapter, and the rules and regulations promulgated by the health officer, or equivalent standards and regulations. The health officer is hereby authorized to establish acceptable reciprocal or direct inspection arrangements between various state, federal, and local food inspection authorities, interstate and intrastate.

Before a permit is issued under a reciprocal or direct inspection arrangement, an original inspection may be made by the health officer, or his designee, to determine if the food products are produced, handled, and processed under conditions which are similar to this chapter. Subsequent inspection shall be made at intervals which the health officer may deem necessary. Such inspections outside Arlington shall be paid for by the applicant or the holder of the permit. (1994 Code, § 8-609)

**9-610. Temporary food service establishment.** A temporary food service establishment shall comply with all provisions of this chapter which are applicable to its operation; but the health officer may augment these requirements when needed to assure the service of safe food; may prohibit the sale of certain potentially hazardous food; and may relax specific requirements for the physical facilities, when in his opinion no imminent health hazard will result and where close supervision of the operation can be provided by the health department. (1994 Code, § 8-610)

**9-611. Collection and analysis of food samples.** (1) It shall be the duty of all health department environmentalists to obtain samples of all substances offered for food whenever ordered to do so by the health officer. These samples shall be delivered to the health department for analysis and inspection. Proprietors of food service establishments shall furnish the health department, upon request, food samples without charge for laboratory analysis and examination.

(2) Environmentalists shall make collections of food samples in the following manner:

(a) Samples of food shall be taken in the presence of the owner, manager, or their authorized designee, and numbered.

(b) Should the owner, manager, or their authorized designee request it, the sample shall be taken in duplicate, handled in the manner hereinbefore provided, and one sample delivered to that industry management.

(c) The quantity of bulk goods shall be in an amount sufficient for proper examination and analysis or as required by the health department laboratory.

(3) The methods of analysis of food samples shall be those prescribed by the director of laboratories or the health officer of the Memphis and Shelby County Health Department.

(4) Whenever upon analysis or examination it appears that the foods from which samples have been taken are adulterated or misbranded in violation of the provisions of this chapter, or if any other violation of this chapter has occurred, a report shall be made promptly to the health officer, who shall take such steps necessary to secure the enforcement of this chapter and all lawful rules promulgated hereunder. (1994 Code, § 8-611)

**9-612. Adulterated or misbranded food.** It shall be unlawful for any person to produce, offer, expose, manufacture for sale or have in their possession, charge, or control any article of food for sale which is adulterated or misbranded. (1994 Code, § 8-612)

**9-613. Report of unwholesome food.** It shall be the duty of every person knowing of any food offered for sale, for consumption by human beings,

or being in any market, public or private, in Arlington, which is not sound, healthy, or wholesome food, forthwith to report to the health department such facts and the particulars relating thereto. (1994 Code, § 8-613)

**9-614. Transporting bakery food.** It shall be unlawful to transport bread, cakes, doughnuts, pies, and other pastries or baked foods from plant to store or from one place to another unless it is wrapped in dust-proof containers. (1994 Code, § 8-614)

**9-615. Right of entry into food establishments.** The health officer and all agents or employees of the health department shall have the right to enter any lot, premises, building, factory, or place where food is manufactured, stored, sold, or offered for sale, and it shall be unlawful for any person to deny to these officers, agents, and employees access to any such place or to interfere with them in the performance of their duties under the provisions of this chapter. (1994 Code, § 8-615)

**9-616. Interpretation of food code; policies and standards of health officer.** The interpretation of the provisions of this chapter shall be made by the health officer, and he shall adopt written policies and standards, approved by the board of health, in carrying out the provisions of this chapter. (1994 Code, § 8-616)

**9-617. Enforcement of food code; rules and regulations of health department.** It shall be the duty of the health department to enforce this chapter and to adopt minimum standards for all classes of foods, including fat contents of meat products, defining specific adulterations and declaring methods of collecting and examining food; to promulgate regulations with reference to the purity, wholesomeness, and fitness for food of all kinds and compounds and substances coming within the provisions of this chapter; and to adopt such other written rules and regulations as may be recommended by the health officer and approved by the board of health. Nothing in this chapter shall be construed as permitting the alteration of a standard which is specifically stated in this chapter. (1994 Code, § 8-617)

**9-618. Application of this chapter.** The provisions of this chapter shall be the rules and regulations governing the sanitary conditions of food establishments. (1994 Code, § 8-618)

**9-619. Cleanliness of employees.** No person maintaining or operating any food establishment shall allow any employee handling or coming in contact with food to be or remain in an unsanitary, filthy, or dirty condition either as to person or clothing while so employed.

All employees shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty. They shall wash their hands thoroughly in an approved handwashing facility before starting work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his or her hands. Employees shall keep their fingernails clean and neatly trimmed and shall wear no jewelry which may contaminate the food.

Hairnets, caps, or other approved hair restraints shall be used by employees engaged in the preparation and service of food to keep hair from food and food-contact surfaces.

Employees shall not use tobacco in any form while engaged in food preparation or service, or while in equipment and utensil washing or food preparation areas. (1994 Code, § 8-619)

**9-620. Health of employees.** No employer shall knowingly require, permit, or allow any person who is infected with any contagious, communicable, or infectious disease to work or remain in or around any food establishment. The same shall apply to all persons exposed to a reportable disease unless the person so exposed has a permit from the health department to engage in such work.

No person, while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection shall work in any area of a food service establishment in any capacity in which there is a likelihood of contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals. No person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease he shall notify the health officer immediately and exclude the employee from the food establishment. (1994 Code, § 8-620)

**9-621. General requirements as to food.** All food in any food establishment shall be from sources approved and considered satisfactory by the health officer and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, properly labeled, and safe for human consumption. No hermetically sealed, non-acid or low-acid food which has been processed in a place other than an approved commercial food processing establishment shall be used. (1994 Code, § 8-621)

**9-622. Maintenance of premises.** All parts of a food establishment and its premises shall be kept clean, neat, and free of garbage, litter, and rubbish.

Cleaning operations shall be conducted in a way that minimizes contamination of food and food-contact surfaces.

The surrounding of food establishments including parking areas, shall present a neat and orderly appearance. All sheds and outbuildings shall be kept clean, painted, and free from accumulations of garbage, manure, ashes, rubbish, tall grasses or weeds, filth in which flies may breed, or standing water in which mosquitoes may breed. (1994 Code, § 8-622)

**9-623. Floors, walls, and ceilings.** Floors shall be installed in kitchens and in all other rooms and areas in which food is stored or prepared and in which utensils are washed, and in walk-in refrigerators, dressing or locker rooms and toilet rooms, and shall be of smooth, non-absorbent materials, and so constructed as to be easily cleanable. All floors shall be kept clean and in good repair. Sawdust or wood shavings, or other similar and approved products, shall be used on the floors only as permitted by the health department. On new construction, floors in food preparation areas shall be hard tile, brick, terrazzo, or similar materials.

Floor drains shall be provided in all rooms where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other waste on the floor. All exterior areas where food is served shall be kept clean and properly drained, and surfaces in such areas shall be finished so as to facilitate maintenance and minimize dust.

The walls and ceilings of all rooms shall be kept clean and in good repair. Walls shall be installed in all areas in which food is stored, prepared, or utensils or hands washed. Walls shall be smooth, light-colored and shall have washable surfaces.

Approved ceilings shall be installed in all areas of food establishments where food is prepared. Such ceilings shall be constructed of smooth, non-absorbent, washable, approved materials. Light fixtures, decorative material and similar equipment and material attached to walls, floors, and ceilings shall be kept clean and in good repair. (1994 Code, § 8-623)

**9-624. Doors and screens.** Except as provided in sections 8-614, 8-658, 8-659, 8-661, and 8-664, it shall be unlawful to sell, keep, serve, or expose for sale in the town any article of food or drink for human beings except within a building, store, room, or other enclosure, the openings into which are effectively provided and equipped with doors, screens, or coverings so as to exclude flies, insects, and vermin of every description. All such places shall at all times be kept free from flies, insects, and vermin. All openings used as passages into or from the building, store, room, or enclosure shall be provided and equipped with doors, screens, shutters, or coverings. These doors must be equipped with self-closing devices. All doors, screens, shutters, and coverings shall be kept closed at all times except during the course of necessary passage through or ordinary use of such openings.

In cases where mechanical equipment such as air-conditioners or shuttered fans or similar devices are approved and used and effectively prevent the entrance of flies, insects, and vermin, screens may be omitted. Fans or other air devices installed in open doorways to prevent entrance of pests must be approved by the health department when such doorways are routinely left open. (1994 Code, § 8-624)

**9-625. Water supply, sewage disposal, and plumbing.** The water supply shall be adequate, of a safe and sanitary quality, and from an approved source. Hot and cold running water, under pressure, shall be provided in all areas where food is prepared or equipment, utensils, or containers are washed.

Ice used for any purpose shall be made from water which comes from an approved source and shall be used only if it has been manufactured, stored, transported, and handled in a sanitary manner, as provided by the rules and regulations of the health department. Ice used for drinking purposes shall be stored in a clean, covered container free from contamination. Food products shall not be stored in ice that is to be used for drinking purposes.

All sewage shall be disposed of in a public sewerage system or another system approved by the health officer.

Plumbing shall be sized, installed, and maintained in accordance with applicable plumbing codes, so as to carry adequate quantities of water to required locations throughout the establishment. Plumbing shall prevent contamination of the water supply and properly convey sewage and liquid wastes from the establishment to the sewerage system. Plumbing shall not constitute a source of contamination of food, equipment, or utensils or create an unsanitary condition or nuisance. (1994 Code, § 8-625)

**9-626. Lighting.** All areas in which food is prepared, served, or stored, or utensils are washed; handwashing areas; dressing or locker rooms, toilet rooms; and garbage and rubbish storage areas shall be well-lighted. During all clean-up activities, adequate light shall be provided in the area being cleaned and upon or around equipment being cleaned. (1994 Code, § 8-626)

**9-627. Ventilation.** All rooms in which food is prepared, serviced, stored; and utensils are washed; dressing or locker rooms; toilet rooms; and garbage and rubbish storage areas shall be well-ventilated. Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food preparation surfaces.

Filters, when used, shall be readily removable for cleaning or replacement. Ventilation system shall comply with applicable fire prevention requirements and shall when vented to the outside air discharge in such a manner as not to create a nuisance. (1994 Code, § 8-627)

**9-628. Maintenance of fixtures.** All counters, shelves, drawers, bins, tables, showcases, and other fixtures shall be kept clean and free from accumulations of dirt and shall be free from cracks in which dirt may accumulate. (1994 Code, § 8-628)

**9-629. Refrigerators, iceboxes, cold-storage rooms, and air conditioners.** Refrigerators, iceboxes, cold-storage rooms, and air-conditioning equipment shall be kept clean and free from foul and unpleasant odors, fungus growths, molds, and slime. Refrigerators and cold storage rooms shall be properly ventilated in accordance with section 8-627. Drips from walk-in refrigerators and air-conditioning equipment shall be connected to the sanitary sewerage system or a system approved by the health officer. Permanent type refrigerates walk-in boxes shall have a floor drain and such floor drain shall be connected to the sanitary sewerage system or a system approved by the health officer. (1994 Code, § 8-629)

**9-630. Utensils and equipment, generally.** (1) Utensils and equipment used in mixing, preparing, or manufacturing food shall be constructed of non-absorbent, non-poisonous material, free from rust, and must be cleaned after each time they are used, and after cleaning shall be protected from flies and dust.

(2) Knives, forks, spoons, plates, dishes, glasses, and other wares used in preparing, handling, or serving food shall be cleaned with hot water and soap after each usage, rinsed, and sanitized as provided in section 8-632.

The use of broken, cracked, or chipped glassware or china and broken or rusty utensils is forbidden and when found must be condemned.

(3) All kitchenware and food contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food storage utensils, shall be thoroughly cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once daily. All utensils and food-contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to such use. All non food contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.

(4) After cleaning, and until use, all food-contact surfaces of equipment and utensils shall be so stored and handled as to be protected from contamination.

(5) All single-service articles shall be stored, handled, and dispensed in a sanitary manner, and shall be used only once and then properly disposed.

(6) Food service establishments which do not have adequate and effective facilities for cleaning and sanitizing utensils shall use only single-service articles. (1994 Code, § 8-630)

**9-631. Sanitary design, construction, and installation of equipment and utensils.** All equipment and utensils shall be so designed and of such material and workmanship as to be smooth, easily cleanable, and durable, and shall be in good repair. The food-contact surfaces of such equipment and utensils shall, in addition, be easily accessible for cleaning, non-toxic, corrosion resistant, and relatively non-absorbent. When approved by the health officer, exception may be made to the above material requirements for equipment such as cutting boards, blocks, and baker's tables.

All equipment shall be so installed and maintained as to facilitate the cleaning thereof and of all adjacent areas.

Cutting blocks and boards and baker's tables may be of hard maple or equivalent material which is non-toxic, smooth, and free of cracks, crevices, and open seams. (1994 Code, § 8-631)

**9-632. Sanitizing dishes and utensils.** When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent solution which is kept reasonably clean and then shall be rinsed free of the solution. All eating and drinking utensils and, where required, the food-contact surfaces of all other equipment and utensils shall be sanitized by one of the following methods:

(1) Immersion for at least one-half ( $\frac{1}{2}$ ) minute in clean hot water at a temperature of at least 180 degrees F., (82.222 degrees C.)

(2) Immersion for a period of at least 1 minute in a sanitizing solution containing:

(a) At least 50 ppm of available chlorine at a temperature not less than 75 degrees F., (23.889 degrees C.), or

(b) At least 12.5 ppm of available iodine in a solution having a pH not higher than 5.0 and a temperature not less than 75 degrees F., (23.889 degrees C.), or

(c) Any other chemical-sanitizing agent which has been demonstrated to the satisfaction of the health officer to be effective and non-toxic under use conditions, and for which a suitable field test is available. Such sanitizing agents, in use solutions, shall provide the equivalent sanitizing effect of a solution containing at least 50 ppm of available chlorine at a temperature not less than 75 degrees F., (23.889 degrees C.)

(3) Equipment too large to treat by methods in subsections (1) and (2) may be treated:

(a) With live steam from a hose, in the case of equipment in which steam can be confined; or

(b) By rinsing with boiling water; or

(c) By spraying or swabbing with a chemical sanitizing solution of at least twice the minimum strength required for the particular

sanitizing solution when used for immersion sanitization. (1994 Code, § 8-632)

**9-633. Paper vessels and straws.** Paper vessels may be used in place of glassware in the serving of food, ices, beverages, or drinks, but paper vessels shall be used only once and then disposed of in an approved and sanitary manner. All paper vessels furnished to customers shall be kept in covered dust and fly-proof containers.

It shall be unlawful to serve, provide, or furnish straws, quills, or other similar devices through which beverages or other liquids may be drawn in connection with the sale or dispensing of such drinks, liquids, or beverages unless the straw, quill, or similar device was previously sanitized and contained in a sealed envelope or other outside covering to be broken or opened by the user only or by an approved dispensing device. (1994 Code, § 8-633)

**9-634. Stoves, ranges, and hoods.** Stoves, ranges, and hoods shall be kept clean and free from grease and odor. (1994 Code, § 8-634)

**9-635. Milk or food in bottles or containers.** Milk or food in bottles or containers shall not be submerged in water. (1994 Code, § 8-635)

**9-636. Wrapping foods.** The use of newspaper or any other unclean paper for the purpose of wrapping food is forbidden. (1994 Code, § 8-636)

**9-637. Common drinking cups.** The use of common drinking cups or other similar containers in the food establishment is forbidden. (1994 Code, § 8-637)

**9-638. Shelf or counter coverings.** The use of newspapers or any other unclean paper for coverings shelves or counters is forbidden. (1994 Code, § 8-638)

**9-639. Storage and disposal of garbage and rubbish.** All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leak-proof, non-absorbent, and approved containers which shall be covered with tight-fitting lids when filled or stored or not in continuous use. All other rubbish shall be stored in containers, rooms, or areas in an approved manner as required by this chapter. The rooms, enclosures, areas, and containers used shall be adequate for the storage of all food waste and rubbish accumulating on the premises. Adequate cleaning facilities shall be provided and each container, room, or area shall be thoroughly cleaned after the emptying or removal of garbage and rubbish. Food waste grinders, if used, shall be installed in compliance with state and local standards and shall be disposed of with sufficient frequency and in such a manner as to prevent a nuisance. Either

throwing, placing, or allowing garbage, trash, sweeping, or rubbish to accumulate upon the ground is forbidden. Can liners shall be used for wet garbage storage. (1994 Code, § 8-639)

**9-640. Birds and animals prohibited; exception.** No live birds or animals shall be allowed in any area used for the conduct of food service establishment operations except guide dogs accompanying blind patrons. (1994 Code, § 8-640)

**9-641. Separation of unrelated activities.** All food service establishments shall be physically separated by complete, tight-fitting, partitions from any other activity not related to food establishments or any other food service activity that may be deemed hazardous to that particular operation. (1994 Code, § 8-641)

**9-642. Sleeping quarters; accumulation of unnecessary articles.** No person shall be permitted to sleep on a regular and continuing basis in any food service establishment in the area where food is prepared, cooked, or served. Bedrooms or living rooms shall be separated by a complete tight-fitting partition, with no direct entry into a food service establishment. Wearing apparel, books, shoes, or any other personal effect, or any other unnecessary articles such as used automobile parts, grease, or gasoline shall not be kept or allowed to accumulate in any kitchen or room where foodstuffs are kept and handled. (1994 Code, § 8-642)

**9-643. Toilet facilities.** With the exception of packaged goods stores, as hereinafter set forth, each food service establishment shall be provided with adequate, conveniently located toilet facilities for its employees and patrons. Toilet facilities shall be conveniently located and shall be accessible to the employees and patrons at all times. Vestibules shall be provided as designated by the health department and shall be kept in a clean condition and in good repair. No food products or articles used in the preparation or serving of food shall be stored in a vestibule or toilet room. Toilets and vestibules shall be lighted and ventilated in an approved manner. Toilet fixtures shall be of sanitary design and readily cleanable. Toilet facilities, including rooms and fixtures, shall be kept in clean condition and in good repair. The doors of all toilet rooms shall be self-closing. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in toilet rooms for women shall be covered. In new construction, all toilets shall have floor drains connected to an approved sewerage system. Toilet doors or stall doors shall not be locked or have coin-operated devices except as approved by the health department.

Packaged good stores shall provide a minimum of one (1) commode and one (1) handwash lavatory which shall meet the foregoing requirements. (1994 Code, § 8-643)

**9-644. Handwashing facilities.** Each food service establishment shall be provided with adequate, conveniently located handwashing facilities for its employees and patrons. Lavatories shall be equipped with hot and cold or tempered running water, hand-cleansing and single-use soap or detergent, and approved sanitary single-use towels or other approved hand-drying devices. These facilities shall be kept clean and in good repair. Lavatories shall be adequate in size and number and shall be so located as to permit convenient and expeditious use by all employees and patrons. One or more lavatories shall be required in each food preparation area. (1994 Code, § 8-644)

**9-645. Basements.** Basements shall be kept clean, free from accumulations of rubbish, free from moisture and unpleasant odors, and shall be well lighted and ventilated. If mechanical lighting and ventilation are required, they shall be installed. (1994 Code, § 8-645)

**9-646. Dressing rooms and lockers.** Adequate facilities shall be provided for the orderly storage of employee's clothing and personal belongings. Where employees routinely change clothes within the establishment, one or more dressing rooms or designated areas shall be provided for this purpose. The designated areas shall be located outside the food preparation, storage, and serving areas, and the utensil washing and storage areas. When approved by the health officer, the area may be located in a storage room where only completely packaged food is stored. Designated areas shall be equipped with adequate lockers, and lockers or other suitable facilities shall be provided in dressing rooms. Dressing rooms and lockers shall be kept clean. (1994 Code, § 8-646)

**9-647. Storage of soiled linens, coats, and aprons.** Soiled linens, coats, and aprons shall be kept in containers until removed for laundering. (1994 Code, § 8-647)

**9-648. Display, storage, and service of food.** All foodstuffs which are displayed or stored shall be fully protected from flies, dust, dirt, and insects by glass cases or other modern methods approved by the health department.

Where unwrapped food is placed on display in all types of food service operations, including smorgasbords, buffets, and cafeterias, it shall be protected against contamination from customers and other sources by effective, easily cleanable, counter-protector devices, cabinets, display cases, containers, or other similar types of protective equipment. Self-service openings in counter guards

shall be so designed and arranged as to protect food from manual contact by customers.

Tongs, forks, spoons, picks, spatulas, scoops, and other suitable utensils shall be provided and shall be used by employees to reduce manual contact to a minimum. For self-service by customers, similar implements shall be provided.

Dispensing scoops, spoons, and dippers used in serving frozen desserts shall be stored between uses in an approved type running-water dipper well.

Sugar shall be provided only in closed dispensers or in individual packages.

Individual portions of food, once served to a customer, shall not be served again, but wrapped food, other than potentially hazardous food, which is still wholesome and has not been unwrapped, may be reserved. (1994 Code, § 8-648)

**9-649. Storage of potentially hazardous food.** Potentially hazardous food shall be kept at 45 degrees F. (7.222 degrees C.), or less, or 140 degrees F. (60.000 degrees C.), or more. All potentially hazardous foods stored at 140 degrees F. (60.000 degrees C.) or more shall be in equipment which is thermostatically controlled, and potentially hazardous foods shall not be transferred from hot storage to refrigeration more than one time. Eggs shall be kept at a temperature which is not conducive to spoilage. (1994 Code, § 8-649)

**9-650. Coffee creamer and refrigerated cream dispensers.** Individual coffee creamers with approved tops or lids and/or automatic or manually operated refrigerated cream dispensers dispensing portioned servings and operated only by food service personnel shall be utilized in food service establishments. (1994 Code, § 8-650)

**9-651. Presetting of tables.** The presetting of tables with china, silver, glassware, etc., is forbidden except when a reasonable time between the setting of the table or tables and the serving of food and drink is maintained. Tables shall not be set in an open-air dining room until the customer has been seated. (1994 Code, § 8-651)

**9-652. Transportation of food.** All perishable food products requiring refrigeration, including meat products, eggs, bakery items, etc., shall be transported in refrigerated vehicles from the point of origin and/or processing plant to the food service establishment from which the food products are sold or offered for sale.

The requirements for storage, display, and general protection against contamination, as contained in this code, shall apply in the transporting of food from a food service establishment to another location for service or catering operations, and all potentially hazardous food shall be kept at 45 degrees F. (7.222 degrees C.), or below or 140 degrees F (60.000 degrees C.), or above,

during transportation. During the transportation of food from a food service establishment, all food shall be in covered dust-proof containers or completely wrapped or packaged so as to be protected from contamination. (1994 Code, § 8-652)

**9-653. Use and storage of poisonous and toxic materials.** Only such poisonous and toxic materials as are required to maintain sanitary conditions may be used or stored in a food service establishment. All containers of poisonous and toxic materials shall be prominently and distinctively marked or labeled for easy identification as to contents. When not in use, poisonous and toxic compounds shall be stored in cabinets which are used for no other purpose, or in a place which is outside the food storage, food preparation, food service, and cleaned-equipment and utensil storage areas. Poisonous materials shall not be used in any way as to contaminate food, equipment, or utensils, nor to constitute other hazards to employees or patrons. (1994 Code, § 8-653)

**9-654. Lounges and bars.** In lounges and bars, a three (3) compartment sink or greater, shall be provided for washing, rinsing, and sanitizing glasses and other bar utensils in the bar area. A lavatory shall be installed in the bar area for bar personnel. A floor drain shall be installed and connected to the approved sewerage system. (1994 Code, § 8-654)

**9-655. Grocery stores.** A sink with a minimum of three (3) compartments and a lavatory shall be installed in the meat processing room of all grocery stores. There shall be no processing or mixing of food in a meat processing or cutting area which does not require cooking before consuming, such as salads, sandwiches, bakery items, slaws, etc. An additional sink with a minimum of two (2) compartments shall be installed in the vegetable preparation area of all grocery stores. Adequate and conveniently located floor drains shall be installed in such stores and a lavatory shall be installed in the bakery department if other than wrapped bakery items are displayed and sold. A service-mop sink shall be provided for clean-up purposes. If a delicatessen is located within a grocery store, its operation shall conform to the requirements of a restaurant.

If a grocery store processes, packages, dispenses, or sells food products other than regular grocery items, such as ice, drinks, sandwiches, dipped ice cream, or similar items, the proper facilities shall be provided for cleaning equipment and production of the food as required by this chapter. (1994 Code, § 8-655)

**9-656. Candy counters.** A lavatory shall be installed in the candy counter area of a food establishment if other than pre-packaged candy is displayed and sold. (1994 Code, § 8-656)

**9-657. Food processing plant.** A food processing plant shall meet all of the applicable requirements of this chapter and shall also meet the following special requirements:

(1) A food processing plant and all of the activities thereof shall be separate from a restaurant or other retail establishment.

(2) All necessary equipment and facilities for the manufacture, cooking, mixing, preparation, and packaging of processed foods shall be provided and utilized so as to protect the food from contamination and to produce a food product which meets the physical and bacteriological standards set by the health officer.

(3) Packages shall be of a design and material so as to protect the contents from contamination.

(4) Processed food shall be labeled so as to inform the consumer of the contents, manufacturer's name and address, and in the case of highly perishable foods, the date of manufacture. (1994 Code, § 8-657)

**9-658. Caterers generally.** A food caterer shall meet all of the applicable requirements of this chapter and shall also meet the following special requirements:

(1) Food distributed or served by a caterer shall be prepared in a food processing plant, but a caterer's permit may be issued to a restaurant which has adequate facilities and in which the catering activities will not interfere with the normal operation of the restaurant.

(2) Caterers' permits shall be restricted to a maximum number of servings and/or volume of food.

(3) Vehicles used for transportation of food shall be checked by the health officer to see if they are suitable before they are used. Vehicles must be labeled on both sides with the name and address of the owner.

(4) Food shall be transported in containers which have been approved by the health officer and which will keep the food 140 degrees F. (60.000 C.), or above, or 45 degrees F. (7.222 degrees C.), or below.

(5) If handwashing facilities are not available at the place where the food is to be served, the caterer shall provide these facilities for his employees as directed by the health officer.

(6) The caterer shall dispense food to consumers only in a place where the food can be protected from contamination. (1994 Code, § 8-658)

**9-659. Industrial caterers.** Industrial caterers shall meet all the applicable requirements of this chapter and shall also meet the following special requirements:

(1) Bulk food shall be dispensed only from a building where toilets and handwashing facilities and any additional facilities deemed necessary by the health officer are available.

(2) Food shall be dispensed only from premises which have been checked and found suitable by the health officer in accordance with standards set in this chapter.

(3) Perishable food shall be transported, stored, and served only in containers and equipment which is designed and thermostatically controlled to keep the food 140 degrees F. (60.000 degrees C.), or above, or 45 degrees F. (7.222 C.), or below.

(4) An industrial caterer shall dispense only food which has been processed at a food processing plant.

(5) Industrial catering trucks shall be trucks which were designed for food catering and also meet the National Sanitation Foundation (NSF) standards.

(6) Industrial catering trucks shall be based at or operated from a premise in an area other than residential where storage facilities are available for food producers and where cleaning facilities are available.

(7) Industrial catering stands shall be operated and supplied by food processors or industrial caterers.

(8) Toilet facilities provided by the shopping center or the pedestrian mall and made accessible to the operator and public shall be deemed in compliance with section 8-643.

(9) No patrons of the industrial catering stand shall be permitted to come within the confines of the stand.

(10) Handwashing facilities shall be provided for the operator of the stand within the confines of the stand. (1994 Code, § 8-659)

**9-660. Salvage foods establishment.** A salvage foods establishment shall meet all of the applicable requirements of this chapter and shall meet the following special requirements:

(1) No person shall engage in the sale, warehousing, or storage of any salvage foods and/or salvage food products without a permit from the health department.

(2) A lavatory with hot and cold or tempered running water, individually portioned soap, and individual single-use towels shall be installed in the salvage operation area.

(3) Toilet facilities shall be installed for the employees and, if a retail establishment, for the patrons.

(4) A salvage food establishment, be it retail or wholesale, shall install a sink with a minimum of three (3) compartments, with hot and cold or tempered running water in the salvage operation area. The sink shall be used for the proper washing, rinsing, and sanitization of applicable salvage food products. Articles which cannot be submerged in water shall be cleaned and sanitized as directed by the health officer.

(5) All vehicles used in the transportation of salvage goods shall be kept clean and free from rodents, insects, accumulations of dirt, spillage, etc.

(6) All salvage goods sold or offered for sale shall be properly labeled. Government surplus commodities in the original containers which are labeled on the outside of the case are acceptable.

(7) All salvage foods such as flour, sugar, meal, or any other food or food product which has burst, torn, spilled, or been damaged in any way and swellers and leakers shall not be re-sacked, re-filled, or sold or offered for sale for human consumption. These salvaged food products shall be stamped or labeled "NOT FOR HUMAN CONSUMPTION."

(8) Salvage operations shall be performed in buildings and structures and with facilities, equipment, and procedures which meet the requirements of this chapter and/or as directed by the health officer. The food salvager shall be responsible for compliance with this chapter.

(9) Items which cannot be salvaged must be denatured and disposed of in a manner approved by the health officer.

(10) No merchandise will be moved intrastate without prior approval of the health officer. No interstate movement of goods will be made without the prior approval of the health officer and the Food and Drug Administration's Food and Drug Control Agency in the state receiving the merchandise.

(11) The permit holder will immediately notify the health officer of any salvage operation which is anticipated within Arlington. Notification will be made prior to the beginning of any salvage operation. (1994 Code, § 8-660)

**9-661. Hucksters.** A huckster shall meet all of the applicable requirements of this chapter and shall also meet the following special requirements:

(1) No person shall engage in the business as a huckster without first having obtained a permit from the health department and having paid the appropriate fee as required in §§ 9-603 and 9-605.

(2) A written application must be made at the health department, in person, by the person requesting the permit, as required in § 9-604.

(3) Huckster permits shall be issued for fruits, vegetables, melons, berries, chestnuts, and packages nuts only, and no other types of food shall be sold from the huckster's vehicles.

(4) A huckster's permit may be suspended or revoked for violating the applicable provisions of this chapter as required in § 9-607.

(5) A huckster's vehicle shall be identified on both sides by the name and address of the person holding the permit and by the health department permit number. Letters shall be at least two (2) inches high and shall be legible.

(6) A huckster's vehicle shall be kept in motion except when making sales, and its movement shall be timed and executed so as to cause a minimum interference with traffic.

(7) When not in use, a huckster's vehicle which contains fruits, vegetables, melons, chestnuts, packaged nuts, and berries shall be stored in

such a place and condition as to prevent contamination of food from dust, flies, insects, rodents, animals, and other pests.

(8) Huckster vehicles must carry waste containers and this waste must be properly disposed of as required by the health officer.

(9) Fruits, including cantaloupes and watermelons, shall be sold whole and shall not be cut or sliced while in the possession of the huckster.

(10) The business of huckstering is prohibited between sundown and sunrise.

(11) Not more than two (2) person shall operate or sell from a huckster's vehicle.

(12) Every huckster shall, at all times, while engaged in his business, carry with him the permit required by this chapter. (1994 Code, § 8-661)

**9-662. Pedestrian vendors.** Pedestrian vendors shall meet all the applicable requirements of this chapter and shall also meet the following special requirements. The health officer shall adopt written rules and regulations for pedestrian vendors for the purpose of interpretation of this chapter, as required by § 9-616:

(1) The owner, agent, manager, park superintendent, director of a mall, shopping center, or other appropriate responsible person shall pay the fee required in § 9-603.

(2) All food to be served and sold by a pedestrian vendor shall be processed under the proper and sanitary facilities as required by the health officer.

(3) All pedestrian vendors shall have a commercially zoned and based establishment where the food is prepared and/or stored when the vehicle is not in use and cleaning facilities are available.

(4) Pedestrian vendors shall have facilities where all perishable foods can be kept 45 degrees F. (7.222 degrees C.), or below, and 140 degrees F. (60.000 degrees C.), or above, in a controlled container.

(5) Mobile units shall be especially designed for food distribution and shall be made from material that can be kept clean and well-maintained.

(6) Operators shall periodically wash their hands and keep their hands clean.

(7) Operators shall wear clean outer garments at all times.

(8) Toilet facilities provided by the mall or shopping center, and made accessible to the public shall be deemed in compliance with § 9-643. (1994 Code, § 8-662)

**9-663. Farmer's market.** A farmer's market shall meet all of the applicable requirements of this chapter and shall also meet the following special requirements:

(1) The agent, manager, or director of the sponsoring organization of a farmer's market shall secure a farmer's market permit from the Memphis and

Shelby County Health Department and shall pay the appropriate fee as required by § 9-603.

This permit shall cover all sellers operating within the market, and the agent, manager, or director thereof shall be held directly responsible for the operation of each seller.

(2) A written application must be made at the health department, in person by the person requesting the permit.

(3) A farmer's market permit shall be issued only for fruits, vegetables, melons, berries, or nuts, and no other types of food may be sold.

(4) A farmer's market permit may be suspended or revoked for violating the applicable provisions of this chapter as required by § 9-607.

(5) Fruits, including cantaloupe and watermelon, shall be sold whole and shall not be cut or sliced while on the premises of the market or within the possession of the seller.

(6) Toilet facilities shall be provided by the sponsoring organization, made available to the public and shall be deemed in compliance with § 9-643.

(7) A separate permit must be obtained for each farmer's market site; this permit shall not be transferable from site to site.

(8) The farmer's market must be completely contained on a paved surface. (1994 Code, § 8-663)

**9-664. Mobile frozen desserts vendors.** No person shall sell, offer for sale, or give away any frozen desserts on Arlington Streets or roads, vacant lots, or premises unless all the provisions of this chapter and the rules and regulations of the health officer are met. A mobile frozen desserts vendor may sell novelties which have been manufactured and packaged at an approved frozen desserts plant.

A mobile frozen desserts vendor's permit shall not be issued to a person unless the following conditions are met:

(1) Vending vehicle must be specially designed as a vending vehicle and be approved by the health officer. An automobile or passenger conveyance vehicle shall not be used to transport or dispense frozen desserts.

(2) Vending vehicles must be constructed so as to be easily cleaned and shall be kept clean.

(3) Vending vehicles must be constructed so as to protect the frozen desserts from contamination.

(4) Vending vehicles shall have a separate compartment for the storage of boxes, paper, and other waste material that may accumulate.

(5) Vending vehicles shall be labeled with the name and address of the distributor on both sides of the vehicle in size and shape of letters as designated by the health officer.

(6) Only frozen desserts novelties shall be sold, offered, for sale, or given away in a mobile frozen desserts vendor's vehicle.

(7) Vehicles shall be loaded and operated only from an establishment which is properly zoned and meets the requirements of the codes of the Town of Arlington.

(8) Vehicles shall be parked only a location which coincides with the zoning laws of Arlington. (1994 Code, § 8-664)