

**TITLE 20****MISCELLANEOUS****CHAPTER**

1. SCHOOLS--IN GENERAL.
2. BOARD OF EDUCATION.
3. SUPERINTENDENT OF CITY SCHOOLS.
4. CUSTODIAN OF SCHOOL FUND.
5. SHADE TREES.
6. PARKS AND CEMETERIES.
7. WATERVILLE GOLF COURSE.
8. FAIR HOUSING REGULATIONS.
9. ALARM SYSTEM REGULATIONS.
10. DISPOSITION OF ABANDONED AND LOST PERSONAL PROPERTY.
11. OPEN BURNING.
12. WRECKERS AND TOWING SERVICES.
13. CODE OF ETHICS.
14. MUNICIPAL ADMINISTRATIVE HEARING OFFICER.

**CHAPTER 1****SCHOOLS--IN GENERAL****SECTION**

20-101. Persons entitled to go to schools; when suspension authorized.

**20-101. Persons entitled to go to schools; when suspension authorized.** All children residing within the corporate limits of the city within the scholastic age are entitled to the benefit of the free schools of the city as prescribed by law, but the city board of education may expel or suspend such students, as in its judgment may seem right or necessary, for disobedience or insubordination. Children residing outside the corporate limits of the city may be admitted to the benefits of the schools of the city upon the payment in advance of such tuition fees as the board of education may prescribe; such fees to be paid to the city clerk and custodian of the school fund, and to be collected by such person as the board of education may direct. (1981 Code, § 20-1, modified)

## CHAPTER 2

### BOARD OF EDUCATION

#### SECTION

20-201. Created.

20-202. Powers.

20-203. To meet, qualify and elect a chairman who shall have various duties.

20-204. General duties.

20-205. Members to comply with and enforce state laws and regulations.

20-206. May establish night schools and middle and senior high schools.

20-207. To prescribe rules and regulations for schools.

20-208. To provide reports to the city council.

20-209. Subject to supervision of the city council.

20-210. No member to be personally interested in any school contract.

20-211. No member to participate in incurring debts beyond income.

20-212. Unlawful to hire unqualified teachers.

**20-201. Created.** (1) There is hereby created a city Board of Education consisting of seven (7) members, all residing within the corporate limits of the city. One (1) shall be elected from each of the five (5) districts established for the election of city council members. The other two (2) shall be elected from the city at large. The term of office shall be for four (4) years, and shall be staggered. All elections of school board members shall be non-partisan, and conducted at the same time and date as the regular election for city council members. Members shall take office at the first regular board meeting in September, following their election. Any member moving out of the district he represents can no longer serve on the board as the district representative. Any member moving out of the city limits can no longer serve on the board as an at-large member. Any vacancy on the board shall be filled by the city council, until the next scheduled election, at which time a replacement shall be elected to serve any remainder of the unexpired term. All board members shall receive compensation at the same salary that is paid to the city council members and be reimbursed for expenses incurred in the performance of school board duties.

(2) At the city election in August, 1996, three of the school board members shall be elected for four-year terms. Those members shall be one at-large, and members representing Districts #1 and 2. The candidate with the highest number of votes in each contest shall be elected. Thereafter, these three seats shall be elected every four years. The four most recently appointed members shall continue to serve on the board until the other four seats are voted upon in August, 1998.

(3) At the city election in August, 1998, the other four school board members shall be elected for four-year terms. Those members shall be one at-

large, and members representing Districts #3, 4, and 5. The candidate with the highest number of votes in each contest shall be elected. Thereafter, these four seats shall be elected every four years. (Ord. of Sept. 1995, as amended by Ord. of 11/13/2000)

**20-202. Powers.** The board of education shall have full power as trustees and directors to manage and control the public schools of the city; to elect or employ a superintendent of city schools; to hire principals, teachers, janitors, truant officers and other necessary employees; and to prescribe all needful rules and regulations. (1981 Code, § 20-17)

**20-203. To meet, qualify and elect a chairman who shall have various duties.** It shall be the duty of the city board of education to hold such regular or special meetings as it may deem necessary. After election such board members shall qualify by taking an oath faithfully to perform the duties of their office and shall then organize by electing one of their number as chairman of such board. It shall be the duty of the chairman to countersign all warrants issued by the superintendent of city schools as authorized by the city board of education; to preside at all meetings of such board of education; to appoint all committees authorized by such board; to visit and inspect all school property in the city from time to time; to make such general recommendations to such board as he may deem for the best interest of the schools; to call special meetings of the city board of education whenever in his judgement the interests of the public schools require it or when requested by a majority of the board; and to sign any and all contracts authorized by such board of education. (1981 Code, § 20-18, modified)

**20-204. General duties.** It shall be the duty of the board of education to elect all principals and teachers, to fix their salaries; to locate, build, repair, furnish and keep in sanitary condition all school houses; to furnish grounds and equipment; to fix all salaries and wages; to employ a truant officer and janitors and such other persons as may be necessary to take care of the school property and carry on the educational interests of the city; to take care of, manage and control all school property; to buy or sell all school supplies, equipment, furniture and fixtures deemed necessary; provided that, the purchase or sale of all supplies, furniture, fixtures and materials of all and every kind shall be made through a purchasing committee, which committee shall be appointed by the chairman; and it is expressly provided that all expenditures for building purposes, repairs, school supplies, furniture, etc., amounting to one hundred dollars (\$100.00) or more shall be let on competitive bids. It shall also be the duty of such board to consider and approve all school building plans; to approve or disapprove any proposed expansion or enlargement of the educational system; to determine or approve the annual budget of expenditures for school purposes; to establish the length of the school year; to advise the superintendent upon the

course of study and to adopt the proper courses; to require and consider reports of the superintendent concerning the progress of the schools; to pass upon all recommendations of the superintendent; and to act as a court of final appeal for teachers, principals and school patrons in matters decided adversely to such teacher, principals or patrons by the superintendent. (1981 Code, § 20-19, modified)

**20-205. Members to comply with and enforce state laws and regulations.** It is expressly made the duty of each member of the board of education to comply with the school laws of the state in the management and control of the public schools of the city; and such board shall require the city superintendent of schools and all school teachers to comply with all the schools laws of the state and with the rules and regulations of the state board of education. (1981 Code, § 20-20)

**20-206. May establish night schools and middle and senior high schools.** The city board of education is authorized to establish and maintain night schools in which persons who are fifteen (15) or more years of age may be enrolled and taught. Such night schools, when established, shall be a part of the free common school system of the city and may be maintained out of the city school fund at the discretion of the board of education. Such board of education is also authorized to establish middle or senior high schools, or both, when required, at the discretion of such board. (1981 Code, § 20-21, modified)

**20-207. To prescribe rules and regulations for schools.** The board of education shall prescribe the rules and system of government of the school, and shall take all such other and further action as it may deem necessary to place the school system of the city on a sound basis, as required by the state board of education for all elementary schools. (1981 Code, § 20-22)

**20-208. To provide reports to the city council.** It shall be the duty of the city board of education through its chairman and secretary to provide monthly reports to the city council, showing the receipts and expenditures of such board of education for the respective months ending before such dates, and such other reports as may be requested by the city council. At a special meeting in April of the city council, such board of education shall make a written itemized report or budget of the amount of money that will be required to run the schools of the city efficiently for the ensuing year and particularly showing the amount of money necessary to be appropriated by the city council to defray the legitimate and necessary expenses thereof. (1981 Code, § 20-23, modified)

**20-209. Subject to supervision of the city council.** The city board of education created shall be subject to the advice, direction and supervision of the city council and the schools and school system of the city are under the

control of the city council acting by and through the city board of education. (1981 Code, § 20-24, modified)

**20-210. No member to be personally interested in any school contract.** No member of the board of education shall contract with such board for any school supplies materials, furniture, fixtures, erections or repairs of any school buildings, etc. (1981 Code, § 20-25)

**20-211. No member to participate in incurring debts beyond income.** It shall be unlawful and shall constitute a forfeiture of his office for any member of the board of education to participate in incurring debts beyond the legitimate school income for any particular school year. (1981 Code, § 20-26)

**20-212. Unlawful to hire unqualified teachers.** It is unlawful for the board of education to employ any person as a teacher in the schools of the city who does not possess the qualifications prescribed by law for teachers. (1981 Code, § 20-27)

## CHAPTER 3

### SUPERINTENDENT OF CITY SCHOOLS

#### SECTION

20-301. To be elected by board of education; general duties.

20-302. Additional duties.

20-303. Not to be personally interested in any school contract.

20-304. Not to hire unqualified teacher.

**20-301. To be elected by board of education; general duties.** The board of education shall elect a superintendent of city schools and fix his compensation. He shall possess all the qualifications prescribed by the state board of education for school superintendents for cities the size of this city. Such superintendent of city schools shall be the executive officer of the city board of education. It shall be his duty to attend all meetings of the board; to act as ex officio secretary of such board; and to make such recommendations as he deems for the best interests of the city public schools. (1981 Code, § 20-41)

**20-302. Additional duties.** It shall also be the duty of the city superintendent of schools:

(1) To keep a record of all of his official acts in a well-bound book to be provided for that purpose.

(2) To issue all warrants authorized by the city board of education for expenditures from the public school fund and to sign the same, together with the chairman of the board.

(3) To keep a well-bound book in which he shall enter a record of all warrants issued and countersigned, showing the amount of each warrant, to whom issued, for what purpose, and to which school; and said city superintendent shall include in his monthly reports to the city council a full, clear and succinct statement of all warrants so signed by him.

(4) To keep in well-bound books to be provided by the city board of education, a full and accurate record of such meeting of the board and an account of all financial transactions. Such books shall be kept in his office. Upon the expiration of the superintendent's term of office, all books and records shall be delivered to his successor or to the chairman of the board of education.

(5) To keep on file in his office all contracts with school teachers together with either the original or a copy of each teacher's state certificate; and he shall not permit the employment of any person as a teacher who does not possess the qualifications prescribed by law for teachers.

(6) To cause to be taken an enumeration or census of the scholastic population of the city, at the time and in the manner prescribed by law, and to cause the same to be filed with the county superintendent of school and such

other officials as may be prescribed by law, the compensation of such census takers to be fixed by the board of education.

(7) Subject to the supervision and approval of the board of education:

(a) To act as executive officer of the school board and, generally, to direct all employees connected with the schools.

(b) To have supervision of the public schools of the city and their organization and classification.

(c) To plan and develop, with the aid of the principals and teachers, courses of study, and to arrange daily programs of study, instruction and recreation.

(d) To make such rules and regulations for the management and government of the schools as he and the teachers may deem necessary and proper.

(e) To elect and approve textbooks, apparatus and educational supplies.

(f) To investigate applicants for positions in the schools, and to recommend and nominate teachers for election by the board of education.

(g) To assign and transfer teachers and to recommend the reelection or dismissal of teachers.

(h) To fix times and prescribe modes of regular examinations; to supervise the promotion and classification of pupils; and to classify applicants for admission to the schools.

(i) To see that registers and all other necessary records are properly kept.

(j) To hold teachers' meetings as often as he thinks advisable, for the discussion of methods of teaching, and matters pertaining to the daily program, discipline, examination and other school subjects.

(k) To promote effective teamwork among teachers, and to effect harmony and interest in all school work.

(l) To employ temporary or substitute teachers in cases of sickness or inability of regular teachers.

(m) To suspend pupils when necessary.

(n) To have general supervision over the janitors' work and see that it is properly done.

(o) To keep the board of education informed of the progress, needs and conditions of the schools; to suggest means for improvements; and to make such reports as the board may require.

(p) To attend all meetings of the board of education.

(q) In cases of vacancies occurring in the teaching staff, to appoint teachers to fill such vacancies, subject to approval by the board at its next regular or called meeting.

(r) To perform such other duties as may be required of him by the city board of education; and to comply with all the requirements of law and all the rules and regulations of the state board of education

pertaining to this city in the operation of its public schools. (1981 Code, § 20-42, modified)

**20-303. Not to be personally interested in any school contract.** The superintendent of the city schools shall not contract with the board of education for any school supplies, materials, furniture, fixtures, erection or repairs of any school buildings. (1981 Code, § 20-43)

**20-304. Not to hire unqualified teacher.** It is unlawful for the city school superintendent to recommend for employment any person as teacher in the schools of the city who does not possess the qualifications prescribed by law for teachers. (1981 Code, § 20-44, modified)



**CHAPTER 4****CUSTODIAN OF SCHOOL FUND****SECTION**

20-401. Bond.

20-402. Duties.

**20-401. Bond.** The city clerk as custodian of the school fund shall enter into bond to be approved by the board in such sum as state law or the board shall require for the faithful discharge of his duties and to account for all moneys that come into his hands. (1981 Code, § 20-61, modified)

**20-402. Duties.** The custodian of the school fund shall disburse any or all school funds belonging to the corporation on the order of the school board. He shall keep in a book for that purpose a correct account of all receipts and disbursements and make with the board an accurate settlement of all his transactions at the close of each month and of each fiscal year. (1981 Code, § 20-62, modified)

## CHAPTER 5

### SHADE TREES

#### SECTION

- 20-501. Purpose and intent.
- 20-502. Definitions.
- 20-503. Administration; shade tree board.
- 20-504. Protection of existing trees.
- 20-505. Tree maintenance.
- 20-506. Removal of healthy public and street trees.
- 20-507. Planting and replacement.
- 20-508. Landmark tree.
- 20-509. Interference with municipal forester.
- 20-510. Penalties.

**20-501. Purpose and intent.** (1) The purposes of this chapter are to promote the health, safety and public welfare in the City of Cleveland, and consistent with forestry policy and practice for urban areas promulgated by the Division of Forestry of the State of Tennessee:

- (a) To encourage the planting of trees in the City of Cleveland;
- (b) To encourage the maintenance and protection of existing trees; and
- (c) To encourage the removal of undesirable or diseased trees.

(2) The standards herein are hereby established in order to lessen air pollution, to promote clean air quality by increasing dust filtration, to reduce noise, heat, and glare, to prevent soil erosion, to improve surface drainage and minimize flooding, to ensure that activities in one area do not adversely affect activities within adjacent areas, to emphasize the importance of trees as a visual screen, to beautify and enhance improved and undeveloped land, to maintain the ambience of the city, to ensure that tree planting and removal does not reduce property values, and to minimize the cost of construction and maintenance of drainage systems necessitated by the increased flow and diversion of surface waters. (1981 Code, § 22.5-21, as replaced by Ord. of Nov. 25, 1996)

**20-502. Definitions.** (1) "City" shall mean the City of Cleveland, Tennessee.

- (2) "Crownsread" - the distance from the ends of branches on one side of the tree, through the trunk, to the ends of the branches on the other side.
- (3) "Drip line" - all points directly underneath the end of the branches.
- (4) "Line clearance" - removal of limbs and branches growing within a set distance of electrical distribution lines.

(5) "Private tree" - a tree growing in an area owned by a private individual, business or commercial establishment, company, or industry, private institution, or other area not owned by government entities.

(6) "Proper pruning method" - selective removal and thinning of the upper portions of the tree using natural target techniques, taking into account the natural structure of the tree.

(7) "Pruning" - selective removal and thinning of the upper portions of the tree taking into account the shape and natural structure of the tree.

(8) "Public tree" - a tree growing in an area owned by the community, including parks, public buildings, schools, hospitals, and other areas to which the public has free access.

(9) "Public utility" - that section of local government in charge of electrical distribution in the community and having responsibility for keeping distribution lines free of hazards, including trees.

(10) "Shrub" - a woody plant with a multiple stem capable of growing to a height of up to fifteen (15) feet.

(11) "Street tree" - a tree growing within a public right-of-way along a street, in a median or the greenway.

(12) "Topping" - arbitrary removal of various portions of the tree, thereby leaving stubs, with no regard for the natural structure of the tree.

(13) "Tree" - a woody plant, at least one (1) inch in diameter, with a single trunk, or multiple trunk capable of growing to a height of fifteen (15) feet or more.

(14) "Utility tree" - a tree that will contact any utility structure. (1981 Code, § 22.5-22, as amended by Ord. of March 1993, as replaced by Ord. of Nov. 25, 1996, and amended by Ord. #2015-14, July 2015)

**20-503. Administration; shade tree board.** The shade tree board shall be responsible for carrying out the tree ordinance:

(1) Creation and establishment of a city shade tree board. There is hereby created and established the Cleveland Shade Tree Board which shall be composed of nine (9) members appointed by the mayor and approved by the city council. Five (5) members shall be appointed for two-year terms, and four (4) members shall be appointed for one-year terms. At the end of one year, four (4) members shall be appointed to two-year terms to replace those members whose terms have expired; and thereafter all members shall be appointed for two-year terms. All members of the shade tree board shall be citizens and residents of the city. One member shall be a member of the city planning commission; one shall be a city council member; one member shall be a private developer; one member shall be a representative of the public utility; one member shall be a representative of Main Street-Cleveland; and four (4) members shall be from the community at large.

(2) Compensation. Members of the board shall serve without compensation.

(3) Duties and responsibilities. The duties of the tree board shall include, but not be limited to, the following:

- (a) Develop and administer a master tree plan for the city subject to review by the city transportation director;
- (b) Develop and review, as necessary, recommend policies to carry out the intent of this chapter;
- (c) Assist in coordinating tree-related activities;
- (d) Coordinate publicity concerning trees and tree programs;
- (e) Conduct an Arbor Day ceremony;
- (f) Provide tree information to the community;
- (g) Maintain a recommended tree list for the community;
- (h) Recognize groups and individuals completing tree projects;
- (i) Coordinate donations of trees or money to purchase trees;
- (j) Hear citizen concerns regarding tree problems during scheduled meetings; and
- (k) Perform other tree-related duties and opportunities that arise from time to time.

(4) Operation. The board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

(5) Review by city council. The city council shall have the right to review the conduct and acts of the shade tree board. Any person may appeal from any ruling of the shade tree board to the city council who may hear the matter and make a final decision. Such appeal shall be made within ten (10) days after the ruling of the shade tree board and shall be filed in the office of the city clerk. An appeal shall stay the ruling of the shade tree board until a decision is made by the city council. (1981 Code, § 22.5-23, modified, as replaced by Ord. of Nov. 25, 1996)

**20-504. Protection of existing trees.** (1)(a) No person shall plant, spray, fertilize, preserve, prune, remove, cut aboveground or otherwise disturb any tree or shrub by digging, boring, removal, concrete constructions, etc., on any public right-of-way or municipal property without first filing an application and obtaining a permit.

(b) The forester shall issue the permits as are required by this chapter.

(c) The forester shall issue the permit provided for in this chapter if, in the forester's judgement, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit granted shall contain a definite date of expiration, and the work shall be completed in the time allowed on the permit and in the manner described.

(d) Applications. (i) Applications for permits must be made forty-eight hours in advance of the time the work is to be started.

(ii) Content. The application shall contain, but shall not be limited to the following:

(A) The number of trees and shrubs to be planted, and the location, variety and method of planting;

(B) The scope of work, including description of pruning, spraying, trimming, fertilizing, etc.;

(C) Assurance. The written agreement of each person who applies for such permit that said person will comply with the requirements, regulations and standards of this chapter;

(D) The time schedule for the proposed work; and

(E) Such other information as the forester deems necessary for the protection of the public.

(iii) Applications for permits may be made by telephone.

(iv) Tree locations will be staked at urban foresters discretion.

(2)(a) All trees on public rights-of-way near any excavation or construction work shall be guarded with a substantial fence, frame, or box not more than 30 inches high and eight feet square, or a barrier a distance in feet from the tree equal to the distance of the trunk in inches at 4.5 feet above the ground, whichever is greater, and all building material, dirt, or other debris shall be kept outside the barrier.

(b) No person shall excavate any tunnels, trenches, or lay any drive within a radius of ten feet from any public tree without first obtaining a permit.

(c) The provisions of this section shall not apply to utility companies, their agents, employees or subcontractors, providing the forester has participated in a preconstruction meeting, except to the extent that the forester judges it necessary to so regulate excavations within a radius of five feet from a public tree for such operations.

(d) Grade changes and trenching within the crown spread (ends of branches) of public trees should be conducted in such a way as to minimize root system damage. Owners of private trees are encouraged to consult the tree board before proceeding with these activities.

(3) As it pertains to commercial and residential development, the city maintains that it is in the best interest of all concerned to save as many existing trees as practical to maintain the ambience of our city.

(4) The public utility shall keep the board informed of all tree trimming activities of street trees and will advise them of all trees that must be removed before removal except in the case of emergency or special circumstances. (1981 Code, § 22.5-24, modified, as replaced by Ord. of Nov. 25, 1996)

**20-505. Tree maintenance.** (1) Tree topping of all public trees is prohibited, except as the first stage of tree removal, and topping of private trees is strongly discouraged.

(2) Obstruction of view - Pruning. (a) It is the duty of any person owning or occupying real property on any street where there are trees or shrubs to prune those trees and shrubs in such a manner that they will not obstruct vision of traffic signs, or obstruct view of any street or alley intersection.

(b) The normal minimum clearance of any overhanging portion of trees shall be ten feet over sidewalks and fourteen feet over all streets, unless in the judgement of the urban forester and city transportation director, additional clearance is necessary for traffic safety, a higher minimum may be required.

(3) Tree maintenance may include pruning, fertilizing, watering, insect and diseases control or other tree care activities. The city shall take responsibility for those maintenance activities needed to keep the public trees reasonably healthy and minimize the risk of hazard trees could cause to residents and visitors of the city. Determination of maintenance needs will be made by the tree board following the recommendation of the urban forester. Tree care may be accomplished by trained city personnel or by contract with qualified commercial tree care companies, under the direction of the urban forester.

(4) Care and maintenance of private trees are encouraged to minimize safety hazards to people and the health risk to other trees in the community. The tree board will provide information in a timely manner to residents about all aspects of tree care including the latest techniques and procedures currently being practiced.

(5) Tree pruning in the vicinity of power lines shall be undertaken by the public utility to assure the supply of electricity to its customers. Drop crotch pruning and pruning to laterals are the recognized methods. Where practicable, the utility shall undertake a program of replacing removed trees with appropriate replacement tree species or cultivars recommended by the urban forester.

(6) The standard tree pruning method will be branch collar pruning as opposed to stubs or flush cuts. Large limbs and branches will be pre-cut (3-cut method) to prevent excessive peeling of the bark, followed by cutting the remaining stub.

(7) The tree board will recommend to the urban forester areas that need to be pruned along streets and sidewalks. (1981 Code, § 22.5-21, as replaced by Ord. of Nov. 25, 1996)

**20-506. Tree removal.** (1) Dead, diseased, and dying trees that pose a safety or health risk to residents, utility lines, service lines or to other trees shall be removed in a timely manner. This section will apply to public trees.

The urban forester will make the risk determination. The appropriate governmental department will be contacted with the recommendation that a tree be removed. All tree removal will be through the urban forester who may contract with the public utility for removal.

(2) Removal of healthy public and street trees. As used in this subsection, the terms "public tree" and "street tree" are referencing those trees defined in § 20-502, but must be five inches (5") in diameter with that required diameter being measured four and one half feet (4 1/2') above ground level in order to qualify for the following procedures. Those public and street trees not meeting the five inch (5") diameter requirements shall be removed at the discretion of the urban forester.

It is the purpose of this subsection that no healthy public or street trees equal to or greater than five inches (5") in diameter with that required diameter being measured four and one half feet (4 1/2') above ground level shall be removed by the city, its staff, or any individual before executing the following process:

(a) The urban forester, or his/her designee, shall take pictures of the healthy public or street tree(s) that is/are proposed to be removed, and they shall be placed on the city's website along with the address and/or approximate location of the tree(s). A notice of the date, time, and location of the respective shade tree board meeting and discussion shall be placed alongside the pictures.

(b) As the aforementioned notice is placed on the internet, the urban forester, or his/her designee, must also send a copy of the pictures and the location of the tree(s) to each member of the shade tree board via e-mail.

(c) In addition to the publicized pictures, public notice, and shade tree board notice, the urban forester, or his/her designee, must place a non-permanent "X" on the tree(s) proposed to be removed and post a sign with a phone number and the urban forester's e-mail address in close proximity to the physical location of the tree stating that the tree may be removed. The shade tree board shall approve the format, size, and information included on this public notice sign, and the approved sign shall be uniformly used by the urban forester in posting the notice. The urban forester shall regularly monitor and keep record of all persons communicating their questions, comments, and concerns. These comments and e-mails shall be provided by the urban forester to all members of the shade tree board via e-mail.

(d) If the previous steps are taken, then the shade tree board will commence discussion and action upon the city's request to remove the healthy public or street tree(s) at the next regular scheduled meeting. The shade tree board may decide to hold a specially called meeting before the next regular scheduled meeting, provided that it is at least fifteen (15) days after all notices and pictures are placed on the city's website,

sent to the board members, and posted in the physical location of the tree(s). This shall provide ample time for citizens to comment on the scenario to the urban forester and the shade tree board.

(e) If the shade tree board approves the urban forester's request for removal of the healthy public or street tree(s) at the next meeting, then the city shall proceed to remove the tree(s). However, should the shade tree board deny the urban forester's request, then the decision may be appealed pursuant to § 20-503(5).

(f) Should an emergency arise that would provide necessary means to remove one (1) or more healthy public or street tree(s), the City of Cleveland shall have the authority to remove the tree(s) without following the previously mentioned procedures. However, the urban forester shall communicate via e-mail the circumstances justifying the emergency removal to all members of the shade tree board.

(g) The removal process set forth in (2) is not applicable to the removal of healthy public trees and healthy street shade trees located in or on the Spring Branch Industrial Park Property (tax identification number 055, parcel 046.00, and more specifically described in the deed recorded in book 2143, page 640 in the Register of Deeds office of Bradley County) and the remaining property in the Cleveland/Bradley Industrial Park (tax identification number 065, parcels 015.15 and 015.13). Removal of any public trees located in or on these parcels are hereby exempted from the removal process described in (2), and public trees on this parcel may be removed without the approval of the shade tree board or the city council. (1981 Code, § 22.5-22, as replaced by Ord. of Nov. 25, 1996, and amended by Ord. #2015-14, July 2015 and Ord. #2015-31, Nov. 2015)

**20-507. Planting and replacement.** The city shall replace all public or street trees that require removal including, but not limited to, trees requiring removal by reason of disease or storm damage. If it is undesirable at the location of removal, then a new location for replanting will be determined by the tree board. Each tree removed must be replaced on a one-to-one basis. Spacing of trees shall be determined by the forester according to local conditions, the species, cultivars, or varieties used, their mature height, spread and form. Generally, all large trees shall be planted forty feet on-center; medium-sized trees shall be planted approximately thirty-five feet on-center; and all small trees shall be planted approximately twenty-five feet on-center. No tree shall be planted closer than thirty feet from street intersections and no closer than fifteen feet from driveways and alleys and no closer than ten feet to utility poles and fire hydrants under normal circumstances.

(1) Size. Unless otherwise specified by the tree board, all medium to large cultivars and varieties shall comply with the American Association of Nurserymen standards and be at least one and one-fourth (1¼) to one and one-half (1½) inches in diameter six (6) inches above ground level, and at least



eight (8) to ten (10) feet in height when planted. The crown shall be in good balance with the trunk. All small deciduous tree species and their cultivars or varieties shall be at least five (5) to six (6) feet or more in height and have six (6) or more branches.

(2) Tree removal to ground level is considered part of the tree removal process (0 to 6 inches from the soil is considered ground level). (1981 Code, § 22.5-27, as replaced by Ord. of Nov. 25, 1996)

**20-508. Landmark tree.** The shade tree board will compose a list of any public trees which qualify as a "landmark tree". A tree may qualify as a landmark tree at the determination of the city shade tree board. The tree board shall use criteria such as rarity, old age, association with a historical event or person, abnormality, or scenic enhancement. Private trees may also qualify as a "landmark tree" the request of landowner. The tree board shall keep a list of all landmark trees, both public and private. (1981 Code, § 22.5-28, as replaced by Ord. of Nov. 25, 1996)

**20-509. Interference with municipal forester.** No person shall hinder, prevent, delay, or interfere with the municipal forester or any of his assistants while they are engaged in carrying out the execution or enforcement of this chapter; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the city. (as added by Ord. of Nov. 25, 1996)

**20-510. Penalties.** Any person violating this chapter shall be punished as provided for in the Code of Ordinances of the City of Cleveland. Each subsequent day that any violation continues unabated shall constitute a separate offense. (1981 Code, § 22.5-29, as replaced by Ord. of Nov. 25, 1996)

## CHAPTER 6

### PARKS AND CEMETERIES

#### SECTION

20-601. Hours regulated.

20-602. Park rules and regulations.

20-603. Skate park rules and regulations.

**20-601. Hours regulated.** Except for unusual and unforeseen emergencies, parks and cemeteries shall be open to the public every day of the year during designated hours. The opening and closing hours for each individual park or cemetery shall be as established by the parks and recreation director and posted therein for public information. City parks, facilities and cemeteries will be closed for public use during the hours posted on the signs in each park or cemetery.

It shall be unlawful for any person to use the parks or facilities during said hours except for public participation or attendance during activities or events specifically authorized by the city manager. Any section or part of any park or cemetery may be declared closed to the public by the administrator at any time and for any interval of time, either temporarily or at regular and stated intervals, daily or otherwise, and either entirely or to merely certain uses, as the administrator shall find reasonably necessary. The physical closing of the parks or municipally owned cemeteries will be the responsibility of the parks and recreation department. Cemeteries shall be closed from sunset to sunrise each day. (1981 Code, § 14-184, as amended by Ord. #2003-33, Nov. 2003)

**20-602. Park rules and regulations.** (1) Definitions. As used in this section the following definitions will apply:

(a) "Department." The Parks and Recreation Department of the City of Cleveland.

(b) "Director." The Director of the Parks and Recreation Department of the City of Cleveland, or his or her designee.

(c) "Park." Includes any city property currently or hereafter used as a city park, including, but not limited to, Deer Park, Fletcher Park, Johnston Park, Elrod Park, Mosby Park, Tinsley Park, and any park located on or adjacent to a city school. As used in this chapter, the word "park" also includes the greenway throughout the corporate limits of the City of Cleveland.

(d) "Pavilion." Includes the pavilions located at Deer Park and Tinsley Park.

(2) Rules and regulations. (a) No person shall ride, park or drive any bicycle, motorcycle, motor vehicle, skate board, roller blade, roller skate, land sailing device, horse or pony on, over or through any park or portion

of a park designated by signage as being restricted from such activities. Parking of vehicles shall be limited to those areas specifically designated for that purpose.

No person shall be permitted to hunt, capture, net or harm any living creature or possess any device, weapon or item designated or designed for such purposes in any park. However, to the extent allowed by state law, individuals may fish within the creeks or streams or other bodies of water that are located within a city park.

(b) No fire shall be built except in fireplaces or grills designed for such purpose. All embers shall be disposed of in a proper manner.

(c) All animals brought to any park shall be properly restrained on a leash or similar device not exceeding 8 feet in length. It is unlawful to allow or permit any domestic animal to run at large in any park, or to enter any lake, pond, fountain or stream therein. The owner or handler of any animal shall also be responsible for the proper disposal of the animal's waste. Any person with an animal in their possession at any park shall be responsible for the conduct of the animal.

(d) No person shall engage in any activity that interferes with the activities of those persons or groups who have obtained a special use permit from the department.

(e) No person shall bring glass containers into a park.

(f) No person shall deposit any refuse or trash brought from private property into receptacles located in a park. Nothing in this subsection is intended to prohibit the disposal of refuse generated from park use or activities, such as picnics, parties, barbeques, etc., so long as all such refuse and waste is disposed of in receptacles provided for such purpose.

(g) No person shall remove, destroy, mutilate or deface any structure, statue, fountain, fence, railing, bench, shrub, tree or any other property in any park.

(h) No person shall use, place or erect any sign, poster, billboard, bulletin board, post, pole, or device of any kind for advertising in any park; or attach any bill, poster or sign to any tree or structure within any park without the prior written permission of the director.

(i) No person shall place or erect any text, trailer, amusement device, or other similar structure in any park without the prior written permission of the director.

(j) No person shall swim or bathe in any area not designated for such purpose. Swimming shall be permitted in designated areas only. All persons using designated swimming areas shall obey all posted rules and/or the instructions of lifeguards and/or other department employees.

(k) No person shall wash any person, object or animal in any stream, pond, lake or fountain that is located in or on any park.

(l) No person shall possess, consume, dispense, convey, or give away any alcoholic beverages, including beer, in any park. No person shall bring any alcoholic beverages, including beer, into a park. However, this section shall not be construed to prohibit the possession or consumption of beer which is sold at the Waterville Golf Course.

(m) All sales, raffles or other fund-raising activities (including sports tournaments) are expressly prohibited unless prior written permission is obtained from the director.

(n) No person shall possess any firework, firecracker, explosive, bow and arrow, BB gun or slingshot in any park without prior written permission from the director.

(o) No person shall refuse to leave a park when directed to leave by a department employee or officer of the Cleveland Police Department.

(p) No person shall play car stereos, radios, portable audio equipment (including, but not limited to, tape players, CD players, or boom boxes) so loudly that they interfere with normal conversations or cause annoying vibrations at a distance of 75 feet or more.

(3) Priority of use. Activities and programs scheduled by the department will have first priority for use of all parks and facilities, including pavilions.

(4) Pavilion reservation. Individuals or groups which desire to reserve a pavilion may be granted special use permits by the department but will be subject to a permit fee. Special conditions of use will be established by the department and noted on the permit. Individuals or groups who obtain a special use permit must have the permit in their possession and be able to display it upon demand at the time and place listed in the permit.

(5) Enforcement. The director, as well as members of the Cleveland Police Department, shall, in conjunction with their other duties imposed by law, enforce the provisions of this section.

(6) Ejection citation for violations. The director and members of the Cleveland Police Department shall have the authority to eject from all parks any person who violates any rule or regulation promulgated under this section. Officers of the Cleveland Police Department are further authorized to issue citations for any violation of any rule or regulation promulgated under this section.

(7) Penalty. In addition to ejection, a violation of any provision of this section shall be punishable by a fine not to exceed \$50.00 for each violation. (as added by Ord. #2004-06, March 2004, and amended by Ord. #2010-14, May 2010, and Ord. #2010-21, June 2010)

**20-603. Skate park rules and regulations.** (1) Definitions. As used in this section, the following definitions will apply:

(a) "Department." The Parks and Recreation Department of the City of Cleveland.

(b) "Director." The Director of the Parks and Recreation Department of the City of Cleveland, or his or her designee.

(c) "Skate park" means the skate park located within Tinsley Park.

(2) Rules and regulations. (a) The skate park is unsupervised. However, department staff will be on site at irregular times. Skaters must follow the directions of department staff or city police. No person shall refuse to leave the skate park when directed to leave by the director, department staff, or an officer of the Cleveland Police Department.

(b) Skaters are using the skate park at their own risk. There is an inherent risk of injury in skating and participation in skate park activities. Users of the skate park, by their participation, accept these risks.

(c) No skater may use the skate park without first obtaining a skate park sticker from the parks and recreation department. In order to obtain a skate park sticker, the skater must sign a waiver form. If the skater is a minor, the parent(s) or legal guardian(s) of the minor must also execute the waiver. Waiver forms and stickers may be obtained from the parks and recreation department during normal operating hours.

(d) The sticker must be placed on the skater's helmet and be clearly visible at all times while the skater is using the skate park. No one may use the skate park without wearing a helmet with the appropriate sticker attached to their helmet.

(e) All skaters must wear appropriate safety equipment and shoes at all times. All skaters must wear a helmet. Helmets must fit well and must have the helmet straps securely fastened at all times. Kneepads, wrist pads, and elbow pads are strongly recommended to be used at all times.

(f) Only skateboards and in-line skates are permitted in the skate park. Bicycles, scooters, mountain bikes and all other motorized devices are prohibited. The department reserves the right to post times for certain uses and to discontinue certain uses if necessary.

(g) Use or consumption of any of the following items is prohibited at all times in the skate park: food, chewing gum, glass containers, cigarettes or other tobacco products, alcohol, or drugs.

(h) Because rain, snow, or other moisture can make the skate park surface slippery, the skate park is considered closed when the skate park surface area is wet and/or during periods of inclement weather.

(i) The skate park is to be used as designed. No modifications to the surface or features are allowed. No ramps, jumps, or obstacles may be added within the skate park. No other items such as benches or tables may be used as ramps or jumps in the skate park. No personally owned ramps, boxes or other similar devices are allowed in the skate park.

(j) Spectators are not permitted entry into the skate park area unless they are wearing the required safety equipment, including a helmet with a city-issued sticker. Spectators who enter the skate park area are considered skaters and are subject to the same rules as skaters.

(k) Personal property is the responsibility of the skater and may not be stored at the skate park.

(l) Profanity, foul language, recklessness and/or boisterous behavior are prohibited in the skate park.

(m) Vandalism or defacing, including, but not limited to, graffiti, stickers and tagging, is prohibited.

(n) Skating is prohibited on the Tinsley Park tennis courts, sidewalks, steps, tables, or any other area of Tinsley Park outside of the skate park fence.

(o) The skate park closes at dark. The skate park may not be used after dark.

(p) Anytime the skate park fence is locked it is considered closed. No person may use the skate park at any time when it is closed.

(q) Organized events require a special event permit from the parks and recreation department.

(r) Skaters ten (10) and under must be accompanied by a parent or guardian.

(s) Juveniles under eighteen (18) years old are not allowed on any portion of the greenway between the house of 11:00 P.M. and 6:00 A.M. unless accompanied and supervised by a responsible adult. The city shall post signs at each of the greenway trail entrances to notify the public of this rule.

(3) Priority of use. Activities and programs scheduled by the department will have first priority for use of the skate park.

(4) Skate park reservation. Individuals or groups which desire to reserve the skate park may be granted special use permits by the department but will be subject to a permit fee. Special conditions of use will be established by the department and noted on the permit. Individuals or groups who obtain a special use permit must have the permit in their possession and be able to display it upon demand at the time and place listed in the permit.

(5) Enforcement. The director, the employees of the recreation department, as well as members of the Cleveland Police Department, shall, in conjunction with their other duties imposed by law, enforce the provisions of this section.

(6) Penalties for violations of skate park rules. The director and members of the Cleveland Police Department shall have the authority to eject from the skate park any person who violates any skate park rule or regulation under this section. Officers of the Cleveland Police Department are further authorized to issue citations for any violation of any skate park rule or

regulation under this section. A skater may be issued a citation and ejected for the same violation.

In addition to or in lieu of ejection from the skate park and/or the issuance of a citation, the director, employees of the recreation department, and officers of the Cleveland Police Department may also elect to, and are hereby authorized to, utilize any or all of the following measures to deal with any violation of the skate park rules and regulations:

- (a) Verbal warning
- (b) Incident report write-up
- (c) Notification to parents or guardians if the skater is under age eighteen (18).
- (d) Suspension of skate park privileges for a specified time.

(7) Civil penalty for citations. If a citation is issued to a skater for a violation of any provision of this section or any of the skate park rules, a skater, or any other person found guilty of such violation in municipal court, shall be assessed a civil penalty not to exceed fifty dollars (\$50.00) for each violation, plus court costs and litigation tax as otherwise specified in the Cleveland Municipal Code.

(8) Compliance with other laws. These rules and regulations are in addition to any other applicable city ordinances, including city park rules and regulations under §§ 20-601 or 20-602, or any other applicable state and/or federal laws. (as added by Ord. #2008-55, Aug. 2008, and amended by Ord. #2015-16, July 2015)

## CHAPTER 7

### WATERVILLE GOLF COURSE

#### SECTION

- 20-701. Parks and recreation director to oversee operations.
- 20-702. Use of fees.
- 20-703. [Deleted.]
- 20-704. Waterville Golf Course Advisory Committee.
- 20-705. Committee's annual review of operations and recommendations.
- 20-706. Discounts - senior golfers, junior golfers and promotional.
- 20-707. Use of private carts.
- 20-708. Prohibition on private coolers or containers.
- 20-709. Rates and fees to be set by resolution.
- 20-710. Reservation of right to lease or contract for management.

**20-701. Parks and recreation director to oversee operations.**

Waterville Golf Course is hereby declared to be a division of the Parks and Recreation Department. The operation and maintenance of the course shall be the responsibility of the parks and recreation director, under the general direction of the city manager. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, and Ord. #2008-51, Aug. 2008)

**20-702. Use of fees.** Rates and fees for various golf services shall be used for costs associated with the course, including operating expenses, replacement of golf carts and maintenance equipment, and all improvements to the golf course, clubhouse, and appurtenant maintenance and storage facilities. (Ord. of Dec. 1995, as replaced by Ord. #2005-47, Jan. 2006)

**20-703. [Deleted.]** (Ord. of Dec. 1995, as deleted by Ord. #2005-47, Jan. 2006)

**20-704. Waterville Golf Course Advisory Committee.** There is hereby created the Waterville Golf Course Advisory Committee, consisting of two city council members appointed by the city council, the city manager, and three golfers having annual memberships at Waterville Golf Course at the time of their election. The three golfers shall be elected by the vote of those golfers holding annual memberships on the first day of January of each calendar year. The election shall be held on the first Monday following the first day of January of each calendar year, or the following day if the first Monday of January is a legal holiday declared by the city council. The election shall be held at a time and place set by the parks and recreation director. Voting by proxy will not be allowed. The term for each golfer representative shall be for one year. There shall be no limit to the number of terms a golfer representative may serve. In



the event of a vacancy occurring during the year, the other two golfer representatives shall select another golfer representative from among the active annual membership roster to fill the unexpired term. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, Ord. #2005-47, Jan. 2006, and Ord. #2008-51, Aug. 2008)

**20-705. Committee's annual review of operations and recommendations.** (1) By the last day of February of each year, the Waterville Golf Course Advisory Committee shall have been called together by the parks and recreation director, and shall have submitted written recommendations to the director. The director shall consider these recommendations for inclusion in the director's annual budget request to the city manager. The city manager shall forward copies of the recommendations to the mayor and city council as part of the annual budget process.

(2) The annual report on recommendations required in subsection 20-705(1) shall include the following:

- (a) A thorough review of the financial condition of the course.
- (b) A recommendation on the rate schedule for the next year.
- (c) A recommendation on the capital improvements to the course or clubhouse for the next fiscal year.
- (d) A recommendation on the capital equipment to be purchased in the next fiscal year.
- (e) A recommendation on the number of annual memberships to be authorized in the next calendar year, and whether they should be limited by category.
- (f) Any other recommendations which the committee believes will enhance the operation of the course. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, Ord. #2005-47, Jan. 2006, and Ord. #2008-51, Aug. 2008)

**20-706. Discounts - senior golfers, junior golfers and promotional.** It is the intent of this chapter that senior golfers (defined as those persons 62 years of age or older) and junior golfers (defined as those persons under 18) shall be given a reasonable discount for some costs during non-peak usage times. Discounts of twenty percent (20%) from the normal rates shall be established in the rate schedule for senior golfers and junior golfers for both annual memberships and weekday green fees. However, there shall be no senior golfer or junior golfer discounts given for weekend or holiday green fees, trail fees, or any cart rental fees. However, a non-cart owner, when riding with a private cart owner, can be given a discount from the normal cart rental fee of up to twenty percent (20%), provided that the discount is established in the rate schedule. Promotional discounts may also be offered to golfers periodically if approved by the parks and recreation director. Promotional discounts may include reduced

green fees so long as they are approved by the parks and recreation director. (Ord. of Dec. 1995, as replaced by Ord. #2005-47, Jan. 2006)

**20-707. Use of private carts.** It is the intent of this chapter to grandfather existing private carts currently stored at Waterville Golf Course, but to discontinue any new private carts being stored or used on the course. Therefore, only those golfers currently paying a cart storage fee as of November 18, 1995, shall be entitled to continue said cart use. That use can only continue so long as the current cart owner(s) and permittee(s) continue to own his/her existing golf cart. No additional dual ownerships and permits beyond those existing on November 18, 1995, and paid in full, shall be allowed. No current private cart owner and permittee may transfer, swap, sell, give, bequeath or in any manner relinquish his grandfathered right to continue using his/her private cart to any other person, firm, corporation or partnership. If any current cart owner and permittee shall allow the owner's cart storage fee to become delinquent for any reason, the owner shall immediately forfeit the right to continue private cart usage. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, Ord. #2005-47, Jan. 2006, and Ord. #2008-51, Aug. 2008)

**20-708. Prohibition on private coolers or containers.** The use of private coolers or similar containers is hereby prohibited on the Waterville Golf Course property. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, replaced by Ord. #2005-47, Jan. 2006, amended by Ord. #2008-51, Aug. 2008, and replaced by Ord. #2010-14, May 2010)

**20-709. Rates and fees to be set by resolution.** The city council shall establish and amend the rates and fees for the Waterville Golf Course by resolution. The current rates and fees established by resolution shall be posted in the pro shop in a conspicuous place at all times, and a copy kept in the office of the parks and recreation director. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, and Ord. #2008-51, Aug. 2008)

**20-710. Reservation of right to lease or contract for management.** Nothing herein shall preclude the city council from entering into a lease agreement or a management contract pertaining to Waterville Golf Course. The city council specifically reserves the right to enter into a lease agreement or management contract in the future. (Ord. of Dec. 1995, as replaced by Ord. #2005-47, Jan. 2006, and amended by Ord. #2008-51, Aug. 2008)

## CHAPTER 8

### FAIR HOUSING REGULATIONS

#### SECTION

- 20-801. Policy.
- 20-802. Definitions.
- 20-803. Unlawful practice.
- 20-804. Discrimination in the sale or rental of housing.
- 20-805. Discrimination in the financing of housing.
- 20-806. Discrimination in the provision of brokerage services.
- 20-807. Exemption.
- 20-808. Administration.
- 20-809. Education and conciliation.
- 20-810. Enforcement.
- 20-811. Investigations; subpoenas; giving of evidence.
- 20-812. Enforcement by private persons.

**20-801. Policy.** It is the policy of the City of Cleveland to provide, within constitutional limitations, for fair housing throughout the city. (Ord. of Aug. 1995)

**20-802. Definitions.** (1) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(2) "Family" includes a single individual.

(3) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and judiciaries.

(4) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises owned by the occupant.

(5) "Discriminatory housing practice" means an act that is unlawful under §§ 20-804, 20-805 or 20-806. (Ord. of Aug. 1995)

**20-803. Unlawful practice.** Subject to the provisions of § 20-807(2), the prohibitions against discrimination in the sale or rental of housing set forth in § 20-804 shall apply to:

(1) All dwellings except as exempted by subsection (2).

(2) Nothing in § 20-804 shall apply to:

(a) Any single-family house sold or rented by an owner: Provided that such private individual owner does not own more than

three such single-family houses at any one time: Provided further that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: Provided further that the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented.

(i) without the use in any manner of the sale or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and

(ii) without the publication, posting or mailing, after notice of any advertisement or written notice in violation of § 20-804(3), but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(b) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(3) For the purposes of subsection (2), a person shall be deemed to be in the business of selling or renting dwellings if:

(a) He has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(b) He has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(c) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families. (Ord. of Aug. 1995)

**20-804. Discrimination in the sale or rental of housing.** As made applicable by § 20-803 and except as exempted by §§ 20-803(2) and 20-807, it shall be unlawful:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, national origin, familial status or handicap.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, national origin, familial status or handicap.

(3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status or handicap, or an intention to make any such preference, limitation or discrimination.

(4) To represent to any person because of race, color, religion, sex, national origin, familial status or handicap that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, familial status or handicap.

(6) To refuse to permit, at the expense of the person with a disability, reasonable modifications are necessary to afford that person full enjoyment of the premises.

(7) To refuse to make reasonable accommodations in rules, policies, practices, or service, when such accommodations are necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. (Ord. of Aug. 1995)

**20-805. Discrimination in the financing of housing.** It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, national origin, familial status or handicap of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, that nothing contained in this section shall impair the scope or effectiveness of the exception contained in § 20-803(2). (Ord. of Aug. 1995)

**20-806. Discrimination in the provision of brokerage services.** It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms of conditions of such access, membership, or participation, on account of race, color, religion, sex, national origin, familial status or handicap. (Ord. of Aug. 1995)

**20-807. Exemption.** Nothing in this chapter shall prohibit a religious organization, association, or society, or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwelling which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, sex, national origin, familial status or handicap. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. (Ord. of Aug. 1995)

**20-808. Administration.** (1) The authority and responsibility for administering this Act shall be with the mayor.

(2) The mayor may delegate any of these functions, duties, and powers to employees of the city or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter under this chapter. The mayor shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officer in the city, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(3) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the mayor to further such purposes. (Ord. of Aug. 1995)

**20-809. Education and conciliation.** Immediately after the enactment of this chapter, the mayor shall commence such educational and conciliatory activities as will further the purposes of this chapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this chapter and his suggested means of implementing it, and shall endeavor with their advise to work out programs of voluntary compliance and of enforcement. (Ord. of Aug. 1995)

**20-810. Enforcement.** (1) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Tennessee Human Rights Commission. Complaints shall be in writing and shall contain such information and be in such form as the Tennessee Human Rights Commission requires. Upon receipt of such a complaint, the Tennessee Human Rights Commission shall furnish a copy of the same to the person or persons who allegedly committed or is about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (3), the Tennessee Human Rights Commission shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Tennessee Human Rights Commission decides to resolve the complaints, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by information methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned. Any employee of the Tennessee Human Rights Commission who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

(2) A complaint under subsection (1) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Tennessee Human Rights Commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(3) If within thirty days after a complaint is filed with the Tennessee Human Rights Commission has been unable to obtain voluntary compliance with this chapter, the person aggrieved may, within thirty days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The Tennessee Human Rights Commission will assist in this filing.

(4) If the Tennessee Human Rights Commission has been unable to obtain voluntary compliance within thirty days of the complaint, the person aggrieved may, within thirty days hereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this chapter, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent

from engaging in such practice or order such affirmative action as may be appropriate.

(5) In any proceeding brought pursuant to this section, the burden of proof shall be on the complaint.

(6) Whenever an action filed by an individual shall come to trial, the Tennessee Human Rights Commission shall immediately terminate all efforts to obtain voluntary compliance. (Ord. of Aug. 1995)

**20-811. Investigations; subpoenas; giving of evidence.** (1) In conducting an investigation, the Tennessee Human Rights Commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: Provided, however, that the Tennessee Human Rights Commission first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Tennessee Human Rights Commission may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court of the district in which the investigation is taking place. The Tennessee Human Rights Commission may administer oaths.

(2) Upon written application to the Tennessee Human Rights Commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Tennessee Human Rights Commission to the same extent and subject to the same limitations as subpoenas issued by the Tennessee Human Rights Commission himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(3) Witnesses summoned by subpoena of the Tennessee Human Rights Commission shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to the witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

(4) Within five days after service of a subpoena upon any person, such person may petition the Tennessee Human Rights Commission to revoke or modify the subpoena. The Tennessee Human Rights Commission shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.



(5) In case of contumacy or refusal to obey a subpoena, the Tennessee Human Rights Commission or other person at whose request it was issued may petition for its enforcement in the municipal or state court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Tennessee Human Rights Commission shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Tennessee Human Rights Commission, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Tennessee Human Rights Commission pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(7) The Tennessee Human Right Commission Attorney shall conduct all litigation in which the Tennessee Human Rights Commission participates as a party or as amicus pursuant to this chapter. (Ord. of Aug. 1995)

**20-812. Enforcement by private persons.** (1) The rights granted by §§ 20-803, 20-804, 20-805, and 20-806 may be enforced by civil actions in state or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: Provided, however, that the court shall continue such civil case brought to this section or § 20-810(4) From time to time before bringing it to trial or renting dwellings; or

(2) Any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from:

(a) Participating, without discrimination on account of race, color, religion or national origin, in any of the activities, services, organizations or facilities; or

(b) Affording another person or class of persons opportunity or protection so to participate, or

(3) Any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the activities, services, organizations or facilities, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and, if bodily injury results, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death

results, shall be subject to imprisonment for any term of years or for life. (Ord. of Aug. 1995)

**CHAPTER 9****ALARM SYSTEM REGULATIONS****SECTION**

- 20-901. Title.
- 20-902. Definitions.
- 20-903. Automatic telephone dialing alarm system.
- 20-904. Permit issuance and renewal.
- 20-905. Application requirements for an alarm permit.
- 20-906. Items required for an alarm system to qualify for an alarm permit.
- 20-907. False alarms.
- 20-908. Fee assessment.
- 20-909. Disconnection.

**20-901. Title.** This chapter shall be known as the "alarm ordinance".

**20-902. Definitions.** Unless it is apparent from the context that another meaning is intended, the following words when used in this chapter shall have the meaning herein:

(1) "Alarm system" means any assembly of equipment, mechanical or electrical, arranged to signal the police and/or fire department that an emergency exists or that the services of either or both those departments are needed. "Alarm systems" shall also mean any alarm device which automatically emits an audible, visual, or other response upon the occurrence of any hazard or emergency and is intended to alert persons outside the building to the existence of said hazard or emergency.

(2) "Alarm user" means the person, firm, partnership, association, corporation, company, or organization of any kind in control of any building, structure, or facility or portion thereof wherein an alarm system is maintained.

(3) "Alarm business" means the business of any individual, partnership, corporation, or other entity engaged in selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing any alarm system or in causing any alarm system to be sold, leased, maintained, serviced, repaired, altered, replaced, moved, or installed in or on any building, structure, or facility.

(4) "Automatic telephone dialing alarm system" means any alarm system which is a device which automatically or electronically transmits by telephone or telephone line connected to the central dispatch facility a recorded message or code signal indicating a need for emergency response; or a system which, upon activation, connects to an answering service whose function it is to transmit to the police and/or fire department a need for emergency response.

(5) "False alarm" means an alarm signal eliciting a response by the police and/or fire department when a situation requiring a response by the police

and/or fire department does not in fact exist; but, this definition does not include an alarm signal caused by unusual conditions of nature nor does it include other extraordinary circumstances not reasonably subject to control by the alarm user. Also this definition does not include an alarm signal caused by situation that may have brought under control prior to the arrival of the responding police and/or fire department, that otherwise would have required a response.

(6) "Central dispatch facility" means the central communications center designated by the city council to receive, route, and otherwise handle all incoming police, fire or other emergency service communication traffic.

(7) "Answering service" refers to a telephone answering service providing among its services the receiving on a continuous basis emergency signals from alarm systems and thereafter relaying the message to the central dispatch facility.

(8) "Permit year" means the portion of the calendar year remaining after the date of issuance of a permit and all subsequent calendar years thereafter that such permit may remain in effect.

**20-903. Automatic telephone dialing alarm system.** (1) It shall be unlawful for any person, natural or corporate, to sell, offer for sale, install, maintain, lease, operate, or assist in the operation of an automatic telephone dialing alarm system over any telephone lines exclusively used by the public to directly request emergency service from the fire and/or police department. This provision does not prohibit an audible alarm, or an alarm answered by an alarm answering service which then contacts the city's central dispatch facility. All alarms must meet the requirements of § 20-906.

(2) The electrical inspector, when he has knowledge of the unlawful maintenance of an automatic telephone dialing alarm system installed or operating in violation of this chapter shall, in writing, order the owner, operator, or lessee to disconnect and cease operation of the system within 72 hours of receipt of the order.

(3) Any automatic telephone dialing system installed unlawfully, as set forth in this section, prior to the effective date of this chapter shall be removed within 30 days.

**20-904. Permit issuance and renewal.** (1) The electrical inspector is hereby authorized to grant a revocable alarm users permit to any alarm user located in the city to operate, maintain, install, or modify a place or fire alarm device, and no such device shall be operated unless such permit shall have first been issued.

(2) A permit issued pursuant to this chapter may be revoked at any time by the electrical inspector upon the giving of ten (10) days notice in writing by registered mail, to the permittee, sent to the address shown on the permit. Violation of this chapter, following conviction thereof, shall constitute grounds for revocation of the permit. The failure of the electrical inspector to revoke the

permit following the finding of the city court that there has been a violation of this chapter, shall not be deemed a waiver of the right to revoke the permit.

(3) The electrical inspector shall charge a fee for the issuance of any such permit, said fee being set and published from time to time as circumstances require by resolution of the city council.

**20-905. Application requirements for an alarm permit.**

(1) Application for an alarm permit shall be made on forms<sup>1</sup> provided by the electrical inspector, and shall be accompanied by the fee as stipulated by the city council. Forms shall include the following:

(a) The type of alarm system.

(b) The name, address, and telephone number of the applicant's property to be serviced by the alarm, and the name, address and telephone number of applicant's residence if different. If the applicant's alarm is serviced by an alarm company, then the applicant shall also include the name, address, and telephone number of that company.

(c) An emergency telephone number of the users and two representatives to permit prompt notification of alarm calls and to assist police and/or fire personnel in the inspection of the property.

(2) It is the applicant's responsibility to immediately notify the electrical inspector in writing of any and all changes in the information on file with the city regarding such permits. (as amended by Ord. of July 8, 1996)

**20-906. Items required for an alarm system to qualify for an alarm permit.** (1) All alarm systems shall have a backup power supply that will become effective in the event of a power failure or outage in the source of electricity.

(2) All alarm systems will have an automatic reset which silences the annunciator within thirty (30) minutes after activation.

(3) Any system installed on or after the effective date of this chapter must comply with the requirements stipulated in this section. Preexisting installations must comply with this section within six (6) months of the effective date of this chapter. (as amended by Ord. of July 8, 1996)

**20-907. False alarms.** (1) Whenever a false alarm is activated in the city, thereby requiring an emergency response to the location by police and/or fire personnel, a police and/or fire officer on the scene of the activated alarm shall determine whether the emergency response was in fact required as indicated by the alarm system or whether in some way the alarm system malfunctioned and thereby activated a false alarm.

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<sup>1</sup>These forms are of record in the city clerk's office.

(2) If the police or fire officer at the scene of the activated alarm system determines the alarm to be false and no emergency seems necessary, then said officer shall submit a report of the false alarm to the electrical inspector, or his designee. A written notification of emergency response and determination of the response shall be mailed or delivered to the alarm user at the address noted on the permit or location where alarm was activated. The permit holder upon receipt of the notification shall be entitled to a hearing before the electrical inspector or his designee and permit holder desiring a hearing shall request said hearing within ten (10) days of date of notification.

(3) The electrical inspector shall have the right to inspect any alarm system on the premises to which response has been made and he may cause an inspection of such system to be made at any reasonable time thereafter to determine whether it is being used in conformity with the terms of this chapter.

(4) It shall be a violation of this chapter to intentionally cause a false alarm, and any person who intentionally causes a false alarm shall be subject to the penalty provisions hereof.

(5) There shall be provided to the alarm user, a ten-day grace period during the initial installation of the alarm system.

(6) It shall be required and provided that any alarm business testing or servicing any alarm system notify the police and/or fire departments and instruct said departments of the location and times of said testing and servicing. This section shall apply to any testing period after the initial installation period has ceased. This section will not apply to the alarm user if prior notice of said testing has been made to the respective departments as outlined in this section. Any violation of this section herein will be assessed under the provisions outlined in this chapter.

**20-908. Fee assessment.** It is hereby found and determined that more than three (3) false alarms within a permit year are excessive and constitute a public nuisance. Upon the activation of a fourth false alarm within a permit year, the chief of police and the fire chief, or their designees, shall personally meet with the alarm owner and encourage repair or replacement in order to correct the problem. They shall also notify the owner that should the false alarms continue, the matter will be referred to the city council for action.

The police chief and fire chief shall refer to the city manager the name of any alarm owner who has had ten (10) false alarms in a permit year. The city manager shall schedule a public hearing before the city council where both the alarm owner and city officials can present information on why the problem is continuing. Upon hearing all the information, and obtaining other information as it deems appropriate, the city council may take whatever lawful action it deems appropriate, up to fines and penalties or disconnection of the alarm, within the limits imposed by state law.

The city clerk shall not bill or collect for any false alarm charge or fee under the previous false alarm ordinance after December 31, 1997. Henceforth,

the city clerk shall bill only for charges stemming from the decisions of the city council following a public hearing when ten (10) or more false alarms have occurred in a permit year. (as amended by Ord. of July 8, 1996, and replaced by Ord. of 3/23/98)

**20-909. Disconnection.** In the event that an alarm system emitting an audible, visual, or other response which causes a disruption to neighbors cannot be reset following attempts to notify the owner, any alarm company servicing the premises, and both the individuals listed as capable of resetting the alarm, the city shall have the right to take such action as may be necessary to disconnect any such alarm. Any such disconnection shall require notification by the city personnel disconnecting the alarm to the alarm owner informing the owner of the reason for the disconnection. Said notice must be mailed by certified mail within twenty-four (24) hours of the actual disconnection being made. (as replaced by Ord. of July 8, 1996)

## CHAPTER 10

### DISPOSITION OF ABANDONED AND LOST PERSONAL PROPERTY

#### SECTION

20-1001. Disposition of abandoned or lost currency.

20-1002. Disposition of personal property other than currency.

20-1003. General provisions.

**20-1001. Disposition of abandoned or lost currency.** (1) If lost or abandoned currency comes into the possession of the City of Cleveland, the city shall hold the currency to allow the city to investigate and attempt to ascertain the lawful owner of the currency. If the lawful owner is identified, the currency shall be returned to the owner. If an investigation fails to determine the lawful owner of the currency, then the city shall comply with all requirements of state law and any regulations of the state treasurer. If the state treasurer declines in writing to accept such currency, then the city shall return the currency to the individual or entity that turned the currency over to the city. If no individual or entity turned the currency over to the city, or if such individual or entity cannot be identified, or if the lost or abandoned currency is found by an officer of the Cleveland Police Department while on duty, then the currency shall be disposed of like any other personal property as provided for in § 20-1002.

(2) As used in this chapter, the term "currency" includes all legal tender, cash, or coin.

(3) This chapter does not apply to currency seized or confiscated pursuant to any state criminal statute. Such currency shall be disposed of according to applicable state law. (as added by Ord. of Oct. 14, 1996)

**20-1002. Disposition of personal property other than currency.** Upon compliance with all requirements of the Office of the State Treasurer and all other applicable regulations, any personal property that is abandoned or lost shall be disposed of according to the following rules:

(1) Any property deemed by the city clerk to be of nominal value, twenty dollars (\$20.00) or less, may be disposed of by the city clerk without the necessity of payment to the city. All such items of nominal value may be destroyed if not otherwise suitable for reuse. All items destroyed shall be accounted for by certified inventory to be done by the chief of police or his designee submitted to the city clerk. Said inventory shall be kept on record in the office of the city clerk for a period of not less than five (5) years.

(2) For items of nominal value or those items of less than \$500.00 value, the city clerk, upon recommendation of the chief of police, may dispose of such property to the convenience of the city. This right includes, but is not limited to, donating such property to a non-profit organization for use in the community. The inventory list of such property shall be submitted to the city



clerk with written recommendation by the chief of police on an annual basis at the same time the city's annual report is sent to the state treasurer. The city clerk shall submit a detailed report of all such dispositions to the city council.

(3) All valuable personal property deemed by the city clerk in excess of \$500 value which is abandoned or lost and in the possession of the city may, after having been held for a period of not less than ninety (90) days or as otherwise required by state law, be sold at public auction or by competitive sealed bids after having been advertised in a daily newspaper of general circulation in this city, and after an investigation has been made to attempt to ascertain the owner of the property. (as added by Ord. of Oct. 14, 1996)

**20-1003. General provisions.** (1) This chapter shall not apply to:

(a) property seized or confiscated in the enforcement of any tax lien;

(b) any weapon confiscated by city law enforcement officials, which shall be disposed of in accordance with Tennessee Code Annotated 39-17-1317.

(c) any motor vehicle that is subject to disposition under any applicable state law allowing forfeiture or seizure of such motor vehicle.

(2) Nothing in this chapter shall prohibit the City of Cleveland from instituting an action in the nature of an interpleader to allow the city to comply with the intent of this chapter and to avoid conflicting claims concerning the right to possession or ownership of any lost or abandoned personal property, including currency. (as added by Ord. of Oct. 14, 1996)

## CHAPTER 11

### OPEN BURNING

#### SECTION

- 20-1101. Definitions.
- 20-1102. Open burning prohibited.
- 20-1103. Exceptions to prohibition on open burning.
- 20-1104. Authority to permit or prohibit open burning.
- 20-1105. Liability for damages and costs.
- 20-1106. Violation and penalty.

**20-1101. Definitions.** (1) "Open burning" is the burning of any matter under such conditions that products of combustion are emitted directly into the open atmosphere without passing directly through a stack. Open burning includes, but is not limited to, fires located or burning in a pile on the ground, a barrel, a fire pit, or other semi-enclosure. The use of an air curtain destructor or air curtain incinerator is considered incineration and is not considered open burning.

(2) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, an agency, authority, commission, or department of the United States government, or of the State of Tennessee government; or any other legal entity, or their legal representative, agent, or assigns.

(3) "Wood waste" is defined as any product which has not lost its basic character as wood, such as bark, sawdust, chips and chemically untreated lumber whose "disposition" by open burning is to solely get rid of or destroy. Plant life of a herbaceous nature, such as leaves, whether attached, fallen, and/or collected, evergreen needles, and grasses, are not considered "wood waste". Additionally, manufactured lumber products, such as plywood, fiberboard, particle board, and paneling, are not considered "wood waste." Painted or artificially stained wood is not considered "wood waste." (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

**20-1102. Open burning prohibited.** No persons shall cause, suffer, allow or permit open burning within the city limits of the City of Cleveland, except as set out in § 20-1103 entitled "Exceptions to prohibition on open burning." (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

**20-1103. Exceptions to prohibition on open burning.** Open burning may be conducted under the following specified exceptions. This grant of exception shall in no way relieve the person responsible for such burning from the consequences, damages, injuries or claims resulting from such burning. Any

exception to the open burning prohibition granted by this section does not relieve any person of the responsibility to obtain a permit which may be required by any other federal or state agency, or of complying with other applicable legal requirements, ordinances, or legal restrictions. In addition, the open burning of tires and other rubber products, vinyl shingles and siding, other plastics, asphalt shingles and other asphalt roofing materials, and/or asbestos containing materials, is expressly prohibited and such materials shall not be included in any open burning conducted under this section.

(1) Non-commercial fires used for cooking of food or for ceremonial, recreational or comfort-heating purposes, including barbecues, campfires and outdoor fireplaces. Fires permitted in this section may not create a nuisance for others, as determined by the Cleveland Fire Department.

(2) Fires set by or at the direction of the Cleveland Fire Department solely for training purposes.

(3) Fires consisting solely of vegetation grown on the property of the burn site or fires disposing of "wood waste" solely for the disposition of such wood waste shall only be conducted as follows:

(a) At least one (1) person shall be constantly present at the burning during the entire time of the burn;

(b) Each burn shall not exceed forty-eight (48) hours in duration;

(c) Burning shall not occur more than twice in any thirty (30) day period; and

(d) The site of such burning is not nearer than one-half ( $\frac{1}{2}$ ) mile to an airport, hospital, nursing home, school, federal or state highway, national reservation, national or state park, wildlife area, national or state forest, and/or occupied structures except such structures as may be located on the same property as the burning site.

(e) Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(4) In addition, such burning may require an "air curtain destructor," or other fire department approved device if deemed necessary by the fire chief.

(5) Fires set at the direction of law enforcement agencies or courts solely for the purpose of destruction of controlled substances and legend drugs seized as contraband. Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(6) Fires consisting solely of manufactured lumber products not chemically treated to prevent insect or rot damage, but subject to the following additional conditions:

(a) The site of such burning is not nearer than one-half ( $\frac{1}{2}$ ) mile to an airport, hospital, nursing home, school, federal or state highway, national reservation, national or state park, wildlife area, national or state forest, and/or occupied structures except such structures as may be located on the same property as the burning site.

(b) Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(c) The person responsible for such burning must certify compliance with the distance requirements by written statement. The certification must include the types and amounts of materials projected to be burned, and must be delivered to the State of Tennessee, Department of Environment and Conservation/Division of Air Pollution Control at the appropriate regional Environmental Field Office at least ten (10) working days prior to commencing the burn.

(7) For any residential parcel of property located within the corporate limits of the City of Cleveland where the residential parcel is ten (10) acres or more in size and has a building located on the subject parcel with an appraised value for tax purposes of at least twenty-five thousand dollars (\$25,000.00), fires consisting solely of vegetation grown on the property of the burn site or fires disposing of "wood waste" solely for the disposition of such wood waste may be conducted, but subject to all of the following limitations and conditions:

(a) At least one (1) person shall be constantly present at the burning during the entire time of the burn.

(b) No burning under this subsection shall occur before 8:00 A.M. and all fires must be completely extinguished by no later than one (1) hour before sunset.

(c) Burning under this subsection shall not occur more than twice in any thirty (30) day period.

(d) Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(e) Burning under this subsection shall be limited to no more than a three hundred (300) cubic foot pile of vegetation or wood waste, with the further limitation that the content of a burn pile should not consist of predominantly trees that were felled by mechanical means.

(f) Burning under this subsection is only allowed on those residential parcels of property that are ten (10) or more acres in size which have a building located on the subject parcel with an appraised value for tax purposes of at least twenty-five thousand dollars (\$25,000.00).

(g) For any burning under this subsection, a permit shall be required from the fire department. All requests for fire department issued permits require a forty-eight (48) hour notice in advance prior to burning to allow ample time for inspection of the burning site. Burning permits issued under this subsection shall be revoked and/or will not be issued if the fire chief or his designee determines that the proposed burning is likely to cause a safety issue for the public. (as added by Ord. of 12/10/2001, replaced by Ord. #2007-46, Nov. 2007, amended by Ord. #2008-33, June 2008, Ord. #2008-44, July 2008, and Ord. #2016-32, Aug. 2016)

**20-1104. Authority to permit or prohibit open burning.** The fire chief or his designee has the authority to permit open burning where there is no other practical, safe, and/or lawful method of disposal. The fire chief reserves the right to require any person to cease or limit open burning if emissions from the fires are deemed by the fire chief or his designee as jeopardizing public health or welfare, creating a public nuisance or safety hazard, or likely to create a potential safety hazard. The fire chief or his designee shall otherwise have the authority to permit or prohibit open burning not specifically addressed in this chapter. (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

**20-1105. Liability for damages and costs.** If the Cleveland Fire Department responds to a fire caused by or that results from open burning and the city uses equipment and/or personnel from the city public works department and/or third parties to control and/or extinguish the fire, the person responsible for the fire shall be subject to a civil action brought by the city in circuit court to recover the city's damages and costs, including the cost of using city equipment, incurred by the city to control or extinguish the fire. This remedy is in addition to any civil penalty set forth in Section 20-1106. (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

**20-1106. Violation and penalty.** In addition to any liability for damages or costs set forth in § 20-1105, any person who violates this chapter shall be subject to a civil penalty in an amount not to exceed fifty dollars (\$50.00) for each violation. (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

## CHAPTER 12

### WRECKERS AND TOWING SERVICES

#### SECTION

- 20-1201. Purpose.
- 20-1202. Scope of chapter.
- 20-1203. Definitions.
- 20-1204. Establishment of wrecker class system and criteria for each class.
- 20-1205. Permit required.
- 20-1206. Application for permits.
- 20-1207. Application and investigation fees, annual permit fees, annual wrecker permit fees, expiration date and renewal of permits.
- 20-1208. Investigation of permit applicant and wreckers.
- 20-1209. Issuance of permits.
- 20-1210. Revocation or suspension of permit.
- 20-1211. Required equipment and standards for all wreckers.
- 20-1212. Required storage facilities and procedures for wreckers.
- 20-1213. Notification(s) given by wrecker permit holders.
- 20-1214. Insurance.
- 20-1215. Statement of charges for wreckers; written notice to vehicle owners and operators; maximum charges for non-consensual tows while operating on rotational call list.
- 20-1216. Additional rules and regulations for wrecker permit holders.
- 20-1217. Vehicles to be towed to place designated by owner or operator of vehicle.
- 20-1218. Rotational call list - wreckers to go to scene of accident on call of dispatcher or owner/operator only.
- 20-1219. Emergency towing and storage.
- 20-1220. Severability.
- 20-1221. [Deleted.]

**20-1201. Purpose.** The purpose of this chapter is to establish rules, regulations, standards and procedures for wrecker operators who elect to apply to the City of Cleveland and receive a permit and who are placed on a rotational call list to remove wrecked, disabled or immobilized vehicles at the request or call of the Cleveland Police Department or other department of the city. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1202. Scope of chapter.** The provisions of this chapter apply to all towing or wrecker services provided by permit holders within the corporate

limits of the City of Cleveland when the wrecker is responding to calls for service while on the rotational call list described in this chapter.

The provisions of this chapter do not apply to wrecker or towing services provided to the City of Cleveland for the towing of city owned vehicles.

Nothing contained in this chapter is intended to require any wrecker operator who is otherwise lawfully doing business within the City of Cleveland to apply for a permit under the provisions of this chapter.

Application to the city for a permit under this chapter by a wrecker operator is voluntary. A permit granted to a wrecker company to be placed on the city's rotational call list is considered a privilege and not a right.

No wrecker operator shall be issued a permit and placed on the rotational call list described under this chapter unless the wrecker operator applies to the city for a permit and agrees to be bound by and comply with the terms and conditions of this chapter and any rules, policies or procedures established by the Cleveland Police Department. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1203. Definitions.** For purposes of this chapter the following words and phrases shall have the following meanings:

(1) "Inside storage." The storing of a motor vehicle within an enclosed building being used by the wrecker or towing operator as a place of business.

(2) "Normal business hours." The hours from 9:00 A.M. to 5:00 P.M. except Saturdays, Sundays, and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(3) "Owner's request." The right of the owner or person in charge of any disabled or inoperative vehicle to request some responsible and reasonable person, gratuitous bailee, or a bailee for hire of his or her choosing to take charge and care of said vehicle.

(4) "Outside storage." The storing of a motor vehicle within a lot or premises being used by the wrecker or towing operator as a place of business, but not inside storage as described above.

(5) "Wrecker operator, permit holder or towing operator." Any person or entity engaged in the business of, or offering the services of, a wrecker or towing service to remove wrecked or disabled vehicles under a rotational call system at the request or call of the city police department or any other department of the city, whereby motor vehicles (except those owned by the City of Cleveland) are or may be towed or otherwise removed from one (1) place to another by the use of a motor vehicle adapted to and designed for that purpose. "Wrecker operator, permit holder, or towing operator" includes all wrecker or towing operators and vehicles permitted by the city under this chapter who qualify to be placed on the rotation call list to respond to requests for towing of vehicles and who are responding under the rotational call list. (as added by

Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1204. Establishment of wrecker class system and criteria for each class.** Four (4) distinct wrecker classes have been established. Each towing vehicle shall only be listed in one (1) class, and the following criteria must be met for each class for inclusion on the rotational call list:

(1) **CLASS A.** For towing passenger cars, pick-up trucks, small trailers, etc. This classification also includes "wheel lift" type vehicle transporters.

(a) The tow truck chassis shall have a minimum manufacturer's capacity of fourteen thousand pounds (14,000 lbs. GVWR);

(b) Individual boom capacity of not less than four (4) tons;

(c) Individual power winch pulling capacity of not less than four (4) tons;

(d) A minimum of one hundred feet (100') of three-eighths inch (3/8"), or larger, cable on each drum;

(e) Wheel lift capable of picking up a passenger car or pick-up truck;

(f) Belt-type cradle tow plate or tow sling to pick up vehicles, and cradle or tow plate to be equipped with safety chain;

(g) Dollies are suggested, but not required; and

(h) Wheel lift: wreckers possessing equipment capable of lifting the vehicle by the wheels only, with nothing touching the vehicle body.

(i) Wheel lift wreckers shall meet all Class A requirements, excluding the belt-type cradle tow plate or tow sling.

(ii) Safety restraint straps (nylon straps with ratchets or the equivalent), shall be provided to secure the towed vehicle's tires into the wheel lift forks.

(2) **CLASS B.** For towing medium size trucks, trailers, etc.

(a) The tow truck chassis shall have a minimum manufacturer's capacity of twenty-six thousand pounds (26,000 GVWR);

(b) Boom specifications:

(i) Double boom so constructed as to permit splitting; each boom to operate independently or jointly; individual boom capacity of no less than eight (8) tons and individual power winch pulling capacity of not less than eight (8) tons; or

(ii) Single boom with no less than a sixteen (16) ton capacity and a power winch pulling capacity of no less than sixteen (16) tons;

(c) Two hundred feet (200') or more of seven-sixteenths inch (7/16"), or larger, cable on each drum;



(d) Cradle tow plate or tow sling to pick up vehicle; cradle of tow plate to be equipped with safety chain.

(3) CLASS C. For towing large trucks, road tractors and trailers.

(a) The tow truck chassis shall have a minimum manufacturers' capacity of not less than thirty-five thousand pounds (35,000 GVWR);

(b) Boom specifications:

(i) Double boom so constructed as to permit splitting; each boom to operate independently or jointly; individual boom capacity of no less than twelve and one-half (12-1/2) tons; or

(ii) Single boom with no less than a twenty-five (25) ton capacity and a power winch pulling capacity of no less than twenty-five (25) tons;

(iii) Two hundred feet (200') or more of nine-sixteenths inch (9/16'), or larger, cable on each drum;

(c) Air brakes so constructed as to lock wheels automatically upon failure;

(d) Only tandem axle trucks with two (2) live drive axles will be accepted as Class C; and

(e) An under-reach capable of towing an eighty thousand pound (80,000 lb.) tractor trailer combination.

(4) CLASS D. Vehicle transporters designed to tow or carry passenger cars, pick-up trucks, small trailers, etc. This classification includes "car carrier" or "rollback" type vehicle transporters.

(a) Car carrier vehicle transporters:

(i) The truck chassis shall have minimum manufacturer's capacity of fourteen thousand pounds (14,000 lbs. GVWR);

(ii) Lift cylinders: Two (2) with a minimum of three-inch (3") bore each; or one (1) with a minimum of five and one-half inch (5-1/2") bore;

(iii) Individual power winch pulling capacity of not less than four (4) tons;

(iv) Fifty feet (50') or more of three-eighths inch (3/8") or larger cable on winch drum;

(v) Two (2) safety chains for securing vehicle to carrier bed;

(vi) Carrier bed shall be a minimum of sixteen feet (16') in length and a minimum of eighty-four inches (84") in width inside side rails;

(vii) Cab protector, constructed of solid steel or aluminum, that extends to a height of four feet (4') above the floor or to a height at which it blocks the forward movement of the bumper of the vehicle being towed; and

(viii) Straps with ratcheting capability that provide for the transporting of motorcycles. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1205. Permit required.** No person or entity shall be placed on the rotational call list established under this chapter and engage in the business of, or offer the services of, a wrecker under the terms of this chapter without first applying for and receiving a permit from the City of Cleveland. Each permit holder meeting the requirements of this chapter shall receive one (1) general permit for their wrecker business and a separate permit for each wrecker used by that business according to the class of wrecker set forth in § 20-1204. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, replaced by Ord. #2006-38, Oct. 2006, amended by Ord. #2008-79, Jan. 2009, and Ord. #2009-81, Jan. 2010, and replaced by Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1206. Application for permits.** (1) Any person or entity desiring to obtain a wrecker permit under this chapter shall file with the Cleveland Police Department an application setting out, among other things, the following:

(a) Name and address of the person or entity desiring the permit.

(b) The location and full description of all property to be utilized in connection with the business, including tax parcel numbers and zoning of this property.

(c) The number of wreckers or towing vehicles owned or available for use by the applicant and a full description of the wreckers sufficient to determine a proper classification under § 20-1204.

(d) A statement that all wreckers are properly equipped for the applicable classification set forth in § 20-1204 and contain the required equipment set out in §§ 20-1204 and 20-1211, and that all wreckers meet applicable state and federal regulations.

(e) A statement that the wrecker or towing operator will accept responsibility for any and all personal property left in towed or stored vehicles.

(f) A statement setting forth and describing available space including inside storage, if available, for properly accommodating and protecting all disabled motor vehicles to be towed or otherwise removed from the place where they had been disabled.

(g) A statement that the applicant will provide twenty-four (24) hour service, including holidays, and that the applicant will have a

qualified operator on duty at all times for each wrecker location permitted hereunder.

(h) A statement that the wrecker or towing operator will not release any vehicles impounded by the city without authorization by the police department, that a file will be maintained on all vehicle release forms and that this file will be made available for police inspection upon request.

(i) An assurance that the applicant will maintain a minimum of one (1) properly equipped and operable wrecker throughout the year for which application is being made.

(j) A Tennessee Bureau of Investigation criminal history check will be provided by the wrecker or towing operator for all employees that will be operating a wrecker for the company.

(k) A certified driving history from the Tennessee Department of Safety and Homeland Security will be provided by the wrecker or towing operator for all employees that will be operating a wrecker for the company. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1207. Application and investigation fees, annual permit fees, annual wrecker permit fees, expiration date and renewal of permits.**

(1) Application and investigation fees. (a) New applicants. Any new applicant for a wrecker permit under this chapter shall be charged an application and investigation fee of two hundred dollars (\$200.00) to cover the expense of investigating the new applicant, the place of business, and the wreckers and equipment.

However, if a wrecker company is already approved by the State of Tennessee Department of Safety and Homeland Security (Tennessee Highway Patrol), and if all paperwork that is filed with the state is provided by the wrecker company to the Cleveland Police Department, then the inspection and the fee may be waived.

(b) Existing permit holders. Wrecker operators already permitted under this chapter shall not be charged an application or investigation fee unless the permit holder changes their business location. In that event, there shall be a supplemental investigation fee of one hundred dollars (\$100.00) paid by the permit holder to cover the cost of the investigation of the new business location.

However, if a wrecker company is already approved by the State of Tennessee Department of Safety and Homeland Security (Tennessee Highway Patrol), and if all paperwork that is filed with the state is provided by the wrecker company to the Cleveland Police Department, then the inspection and the fee may be waived.

All current permit holders will be required to pay the annual permit and wrecker permit fees established under this section.

(2) Annual permit fee. All current permit holders will be required to pay the annual permit established under this section.

All permit holders shall pay an annual permit fee of fifty dollars (\$50.00) per wrecker business to cover the cost of the processing and the issuance of an annual permit.

(3) Annual wrecker permit fee. In addition to the annual permit fee described above, all permit holders shall pay an annual fee of fifty dollars (\$50.00) per wrecker permitted under this chapter to cover the cost of the Cleveland Police Department performing an annual inspection of each wrecker permitted under this chapter.

However, the annual wrecker permit fee of fifty dollars (\$50.00) shall be waived for any wrecker that has a current inspection sticker issued by the State of Tennessee Department of Safety and Homeland Security (Tennessee Highway Patrol).

The annual permit fee and the annual wrecker fee(s) shall be paid by the permit holder to the city prior to the issuance of the annual permit and the annual wrecker permit.

(4) Expiration date and renewal of permits. All permits shall expire March 31. Applications for renewal shall be filed by February 28 of each year. Late applications for renewal will be considered in due course, but the applicant will not be privileged to operate from March 31 until a renewal is approved. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1208. Investigation of permit applicant and wreckers.** The Cleveland Police Department shall investigate each applicant for a wrecker permit under this chapter and the policies, rules, and regulations adopted by the Cleveland Police Department to determine whether or not the applicant has the necessary equipment and facilities to qualify as a wrecker operator under the provisions of this chapter and the police department's policies, rules, and regulations. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1209. Issuance of permits.** Every applicant and each wrecker of each permit applicant determined by the Cleveland Police Department to be qualified under this chapter to receive a permit shall be issued a permit by the city. A separate permit shall be issued for each wrecker approved by the Cleveland Police Department, which permit shall at all times be kept with each wrecker. Such permit shall have printed thereon the year for which it is valid. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006,

and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 **Ch18\_01-10-22**)

**20-1210. Revocation or suspension of permit.** The Chief of Police of the Cleveland Police Department may suspend or revoke the permit of any permit holder or the permit issued to any individual wrecker on any of the following grounds:

(1) If a permit was procured by fraudulent conduct or false statement of a material fact or a material fact concerning the applicant which was not disclosed at the time of the application that would have constituted just cause for refusing to issue a permit;

(2) Failure of a wrecker permit holder to have an operable and properly equipped wrecker and qualified operator on duty at all times or to promptly respond to police calls while on call;

(3) A violation of any provision or requirement set forth in this chapter, or the violation of any rule or regulation or policy adopted by the Cleveland Police Department, or the violation of a state or federal statute; or

(4) If a wrecker does not meet all applicable state and federal regulations or any of the provisions or requirements of this chapter or any rule, policy or regulation of the Cleveland Police Department; or

The Chief of Police of the Cleveland Police Department may also suspend or revoke a permit in his discretion for any good cause not otherwise specified herein.

A suspension or revocation shall terminate all authority and permission granted by such permit to the permit holder.

Any permit holder whose permit is suspended or revoked by the Chief of Police may appeal the decision to a court of competent jurisdiction by common law certiorari as provided in Tennessee Code Annotated, § 27-8-101. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2011-06, May 2011, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 **Ch18\_01-10-22**)

**20-1211. Required equipment and standards for all wreckers.** In addition to the equipment required under the applicable wrecker classifications set forth in § 20-1204, all wreckers shall have and maintain additional equipment and standards as follows:

(1) The following additional equipment is required:

(a) At least one (1) heavy-duty push broom;

(b) Flood lights mounted at a height sufficient to illuminate the scene at night;

(c) One (1) shovel;

(d) A minimum of one (1) fully charged twenty pound (20 lb.), or two (2) fully charged ten pound (10 lb.), fire extinguisher(s) having an

Underwriter's Laboratory rating of four (4) A:B:C: or more. The fire extinguisher(s) must be securely mounted on the towing vehicle;

- (e) One (1) axe;
- (f) One (1) set of bolt cutters;
- (g) One (1) pinch bar, pry bar or crow bar;
- (h) A minimum of one (1) fifty pound (50 lb.) bag of fluid absorption compound;
- (i) Three (3) red emergency reflectors; and
- (j) One (1) light bar. The towed vehicle must be capable of

displaying all lights on the rear of the vehicle while in tow. When this is not possible, a light bar must be attached to the rear most vehicle while in tow. The bar must consist of two (2) tail lamps, two (2) stop lamps, and two (2) turn signals. All lights on the light bar must be fully operational.

(2) The appearance of all wreckers shall be reasonably good with equipment painted.

(3) All wreckers shall display the firm's name, address and phone number. Such information shall be painted on or permanently affixed on both sides. Such lettering shall be at least three inches (3") high. Magnetic signs will not be permitted as a substitute.

(4) In accordance with Tennessee Code Annotated, § 55-8-170(c), it is the responsibility of the wrecker operator to have equipment for removing glass and other debris from the accident scene and to remove such debris from the highway. The wrecker operator shall be responsible for removing all glass and other debris from the street or highway. Failure to do so may result in suspension or revocation of the wrecker operator's permit. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1212. Required storage facilities and procedures for wreckers.**

Permit holders must provide proper storage facilities and procedures as follows:

(1) Permit holders must be equipped to provide an adequate storage lot or building for proper, safe and secure storage of all vehicles towed.

(2) The permit holder shall provide a properly zoned (or lawful nonconforming use) fenced lot or building for proper and safe storage. Such lot for storage shall be located on the same property as the wrecker service or in close proximity thereto. If the storage lot is not located on the same property as the wrecker operator's place of business, the towing company storage facility must be identified with a highly visible sign that has the towing company's name, address and phone number thereon.

(3) A storage lot fence shall be a minimum of six feet (6') high, constructed of chain-link security fencing, lumber, or other material which will serve as a significant deterrent to unauthorized entry. The fencing shall be equipped with gates capable of being locked, which shall be locked at all times

when the storage facility is unattended. There shall be room to store at least ten (10) cars within the fenced lot. Class C operators shall additionally have room to store a minimum of one (1) tractor and trailer within the fenced lot.

(4) A wrecker permit holder shall be responsible for storing, safekeeping and preventing vandalism of all towed vehicles and their contents.

(5) A wrecker permit holder's place of business shall be staffed between the hours of 8:00 A.M. and 5:00 P.M. Monday through Friday, excluding legal holidays. The wrecker permit holder's storage facility, if not located on the same property as the permit holder's place of business, shall be readily available for access to customers and members of the Cleveland Police Department between the hours of 8:00 A.M. and 5:00 P.M. Monday through Friday, excluding legal holidays.

(6) Records of the vehicles towed and charges of tows from calls received from the city rotation list shall be maintained for at least two (2) years and shall be open for inspection by the Cleveland Police Department and the owner of any vehicle towed or his agent.

(7) The Cleveland Police Department may inspect any wrecker permit holder at any time during normal business hours.

(8) All vehicles towed under the rotation call list provided for by this chapter shall be stored inside a building or inside the fenced storage facility described above unless an authorization to do otherwise is obtained from the vehicle's owner.

(9) In accordance with any notice provisions applicable to wrecker operators as set out in state law, the wrecker service shall notify the registered owners and lien holders of the location of the stored vehicles and the costs of securing possession of the towed and stored vehicle. The City of Cleveland Police Department is hereby authorized, but is not required to, provide registration information to the wrecker permit holder to assist the permit holder in giving any required notice(s) under state law. Wrecker permit holders may also wish to contact the Bradley County Clerk's office to obtain registration information on vehicles. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 ***Ch18\_01-10-22***)

**20-1213. Notification(s) given by wrecker permit holders.** State law imposes certain notice requirements on wrecker permit holders. All wrecker permit holders on the rotational call list shall comply with all of these notice provisions. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 ***Ch18\_01-10-22***)

**20-1214. Insurance.** (1) Each wrecker permit holder assumes the liability for personal injury or property damage resulting from a permit holder's or their employee's intentional or negligent act(s) from the time contact is made

with any vehicle to be towed. Each wrecker permit holder assumes full liability for all items of value in the towed vehicle.

(2) Each wrecker permit holder shall maintain the following policies of insurance according to the minimum limits set forth in this section. Each policy shall be in the name of the wrecker permit holder and shall include coverage for towing and storage. The policy shall be effective for a minimum of a six (6) month period. It is not the intent of the City of Cleveland to limit the wrecker permit holder to the type and amount of insurance required herein. The wrecker permit holder may choose to purchase more or additional coverage than specified herein. The types of coverage and the limits set forth herein are the minimum limits necessary to be eligible to be placed on the city's rotational call list.

(a) Any wrecker service on the rotational call list utilized by the City of Cleveland shall be properly licensed and insured.

(b) Insurance must be sufficient to compensate for any loss of or damage to property entrusted to the wrecker company.

(c) A certificate of insurance shall be filed with the Cleveland Police Department before a towing company may be placed on the rotational call list. Certificates of insurance must be itemized to indicate the amounts of liability, garage keepers and on-hook coverage. The policy must also disclose all of the towing vehicles that are covered under the policy.

(d) For purposes of this section, the following definitions shall apply:

(i) Vehicle liability. Insurance that pays for damages due to bodily injury and property damage for others for which the towing company is responsible.

(ii) Garage keepers liability. Insurance that protects a garage keeper against liability for damage to vehicles in his/her care, custody or control.

(iii) On-hook coverage. Insurance that will normally pay to repair or replace a vehicle that the towing company did not own if it is damaged by a collision, fire, theft, explosion, or vandalism while it is being towed or hauled.

(3) Liability coverage must be equal to or greater than the minimum amounts specified in this section. Insurance coverage may be provided in a single policy or separate split policies. Regardless of the type of policy or policies, the total amount of coverage must equal those amounts listed below, per incident.

(a) Minimum vehicle liability amounts:

(i)	Class A and D	\$300,000.00
(ii)	Class B	\$500,000.00
(iii)	Class C	\$750,000.00



- (b) Minimum garage keepers liability policy:
  - (i) Class A and D \$75,000.00
  - (ii) Class B \$150,000.00
  - (iii) Class C \$200,000.00
- (c) Minimum "on-hook" coverage:
  - (i) Class A and D \$75,000.00
  - (ii) Class B \$150,000.00
  - (iii) Class C \$200,000.00

(d) Wrecker companies "on-hook" coverage may be included in the garage keeper's liability policy. It may also be provided as a separate policy, dependent upon the underwriter. In any event, both garage keeper's liability and "on-hook" insurance coverage must be carried by the wrecker permit holder. The minimum rates established by this section are in no way intended to limit the amount of coverage deemed appropriate by a wrecker permit holder.

(4) Renewal certificates of insurance must be submitted to the Cleveland Police Department thirty (30) days prior to the expiration date of the current certificates of insurance.

(5) Wrecker permit holders shall notify the City of Cleveland immediately in writing if a policy is canceled or non-renewed. This written notice shall be sent within forty-eight (48) hours of the time and date that the wrecker permit holder is notified that a policy will be canceled or non-renewed.

(6) The wrecker permit holder shall also notify the City of Cleveland in writing of any other changes in insurance coverage (i.e., changing companies, vehicles, etc.). This notice shall be sent at least ten (10) days prior to any change.

(7) All wrecker and storage facilities shall be inspected by the Cleveland Police Department and a certificate of insurance filed with the Cleveland Police Department before a wrecker permit holder is placed on the rotational call list. This certificate of insurance shall include an endorsement providing a minimum of thirty (30) working days' notice to the City of Cleveland in the event of a cancellation or non-renewal of a policy.

However, if a wrecker company is pre-approved by the State of Tennessee Department of Safety and Homeland Security (Tennessee Highway Patrol), and if all paperwork that is filed with the state is provided by the wrecker company to the Cleveland Police Department, then the inspection may be waived.

(8) Violation of any of the above insurance requirements or regulations shall be cause for immediate suspension or removal from the rotational call list. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1215. Statement of charges for wreckers; written notice to vehicle owners and operators; maximum charges for non-consensual**

**tows while operating on rotational call list.** (1) All permit holders and wrecker operators shall be subject to all of the requirements set forth herein as to charges for any call from the police department or the city referred to the wrecker operator under the city's call rotation system established herein. In addition, all permit holders and wrecker operators shall be subject to disclosure requirements as to charges for any call from the police department or the city referred to the wrecker operator under the city's call rotation system established herein.

(2) Current tow and storage rates shall be posted in a conspicuous place at the wrecker permit holder's business office. In addition, the wrecker permit holder shall file a copy of the company's current tow and storage rates with the Cleveland Police Department.

(3) A chronological record of towed vehicles and the charges billed as a result of the services provided by a wrecker company pursuant to calls on the rotation call list shall be maintained and available for inspection by the Cleveland Police Department upon request. These records shall be kept by the wrecker company for at least a two (2) year period.

(4) All permit holders and wrecker operators shall have statements with the name, address and telephone number of the permit holder's place of business printed thereon.

(5) Before towing a disabled vehicle away from a scene, the wrecker operator shall present a statement to the owner or operator of the disabled vehicle or his authorized representative, unless the owner or operator is under arrest or incapacitated.

This statement may be prepared on a pre-printed form which shall contain, at a minimum, the following information:

- (a) The name and address of the owner or operator of the vehicle being towed.
- (b) The state and license number of the vehicle.
- (c) Storage rates per day or part thereof.
- (d) A schedule of charges for towing and all other services that may be provided by the wrecker operator.
- (e) The name of the wrecker operator.
- (f) The following language must be contained on the statement:

"The charges set forth herein are determined by the wrecker company and not the City of Cleveland."

The statement shall be retained by the permit holder for a period of two (2) years and shall be subject to inspection by the Cleveland Police Department at any time during regular business hours.

- (6) Storage rates begin twenty-four (24) hours after a vehicle is towed.
- (7) There will be no charge for "hook-up."

(8) There shall be no charge for normal street or highway cleanup. A normal cleanup includes, but is not limited to, removal of glass, vehicle body

parts, vehicle fluids, etc. Cleanups requiring additional/specialized equipment and/or resources, such as diesel spills, Haz-mat, etc., may result in additional charges being levied against the liable party(s) by the towing companies and/or other state or local regulatory or governmental agencies.

(9) There shall be no charge for certain types of equipment, e.g., dollies and fire extinguishers.

(10) If the off-loading of cargo is required, each towing company providing these services shall list the names, addresses, and telephone numbers of each person hired to off-load cargo. This list shall be provided to the Cleveland Police Department upon request.

(11) Maximum charges for non-consensual tows while operating on rotational call. The following charges are hereby established as the maximum charges for those non-consensual tows made by a wrecker permit holder while the permit holder is operating on the city's rotational call list. These maximum charges do not apply if the tow is consensual, or if the tow is made while the wrecker is not operating on the city's rotational call list.

(a) The maximum charge for non-consensual wrecker services while operating on the city's rotational call list shall be as follows:

(i) A&D Class: (A) The maximum tow rate is two hundred twenty-five dollars (\$225.00), plus any charges for winching, if applicable. This rate applies regardless of the time of day, or the day of the week. This rate also applies on weekends and holidays.

(B) There shall be no separate fuel charge.

(C) Winching may be charged only if the vehicle is off the road or is overturned. The maximum winching fee is seventy-five dollars (\$75.00) per half hour.

(D) Maximum storage rates shall be thirty-five dollars (\$35.00) per day for outside storage, and fifty dollars (\$50.00) per day for inside storage.

(E) Administration fees shall only apply after three (3) days.

(ii) B Class: (A) The maximum tow rate is three hundred fifty dollars (\$350.00) per hour from start to stop. This rate applies regardless of the time of day, or the day of the week. This rate also applies on weekends and holidays.

(B) There shall be no separate fuel charge.

(C) There shall be no separate winching fee.

(D) Maximum storage rates shall be thirty-five dollars (\$35.00) per day for outside storage, and fifty dollars (\$50.00) per day for inside storage, except for tractor trailers. For tractor trailers, the maximum storage rates shall be fifty dollars (\$50.00) per day for the tractor and eighty-five dollars (\$85.00) per day for the trailer.

- (E) Administration fees shall only apply after three (3) days.
- (iii) C Class: (A) The maximum tow rate is six-hundred fifty dollars (\$650.00) per hour from start to stop. This rate applies regardless of the time of day, or the day of the week. This rate also applies on weekends and holidays.
  - (B) There shall be no separate fuel charge.
  - (C) There shall be no separate winching fee.
  - (D) Maximum storage rates shall be thirty-five dollars (\$35.00) per day for outside storage, and fifty dollars (\$50.00) per day for inside storage, except for tractor trailers. For tractor trailers, the maximum storage rates shall be fifty dollars (\$50.00) per day for the tractor and eighty-five dollars (\$85.00) per day for the trailer.
  - (E) Administration fees shall only apply after three (3) days.
- (b) The maximum charges set forth above for all classes of wreckers do not apply to:
  - (i) Consensual wrecker services provided by a towing company for a private individual or entity that chooses to enter into a private contract with the towing or wrecker company for service. (Owner's request.)
  - (ii) Non-consensual towing from private property that occurs when a private property owner hires or otherwise authorizes a wrecker or towing company to remove a vehicle from that owner's private property.
  - (iii) Any towing or wrecker services provided by a wrecker permit holder when that permit holder is not operating on the city's rotational call list at the time the wrecker services are provided. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1216. Additional rules and regulations for wrecker permit holders.** (1) All operators shall respond to a wreck within a reasonable time after being called, and except for exigent or unusual circumstances a response must be made within thirty (30) minutes after the dispatch request is made to the wrecker operator. If the wrecker is engaged elsewhere or for any reason the wrecker operator cannot reasonably expect to respond within thirty (30) minutes, it shall be the duty of the wrecker operator to so advise the police department and decline to accept the call whereupon the next wrecker operator on rotation shall be called. Class C wreckers and recovery class wreckers shall

be granted an additional fifteen (15) minutes to respond to a tow for a large truck, road tractor and trailers.

(2) No wrecker operator shall refer or delegate police calls to other wrecker companies.

(3) No answering service, paging service or similar service or procedure may be used to forward a call to an owner or employee of the wrecker service between the hours of 8:00 A.M. to 5:00 P.M. Monday through Friday, excluding legal holidays. The wrecker permit holder may provide for an after-hours number which shall be provided to the Cleveland Police Department.

(4) The first wrecker operator at the scene shall tow the vehicle causing the greatest hazard as directed by the investigating police officer.

(5) A wrecker operator may accept a dispatch of more than one (1) wrecker only if qualified wreckers and operators are available within the time limits specified above.

(6) All permit holders shall file with the Cleveland Police Department a photocopy of a current operator's license for each employee authorized to operate a wrecker for the permit holder. The photocopy of any new operator's license shall be filed within ten (10) days following employment or renewal of the operator's license.

(7) All permits holders shall immediately notify the Cleveland Police Department, in writing, of any driver's license changes or any actions committed by a driver which would cause that operator's driver's license to be suspended, revoked, or cancelled.

(8) All permits holders shall immediately notify the Cleveland Police Department, in writing, of any arrest or conviction of any driver or operator working for the wrecker company. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1217. Vehicles to be towed to place designated by owner or operator of vehicle.** The wrecker operator may tow the wrecked or disabled vehicle to the operator's place of business; provided, if the owner or agent of the wrecked or disabled vehicle pays or secures the towing charges, then the wrecker operator shall pull the vehicle to any place designated by such owner or agent. It shall be unlawful for the wrecker owner, or an agent, employee or representative of the wrecker owner to high-pressure or otherwise coerce any owner of a wrecked or disabled vehicle to sign a work order or agreement at the scene of an accident for any repairs to be made on such wrecked or disabled vehicle. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1218. Rotational call list - wreckers to go to scene of accident on call of dispatcher or owner/operator only.** When a member of the Cleveland Police Department is dispatched to an accident, or is involved in other matters which may require wrecker assistance, the investigating officer, after making a determination of the need for a wrecker, will generally offer "owner's request" to the registered owner, driver, or any competent occupant, except in those situations where, in the officer's opinion, an emergency exists, or where the immediate clearing of a public thoroughfare mandates that a tow operator be requested on an expedited basis, or when the occupants have been physically arrested.

If the registered owner, driver or other competent adult does not exercise the owner's request, or if the officer determines that the owner's request is not warranted, then that officer shall then call the dispatcher. The dispatcher will notify the next scheduled wrecker on the rotational call list to respond.

The investigating officer will normally follow the set rotational list except in situations where the wrecker on the rotational call list indicates an inability to respond in a timely manner or other weather or emergency situations which the officer deems it necessary to dispatch the closest available wrecker or if a specialized service is deemed to be needed, or if the wrecker on the rotational call list cannot be reached for some reason.

It shall be unlawful for any wrecker operator, or his agent or representative, to go to any place where an accident has occurred unless called by the dispatcher or unless called directly by the owner or operator of a motor vehicle. Under either circumstance, the wrecker operator shall clear with the dispatcher before going to the accident scene. It shall be unlawful for the owner of any wrecker, or his agent or representative, to go to the place of a wreck by reason of information received by shortwave radio, police radio or scanner.

A wrecker operator operating under this chapter shall not proceed to the scene of a disabled motor vehicle without having been requested or notified to do so, as provided in this section. Responding to a call upon notice from gas station attendants, taxicab drivers or other unauthorized persons shall be considered a violation of this chapter. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, added by Ord. #2006-38, Oct. 2006, and replaced by Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1219. Emergency towing and storage.** Whenever any police officer finds a vehicle standing upon any street or highway and the vehicle constitutes a hazard to the safe movement of traffic along such street, or when the towing of such vehicle is otherwise permitted by the Cleveland Municipal Code or other applicable law, the officer shall:

(1) Notify the police dispatcher, who shall call the wrecker having the class of wrecker necessary.

(2) The wrecker shall tow the wrecker or disabled motor vehicle in the manner and procedures as provided in this chapter; and

(3) The wrecker shall be entitled to recover any unpaid charges for towing and storage in accordance with Title 55, Chapter 16, Tennessee Code Annotated, "Unclaimed or Abandoned Vehicles." (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1220. Severability.** The provisions of this chapter are declared to be severable. If any provision of this chapter is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this article. Failure to enforce any provision of this chapter does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this chapter at any time. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2014-11, April 2014, and Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

**20-1221. [Deleted.]** (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, replaced by Ord. #2006-38, Oct. 2006, and Ord. #2014-11, April 2014, and deleted by Ord. #2019-46, Dec. 2019 *Ch18\_01-10-22*)

## CHAPTER 13

### CODE OF ETHICS

#### SECTION

- 20-1301. Applicability.
- 20-1302. Definition of "personal interest."
- 20-1303. Disclosure of personal interest by official with vote.
- 20-1304. Disclosure of personal interest in non-voting matters.
- 20-1305. Acceptance of gratuities, etc.
- 20-1306. Use of information.
- 20-1307. use of municipal time, facilities, etc.
- 20-1308. Use of position or authority.
- 20-1309. Outside employment.
- 20-1310. Ethics complaints.
- 20-1311. Violations.

**20-1301. Applicability.** This chapter is the code of ethics for personnel of the municipality. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the municipality. The words "municipal" and "municipality" include these separate entities. (as added by Ord. #2006-49, March 2007)

**20-1302. Definition of "personal interest."** (1) For purposes of § 20-1303 and 20-1304, "personal interest" means:

(a) Any financial, ownership, or employment interest in the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests; or

(b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or

(c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s), step-parent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).

(2) The words "employment interest" include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.

(3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter. (as added by Ord. #2006-49, March 2007)



**20-1303. Disclosure of personal interest by official with vote.** An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's vote on the measure. In addition, the official may recuse himself from voting on the measure. (as added by Ord. #2006-49, March 2007)

**20-1304. Disclosure of personal interest in non-voting matters.** An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the city clerk. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself or herself from the exercise of discretion in the matter. (as added by Ord. #2006-49, March 2007)

**20-1305. Acceptance of gratuities, etc.** An official or employee may not accept, directly or indirectly, any money, gift, gratuity, brother consideration or favor of any kind from anyone other than the municipality:

(1) For the performance of an act, or refraining from performance of an act, that he or she would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That might reasonably be interpreted as an attempt to influence his or her action, or reward him or her for past action, in executing municipal business. (as added by Ord. #2006-49, March 2007)

**20-1306. Use of information.** (1) An official or employee may not disclose any information obtained in his or her official capacity or position of employment that is made confidential under state or federal law except as authorized by law.

(2) An official or employee may not use or disclose information obtained in his or her official capacity or position of employment with the intent to result in financial gain for himself or herself or any other person or entity. (as added by Ord. #2006-49, March 2007)

**20-1307. Use of municipal time, facilities, etc.** (1) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself or herself.

(2) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or

lease that is determined by the governing body to be in the best interests of the municipality. (as added by Ord. #2006-49, March 2007)

**20-1308. Use of position or authority.** (1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.

(2) An official or employee may not use or attempt to use his or her position to secure any privilege or exemption for himself or herself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. (as added by Ord. #2006-49, March 2007)

**20-1309. Outside employment.** An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy. (as added by Ord. #2006-49, March 2007)

**20-1310. Ethics complaints.** (1) The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.

(2) (a) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his or her own initiative when he or she acquires information indicating a possible violation and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.

(b) The city attorney may request that the governing body hire another attorney, individual, or entity to act as ethics officer when he or she has or will have a conflict of interests in a particular matter.

(c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body, the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or another individual or entity chosen by the governing body.

(3) The interpretation that a reasonable person In the circumstances would apply shall be used in interpreting and enforcing this code of ethics.

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel provisions rather than as a violation of this code of ethics. (as added by Ord. #2006-49, March 2007)

**20-1311. Violation.** An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law and in addition is subject to censure by the governing body. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action. (as added by Ord. #2006-49, March 2007)

## CHAPTER 14

### MUNICIPAL ADMINISTRATIVE HEARING OFFICER

#### SECTION

- 20-1401. Municipal administrative hearing officer.
- 20-1402. Communication by administrative hearing officer and parties in contested cases.
- 20-1403. Appearance in person or by a duly authorized representative-representation by counsel.
- 20-1404. Pre-hearing conference-hearing or converting pre-hearing conference to a hearing-pre-hearing orders.
- 20-1405. Appointment of administrative hearing officer-temporary appointment of administrative law judge.
- 20-1406. Training and continuing education-fees.
- 20-1407. Jurisdiction not exclusive.
- 20-1408. Citations for violations - written notice - signature of violator-service on absentee property owners-deadline for transmission of citations.
- 20-1409. Review of citation for appropriateness - levy of fines-setting hearing - cancellation of fines and hearing if violation remedied.
- 20-1410. Party in default.
- 20-1411. Petitions for intervention - conditions on intervenor's participation.
- 20-1412. Regulating course of proceedings - full disclosure of all relevant facts and issues-hearing open to public.
- 20-1413. Evidence and affidavits - official notice - information in the notice.
- 20-1414. Rendering of final order - findings of fact - appointment of qualified substitute - submission of proposed findings.
- 20-1415. Statement of when order entered and effective-compliance with final order.
- 20-1416. Collection of fines, judgments and debts.
- 20-1417. Judicial review of final order.
- 20-1418. Appeal to court of appeals.

**20-1401. Municipal administrative hearing officer.** (1) In accordance with Tennessee Code Annotated, title 6, chapter 54, part 10, there is hereby created the office of administrative hearing officer to hear violations of any of the provisions codified in the Cleveland Municipal Code relating to building and property maintenance including:

- (a) Building codes adopted by the City of Cleveland-Cleveland Municipal Code-title 12;
- (b) All residential codes adopted by the City of Cleveland-Cleveland Municipal Code-title 12;
- (c) All plumbing codes adopted by the City of Cleveland-Cleveland Municipal Code-title 12;

(d) All electrical codes adopted by the City of Cleveland-Cleveland Municipal Code-title 12;

(e) All gas codes adopted by the City of Cleveland-Cleveland Municipal Code-title 12;

(f) All mechanical codes adopted by the City of Cleveland-Cleveland Municipal Code-title 12;

(g) All energy codes adopted by the City of Cleveland;

(h) All property maintenance codes and regulations adopted by the City of Cleveland-Cleveland Municipal Code-title 13;

(i) All ordinances regulating any subject matter commonly found in the above-described codes.

The administrative hearing officer is not authorized to hear violation of codes adopted by the state fire marshal pursuant to Tennessee Code Annotated, § 68-120-101(a) enforced by a deputy building inspector pursuant to Tennessee Code Annotated, § 68-120-101(f).

The utilization of the administrative hearing officer shall be at the discretion of the city manager and/or the city manager's designee, and shall be an alternative to the enforcement included in the Cleveland Municipal Code.

(2) There is hereby created one (1) administrative hearing officer position to be appointed pursuant to § 20-1405 below.

(3) The amount of compensation for the administrative hearing officer shall be approved by the city council.

(4) Clerical and administrative support for the office of administrative hearing officer shall be provided as determined by the city manager.

(5) The administrative hearing officer shall perform all of the duties and abide by all of the requirements provided in title 6, chapter 54, section 1001, et seq., of the Tennessee Code Annotated. (as added by Ord. #2012-15, Aug. 2012)

**20-1402. Communication by administrative hearing officer and parties in contested cases.** (1) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative hearing officer presiding over a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(2) Notwithstanding subsection (1), an administrative hearing officer may communicate with municipal employees or officials regarding a matter pending before the administrative body or may receive aid from staff assistants, members of the staff of the city attorney or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative hearing officer would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(3) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative hearing officer without notice and opportunity for all parties to participate in the communication.

(4) If, before serving as an administrative hearing officer in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5).

(5) An administrative hearing officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) business days after notice of the communication. (as added by Ord. #2012-15, Aug. 2012)

**20-1403. Appearance in person or by a duly authorized representative-representation by counsel.** (1) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by any provision of law, other representative. (as added by Ord. #2012-15, Aug. 2012)

**20-1404. Pre-hearing conference-hearing or converting pre-hearing conference to a hearing-pre-hearing orders.** (1)(a) In any action set for hearing, the administrative hearing officer, upon the administrative hearing officer's own motion, or upon motion of one (1) of the parties or such party's qualified representatives, may direct the parties or the attorneys for the parties, or both, to appear before the administrative hearing officer for a conference to consider:

- (i) The simplification of issues;
- (ii) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
- (iii) The limitation of the number of witnesses; and
- (iv) Such other matters as may aid in the disposition of the action.

(b) The administrative hearing officer shall make an order that recites the action taken at the conference, and the agreements made by the parties as to any of the matters considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties. Such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(2) Upon reasonable notice to all parties, the administrative hearing officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the administrative hearing officer sitting alone, to consider argument or evidence, or both, on any question of law.

(3) In the discretion of the administrative hearing officer, all or part of the pre-hearing conference may be conducted by telephone, television or other electronic means, if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(4) If a pre-hearing conference is not held, the administrative hearing officer may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings. (as added by Ord. #2012-15, Aug. 2012)

**20-1405. Appointment of administrative hearing officer-temporary appointment of administrative law judge.** (1) The administrative hearing officer shall be appointed by the city council for a four-year term and serve at the pleasure of the city council. Such administrative hearing officer may be reappointed.

(2) An administrative hearing officer shall be one (1) of the following:

- (a) Licensed building inspector;
- (b) Licensed plumbing inspector;
- (c) Licensed electrical inspector;
- (d) Licensed attorney;
- (e) Licensed architect; or
- (f) Licensed engineer;

(3) The city may also contract with the Administrative Procedures Division, office of the Tennessee Secretary of State to employ an administrative law judge on a temporary basis to serve as an administrative hearing officer. Such administrative law judge shall not be subject to the training or continuing education requirements of Tennessee Code Annotated, § 6-54-1007 (a) and (b). (as added by Ord. #2012-15, Aug. 2012)

**20-1406. Training and continuing education-fees.** (1) Each person appointed to serve as an administrative hearing officer shall, within the six (6) month period immediately following the date of such appointment, participate in a program of training conducted by the University of Tennessee's Municipal Technical Advisory Service, (MTAS) or its designee(s). MTAS shall issue a certificate of participation to each person whose attendance is satisfactory.

(2) Each person actively serving as an administrative hearing officer shall complete six (6) hours of continuing education every calendar year. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the administrative hearing officer(s). No continuing education hours from one (1) calendar year may be carried over to a subsequent calendar year.

(3) MTAS has the authority to set and enact appropriate fees for the requirements of this section. The city shall bear the cost of the fees for administrative hearing officer serving the city.

(4) Costs pursuant to this section shall be offset by fees enacted. (as added by Ord. #2012-15, Aug. 2012)

**20-1407. Jurisdiction not exclusive.** The power and authority vested in the office of administrative hearing is not exclusive and does not terminate or diminish any other existing municipal power or authority. The Cleveland City Council may direct a municipal officer or employee to develop criteria for determining when to exercise administrative enforcement. (as added by Ord. #2012-15, Aug. 2012)

**20-1408. Citations for violations - written notice-signature of violator - service on absentee property owners-deadline for transmission of citations.** (1) Upon the issuance of a citation for violation of a municipal ordinance referenced in the city's administrative hearing ordinance, the issuing officer shall provide written notice of:

(a) A short and plain statement of the matters asserted. If the issuing officer is unable to state the matters in detail at the time the citation is served, the initial notice may be limited to a statement of the issues involved and the ordinance violations alleged. Thereafter, upon timely, written application a more definite and detailed statement shall be furnished ten (10) business days prior to the time set for the hearing;

(b) A short and plain description of the city's administrative hearing process including references to state and local statutory authority;

(c) Contact information for the city's administrative hearing office; and

(d) Time frame in which the hearing officer will review the citation and determine the fine and remedial period, if any.

(2) Citations issued for violations of ordinances referenced in the city's administrative hearing ordinance shall be signed by the alleged violator at the time of issuance. If an alleged violator refuses to sign, the issuing officer shall note the refusal and attest to the alleged violator's receipt of the citation. An alleged violator's signature on a citation is not admission of guilt.



(3) Citations issued upon absentee property owners may be served via certified mail sent to the last known address of the recorded owner of the property.

(4) Citations issued for violations of ordinances referenced in the city's administrative hearing ordinance shall be transmitted to an administrative hearing officer within two (2) business days of issuance. (as added by Ord. #2012-15, Aug. 2012)

**20-1409. Review of citation for appropriateness - levy of fines-setting hearing - cancellation of fines and hearing if violation remedied.** (1) Upon receipt of a citation issued pursuant to § 20-1408, the administrative hearing officer shall, within seven (7) business days of receipt, review the appropriateness of an alleged violation. Upon determining that a violation does exist, the hearing officer has the authority to levy a fine upon the alleged violator in accordance with this section. Any fine levied by a hearing officer must be reasonable based upon the totality of the circumstances.

(a) For violations occurring upon residential property a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars (\$500.00) per violation. For purposes of the administrative hearing officer program, "residential property" means a single family dwelling principally used as the property owner's primary residence and the real property upon which it sits.

(b) For violations occurring upon non-residential property a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars (\$500.00) per violation per day. For purposes of the administrative hearing officer program, "non-residential property" means all real property, structures, buildings and dwellings that are not residential property.

(2) If a fine is levied pursuant to subsection (1), the hearing officer shall set a reasonable period of time to allow the alleged violator to remedy the violation alleged in the citation before the fine is imposed. The remedial period shall be no less than ten (10) or greater than one hundred twenty (120) calendar days, except where failure to remedy the alleged violation in less than ten (10) calendar days would pose an imminent threat to the health, safety or welfare of persons or property in the adjacent area.

(3) Upon the levy of a fine pursuant to subsection (1), the hearing officer shall within seven (7) business days, provide via certified mail notice to the alleged violator of:

(a) The fine and remedial period established pursuant to subsections (1) and (2);

(b) A statement of the time, place, nature of the hearing, and the right to be represented by counsel; and

(c) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved.

(4) The date of the hearing shall be no less than thirty (30) calendar days following the issuance of the citation. To confirm the hearing, the alleged violator must make a written request for the hearing to the hearing officer within seven (7) business days of receipt of the notice required in subsection (3).

(5) If an alleged violator demonstrates to the issuing officer's satisfaction that the allegations contained in the citation have been remedied to the issuing officer's satisfaction, the fine levied pursuant to subsection (1) shall not be imposed or if already imposed cease; and the hearing date, if the hearing has not yet occurred, shall be cancelled. (as added by Ord. #2012-15, Aug. 2012)

**20-1410. Party in default.** (1) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative hearing officer may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(2) If the proceedings are conducted without the participation of the party in default, the administrative hearing officer shall include in the final order a written notice of default and a written statement of the grounds for the default. (as added by Ord. #2012-15, Aug. 2012)

**20-1411. Petitions for intervention - conditions on intervenor's participation.** (1) The administrative hearing officer shall grant one (1) or more petitions for intervention if:

(a) The petition is submitted in writing to the administrative hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) business days before the hearing;

(b) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The administrative hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(2) If a petitioner qualifies for intervention, the administrative hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's participation so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two (2) or more intervenors to combine their participation in the proceedings.

(3) The administrative hearing officer, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative hearing officer may modify the order at any time, stating the reasons for the modification. The administrative hearing officer shall promptly give notice of an order granting, denying or modifying intervention to the petitioner for intervention and to all parties. (as added by Ord. #2012-15, Aug. 2012)

**20-1412. Regulating course of proceedings - full disclosure of all relevant facts and issues - hearing open to public.** (1) The administrative hearing officer shall regulate the course of the proceedings, in conformity with the pre-hearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the administrative hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

(3) In the discretion of the administrative hearing officer and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

(4) The hearing shall be open to public observation pursuant to Tennessee Code Annotated, title 8, chapter 44 unless otherwise provided by state or federal law. To the extent that a hearing is conducted by telephone, television or other electronic means, the availability of public observation shall be satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape recording and to inspect any transcript produced, if any. (as added by Ord. #2012-15, Aug. 2012)

**20-1413. Evidence and affidavits - official notice - information in the notice.** (1) In administrative hearings:

(a) The administrative hearing officer shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a

type commonly relied upon by reasonably prudent men in the conduct of their affairs. The administrative hearing officer shall give effect to the rules of privilege recognized by law and to statutes protecting the confidentiality of certain records, and shall exclude evidence which in his or her judgment is irrelevant, immaterial or unduly repetitious;

(b) At any time not less than ten (10) business days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce in evidence, together with a notice in the form provided in subsection (2). Unless the opposing party, within seven (7) business days after delivery, delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as provided in this subdivision (b), the affidavit shall not be admitted into evidence. "Delivery," for purposes of this section, means actual receipt;

(c) The administrative hearing officer may admit affidavits not submitted in accordance with this section where necessary to prevent injustice;

(d) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the municipality. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available; and

(e) (i) Official notice may be taken of:

(A) Any fact that could be judicially noticed in the courts of this state;

(B) The record of other proceedings before the agency; or

(C) Technical or scientific matters within the administrative hearing officer's specialized knowledge; and

(ii) Parties must be notified before or during the hearing, or before the issuance of any final order that is based in whole or in part on facts or material notice, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

(2) The notice referred to in subdivision (b) shall contain the following information and be substantially in the following form:

The accompanying affidavit of \_\_\_\_\_ (here insert name of affiant) will be introduced as evidence at the hearing in \_\_\_\_\_ (here insert title of proceeding). \_\_\_\_\_ (here insert name of

affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify \_\_\_\_\_ (here insert name of the proponent or the proponent's attorney) at \_\_\_\_\_ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to \_\_\_\_\_ (here insert name of proponent or the proponent's attorney) on or before \_\_\_\_\_ (here insert a date seven (7) business days after the date of mailing or delivering the affidavit to the opposing party). (as added by Ord. #2012-15, Aug. 2012)

**20-1414. Rendering of final order - findings of fact - appointment of qualified substitute - submission of proposed findings.** (1) An administrative hearing officer shall render a final order in all cases brought before his or her body.

(2) A final order shall include conclusions of law, the policy reasons therefore, and findings of fact for all aspects of the order, including the remedy prescribed. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

(3) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The administrative hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(4) If an individual serving or designated to serve as an administrative hearing officer becomes unavailable, for any reason, before rendition of the final order, a qualified substitute shall be appointed. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(5) The administrative hearing officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(6) A final order rendered pursuant to subsection (1) shall be rendered in writing within seven (7) business days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.

(7) The administrative hearing officer shall cause copies of the final order under subsection (1) to be delivered to each party. (as added by Ord. #2012-15, Aug. 2012)

**20-1415. Statement of when order entered and effective - compliance with final order.** (1) All final orders shall state when the order is entered and effective.

(2) A party may not be required to comply with a final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order. (as added by Ord. #2012-15, Aug. 2012)

**20-1416. Collection of fines, judgments and debts.** The city may collect a fine levied pursuant to this section by any legal means available to a municipality to collect any other fine, judgment or debt. (as added by Ord. #2012-15, Aug. 2012)

**20-1417. Judicial review of final order.** (1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review.

(2) Proceedings for judicial review of a final order are instituted by filing a petition for review in the chancery court in the county where the municipality lies. Such petition must be filed within sixty (60) calendar days after the entry of the final order that is the subject of the review.

(3) The filing of the petition for review does not itself stay enforcement of the final order. The reviewing court may order a stay on appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) business days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied.

(4) Within forty-five (45) calendar days after service of the petition, or within further time allowed by the court, the administrative hearing officer shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the administrative proceeding, the court may order that the additional evidence be taken before the administrative hearing officer upon conditions determined by the court. The administrative hearing officer may modify its findings and decision by reason of the additional evidence and

shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(6) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the administrative hearing officer, except as otherwise provided in this chapter. The administrative hearing officer that issued the decision to be reviewed is not required to file a responsive pleading.

(7) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the administrative hearing officer, not shown in the record, proof thereon may be taken in the court.

(8) The court may affirm the decision of the administrative hearing officer or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the administrative hearing officer;

(c) Made upon unlawful procedure;

(d) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(e) Unsupported by evidence that is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the administrative hearing officer as to the weight of the evidence on questions of fact.

(9) No administrative hearing decision pursuant to a hearing shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(10) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record. (as added by Ord. #2012-15, Aug. 2012)

**20-1418. Appeal to court of appeals.** (1) An aggrieved party may obtain a review of any final judgment of the chancery court under this chapter by appeal to the Court of Appeals of Tennessee.

(2) The record certified to the chancery court and the record in the chancery court shall constitute the record in an appeal. Evidence taken in court pursuant to title 24 shall become a part of the record.

(3) The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure. (as added by Ord. #2012-15, Aug. 2012)