

TITLE 5**MUNICIPAL FINANCE AND TAXATION¹****CHAPTER**

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CHAPTER 1**PURCHASING****SECTION**

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5-101. Purchasing agent. The town recorder shall be the purchasing agent for the municipality. Except as otherwise provided by this chapter, all supplies, materials, equipment, and services of any nature whatsoever shall be acquired by the purchasing agent or his authorized representative. (Ord. #736-22, Sept. 2022)

5-102. Sealed competitive bidding. Public advertisement and sealed competitive bidding shall be required for the purchase of all goods and services exceeding an amount of twenty-five thousand dollars (\$25,000.00) except for those purchases specifically exempted from advertisement and bidding by the Municipal Purchasing Law of 1983 or by other general laws regulating municipal purchases. (Ord. #736-22, Sept. 2022)

5-103. Competitive bids. Purchases on all goods and services costing less than the town's competitive bid threshold of twenty-five thousand dollars

¹Charter reference
Taxation and revenue: art. VII.
Municipal code reference
Budget amendments: § 1-105.

(\$25,000.00) but more than ten thousand dollars (\$10,000.00) shall be made by competitive bidding of at least (3) written quotes. The purchase shall be awarded to the lowest responsible bidder, except for those purchases specifically exempted from advertisement and bidding by the Municipal Purchasing Law of 1983. A written record shall be required and be available for inspection showing that competitive bids were obtained by one (1) or more of the following methods:

- (1) Direct mail request to prospective bidders;
- (2) Telephone;
- (3) Public notice posted on the bulletin board in the municipal building; and/or
- (4) Email. (Ord. #736-22, Sept. 2022)

5-104. Purchases less than \$10,000.00. Public advertisement and competitive bidding shall not be required for the purchase of goods and services up to ten thousand dollars (\$10,000.00). The purchasing agent is expected to obtain the best prices and services available for purchases and contracts of ten thousand dollars (\$10,000.00) or less. (Ord. #736-22, Sept. 2022)

5-105. Determination of lowest responsible bidder. In determining the lowest responsible bidder, as referred to in § 5-103, in addition to price, the Town of Erwin will follow *Tennessee Code Annotated*, § 54-5-117. Accepted bidder to be financially responsible and qualified under rules and regulations. (Ord. #736-22, Sept. 2022)

CHAPTER 2

REAL PROPERTY TAXES

SECTION

5-201. When due and payable.

5-202. When delinquent--penalty and interest.

5-203. Recorder's duties at tax sales.

5-201. When due and payable. Taxes levied by the town against real property shall become due and payable annually on the first Monday of October of the year for which levied. (2005 Code, § 5-201)

5-202. When delinquent--penalty and interest. All real property taxes shall become delinquent on and after the first day of March next after they become due and payable and shall thereupon be subject to such penalty and interest as is authorized and prescribed by the charter. (2005 Code, § 5-202)

5-203. Recorder's duties at tax sales. The recorder is hereby authorized, empowered, and directed to attend all tax sales conducted through the chancery court for the purpose of foreclosing liens for unpaid taxes due the town. At such sales, in the absence of good faith bids for the amount of taxes, penalties, and costs by other parties, he is directed and empowered to bid the amount of such taxes, penalties, and costs then accruing against any property or properties, for the year or years for which such properties are offered for sale. Any bids for such property or properties shall be made subject to unpaid state and county taxes, unpaid street improvements, assessments, and for taxes accruing after the year or years for which the sales are made in favor of the town. On confirmation of such sales to the town, title thereto shall be taken in the corporate name of the Board of Mayor and Aldermen of the Town of Erwin. (2005 Code, § 5-203)

CHAPTER 3**PRIVILEGE TAXES****SECTION**

5-301. Tax levied.

5-302. License required.

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

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

CHAPTER 4

WHOLESALE BEER TAX

SECTION

5-401. To be collected.

5-401. To be collected. The recorder is hereby directed to take appropriate action to assure payment to the town of the wholesale beer tax levied by the "Wholesale Beer Tax Act," as set out in *Tennessee Code Annotated*, title 57, chapter 6.¹ (2005 Code, § 5-401)

¹State law reference

Tennessee Code Annotated, title 57, chapter 6 provides for a tax in accordance with § 57-6-103. Every wholesaler is required to remit to each municipality the amount of the net tax on beer wholesale sales to retailers and other persons within the corporate limits of the municipality.

Municipal code references

Alcohol and beer regulations: title 8.

Beer privilege tax: § 8-208.

CHAPTER 5

HOTEL/MOTEL TAX

SECTION

- 5-501. Definitions.
- 5-502. Rooms to be numbered.
- 5-503. Tax levied.
- 5-504. Collection.
- 5-505. Remission to town.
- 5-506. Collection, development of report, audit, etc.
- 5-507. Operator cannot advertise that he will assume tax.
- 5-508. Delinquent taxes; offenses by operators and/or transients.
- 5-509. Operators to keep records.
- 5-510. Additional powers of recorder, remedies available to tax payer.
- 5-511. Recorder to collect; disposition of proceeds.

5-501. Definitions. As used in this chapter:

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

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

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

(4) "Operator" means the person operating the hotel, whether as owner, lessee or otherwise;

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

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

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

(8) "Transient" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodgings, or accommodations in a hotel for a period of less than thirty (30) continuous days. (Ord. #733-22, June 2022)

5-502. Rooms to be numbered. Each sleeping room and in every hotel in the town shall be numbered in a plain and conspicuous manner. The number of each room shall be placed on the outside of the door of such room, and no two (2) doors shall bear the same number. (Ord. #733-22, June 2022)

5-503. Tax levied. There is hereby levied, assessed and imposed, and shall be paid and collected, a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount equal to four percent (4%) of the consideration charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided herein. (Ord. #733-22, June 2022)

5-504. Collection. Such tax shall be added by each operator to each invoice prepared by the operator for the occupancy in his hotel to be given directly or transmitted to the transient and shall be collected by such operator from the transient and remitted to the town. (Ord. #733-22, June 2022)

5-505. Remission to town. The tax hereby levied shall be remitted by all operators who lease, rent or charge for occupancy within a hotel in the town to the town recorder of the town, such tax to be remitted to such officer no later than the twentieth (20th) day of each month for the preceding month. The operator is hereby required to collect the tax from the transient at the time of the presentation of the invoice for such occupancy whether prior to occupancy or after occupancy as may be the custom of the operator and if credit is granted by the operator to the transient then the obligation to the town entitled to such tax shall be that of the operator. (Ord. #733-22, June 2022)

5-506. Collection, development of report, audit, etc. The town recorder shall be responsible for the collection of such tax. A monthly tax return under oath shall be filed with the town recorder by the operator with such number of copies thereof as the town recorder may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the town recorder and approved by the board of mayor and aldermen prior to use. The town recorder shall audit each operator in the town at least once per year and shall report on the audits made on a quarterly basis to the board of mayor and aldermen. (Ord. #733-22, June 2022)

5-507. Operator cannot advertise that the operator will assume tax. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof, will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded. (Ord. #733-22, June 2022)

5-508. Delinquent taxes; offenses by operators and/or transients. Taxes collected by the operator which are not remitted to the town recorder on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition, for the penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest shall become a part of the tax. Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is declared to be unlawful and shall be punishable upon conviction by a fine not in excess of fifty dollars (\$50.00). (Ord. #733-22, June 2022)

5-509. Operators to keep records. It shall be the duty of every operator liable for the collection and payment to the town of the tax imposed by this article to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the town. Every person to whom a permit is issued under this chapter shall at all times keep a standard hotel register, in which shall be inscribed the names of all guests renting or occupying rooms and the number of the room which guest is to occupy, together with the time such room is rented, which records the town recorder shall have the right to inspect at all reasonable times. (Ord. #733-22, June 2022)

5-510. Additional powers of recorder; remedies available to tax payer. The town recorder or other authorized collector of the tax in administering and enforcing the provisions of this act shall have, as additional powers, those powers, and duties with respect to collecting taxes as provided by law for the county clerks.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in *Tennessee Code Annotated*, title 67. The town recorder shall have all those powers and duties as provided in *Tennessee Code Annotated*, § 67-1-707(b). Any tax paid under protest shall be paid to the town recorder. Any suit filed to recover taxes paid under protest may be brought by filing the same against the town recorder of the town. (Ord. #733-22, June 2022)

5-511. Recorder to collect; disposition of proceeds. The town recorder is hereby charged with the duty of collection of the tax herein levied and the proceeds received by the town from the tax shall be used exclusively for

tourism and tourism development within the town as required by *Tennessee Code Annotated*, § 67-4-1403. (Ord. #733-22, June 2022)

CHAPTER 6

DEBT MANAGEMENT POLICY

SECTION

- 5-601. Introductory statement.
- 5-602. Goals and objectives.
- 5-603. Procedures for issuance of debt.
- 5-604. Credit quality and credit enhancement.
- 5-605. Affordability.
- 5-606. Debt structure.
- 5-607. Debt types.
- 5-608. Refinancing outstanding debt.
- 5-609. Methods of issuance.
- 5-610. Professionals.
- 5-611. Compliance.
- 5-612. Debt policy review.

5-601. Introductory statement. In managing its debt (defined herein as tax-exempt or taxable bonds, capital outlay notes, other notes, capital leases, interfund loans or notes and loan agreements); it is the town's policy to:

- (1) Achieve the lowest cost of capital within acceptable risk parameters.
- (2) Maintain or improve credit ratings.
- (3) Assure reasonable cost access to the capital markets.
- (4) Preserve financial and management flexibility.
- (5) Manage interest rate risk exposure within acceptable risk parameters. (Ord. #657-11, Oct. 2011)

5-602. Goals and objectives. Debt policies and procedures are tools that ensure that financial resources are adequate to meet the town's long-term capital planning objectives. In addition, the debt management policy (the "debt policy") helps to ensure that financings undertaken by the town have certain clear, objective standards which allow the town to protect its financial resources in order to meet its long-term capital needs.

The debt policy formally establishes parameters for issuing debt and managing a debt portfolio which considers the town's specific capital improvement needs; ability to repay financial obligations; and, existing legal, economic, and financial market conditions. Specifically, the policies outlined in this document are intended to assist in the following:

- (1) To guide the town in policy and debt issuance decisions.
- (2) To maintain appropriate capital assets for present and future needs.
- (3) To promote sound financial management.

- (4) To protect the town's credit rating.
- (5) To ensure the town's debt is issued legally under applicable state and federal laws.
- (6) To promote cooperation and coordination with other parties in the financing.
- (7) To evaluate debt issuance options. (Ord. #657-11, Oct. 2011)

5-603. Procedures for issuance of debt. (1) Authority. (a) The town will only issue debt by utilizing the statutory authorities provided by *Tennessee Code Annotated* as supplemented and revised ("TCA") and the Internal Revenue Code (the "code").

(b) The town will adhere to any lawfully promulgated rules and regulations of the state and those promulgated under the code.

(c) All debt must be formally authorized by resolution of the town's legislative body.

(2) Transparency. (a) It is recognized that the issuance of debt must have various approvals and on occasion, written reports provided by the State of Tennessee Comptroller's office either prior to adoption of resolutions authorizing such debt, prior to issuance and/or following issuance. The town, in conjunction with any professionals (including, but not limited to, financial advisors, underwriters, bond counsel, etc. which may individually or collectively be referred to herein as "financial professionals") will ensure compliance with *Tennessee Code Annotated*, the code and all federal and state rules and regulations. Such state compliance will include, but not be limited to, compliance with all legal requirements regarding adequate public notice of all meetings of the town related to consideration and approval of debt.

(i) All costs associated with the initial issuance or incurrence of debt shall be disclosed prior to action by the governing body in accordance with the notice requirements stated above.

(ii) All costs associated with the repayment of the debt including interest, principal, and fees or charges shall be disclosed prior to action by the governing body in accordance with the notice requirements stated above. In cases of variable interest or non-specified costs, detailed explanation of the assumptions shall be provided, along with the complete estimate of total costs anticipated to be incurred as part of the debt issue.

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

Additionally, the town shall provide the Tennessee Comptroller's office sufficient information on the debt to not only allow for transparency regarding the issuance, but also assuring that the comptroller's office has sufficient information to adequately report or approve any formal action related to the sale and issuance of debt. The town will also make this information available to its legislative body, citizens and other interested parties.

(b) The town will file its audited financial statements and any continuing disclosure document prepared by the town or its dissemination agent. To promote transparency and understanding, these documents should be furnished to members of the legislative body and made available electronically or by other usual and customary means to its citizens, taxpayers, rate payers, businesses, investors and other interested parties by posting such information online or in other prominent places. (Ord. #657-11, Oct. 2011)

5-604. Credit quality and credit enhancement. The town's debt management activities will be conducted in order to maintain or receive the highest possible credit ratings. The mayor and recorder, in conjunction with any financial professionals that the town may chose to engage, will be responsible for maintaining relationships and communicating with one (1) or more rating agencies.

The town will consider the use of credit enhancements on a case-by-case basis, evaluating the economic benefit versus cost for each case. Only when clearly demonstrable savings can be shown shall an enhancement be considered. The town will consider each of the following enhancements as alternatives by evaluating the cost and benefit of such enhancements:

(1) Insurance. The town may purchase bond insurance when such purchase is deemed prudent and advantageous. The predominant determination shall be based on such insurance being less costly than the present value of the difference in the interest on insured bonds versus uninsured bonds.

(2) Letters of credit. The town may enter into a Letter-of-Credit ("LOC") agreement when such an agreement is deemed prudent and advantageous. The town or its financial professionals, if any, may seek proposals from qualified banks or other qualified financial institutions pursuant to terms and conditions that are acceptable to the town. (Ord. #657-11, Oct. 2011)

5-605. Affordability. The town shall consider the ability to repay debt as it relates to the total budget resources, the wealth and income of the community and its property tax base and other revenues available to service the debt. The town may consider debt ratios and other benchmarks compared to its peers when analyzing its debt including materials published by the nationally recognized credit rating agencies. (Ord. #657-11, Oct. 2011)

5-606. Debt structure. The town shall establish all terms and conditions relating to the issuance of debt and will invest all bond proceeds pursuant to the terms of its investment policy, if any. Unless otherwise authorized by the town, the following shall serve as the debt policy for determining structure:

(1) **Term.** All capital improvements financed through the issuance of debt will be financed for a period not to exceed the useful economic life of the improvements and in consideration of the ability of the town to absorb such additional debt service expense. The term of debt shall be determined by, but not limited to, the economic life of the assets financed, conditions in the capital markets, the availability of adequate revenue streams to service the debt and the existing pattern of debt payable from such identifiable fund or enterprise activity, but in no event will the term of such debt exceed forty (40) years, as outlined in *Tennessee Code Annotated*.

(2) **Capitalized interest.** From time to time, certain financings may require the use of capitalized interest from the date of issuance until the town is able to realize beneficial use and/or occupancy of the financed project. Interest may be capitalized through a period permitted by federal law and *Tennessee Code Annotated* if it is determined that doing so is beneficial to the financing by the legislative body and is appropriately memorialized in the legislative action authorizing the sale and issuance of the debt.

(3) **Debt service structure.** General obligation debt issuance shall be planned to achieve relatively net level debt service or level principal amortization considering the town's outstanding debt obligations, while matching debt service to the useful economic life of facilities. Absent events or circumstances determined by its legislative body, the town shall avoid the use of bullet or balloon maturities (with the exception of sinking fund requirements required by term bonds) except in those instances where such maturities serve to make existing overall debt service level or match specific income streams. Debt which is supported by project revenues and is intended to be self-supporting should be structured to achieve level proportional coverage to expected available revenues.

(4) **Call provisions.** In general, the town's debt should include a call feature no later than ten (10) years from the date of delivery of the bonds. The town will avoid the sale of long-term debt which carries longer redemption features unless a careful evaluation has been conducted by the mayor and recorder and/or financial professionals, if any, with respect to the value of the call option.

(5) **Original issuance discount/premium.** Debt with original issuance discount/premium will be permitted.

(6) **Deep discount bonds.** Deep discount debt may provide a lower cost of borrowing in certain capital markets. The mayor and recorder and/or financial professionals, if any, should carefully consider their value and effect on any

future refinancing as a result of the lower-than-market coupon. (Ord. #657-11, Oct. 2011)

5-607. Debt types. When the town determines that debt is appropriate, the following criteria will be utilized to evaluate the type of debt to be issued.

(1) **Security structure.** (a) General obligation bonds. The town may issue debt supported by its full faith, credit and unlimited ad valorem taxing power ("general obligation debt"). General obligation debt shall be used to finance capital projects that do not have significant independent creditworthiness or significant on-going revenue streams or as additional credit support for revenue-supported debt, if such support improves the economics of the debt and is used in accordance with these guidelines.

(b) Revenue debt. The town may issue debt supported exclusively with revenues generated by a project or enterprise fund ("revenue debt"), where repayment of the debt service obligations on such revenue debt will be made through revenues generated from specifically designated sources. Typically, revenue debt will be issued for capital projects which can be supported from project or enterprise-related revenues.

(c) Capital leases. The town may use capital leases to finance projects assuming the mayor and recorder and/or financial professionals, if any, determine that such an instrument is economically feasible.

(2) **Duration.** (a) Long-term debt. The town may issue long-term debt when it is deemed that capital improvements should not be financed from current revenues or short-term borrowings. Long-term debt will not be used to finance current operations or normal maintenance. Long-term debt will be structured such that financial obligations do not exceed the expected useful economic life of the project(s) financed.

(i) Serial and term debt. Serial and term debt may be issued in either fixed or variable rate modes to finance capital infrastructure projects;

(ii) Capital Outlay Notes ("CONs"). CONs may be issued to finance capital infrastructure projects with an expected life up to twelve (12) years; or

(iii) Capital leases. Capitalized leases may be issued to finance infrastructure projects or equipment with an expected life not greater than its expected useful life.

(b) Short-term debt. Short-term borrowing may be utilized for:

(i) Financing short economic life assets;

(ii) The construction period of long-term projects;

(iii) For interim financing; or

(iv) For the temporary funding of operational cash flow deficits or anticipated revenues subject to the following policies:

(A) Bond Anticipation Notes ("BANs"). BANs, including commercial paper notes issued as BANs, may be issued instead of capitalizing interest to reduce the debt service during the construction period of a project or facility. The BANs shall not mature more than two (2) years from the date of issuance. BANs can be rolled in accordance with federal and state law. BANs shall mature within six (6) months after substantial completion of the financed facility.

(B) Revenue Anticipation Notes ("RANs") and Tax Anticipation Notes ("TANs"). RANs and TANs shall be issued only to meet cash flow needs consistent with a finding by bond counsel that the sizing of the issue fully conforms to federal IRS and state requirements and limitations.

(C) Lines of credit. Lines of credit shall be considered as an alternative to other short-term borrowing options. A line of credit shall only be structured to federal and state requirements.

(D) Interfund loans. Interfund loans shall only be used to fund operational deficiencies among accounts or for capital projects to be paid from current fiscal year revenues. Such interfund loans shall be approved by the state comptroller's office and shall only be issued in compliance with state regulations and limitations.

(E) Other short-term debt. Other short-term debt including commercial paper notes, BANs, capitalized leases and CONs may be used when it provides an interest rate advantage or as interim financing until market conditions are more favorable to issue debt in a fixed or variable rate mode. The town will determine and utilize the most advantageous method for short-term borrowing. The town may issue short-term debt when there is a defined repayment source or amortization of principal.

(3) Interest rate modes. (a) Fixed rate debt. To maintain a predictable debt service schedule, the town may give preference to debt that carries a fixed interest rate.

(b) Variable debt rate. The town recognizes the value of variable rate debt obligations and that towns and cities have greatly benefitted from the use of variable rate debt in the financing of needed infrastructure and capital improvements.

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

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

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

(iii) Prior to entering into any variable rate debt obligation that is backed by a letter of credit provider, the board of mayor and aldermen shall be informed of the potential affect on rates as well as any additional costs that might be incurred should the letter of credit fail.

(iv) Prior to entering into any variable rate debt obligation, the board of mayor and aldermen will be informed of any terms, conditions, fees, or other costs associated with the prepayment of variable rate debt obligations.

(4) Zero coupon debt. Zero coupon debt may be used if an analysis has been conducted by the mayor and recorder and/or financial professionals, if any, and the risks and returns associated with the zero coupon debt have been made. The analysis shall include, but not be limited to a recommendation regarding the use of zero coupon debt as the most feasible instrument considering available revenues streams, the need for the project and other factors determined by the legislative body.

(5) Synthetic debt. The town will not enter into any new interest rate swaps or other derivative instruments unless it adopts a debt derivative policy consistent with the requirements of *Tennessee Code Annotated* and only after approval of the state comptroller's office and affirmative action of the legislative body. To the extent the town has any current existing interest rate swaps or other derivative instruments, the town will monitor these agreements and any amendments consistent with the compliance report issued by the state comptroller's office at the time the agreements were previously authorized. (Ord. #657-11, Oct. 2011, as amended by Ord. #671-14, April 2014)

5-608. Refinancing outstanding debt. The mayor and recorder, in conjunction with financial professionals, if any, shall have the responsibility to analyze outstanding debt for refunding opportunities. The mayor and recorder will consider the following issues when analyzing possible refunding opportunities:

(1) Debt service savings. Absent other compelling considerations, such as the opportunity to eliminate onerous or restrictive covenants contained in existing debt documents, the town has established a minimum net present value savings threshold of at least three percent (3%) of the advance refunded debt

principal amount. Current refunding opportunities may be considered by the town using any savings threshold if the refunding generates positive net present value savings. The decision to take less than three percent (3%) net present value savings for an advance refunding or to take the savings in any matter other than a traditional year-to-year level savings pattern must be approved by the legislative body or delegated to the town's chief executive.

(2) Restructuring for economic purposes. The town may also refund debt when it is in its best financial interest to do so. Such a refunding will be limited to restructuring to meet unanticipated revenue expectations, achieve cost savings, mitigate irregular debt service payments, release reserve funds or remove unduly restrictive bond covenants or any other reason approved by the legislative body in its discretion.

(3) Term of refunding issues. Normally, the town will refund debt equal to or within its existing term. However, the mayor and recorder may consider maturity extension, when necessary to achieve desired outcomes, provided that such extension is legally permissible and it is approved by the legislative body. The mayor and recorder may also consider shortening the term of the originally issued debt to realize greater savings. The remaining useful economic life of the financed facility and the concept of inter-generational equity should guide these decisions.

(4) Escrow structuring. The town shall utilize the least costly securities available in structuring refunding escrows. In the case of open market securities, a certificate will be provided by a third party agent, who is not a broker-dealer stating that the securities were procured through an arms-length, competitive bid process, that such securities were more cost effective than State and Local Government Obligations (SLGS), and that the price paid for the securities was reasonable within federal guidelines. In cases where taxable debt is involved, the mayor and recorder, with the approval of bond counsel, may make a direct purchase as long as such purchase is the most efficient and least costly. Under no circumstances shall an underwriter, agent or any financial professionals sell escrow securities involving tax-exempt debt to the town from its own account.

(5) Arbitrage. The town shall take all necessary steps to optimize escrows and to avoid negative arbitrage in its refunding. Any positive arbitrage will be rebated as necessary according to federal guidelines. (Ord. #657-11, Oct. 2011)

5-609. Methods of issuance. The mayor and recorder may consult with a financial professional regarding the method of sale of debt. Subject to approval by the legislative body, the mayor and recorder will determine the method of issuance of debt on a case-by-case basis consistent with the options provided by prevailing state law.

(1) Competitive sale. In a competitive sale, the town's debt will be offered in a public sale to any and all eligible bidders. Unless bids are rejected,

the debt shall be awarded to the bidder providing the lowest true interest cost as long as the bid adheres to the requirements set forth in the official notice of sale.

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

(2) Negotiated sale. The town recognizes that some securities are best sold through a negotiated sale with an underwriter or group of underwriters. The town shall assess the following circumstances in determining whether a negotiated sale is the best method of sale:

- (a) State requirements on negotiated sales;
- (b) Debt structure which may require a strong pre-marketing effort such as those associated with a complex transaction generally referred to as a "story" bond;
- (c) Size or structure of the issue which may limit the number of potential bidders;
- (d) Market conditions including volatility wherein the town would be better served by the flexibility afforded by careful timing and marketing such as is the case for debt issued to refinance or refund existing debt;
- (e) Whether the debt is to be issued as variable rate obligations or perhaps as zero coupon debt;
- (f) Whether an idea or financing structure is a proprietary product of a single firm;
- (g) In a publicly offered or privately placed, negotiated sale, a financial advisor, if any, shall not be permitted to resign as the financial advisor in order to underwrite or privately place an issue for which they are or have been providing advisory services; and
- (h) The underwriter shall clearly identify itself in writing as an underwriter and not as a financial advisor from the earliest stages of its relationship with the town with respect to the negotiated issue. The underwriter must clarify its primary role as a purchaser of securities in an arm's length commercial transaction and that it has financial and other interests that differ from those of the town. The underwriter in a publicly offered, negotiated sale shall be required to provide pricing information both as to interest rates and to takedown per maturity to the legislative body (or its designated official) in advance of the pricing of the debt.

(3) Private placement. From time to time, the town may elect to privately place its debt. Such placement shall only be considered if this method is demonstrated to be advantageous to the town. (Ord. #657-11, Oct. 2011)

5-610. Professionals. (1) Financial professionals. As needed, the town may select financial professionals to assist in its debt issuance and

administration processes. In selecting financial professionals, consideration should be given with respect to:

- (a) Relevant experience with municipal government issuers and the public sector;
- (b) Indication that the firm has a broadly based background and is therefore capable of balancing the town's overall needs for continuity and innovation in capital planning and debt financing;
- (c) Experience and demonstrated success as indicated by its experience;
- (d) The firm's professional reputation;
- (e) Professional qualifications and experience of principal employees; and
- (f) The estimated costs, but price should not be the sole determining factor.

(2) Miscellaneous. (a) Written agreements. (i) Any financial professionals engaged by the town shall enter into written agreements including, but not limited to, a description of services provided and fees and expenses to be charged for the engagement.

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

(iii) The town shall require all financial professionals engaged in the process of issuing debt to clearly disclose all compensation and consideration received related to services provided in the debt issuance process by both the town and the lender or conduit issuer, if any. This includes "soft" costs or compensations in lieu of direct payments

(b) Conflict of interest. (i) Financial professionals involved in a debt transaction hired or compensated by the town shall be required to disclose to the town existing client and business relationships between and among the professionals to a transaction (including but not limited to financial advisors, swap advisors, bond counsel, swap counsel, trustee, paying agent, underwriter, counterparty, and remarketing agent), as well as conduit issuers, sponsoring organizations and program administrators. This disclosure shall include that information reasonably sufficient to allow the town to appreciate the significance of the relationships.

(ii) Financial professionals who become involved in the debt transaction as a result of a bid submitted in a widely and

publicly advertised competitive sale conducted using an industry standard, electronic bidding platform are not subject to this disclosure. No disclosure is required that would violate any rule or regulation of professional conduct. (Ord. #657-11, Oct. 2011)

5-611. Compliance. (1) Continuing annual disclosure. Normally at the time debt is delivered, the town will execute a continuing disclosure certificate in which it will covenant for the benefit of holders and beneficial owners of the publically traded debt to provide certain financial information relating to the town by not later than twelve (12) months after each of the town's fiscal years, (the annual report and provide notice of the occurrence of certain enumerated events). The annual report (and audited financial statements, if filed separately) will be filed with the MSRB through the operation of the Electronic Municipal Market Access system ("EMMA") and any State Information Depository established in the State of Tennessee (the "SID"). If the town is unable to provide the annual report to the MSRB and any SID by the date required, notice of each failure will be sent to the MSRB and any SID on or before such date. The notices of certain enumerated events will be filed by the town with the MSRB through EMMA and any SID. The specific nature of the information to be contained in the annual report or the notices of significant events is provided in each continuing disclosure certificate. These covenants are made in order to assist underwriters in complying with SEC Rule 15c2-12(b) (the "Rule").

(2) Arbitrage rebate. The town will also maintain a system of record keeping and reporting which complies with the arbitrage rebate compliance requirements of the Internal Revenue Code (the "code").

(3) Records. The town will also maintain records required by the code including, but not limited to, all records related to the issuance of the debt including detailed receipts and expenditures for a period up to six (6) years following the final maturity date of the debt or as required by the code. (Ord. #657-11, Oct. 2011)

5-612. Debt policy review. (1) General guidance. The guidelines outlined herein are only intended to provide general direction regarding the future issuance of debt. The town maintains the right to modify this debt policy and may make exceptions to any of its guidelines at any time to the extent that the execution of such debt achieves the goals of the town as long as such exceptions or changes are consistent with *Tennessee Code Annotated* and any rules and regulations promulgated by the state.

This debt policy should be reviewed from time to time as circumstances, rules and regulations warrant.

(2) Designated officials. The mayor and recorder are responsible for ensuring substantial compliance with this debt policy. (Ord. #657-11, Oct. 2011)