

**TITLE 5****MUNICIPAL FINANCE AND TAXATION<sup>1</sup>****CHAPTER**

1. MISCELLANEOUS.
2. PURCHASING PROCEDURES.
3. PRIVILEGE AND BUSINESS TAX.
4. PROPERTY TAX COLLECTION.
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**CHAPTER 1****MISCELLANEOUS****SECTION**

- 5-101. Official depository for city funds.  
5-102. Fiscal year of the city.

**5-101. Official depository for city funds.** First People's Bank is hereby designated as the official depository for funds of the City of Baneberry, Tennessee.<sup>2</sup> (1999 Code, § 5-101, modified)

**5-102. Fiscal year of the city.** The fiscal year of the city is hereby fixed and determined to commence on the first day of July of each year.<sup>3</sup> (1999 Code, § 5-102)

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<sup>1</sup>Charter reference

Finance and taxation: title 6, chapter 22.

<sup>2</sup>Charter reference

*Tennessee Code Annotated*, § 6-22-120 prescribes depositories for city funds.

<sup>3</sup>Charter reference

*Tennessee Code Annotated*, § 6-22-121 provides that the fiscal year of the city shall begin on July 1 unless otherwise provided by ordinance.

## CHAPTER 2

### PURCHASING PROCEDURES

#### SECTION

- 5-201. Purchasing agent.
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**5-201. Purchasing agent.** The city manager, or an officer of the city designated by the city manager, shall be the purchasing agent for the city.

Except as otherwise provided in this policy, all supplies, materials, equipment and services of any nature whatsoever shall be approved and acquired by the purchasing agent or his representative.

The purchasing agent shall be responsible for:

(1) The purchase of supplies, materials and equipment and contractual services required by any commission, office, department or agency of the city.

(2) The storage and distribution of all supplies, materials and equipment required by any commission, office, department or agency of the city.

(3) Establishing written specifications, whenever practicable, for supplies, materials and equipment required by any commission, office, department or agency of the city. Such specifications shall be definite and certain and shall permit competition.

(4) Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies or equipment stored in store rooms or warehouses.

(5) Soliciting and maintaining an up-to-date list of qualified suppliers who have requested their names to be added to a "bidders list." The purchasing agent shall have authority to temporarily remove the names of vendors who have defaulted on their quotations, attempted to defraud the city, or who have failed to meet established specifications or delivery dates.

(6) Obtaining as full and open competition as possible on all purchases, contracts and sales. (Ord. #216-2, March 2016)

**5-202. General procedures.** Competitive bids on all supplies, materials, equipment, services and contracts for public improvements, except those specified elsewhere in this policy, shall be obtained, whenever practicable, and the purchase or contract awarded to the lowest responsible bidder, provided that any or all bids may be rejected as prescribed by this policy. (Ord. #216-2, March 2016)

**5-203. Rejection of bids.** The purchasing agent shall have the authority to reject any and all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby. The purchasing agent shall not accept the bid of a vendor or contractor who is in default on the payment of taxes, licenses, fees, or other monies of whatever nature that may be due the city by said vendor or contractor. (Ord. #216-2, March 2016)

**5-204. Conflict of interest.** All officials, officers, employees and/or volunteers who participate in any phase of the purchasing function are to be free of interests or relationships which are actually or potentially detrimental or conflictual to the best interests of the city, and shall not engage in or participate in any commercial transaction involving the city, in which they have a significant interest.

No member of the city council, officer, employee or volunteer of the city shall have a financial interest in any contract or in the sale to the city or to a contractor supplying the city of any land or rights or interests in any land, material, supplies, equipment, or services; except when a majority of the city council determines such exception is in the best interest of the city; provided, that no council member whose interest is involved shall vote on the question. Any willful violation of this section shall constitute malfeasance in office, and any officer, employee or volunteer of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, expressed or implied, of the person or corporation contracting with the city shall render the contract voidable by the city manager or the city council. (Ord. #216-2, March 2016)

**5-205. Purchasing from employee.** It shall be the policy of the city to not purchase any goods or service from any city official, employee, volunteer, or a close relative of any official, employee or volunteer without prior unanimous approval of the city council. (Ord. #216-2, March 2016)

**5-206. Sealed bid requirements - \$10,000.00 or greater.** On all purchases and contracts estimated to be in excess of ten thousand dollars (\$10,000.00), except as otherwise provided for in this policy, formal sealed bids shall be required to be submitted at a specified time and place to the purchasing agent. The purchasing agent shall submit the bids for award by the city council at the next regularly scheduled council meeting or at a specially-called council meeting together with the recommendation as to the lowest responsible bidder. No contract or purchase shall be subdivided to avoid the requirements of this section.

Prior to advertising an invitation to bid, the city manager shall verify applicable account balances for all purchases over ten thousand dollars (\$10,000.00).

A notice inviting bids shall be published once in a newspaper of general circulation in Jefferson County at least five (5) days before the last day of the bids. The newspaper notice shall contain a general description of the article(s) to be purchased or services to be contracted; list the final bid due date and time; state where the written specifications may be obtained; and list the time and place where city council will open the bids.

In addition to publication in a newspaper, the purchasing agent may take other actions deemed appropriate to notify all prospective bidders of the invitation to bid. This may be accomplished verbally, or by direct delivery, parcel deliver, U.S. mail, e-mail, and/or by posting notice in a public place. (Ord. #216-2, March 2016)

**5-207. Sealed bid procedures.** Procedure for sealed bids shall be as follows:

(1) Sealing. Bids shall be submitted to the purchasing agent, prior to the date and time deadline, securely sealed in an envelope, and shall be identified on the envelope in accordance with bid instructions.

(2) Opening. Bids shall be opened in public at the time and place stated in the public notices.

(3) Tabulation. A tabulation of all bids received shall be available for public inspection.

A written record shall be required for all sealed-bid purchases and available for inspection showing how and when sealed bids were obtained, when opened, who received award, and the basis of the award (selection decision). (Ord. #216-2, March 2016)

**5-208. Competitive bidding - \$4,000.00 - \$10,000.00.** All purchases of supplies, equipment, services and contracts estimated to be in excess of four thousand dollars (\$4,000.00) but less than ten thousand dollars (\$10,000.00), shall be by competitive bidding and may be awarded to the lowest responsible bidder. Before any purchases or contracts exceeding four thousand dollars (\$4,000.00) are made, the purchasing agent shall give ample time for competitive bidding. A written record shall be required and available for inspection showing that competitive bids were obtained by direct mail, telephone bids, or public notice; who received award; and the basis of the award (selection decision). Such bids shall be received by the purchasing agent who shall award the bid to the lowest responsible bidder. No contract or purchase shall be subdivided to avoid the requirements of this section.

Prior to a purchase or contract obligation, the city manager shall verify account balances for all purchases over one thousand dollars (\$1,000.00) and less than ten thousand dollars (\$10,000.00). (Ord. #216-2, March 2016)

**5-209. Purchases and contracts less than \$4,000.00.** The purchasing agent is expected to obtain the best prices and services available for purchases and contracts that are less than four thousand dollars (\$4,000.00), but is exempted from the formal bid requirements mentioned in the two (2) previous sections. (Ord. #216-2, March 2016)

**5-210. Bid deposit.** When deemed necessary, bid deposits may be prescribed and noted in the public notices inviting bids. The purchasing agent shall determine an appropriate deposit amount that will ensure that the winning bidder will undertake the contract under the terms at which they bid. Unsuccessful bidders shall be entitled to return of the deposits where such has been required. A successful bidder shall forfeit any required deposit upon failure on his part to enter into a contract with the city within ten (10) days after the award. (Ord. #216-2, March 2016)

**5-211. Performance and payment bonds.** The purchasing agent shall have the authority to require a performance bond, before entering into a contract, in such form and amount as he shall find reasonably necessary to protect the best interests of the city in accordance with the penalties provided by *Tennessee Code Annotated*. The purchasing agent may also require a payment bond and a labor and material bond, before entering into a contract, in such form and amount as he or she shall deem necessary to protect the best interest of the city. (Ord. #216-2, March 2016)

**5-212. Record of bids.** The purchasing agent shall keep a record of all open market orders and the bids submitted in competition thereon, including a list of the bidders; the amount bid by each; and the method of solicitation and bidding, and such records shall be open to public inspection and maintained in the city manager's office.

The bid file shall contain the following information:

- (1) Request to start bid procedures.
- (2) A copy of the advertisement.
- (3) A copy of the specifications.
- (4) A list of bidders and their responses.
- (5) A copy of the purchase order.
- (6) A copy of the invoice. (Ord. #216-2, March 2016)

**5-213. Considerations in determining bid award.** (1) The ability, capacity and skill of the bidder to perform the contract or provide the material or service required.

- (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgement, experience, and efficiency of the bidder.
- (4) The previous and existing compliance, by the bidder, with laws and ordinances relating to the contract or service.
- (5) The quality of performance of previous contracts or services.
- (6) The sufficiency of the financial resources and ability of bidder to perform the contract or provide the service.
- (7) The ability of the bidder to provide future maintenance and service for the use of supplies or services contracted.
- (8) Terms and conditions stated in the bid.
- (9) Compliance with specifications.
- (10) Total cost of the bid including expected life, maintenance costs, and performance. (Ord. #216-2, March 2016)

**5-214. Statement when award not given to low bidder.** When the award for purchases and contracts in excess of four thousand dollars (\$4,000.00) is not given to the lowest bidder, a full and complete statement of the reasons

for placing the order elsewhere, shall be prepared by the purchasing agent or department head and filed with all the other papers relating to the transaction. (Ord. #216-2, March 2016)

**5-215. Award in case of tie bids.** (1) If all bids received are for the same amount, quality service being equal, the purchase contract shall be awarded to a local bidder.

(2) Where a local vendor has not bid or where his bid is not the lowest tie bid, the purchasing agent shall award the purchase or contract to one (1) of the bidders by drawing lots in public. (Ord. #216-2, March 2016)

**5-216. Back orders.** All orders must be completed, whether through complete fulfillment of the purchase order or through closing the purchase order with items not received. The non-delivered items will be cancelled from the purchase order and a check will be issued to the equal amount of the purchase order. (Ord. #216-2, March 2016)

**5-217. Emergency purchases.** When, in the judgement of the purchasing agent, an emergency exists, the purchasing provisions of this policy may be waived; provided, however, that the purchasing agent shall report the "emergency" purchases/contracts to the city council at the next regular council meeting stating the item; the amount paid; from whom the purchase was made; and the nature of the emergency. Poor planning and management do not constitute an emergency. (Ord. #216-2, March 2016)

**5-218. Waiver of competitive bidding.** Upon recommendation of the city manager, that it is clearly to the advantage of the city, to not purchase or contract by competitive bidding, the requirements of competitive bidding may be waived under the following circumstances.

(1) **Single source of supply.** The availability of only one (1) vendor of a required product or service within a reasonable distance of the city as determined after a documented, thorough search by the using department or the purchasing department. A written, "sole-sourcing" statement must be filed verifying the reality of a single-source supplier.

(2) **State department of general services.** Purchases that are made through or in conjunction with the state department of general services (state contracts). Municipalities may take advantage of these so-called "state prices" regardless of any charter or general law requirements.<sup>1</sup> These bids may be viewed on the file received from the state.

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<sup>1</sup>State law reference

*Tennessee Code Annotated*, § 12-3-1001.

(3) Purchases from other governments. Any municipality may purchase from any federal, state or local government unit or agency, second-hand articles of equipment or other materials, supplies, or commodities. The purchasing agent, all department heads, and city staff will be authorized to sign for these purchases. These purchases may be made without competitive bidding and public advertising regardless of charter requirements.<sup>1</sup>

(4) Purchases from non-profit corporations. Any purchase from any non-profit corporation whose sole purpose is to provide goods and services specifically to municipalities, such as local government data processing.<sup>2</sup>

(5) Purchases from Tennessee state industries.

(6) Purchases from instrumentalities created by two (2) or more co-operating governments.<sup>3</sup>

(7) Certain insurance. Municipalities may purchase tort liability insurance, without competitive bidding from the Tennessee Municipal League (TML), or any other plan authorized and approved by any organization of government entities representing cities and counties.<sup>4</sup>

(8) Investments in or purchases from the pooled investment fund established, *Tennessee Code Annotated*, § 9-17-105.

(9) Purchases of fuels, fuel products, or perishable commodities.

(10) Professional service contracts. Any services of a professional person or firm, including attorneys, accountants, physicians, architects, and consultants required by the city, whose fee is one thousand dollars (\$1,000.00) or more, shall be evidenced by written contract. The contract will be awarded on the basis of recognized competence and integrity, rather than on competitive bids. Competitive bidding shall be prohibited for such services.<sup>5</sup>

(11) City council approval. In those cases where city council indicates, by formal unanimous resolution of those present at the meeting, based on the recommendation of the city manager, that it is clearly to the advantage

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<sup>1</sup>State law reference  
*Tennessee Code Annotated*, § 12-2-1003.

<sup>2</sup>State law reference  
*Tennessee Code Annotated*, § 6-56-302.

<sup>3</sup>State law reference  
*Tennessee Code Annotated*, § 12-9-101.

<sup>4</sup>State law reference  
*Tennessee Code Annotated*, § 29-20-407.

<sup>5</sup>State law reference  
*Tennessee Code Annotated*, § 29-20-407.



of the city not to contract with competitive bidding, noncompetitive purchasing/contracting may be authorized. (Ord. #216-2, March 2016)

**5-219. Property control.** A physical inventory of the city's fixed assets must be taken annually.

A system of fixed asset records provides a simple method of positive identification for each piece of equipment and:

- (1) Prevents the purchase of unneeded and duplicate assets;
- (2) Provides a basis for insurance claims;
- (3) Reduces theft and negligence of equipment;
- (4) Establishes replacement schedules for equipment; and
- (5) Records transfers and/or disposals of surplus property to be classified as a fixed asset, an item must:

- (a) Be tangible;
- (b) Have a life longer than the current year, and
- (c) Have a value over one hundred dollars (\$100.00).

Any property and equipment that meets these criteria must have an asset number (affixed with a property sticker), a property card, and be inventoried annually. Such records shall be controlled and maintained by the city manager. (Ord. #216-2, March 2016)

**5-220. Disposal of surplus property.** The purchasing agent shall be in charge of the transfer, disposal and disposition of surplus property, equipment and materials and shall make a full report to the city council after items are disposed of.

"Surplus property" as used herein to generically describe any city property, equipment, supplies, or material that is no longer needed or usable by the holding department.

When a department head determines there is surplus property within the department, he will notify the city manager in writing of any such equipment. The purchasing agent may transfer surplus property from one (1) department to another. (Ord. #216-2, March 2016)

**5-221. Unsuitable for public use, sale or exchange.** The purchasing agent with the approval of the city manager shall have the authority to sell all supplies which have become unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies. Such sales shall be made to the highest bidder. All monies received from such sales shall be paid into the appropriate fund of the city. (Ord. #216-2, March 2016)

**5-222. Items estimated to have monetary value.** When disposing of items estimated to have monetary value, the purchasing agent shall adhere to the following procedures:

(1) Obtain a resolution from city council, declaring said item(s) as surplus property and fixing the date, time, and place for the purchasing agent to receive bids.

(2) A copy of the resolution shall be posted in three (3) locations in the city.

(3) The purchasing agent may advertise the surplus items being dispositioned using the most cost-effective advertising media that will be advantageous to the city.

(4) Such equipment or materials shall be sold to the highest bidder. In the event the highest bidder is unable to pay within twenty-four (24) hours, the item shall be awarded to the second highest bidder.

(5) All pertinent dispositioning information will be noted in the fixed asset records of the city as to the disposal of the items.

(6) The advertisement, bids, and property cards shall be retained for a minimum period of five (5) years. (Ord. #216-2, March 2016)

**5-223. Surplus property painted with city colors or with city emblems.** No surplus city property painted with city colors and/or with a city emblem shall be disposed of unless it is repainted with colors other than those of the city and/or the emblem(s) removed. (Ord. #216-2, March 2016)

**5-224. Recycling.** Surplus property deemed to have no further utility within the city; of no practical value to other authorized agencies; and no practical resale or trade-in value, shall be recycled to the fullest extent possible. (Ord. #216-2, March 2016)

**5-225. Items consumed in the course of work or thought to be worthless.** City property which may be consumed in the course of normal city business and items thought to be worthless shall be disposed of in a like manner as any other refuse. These items shall be charged off as a routine cost of doing business. (Ord. #216-2, March 2016)

**5-226. Employees participating in the disposal of surplus property.** No city official, officer, employee, volunteer, their relatives, or representatives acting on the behalf of these same city officials, officers, employees, volunteers, or their relatives are permitted to purchase non-competitively or otherwise receive for ownership purposes, property of the city-surplus or otherwise.

City officials, officers, employees, volunteers, and their relatives or representatives are authorized to participate in any public sale of surplus property. (Ord. #216-2, March 2016)

**5-227. Surplus property. (1) Purpose:**

(a) To set forth the City of Baneberry's administrative policy for the transfer and disposition of surplus property, equipment and materials.

(b) To set forth the City of Baneberry's administrative policy for scrapping and recycling of scrap and recyclable surplus property, equipment and materials and disposing of same.

(c) To ensure the receipt of all revenues from the disposal of surplus property, equipment and materials and scrap or recyclables.

(d) To explain disciplinary consequences which may result should an elected official, employee or volunteer violate the policy and procedures set forth below.

**(2) Definitions:**

(a) The term "surplus property" is used generically herein to describe any city property, equipment or material that is no longer needed or usable by the holding department. For purposes of this policy, all surplus property including scrap, recyclables, trash, and/or junk disposed, discarded or abandoned on city premises, including all surplus property placed in storage or collection containers of any kind, including containers or facilities located on premises leased from the city by city tenants, is hereby deemed to be city property and not property of any city official, officer, employee or volunteer.

(b) The terms "scrapping" and "recycling" as used herein refer to the act of transferring discarded surplus property, including scrap or recyclables, to a vendor for use, salvage or resale.

(c) The terms "scrap" or "recyclables" as used herein refer to surplus property that:

(i) May be reused "as is" or after repair; or

(ii) May be salvaged for its mineral value after treatment or processing.

(d) The term "trash" or "junk" as used herein refers to surplus property which has no practical salvage or recyclable value.

This policy is designed to address two (2) categories of scrapping and recycling:

(i) Management-directed scrapping, recycling and handling of trash or junk, i.e., authorized disposal.

(ii) Personal scrapping, recycling or handling of trash or junk, i.e., unauthorized disposal.

(e) Employee's personal property. For purposes of this policy an employee's personal property is:

(i) That property in the possession of an employee which was the property of the employee prior to it having been brought onto or placed upon city premises; or

(ii) That property lawfully acquired from its prior owner or his/her authorized representative by an off-duty employee while on city premises after having been brought to city premises by its owner where such property remains in the possession of the employee as his or her property, after transfer to said employee. Each employee is responsible for determining that any property which he or she may take possession of or acquire while on city premises has been obtained or acquired from an individual lawfully authorized by its owner to make the transfer to the employee.

This definition of "personal property" applies to all elected officials, officers, employees and volunteers. (Ord. #216-2, March 2016)

**5-228. Methods of transfer and disposition.** All surplus property is disposed of "as is" and "where is," with no warranty, guarantee, or representation of any kind, expressed or implied, as to the condition, utility or usability of the property offered unless expressly authorized by the city council.

(1) Transfer to another department. Surplus property may be transferred between city departments.

(2) Trade-in. Property declared as surplus may be offered as a trade-in for credit toward the acquisition of new property.

(3) Return to manufacturer. Surplus property may, when possible, be returned to the manufacturer for buy-back credit.

(4) Disposal. Surplus property may be offered for sale by the city. Appropriate methods of sale are as follows:

(a) Auction. Surplus property may be sold at public auction. Auctions may be conducted by city staff, or the city may contract with a professional auctioneer or electronic auction site.

(b) Sealed bids. Sealed bids may be solicited for the sale of surplus property. Surplus property disposed of in this manner shall be sold to the highest responsible bidder.

(c) Selling for scrap. Surplus property may be sold as scrap if the city deems that the value of its parts exceeds the value of the surplus property as a whole.

(d) No value item. Where the city determines that property is surplus and of minimal value to the city due to spoilage, obsolescence or other cause or where the city determines that the cost of disposal of such property would exceed the recovery value, the city shall dispose of the same in such a manner as they deem appropriate and in the best interest of the city.

(5) Donation. Surplus property may be donated to any other public agency or charitable organization exempt under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. "Public agency" means the state or any agency or

subdivision thereof, any city, county, special district, or school district. (Ord. #216-2, March 2016, modified)

**5-229. Transfer and disposition policy.** Consistent with *Tennessee Code Annotated*, the city council sets forth the policy of the city for disposal or destruction of surplus property.

(1) City manager directed transfer and disposal (authorized).

(a) Property with an estimated market value exceeding ten thousand dollars (\$10,000.00). Transfer or disposition of surplus property with an estimated market value exceeding ten thousand dollars (\$10,000.00) per item shall be determined specifically by the city council.

(b) Property with an estimated market value less than ten thousand dollars (\$10,000.00). The city manager may direct the transfer and disposition of surplus property with an estimated market value not to exceed ten thousand dollars (\$10,000.00) per item.

(c) Transfer and disposition of surplus property may include:

(i) All surplus property will first be considered for transfer between departments for the benefit of the City of Baneberry.

(ii) All surplus property not needed by the City of Baneberry may be offered for sale for the highest estimated market value. Surplus property may be sold by public auction, electronic auction site, or sealed bid.

(iii) Surplus property may be donated or sold at less than estimated market value to public agencies and nonprofit organizations.

(d) Scrapping/recycling/junking.

(i) Such activities may involve the sale of surplus property at public auction or through sealed bids to public bodies, organizations, or vendors including scrap dealers or recycling centers.

(ii) It is the policy of the City of Baneberry that no official, officer, employee or volunteer may engage in any sale, scrapping or recycling or other disposal of city property, as defined herein, unless specifically directed to engage in such activity by the city manager who has been lawfully and duly authorized and designated to direct such activity.

(e) Real estate. All activity involving the declaration and sale of surplus real estate shall require authorization by the city council regardless of the actual or estimated value.

(2) Proceeds from transfer and disposition of property. When so authorized to transfer, sell, donate, recycle, and scrap city property, the official, officer, employee or volunteer directed to undertake such activity shall remit the entire proceeds from any such activity to the city by check or money order made

payable to the City of Baneberry, and such proceeds shall be deposited into the appropriate fund.

(3) Personal scrapping, recycling or disposal of trash or junk (unauthorized). Transferring, selling, donating, scrapping, recycling or disposing of city property, as defined herein (regardless of monetary value), by any city official, officer, employee or volunteer for personal gain or to benefit the interest of any person or party other than the City of Baneberry, including handling or disposal of trash or junk except as directed by city management person(s) lawfully and duly authorized and designated to direct such activity, is strictly forbidden.

(4) City officials, officers, employees and volunteers are prohibited from claiming ownership of, giving away, recovering, or salvaging for personal use, or the use or interest of any person other than the City of Baneberry, any materials abandoned, disposed or stored upon city premises, including trash or other materials, placed in, upon or in the vicinity of recycling or collection cans, dumpsters or bins located on city premises, or collection or debris piles, or other city storage or disposal facilities or refuse sites, and including any such facility or site belonging to any city tenant.

Furthermore, city officials, officers, employees and volunteers are prohibited from taking possession of any surplus property or the proceeds from the sale of surplus property designated for disposal as trash, scrap, or as recyclables, except as lawfully authorized by persons designated with such authority by the city manager.

This prohibition includes giving any such surplus property or the proceeds from the sale of such surplus property to any person or party other than for the duly authorized benefit and interest of the City of Baneberry, or authorizing any other person or party to accept, receive or take any such surplus property to benefit their own interest, except as provided herein above.

(5) Any transfer and/or disposal of surplus property authorized by the city manager shall be reported to the city council. (Ord. #216-2, March 2016)

**5-230. Disciplinary actions.** Appropriate disciplinary action, up to and including removal from office, employment termination, and removal from assigned volunteer position shall be taken should an official, officer, employee or volunteer be found, through proper investigation, to:

(1) Having failed to promptly remit to persons officially designated to receive proceeds, including cash or other consideration, from the sale of city property, as defined herein, including the proceeds from the sale, scrapping or recycling of any such property belonging to city tenants;

(2) Having failed, in the performance of their duties, to promptly place in appropriate city containers, bins, dumpsters, or other collection facilities, equipment or containers, or having received, taken, given away, collected, stored or retained in other than appropriate city containers, bins, or collection

facilities, or dump sites, city scrap, recyclables, trash or any such surplus property belonging to city tenants;

(3) Having engaged in selling, scrapping, recycling or handling of city property in violation of this chapter or the procedures set forth herein, including having engaged in any such activity for their personal interest or gain, or in aid of others doing the same for their respective interest or gain;

(4) Having used city vehicles, facilities or equipment to collect, store, or transport surplus property to sites, locations, or facilities, including the facilities of scrap vendors or recycling centers, except as specifically directed by authorized city management, in accordance with the procedures set forth herein; and/or

(5) Having failed to notify his department director in a prompt and timely manner after having observed any individual engaging in any of the above-described act(s) or having learned that such act(s) were being committed by other city officials, officers, employees or volunteers. (Ord. #216-2, March 2016)

**5-231. Procedures.** All surplus property is disposed of "as is" and "where is," with no warranty, guarantee, or representation of any kind, expressed or implied, as to the condition, utility or usability of the property offered unless specified by the city council. It is critical to maintain a trail of documentation for audit purposes regarding the disposition of property of the City of Baneberry.

The city manager or his designee is authorized to declare property, equipment and materials surplus.

(1) Identifying excess property. Each department head is responsible to identify excess property regularly.

Each department head will evaluate the operational status of the excess property and notify the city manager in writing.

The city manager will circulate the excess property notification between the other departments within the city.

(2) Transfer excess property between departments. Department heads may request the transfer of excess property by making request to the city manager. Both department heads must agree when the excess property cost was in excess of two thousand five hundred dollars (\$2,500.00). Transfers between departments are contingent upon approval of the city manager.

Notification will be provided to the city manager in writing of any transfer of excess property to a different location or department ownership.

(3) Transfer surplus property for trade-in or return to manufacturer.

(a) Department heads may offer property for trade-in toward the purchase of new property and equipment with the approval of the city manager. Department heads will attach trade-in information to the procurement documents. Department heads will notify the city manager of the procurement and disposition of property and equipment.

(b) Department heads may offer property and equipment for buy-back credit to the manufacturer with approval of the city manager. Department heads will forward buy-back credit documents to the city manager. Department heads will notify the city manager of this disposition of property and equipment.

(c) Department heads will inform the city manager of all trade-ins and credits since it is critical for budgeting and asset tracking. If surplus property is to be applied to a purchase order, the trade-in value and/or credit shall be itemized on the purchase order. The amount charged against the appropriation code will be the value of the purchase before application of the trade-in credit.

(4) Disposal of surplus property. (a) Excess property as shown on applicable notifications, that is not transferred among departments or for trade-in or manufacturer's credit, will be declared surplus by the department head or city manager.

The department head will determine the estimated market value and the most fiscally advantageous method of disposal.

For surplus property with an estimated market value in excess of ten thousand dollars (\$10,000.00), the method of disposal will be determined by the city council.

(i) In determining the estimated market value, the department head shall document the methods used to make such determination including tools such as *Kelly Blue Book*, classified advertisements, and local vendors with similar products available.

(ii) The estimated market value will consider a computation of expenses associated with the disposal of surplus property. These expenses may include advertising, auction costs, storage, and other costs.

(iii) For surplus property in volume with unit values less than two thousand five hundred dollars (\$2,500.00), if the aggregate total of the property exceeds two thousand five dollars (\$2,500.00), then estimated market value will be by group.

(b) Method of disposal. Sale of surplus property shall be to the highest bidder or for the highest market value and may be disposed of by sale by public auction, or sealed bid.

(i) Auction. Surplus property may be sold at public auction. Public auctions may be conducted by city staff, or the city may contract with a professional auctioneer or electronic auction site.

Sale of surplus property at public auction conducted by city staff must be after giving publication in the official newspaper of the city no later than ten (10) days prior to such auction. The department head shall reserve the right to reject any and all bids received for any item.



In the event the department head rejects any and all such bids so received, the item may not be disposed of for a lesser value of the lowest bid rejected.

Abandoned bicycles and unidentified bicycles in possession of the police department for six (6) months may be sold at public auction conducted by the police department.

All unclaimed property may be sold at public auction after the period of six (6) months.

(ii) Sealed bid. Sealed bids may be solicited for the sale of surplus property. The department head shall reserve the right to reject any and all bids received for any item.

In the event the department head rejects any and all such bids so received, the item may not be disposed of for a lesser value of the lowest bid rejected.

(iii) Selling for scrap. Surplus property may be sold as scrap if the department head deems that the value of its parts exceeds the value of the surplus property as a whole after approval of the city council. For-profit vendors shall include scrap dealers and recycling centers.

(iv) No-value item. Where the department head determines that property is surplus and of minimal value to the city due to spoilage, obsolescence or other cause or where the department head determines that the cost of disposal of such property would exceed the recovery value, he shall dispose of the item in such a manner as they deem appropriate and in the best interest of the city considering the ability to recycle. Disposal of no value items must be approved by the city council.

(v) Donation. Surplus property may be donated to any other public agency or charitable organization exempt under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code.

(A) "Public agency" means the state or any agency or subdivision thereof, any city, county, special district, or school district.

(B) Non-profit organizations are recognized as charitable organizations exempt under section 501(c)(3) of the Internal Revenue Code.

(5) Accounting for the disposition of surplus property. (a) The department head will notify the city manager in writing of the disposition of all surplus property and attach all supporting documentation.

(b) The finance department shall make adjustments to their inventories/assets lists showing the disposition of excess property.

(c) Copies of all records documenting the surplus property process will be kept on file with the city manager.

(6) Transfer of ownership and title. Delivery of the surplus property together with transfer of ownership and title passes upon receipt of the proceeds.

The city manager shall cause licenses and title documents to be executed and transferred upon verification of receipt of funds.

(7) Surplus property and employees. City officials, officers, employees and/or volunteers shall not be the purchasers of any surplus real or personal property of the city.

This disqualification shall extend to the family members of such officials, officers, employees and/or volunteers and any third persons acting at the direction or request of a disqualified official, officer, employee or volunteer where the purchase or sale is intended for the benefit of such employee.

Any exceptions to this policy will only be made at the direction of the city manager.

Violation may result in disciplinary action up to and including discharge. (Ord. #216-2, March 2016, modified)

**5-232. Definitions.** When used in the context of this chapter and in the authorization of the purchase order, contractual agreements, invitations to bid, or other pertinent documents, the words, conditions and phrases below shall have the following meanings:

- (1) "Accept." To receive with approval or satisfaction.
- (2) "Acknowledgment." Written confirmation from the vendor to the purchaser of an order implying obligation or incurring responsibility.
- (3) "Agreement." A coming together in opinion or determination; understanding and agreement between two (2) or more parties.
- (4) "All or none." Baneberry reserves the right to award each item or to award all items on an "all or none basis."
- (5) "Annual." Recurring, done or performed every year.
- (6) "Appropriations." Public funds set aside for a specific purpose.
- (7) "Approved." To be satisfied with; admit the propriety or excellence of; to be pleased with; to conform; to ratify.
- (8) "Approved equal." Alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount, or rights.
- (9) "Attest." To certify to the verity of a public document formally by signature; to affirm to be true or genuine.
- (10) "Award." The presentation of a contract to a vendor; to grant; to enter into with all required legal formalities.
- (11) "Awarded bidder." Any individual, company, firm, corporation, partnership, or other organization to whom an award is made by the city.
- (12) "Back order." The portion of a customer's order undelivered due to temporary unavailability of a particular product or material.
- (13) "Bid." A vendor's response to an invitation for bids; the information concerning the price or cost of materials or services offered by a vendor.

(14) "Bid bond." An insurance agreement in which a third party agrees to be liable to pay a certain amount of money should a specific vendor's bid be accepted and the vendor fails to sign the contract as bid.

(15) "Bid file." A folder containing all of the documentation concerning a particular bid. This documentation includes: the names of all vendors to whom the invitation to bid was mailed, the responses of the vendors, the bid tabulations form and any other information as may be necessary.

(16) "Bid opening." The opening and reading of the bids, conducted at the time and place specified in the invitation for bids and in the presence of anyone who wishes to attend.

(17) "Bid solicitation." Invitations for bids.

(18) "Bidder." Any individual, company, firm, corporation, partnership or other organization or entity bidding on solicitations issued by the purchasing agent and offering to enter into contracts with the city. The term "bidder" as used throughout this chapter shall be construed to mean "offeror" where appropriate.

(19) "Blanket bid (order)." A type of bid used by buyers to purchase repetitive products. The city establishes its need of a product for a specified time. The vendor is then informed of the city's expected usage duration of the contract. The city will order small quantities of these items from the vendor over the life of the contract.

(20) "Business." Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or legal entity through which business is conducted.

(21) "Cancel." To revoke a contract or bid.

(22) "Capital items." Equipment which is tangible; has an expected lifespan of one (1) year or longer; and a value (usually) in excess of one thousand dollars (\$1,000.00).

(23) "Cash discount ." A discount from the purchase price allowed to the purchaser, if payment is made within a specified time.

(24) "Caveat emptor." Let the buyer beware; used in proposals or contracts to caution a buyer to avoid misrepresentation.

(25) "Certify." To testify in writing; to make known or establish as a fact.

(26) "City." Baneberry, Tennessee.

(27) "Competitive bidding." Bidding on the same undertaking or material items by more than one (1) vendor.

(28) "Conspicuously." To be prominent or obvious; located, positioned, or designed to be noticed.

(29) "Construction." The building, alteration, demolition or repair (including, but not limited to, dredging, excavating and painting) of public buildings, structures and highways, and other improvements or additions to real property.

(30) "Contract." An agreement, grant or order for the procurement, use, or disposal of supplies, services, construction, insurance, real property or any other item.

(31) "Data." Recorded information, regardless of form or characteristic.

(32) "Delivery schedule." The required or agreed upon rate of delivery of goods or services.

(33) "Discount for prompt payment ." A predetermined discount offered by a vendor for prompt payment. (See payment terms.)

(34) "Encumber." Reserve funds against a budgeted line item; to charge against an account.

(35) "Evaluation of bid." The process of examining a bid to determine a bidder's responsibility, responsiveness to requirements, or other characteristics of the bid that determine the eventual selection of a winning bid.

(36) "Fiscal year." An accounting period of twelve (12) months; July 1 to June 30.

(37) "F.O.B. destination." An abbreviation for "free on board" that refers to the point of delivery of goods. The seller absorbs transportation charges and retains title to and responsibility for the goods until Baneberry has received and signed for the goods.

(38) "Goods." All materials, equipment, supplies, and printing.

(39) "Invitation for bid." All documents utilized for soliciting bids.

(40) "Invoice." A written account of merchandise and process, delivered to the purchaser; a bill.

(41) "Lead time." The period from date of ordering to date of delivery which the buyer must reasonably allow the vendor to prepare goods for shipment.

(42) "Life cycle costing." A procurement technique which considers the total cost of purchasing, maintaining, operating and disposal of a piece of equipment when determining low bid.

(43) "Material receiving report." A form used by the purchasing function of an agency to inform others of the receipt of goods purchased.

(44) "Payment term." The conditions under which a vendor completes a sale. "Payment terms" cover:

(a) When payment is expected;

(b) Any conditions on that payment; and

(c) Any discounts the buyer will receive.

(45) "Performance bond." A bond given to the purchaser by a vendor (or contractor) guaranteeing the performance of certain services or delivery of goods within a specified time. The purpose is to protect the purchaser against a cash loss which might result if the vendor did not deliver as promised.

(46) "Pre-bid conference." A meeting held with potential vendors after an invitation for bids has gone out to promote uniform interpretation by all prospective contractors of the solicitation's scope, work statements and specifications.

(47) "Procurement or purchasing." Buying, renting, leasing, or otherwise obtaining supplies, services, construction, insurance or any other item. It also includes all functions that pertain to the acquisition of such supplies, services, construction, insurance and other items, including description of requirements, selection and solicitation of sources, preparation and award of contract, contract administration, and all phases of warehousing and disposal.

(48) "Public." Open to all.

(49) "Public purchasing unit." The State of Tennessee, any county, city, town, governmental entity, or other subdivision of the State of Tennessee, or any public agency or public authority.

(50) "Purchasing order." A legal document used to authorize a purchase from a vendor. A purchase order, when given to a vendor, should contain statements about the quantity, description, and price of goods or services ordered; agreed terms of payment, discounts, date of performance, transportation terms, and all other agreements pertinent to the purchase and its execution by the vendor.

(51) "Reject." Refuse to accept, recognize, or make use of; repudiate, to refuse to consider or grant.

(52) "Responsive bidder." One who has submitted a bid which conforms in all material respects to the invitation for bids.

(53) "Sealed." Secured in any manner so as to be closed against inspection of contents.

(54) "Sealed bids." Written proposals or offers which are submitted by potential vendors before a certain date to a purchasing agent who has provided complete information regarding specifications and quantities required.

(55) "Sole source procurement." An award for a commodity which can only be purchased from one (1) supplier, usually because of its technological, specialized, or unique character.

(56) "Specifications." Any description of the physical or functional characteristics of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(57) "Standardization." The making, causing, or adapting of items to conform to recognized qualifications.

(58) "Telephone bids." Contacting one (1) or more vendors to obtain oral quotes for items of a value less than four thousand dollars (\$4,000.00).

(59) "Vendor." The person who transfers property, goods, or services by sale. (Ord. #216-2, March 2016)

**5-233. Funds appropriated and available.** This chapter shall authorize only the purchase of materials and supplies and the procurement of contracts for which funds have been appropriated and are within the limits of the funds estimated for each department in the annual budget or which have been authorized and lawfully funded by the city council.

The municipality shall have no liability for any purchase made in violation hereof. In the event any provision of this chapter shall be construed to be in conflict herewith, then the provisions of this section shall prevail. (Ord. #216-2, March 2016)

**5-234. Forms and procedures.** The city manager is authorized to develop additional procedures and forms in furtherance of these policies. (Ord. #216-2, March 2016)

**5-235. Standards of conduct.** In all actions involving procurement of supplies, services, or construction for the city, and the use and disposition of supplies, materials, time, property and equipment, the provisions of Ord. #207-1 - An Ordinance Adopting "Code of Ethics" for the City of Baneberry shall be complied with in full. (Ord. #216-2, March 2016)

## CHAPTER 3

PRIVILEGE AND BUSINESS TAX

## SECTION

5-301. Tax levied.

5-302. License required.

**5-301. Tax levied.** Except as otherwise specifically provided in this code, there is hereby levied on all vocations, occupations, and businesses declared by the general laws of the state to be privileges taxable by municipalities, an annual privilege tax in the maximum amount allowed by state laws. The taxes provided for in the state's "Business Tax Act" (*Tennessee Code Annotated*, § 67-4-701, *et seq.*) are hereby expressly enacted, ordained, and levied on the business activities, vocations, and occupations carried on within the city at the rates and in the manner prescribed. (1999 Code, § 5-301)

**5-302. License required.** No person shall exercise any such privilege within the town without a currently effective privilege license, which shall be issued by the recorder to each applicant therefor upon the applicant's payment of the appropriate privilege tax. (1999 Code, § 5-302)

**CHAPTER 4****PROPERTY TAX COLLECTION****SECTION**

- 5-401. Trustee of Jefferson County to collect taxes.
- 5-402. Delinquent taxes.
- 5-403. Fee for service.

**5-401. Trustee of Jefferson County to collect taxes.** Commencing with the real property tax year of 2001, the Trustee of Jefferson County is hereby authorized to collect the ad valorem taxes assessed by the City of Baneberry on real property located within the city's corporate limits. (1999 Code, § 5-401)

**5-402. Delinquent taxes.** The Trustee of Jefferson County, Tennessee, is hereby authorized to collect all delinquent ad valorem taxes for the City of Baneberry for the year 2000. (1999 Code, § 5-402)

**5-403. Fee for service.** The city will pay to Jefferson County, through the county's trustee's office, the designated fee set by the Tennessee Legislature and the yearly computer conversion cost. (1999 Code, § 5-403)



## CHAPTER 5

### DEBT MANAGEMENT POLICY<sup>1</sup>

#### SECTION

- 5-501. Purpose.
- 5-502. Definition of "debt."
- 5-503. Approval of debt.
- 5-504. Transparency.
- 5-505. Role of debt.
- 5-506. Types and limits of debt.
- 5-507. Use of variable rate debt.
- 5-508. Use of derivatives.
- 5-509. Costs of debt.
- 5-510. Refinancing outstanding debt.
- 5-511. Professional services.
- 5-512. Conflicts.
- 5-513. Review of policy.
- 5-514. Compliance.

**5-501. Purpose.** The purpose of this debt policy is to establish a set of parameters by which debt obligations will be undertaken by the City of Baneberry, Tennessee. This policy reinforces the commitment of the city and its officials to manage the financial affairs of the city so as to minimize risks, avoid conflicts of interest and ensure transparency while still meeting the capital needs of the city. A debt management policy signals to the public and the rating agencies that the city is using a disciplined and defined approach to financing capital needs and fulfills the requirements of the State of Tennessee regarding the adoption of a debt management policy.

The goal of this policy is to assist decision makers in planning, issuing and managing debt obligations by providing clear direction as to the steps, substance and outcomes desired. In addition, greater stability over the long-term will be generated by the use of consistent guidelines in issuing debt. (Ord. #211-6, Dec. 2011)

**5-502. Definition of "debt ".** All obligations of the city to repay, with or without interest, in installments and/or at a later date, some amount of

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<sup>1</sup>State law references

*Tennessee Code Annotated*, §§ 7-51-901, *et seq.* - contracts, leases and lease purchase agreements.

*Tennessee Code Annotated*, §§ 9-21-101, *et seq.* - local government public obligations law.

money utilized for the purchase, construction, or operation of city resources. This includes but is not limited to notes, bond issues, capital leases, and loans of any type (whether from an outside source such as a bank or from another internal fund). (Ord. #211-6, Dec. 2011)

**5-503. Approval of debt.** Bond anticipation notes, capital outlay notes, grant anticipation notes, and tax and revenue anticipation notes will be submitted to the State of Tennessee Comptroller's Office and the city council prior to issuance or entering into the obligation. A plan for refunding debt issues will also be submitted to the comptroller's office prior to issuance. Capital or equipment leases may be entered into by the city council; however, details on the lease agreement will be forwarded to the comptroller's office on the specified form within forty-five (45) days. (Ord. #211-6, Dec. 2011)

**5-504. Transparency.** (1) The city shall comply with legal requirements for notice and for public meetings related to debt issuance.

All notices shall be posted in the customary and required posting locations, including as required local newspapers, bulletin boards, and websites.

(2) All costs (including principal, interest, issuance, continuing, and onetime) shall be clearly presented and disclosed to the citizens, city council, and other stakeholders in a timely manner.

(3) The terms and life of each debt issue shall be clearly presented and disclosed to the citizens/members, city council, and other stakeholders in a timely manner.

(4) A debt service schedule outlining the rate of retirement for the principal amount shall be clearly presented and disclosed to the citizens/members, city council, and other stakeholders in a timely manner. (Ord. #211-6, Dec. 2011)

**5-505. Role of debt.** (1) Long-term debt shall not be used to finance current operations. Long-term debt may be used for capital purchases or construction identified through the capital improvement, regional development, transportation, or master process or plan. Short-term debt may be used for certain projects and equipment financing as well as for operational borrowing; however, the city will minimize the use of short-term cash flow borrowings by maintaining adequate working capital and close budget management.

(2) In accordance with generally accepted accounting principles and state law:

(a) The maturity of the underlying debt will not be more than the useful life of the assets purchased or built with the debt, not to exceed thirty (30) years; however, an exception may be made with respect to federally sponsored loans, provided such an exception is consistent with law and accepted practices.

(b) Debt issued for operating expenses must be repaid within the same fiscal year of issuance or incurrence. (Ord. #211-6, Dec. 2011)

**5-506. Types and limits of debt.** (1) The city will seek to limit total outstanding debt obligations to fifteen percent (15%) of the annual budget, excluding overlapping debt, enterprise debt, and revenue debt.

(2) The limitation on total outstanding debt must be reviewed prior to the issuance of any new debt.

(3) The city's total outstanding debt obligation will be monitored and reported to the city council by the city manager. The city manager shall monitor the maturities and terms and conditions of all obligations to ensure compliance. The city manager shall also report to the city council any matter that adversely affects the credit or financial integrity of the city.

(4) The city has issued (XYZ) in the past and is authorized to issue general obligation bonds, revenue bonds, TIFs, loans, notes and other debt allowed by law. The city has determined it currently will not issue (ABC).

(5) The city will seek to structure debt with level or declining debt service payments over the life of each individual bond issue or loan.

(6) As a rule, the city will not backload, use "wrap-around" techniques, balloon payments or other exotic formats to pursue the financing of projects. When refunding opportunities, natural disasters, other non-general fund revenues, or other external factors occur, the city may utilize non-level debt methods. However, the use of such methods must be thoroughly discussed in a public meeting and the mayor and governing body must determine such use is justified and in the best interest of the city.

(7) The city may use capital leases to finance short-term projects.

(8) Bonds backed with a general obligations pledge often have lower interest rates than revenue bonds. The city may use its general obligation pledge with revenue bond issues when the populations served by the revenue bond projects overlap or significantly are the same as the property tax base of the city. The city council and management are committed to maintaining rates and fee structures of revenue supported debt at levels that will not require a subsidy from the city's general fund. (This provision is necessary only if the city has a source of repayment for a revenue bond, such as a water or sewer system.) (Ord. #211-6, Dec. 2011)

**5-507. Use of variable rate debt.** The city recognizes the value of variable rate debt obligations and that cities have greatly benefitted from the use of variable rate debt in the financing of needed infrastructure and capital improvements.

However, the city also recognizes there are inherent risks associated with the use of variable rate debt and will implement steps to mitigate these risks, including:

(1) The city will annually include in its budget an interest rate assumption for any outstanding variable rate debt that takes market fluctuations affecting the rate of interest into consideration;

(2) Prior to entering into any variable rate debt obligation that is backed by insurance and secured by a liquidity provider, the city council shall be informed of the potential affect on rates as well as any additional costs that might be incurred should the insurance fail;

(3) Prior to entering into any variable rate debt obligation that is backed by a letter of credit provider, the city council shall be informed of the potential affect on rates as well as any additional costs that might be incurred should the letter of credit fail;

(4) Prior to entering into any variable rate debt obligation, the city council will be informed of any terms, conditions, fees, or other costs associated with the prepayment of variable rate debt obligations; and

(5) The city shall consult with persons familiar with the arbitrage rules to determine applicability, legal responsibility, and potential consequences associated with any variable rate debt obligation. (Ord. #211-6, Dec. 2011)

**5-508. Use of derivatives.** The city chooses not to use derivative or other exotic financial structures in the management of the city's debt portfolio.

Prior to any reversal of this provision:

(1) A written management report outlining the potential benefits and consequences of utilizing these structures must be submitted to the city council; and

(2) The city council must adopt a specific amendment to this policy concerning the use of derivatives or interest rate agreements that complies with the state funding board guidelines. (Ord. #211-6, Dec. 2011)

**5-509. Costs of debt.** (1) All costs associated with the initial issuance or incurrence of debt, management and repayment of debt (including interest, principal, and fees or charges) shall be disclosed prior to action by the city council in accordance with the notice requirements stated above.

(2) In cases of variable interest or non-specified costs, detailed explanation of the assumptions shall be provided along with the complete estimate of total costs anticipated to be incurred as part of the debt issue.

(3) Costs related to the repayment of debt, including liabilities for future years, shall be provided in context of the annual budgets from which such payments will be funded (i.e., general obligations bonds in context of the general fund, revenue bonds in context of the dedicated revenue stream and related expenditures, loans and notes). (Ord. #211-6, Dec. 2011)

**5-510. Refinancing outstanding debt.** The city will refund debt when it is in the best financial interest of the city to do so, and the chief financial officer shall have the responsibility to analyze outstanding bond issues for

refunding opportunities. The decision to refinance must be explicitly approved by the governing body, and all plans for current or advance refunding of debt must be in compliance with state laws and regulations.

The chief financial officer will consider the following issues when analyzing possible refunding opportunities:

(1) Onerous restrictions. Debt may be refinanced to eliminate onerous or restrictive covenants contained in existing debt documents, or to take advantage of changing financial conditions or interest rates.

(2) Restructuring for economic purposes. The city will refund debt when it is in the best financial interest of the city to do so. Such refunding may include restructuring to meet unanticipated revenue expectations, achieve cost savings, mitigate irregular debt service payments, or to release reserve funds. Current refunding opportunities may be considered by the chief financial officer if the refunding generates positive present value savings, and the chief financial officer must establish a minimum present value savings threshold for any refinancing.

(3) Term of refunding issues. The city will refund bonds within the term of the originally issued debt. However, the chief financial officer may consider maturity extension, when necessary to achieve a desired outcome, provided such extension is legally permissible. The chief financial officer may also consider shortening the term of the originally issued debt to realize greater savings. The remaining useful life of the financed facility and the concept of inter-generational equity should guide this decision.

(4) Escrow structuring. The city shall utilize the least costly securities available in structuring refunding escrows. Under no circumstances shall an underwriter, agent or financial advisor sell escrow securities to the city from its own account.

(5) Arbitrage. The city shall consult with persons familiar with the arbitrage rules to determine applicability, legal responsibility, and potential consequences associated with any refunding. (Ord. #211-6, Dec. 2011)

**5-511. Professional services.** The city shall require all professionals engaged in the process of issuing debt to clearly disclose all compensation and consideration received related to services provided in the debt issuance process by both the city and the lender or conduit issuer, if any. This includes "soft" costs or compensations in lieu of direct payments.

(1) Counsel. The city shall enter into an engagement letter agreement with each lawyer or law firm representing the city in a debt transaction. (No engagement letter is required for any lawyer who is an employee of the city or lawyer or law firm which is under a general appointment or contract to serve as counsel to the city. The city does not need an engagement letter with counsel not representing the city, such as underwriters' counsel.)

(2) Financial advisor. (If the city chooses to hire financial advisors, the city must select between the following options.) The city shall enter into a

written agreement with each person or firm serving as financial advisor in debt management and transactions.

(a) In a competitive sale, the financial advisor shall not be permitted to bid on an issue for which they are or have been providing advisory services.

(b) In a publicly offered, negotiated sale, the financial advisor (either):

(i) Shall not be permitted to resign as financial advisor in order to underwrite an issue for which they are or have been providing advisory services; or

(ii) May resign as financial advisor only in advance of negotiations in order to underwrite an issue for which they are or have been providing advisory services.

(3) Underwriter. (If there is no financial advisor.) In advance of pricing of the debt in a publicly offered, negotiated sale, the underwriter must provide pricing information both as to interest rates and to takedown per maturity to the city council (or its designated official). (Ord. #211-6, Dec. 2011)

**5-512. Conflicts.** Professionals involved in a debt transaction hired or compensated by the city shall be required to disclose to the city existing client and business relationships between and among the professionals to a transaction (including but not limited to financial advisor, swap advisor, bond counsel, swap counsel, trustee, paying agent, liquidity or credit enhancement provider, underwriter, counterparty, and remarketing agent), as well as conduit issuers, sponsoring organizations and program administrators. This disclosure shall include that information reasonably sufficient to allow the city to appreciate the significance of the relationships.

Professionals who become involved in the debt transaction as a result of a bid submitted in a widely and publicly advertised competitive sale conducted using an industry standard, electronic bidding platform are not subject to this disclosure. No disclosure is required that would violate any rule or regulation of professional conduct. (Ord. #211-6, Dec. 2011)

**5-513. Review of policy.** This policy shall be reviewed at least annually by the city council with the approval of the annual budget. Any amendments shall be considered and approved in the same process as the initial adoption of this policy, with opportunity for public input. (Ord. #211-6, Dec. 2011)

**5-514. Compliance.** The city manager is responsible for ensuring compliance with this policy. (Ord. #211-6, Dec. 2011)

**CHAPTER 6****USE OF COLLECTION AGENCY****SECTION**

5-601. Authorization.

5-602. Contract.

**5-601. Authorization.** The city is hereby authorized to solicit and use the services of a collection agency to collect unpaid fines and unpaid special assessments. (Ord. #211-2, May 2011)

**5-602. Contract.** The contract with such collection agency shall be in writing and conform to all provisions set forth in *Tennessee Code Annotated*, § 40-24-105(d). (Ord. #211-2, May 2011)

## CHAPTER 7

### HOTEL/MOTEL TAX

#### SECTION

- 5-701. Definitions.
- 5-702. Register required; availability for inspection.
- 5-703. Rooms to be numbered.
- 5-704. Tax levied.
- 5-705. Collection.
- 5-706. Remission to city.
- 5-707. Collection, development of report, audit, etc.
- 5-708. Operator cannot advertise that he will assume tax.
- 5-709. Delinquent taxes; offenses by operators and/or transients.
- 5-710. Operators to keep records.
- 5-711. Additional powers of recorder; remedies available to taxpayer.
- 5-712. Recorder to collect; disposition of proceeds.

#### **5-701. Definitions.** As used in this chapter:

(1) "Consideration " means the consideration charged, whether or not received, for the occupancy in a hotel valued in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever;

(2) "Hotel " means any structure or space, or any portion thereof, that is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes privately, publicly, or government-owned hotels, inns, tourist camps, tourist courts, tourist cabins, motels, short-term rental units, primitive and recreational vehicle campsites and campgrounds, or any place in which rooms, lodgings, or accommodations are furnished to transients for consideration;

(3) "Occupancy " means the use or possession, or the right to use or possession, of any room lodgings or accommodations in any hotel;

(4) "Persons " means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit;

(5) "Tourism" means attracting nonresidents to visit a particular municipality and encouraging those nonresidents to spend money in the municipality, which includes travel related to both leisure and business activities;

(6) "Tourism development " means the acquisition and construction of, and financing and retirement of debt for, facilities related to tourism; and



(7) "Transient" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodgings, or accommodations in a hotel for a period of less than thirty (30) continuous days. (Ord. #2022-01, March 2022)

**5-702. Registration required; availability for inspection.** Every person to whom a permit is issued under this article shall at all times keep a standard hotel register, in which shall be inscribed the names of all guests renting or occupying rooms in his hotel. Such register shall be signed in every case by the persons renting a room or by someone under his direction, and after registration is made and the name of the guest is inscribed as herein provided, the manager shall write the number of the room which guest is to occupy, together with the time such room is rented, before such person is permitted to occupy such room. The register shall be open to inspection at all times to the city. (Ord. #2022-01, March 2022)

**5-703. Rooms to be numbered.** Each sleeping room and in every hotel in the city shall be numbered in a plain and conspicuous manner. The number of each room shall be placed on the outside of the door of such room, and no two (2) doors shall bear the same number. (Ord. #2022-01, March 2022)

**5-704. Tax levied.** There is hereby levied, assessed and imposed, and shall be paid and collected, a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount equal to four percent (4%) of the consideration charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided herein. (Ord. #2022-01, March 2022)

**5-705. Collection.** Such tax shall be added by each operator to each invoice prepared by the operator for the occupancy in his hotel to be given directly or transmitted to the transient and shall be collected by such operator from the transient and remitted to the city. (Ord. #2022-01, March 2022)

**5-706. Remission to city.** The tax hereby levied shall be remitted by all operators who lease, rent or charge for occupancy within a hotel in the city to the city recorder of the city, such tax to be remitted to such officer no later than the twentieth (20th) day of each month for the preceding month. The operator is hereby required to collect the tax from the transient at the time of the presentation of the invoice for such occupancy whether prior to occupancy or after occupancy as may be the custom of the operator and if credit is granted by the operator to the transient then the obligation to the city entitled to such tax shall be that of the operator. (Ord. #2022-01, March 2022)

**5-107. Collection, development of report, audit, etc.** The city recorder shall be responsible for the collection of such tax. A monthly tax return

under oath shall be filed with the city recorder by the operator with such number of copies thereof as the city recorder may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the city recorder and approved by the board of mayor and aldermen prior to use. The city recorder may audit each operator in the city at least once per year and shall report on the audits made on a quarterly basis to the board of mayor and aldermen. (Ord. #2022-01, March 2022)

**5-708. Operator cannot advertise that his will assume tax.** No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof, will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded. (Ord. #2022-01, March 2022)

**5-709. Delinquent taxes; offenses by operators and/or transients.** Taxes collected by the operator which are not remitted to the city recorder on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, such taxes are delinquent. Such interest shall become a part of the tax. Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is declared to be unlawful and shall be punishable upon conviction by a fine not in excess of fifty dollars (\$50.00). (Ord. #2022-01, March 2022)

**5-710. Operators to keep records.** It shall be the duty of every operator liable for the collection and payment to the city of the tax imposed by this article to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city which records the city recorder shall have the right to inspect at all reasonable times. (Ord. #2022-01, March 2022)

**5-711. Additional powers of recorder; remedies available to taxpayer.** The city recorder or other authorized collector of the tax in administering and enforcing the provisions of this act shall have, as additional powers, those powers and duties with respect to collecting taxes as provided by law for the county clerks. Upon any claim of illegal assessment and collection, the tax payer shall have the remedy provided in *Tennessee Code Annotated*, title 67. The city recorder shall have all those powers and duties as provided in *Tennessee Code Annotated*, § 67-1 -707(b) with respect to the adjustment and settlement with tax payers of errors of taxes collected. Any tax paid under protest shall be paid to the city recorder. Any suit filed to recover taxes paid

under protest may be brought by filing the same against the city recorder of the city. (Ord. #2022-01, March 2022)

**5-712. Recorder to collect; disposition of proceeds.** The city recorder is hereby charged with the duty of collection of the tax herein levied and the proceeds received by the city from the tax shall be used exclusively for tourism and tourism development within the city as required by *Tennessee Code Annotated*, § 67-4-1403. (Ord. #2022-01, March 2022)