

**TITLE 1**

**GENERAL ADMINISTRATION**<sup>1</sup>

**CHAPTER**

1. BOARD OF COMMISSIONERS.
2. MAYOR.
3. RECORDER.
4. MISCELLANEOUS.
5. TOWN MANAGER.
6. CODE OF ETHICS.
7. ADMINISTRATIVE HEARING OFFICER.

**CHAPTER 1**

**BOARD OF COMMISSIONERS**<sup>2</sup>

**SECTION**

- 1-101. Time and place of regular meetings.
- 1-102. Order of business.
- 1-103. General rules of order.

**1-101. Time and place of regular meetings.** The board of commissioners shall hold regular monthly meetings at 6:00 P.M. on the second Monday of each month at the community center. (1997 Code, § 1-101, modified)

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<sup>1</sup>Charter reference

See the charter index, the charter itself, and footnote references to the charter in the front of this code.

Municipal code references

Building, plumbing, electrical and gas inspectors: title 12.

Fire department: title 7.

Utilities: titles 18 and 19.

Water and sewers: title 18.

Zoning: title 14.

<sup>2</sup>Charter references

Eligibility: art. IV, § 1(b).

Meetings: art. IV, § 8.

Oath of office: art. IV, § 9.

Quorum: art. IV, § 10.

Term of office: art. IV, § 1(c).

**1-102. Order of business.** At each meeting of the board of commissioners the following regular order of business shall be observed unless dispensed with by a majority vote of the members present:

- (1) Call to order by the mayor.
- (2) Roll call by the recorder.
- (3) Reading of minutes of the previous meeting by the recorder and approval or correction.
- (4) Grievances from citizens.
- (5) Communications from the mayor.
- (6) Reports from committees, members of the board of commissioners, and other officers.
- (7) Old business.
- (8) New business.
- (9) Adjournment. (1997 Code, § 1-102)

**1-103. General rules of order.** The rules of order and parliamentary procedure contained in Robert's Rules of Order, Newly Revised, shall govern the transaction of business by and before the board of commissioners at its meetings in all cases to which they are applicable and in which they are not inconsistent with provisions of the charter or this code. (1997 Code, § 1-103)

**CHAPTER 2****MAYOR<sup>1</sup>****SECTION**

1-201. Executive responsibilities.

1-202. Executes municipality's contracts.

**1-201. Executive responsibilities.** The mayor may require such reports from the officers and employees as he may reasonably deem necessary to carry out his executive responsibilities. (Ord. #091205-68, Oct. 2005)

**1-202. Executes municipality's contracts.** The mayor shall execute all contracts as authorized by the board of commissioners. (1997 Code, § 1-202)

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<sup>1</sup>Charter references

Eligibility: art. IV, § 1(b).

Oath of office: art. IV, § 9.

Term of office: art. IV, § 1(c).

**CHAPTER 3****RECORDER<sup>1</sup>****SECTION**

1-301. To be bonded.

1-302. To keep minutes, etc.

1-303. To perform general administrative duties, etc.

**1-301. To be bonded.** The recorder shall be bonded in the sum of ten thousand dollars (\$10,000.00), with surety acceptable to the board of commissioners, before assuming the duties of his office. (1997 Code, § 1-301)

**1-302. To keep minutes, etc.** The recorder shall keep the minutes of all meetings of the board of commissioners and shall preserve the original copy of all ordinances in a separate ordinance book. (1997 Code, § 1-302)

**1-303. To perform general administrative duties, etc.** The recorder shall perform all administrative duties for the board of commissioners and for the Town of Englewood which are not expressly assigned by the charter or this code to another corporate officer. The recorder shall also have custody of and be responsible for maintaining all corporate bonds, records, and papers in such fireproof vault or safe as the Town of Englewood shall provide. (1997 Code, § 1-303)

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<sup>1</sup>Charter references

Appointment: art. VII, § 1.

Bond required: art. VII, § 1.

Compensation: art. VII, § 1.

Powers and duties: art. VII.

Treasurer; recorder acts as: art. VII, § 6.

**CHAPTER 4**

**MISCELLANEOUS**

**SECTION**

1-401. Discrimination prohibited.

**1-401. Discrimination prohibited.** The Town of Englewood shall not discriminate on the basis of race, color, national origin or religion. (1997 Code, § 1-401)

## CHAPTER 5

### TOWN MANAGER

#### SECTION

1-501. Appointment; at will status; residency.

1-502. Duties.

1-503. Vacancies.

**1-501. Appointment; at will status; residency.** The board of commissioners shall appoint a town manager who shall serve at the will and pleasure of the board. The town manager need not be a resident, but must become a resident within ninety (90) days after taking office. (Ord. #091205-67, Oct. 2005)

**1-502. Duties.** The town manager shall perform all of the following duties:

(1) Employ, promote, discipline, suspend and discharge all employees and department heads, in accordance with personnel policies and procedures, if any, adopted by the board;

(2) Act as purchasing agent for the municipality in the purchase of all materials, supplies and equipment for the proper conduct of the municipality's business provided, that all purchases shall be made in accordance with policies, practices, and procedures established by the board, in accordance with state law;

(3) Prepare and submit the annual budget and capital program to the board for their adoption by ordinance;

(4) Administer the business of the town;

(5) Make recommendations to the board for improving the quality and quantity of public services to be rendered by the officers and employees to the inhabitants of the town;

(6) Keep the board fully advised as to the conditions and needs of the town;

(7) Report to the board the condition of all property, real and personal, owned by the town and recommend repairs or replacements as needed;

(8) Recommend to the board and suggest the priority of programs or projects involving public works or public improvements that should be undertaken by the town;

(9) Recommend specific personnel positions, as may be required for the needs and operations of the town, and may propose personnel policies and procedures for approval of the board; and

(10) Perform such other duties as may from time to time be designated or required by the board. (Ord. #091205-67, Oct. 2005)

**1-503. Vacancies.** During a vacancy in the office of town manager, the board of commissioners may appoint an acting town manager, may designate a department head as acting town manager or may assign the duties of the town manager to the mayor. (Ord. #091205-67, Oct. 2005)

## CHAPTER 6

### CODE OF ETHICS<sup>1</sup>

#### SECTION

- 1-601. Applicability.
- 1-602. Definition of "personal interest."
- 1-603. Disclosure of personal interest by official with vote.
- 1-604. Disclosure of personal interest in non-voting matters.
- 1-605. Acceptance of gratuities, etc.
- 1-606. Use of information.
- 1-607. Use of municipal time, facilities, etc.
- 1-608. Use of position or authority.
- 1-609. Outside employment.

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<sup>1</sup>State statutes dictate many of the ethics provisions that apply to municipal officials and employees. For provisions relative to the following, see the Tennessee Code Annotated (T.C.A.) sections indicated:

Campaign finance: Tennessee Code Annotated, title 2, ch. 10.

Conflict of interests: Tennessee Code Annotated, §§ 6-54-107, 108; 12-4-101, 102.

Conflict of interests disclosure statements: Tennessee Code Annotated, § 8-50-501 and the following sections.

Consulting fee prohibition for elected municipal officials: Tennessee Code Annotated, §§ 2-10-122, 124.

Crimes involving public officials (bribery, soliciting unlawful compensation, buying and selling in regard to office): Tennessee Code Annotated, § 39-16-101 and the following sections.

Crimes of official misconduct, official oppression, misuse of official information: Tennessee Code Annotated, § 39-16-401 and the following sections.

Ouster law: Tennessee Code Annotated, § 8-47-101 and the following sections.

A brief synopsis of each of these laws appears in Appendix A of this municipal code.



1-610. Ethics complaints.

1-611. Violations.

**1-601. 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. (Ord. #05-14-07-82, May 2007)

**1-602. Definition of "personal interest."** (1) For purposes of §§ 1-603 and 1-604, "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 step child(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. (Ord. #05-14-07-82, May 2007)

**1-603. 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<sup>1</sup> from voting on the measure. (Ord. #05-14-07-82, May 2007)

**1-604. 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

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<sup>1</sup>Masculine pronouns include the feminine. Only masculine pronouns have been used for convenience and readability.

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 recorder. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter. (Ord. #05-14-07-82, May 2007)

**1-605. Acceptance of gratuities, etc.** An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other 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 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 action, or reward him for past action, in executing municipal business. (Ord. #05-14-07-82, May 2007)

**1-606. Use of information.** (1) An official or employee may not disclose any information obtained in his 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 official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity. (Ord. #05-14-07-82, May 2007)

**1-607. 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.

(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. (Ord. #05-14-07-82, May 2007)

**1-608. 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 position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. (Ord. #05-14-07-82, May 2007)

**1-609. 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. (Ord. #05-14-07-82, May 2007)

**1-610. Ethics complaints.** (1) The town 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 town 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 town 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 own initiative when he 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 town attorney may request the governing body to hire another attorney, individual, or entity to act as ethics officer when he 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 town 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 or a civil service policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics. (Ord. #05-14-07-82, May 2007)

**1-611. Violations.** 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. (Ord. #05-14-07-82, May 2007)

## CHAPTER 7

### ADMINISTRATIVE HEARING OFFICER

#### SECTION

- 1-701. Municipal administrative hearing officer.
- 1-702. Communication by administrative hearing officer and parties.
- 1-703. Appearance by parties and/or counsel.
- 1-704. Pre-hearing conference and orders.
- 1-705. Appointment of administrative hearing officer/administrative judge.
- 1-706. Training and continuing education.
- 1-707. Jurisdiction not exclusive.
- 1-708. Citations for violations--written notice.
- 1-709. Review of citation--levy of fines.
- 1-710. Party in default.
- 1-711. Petitions for intervention.
- 1-712. Regulating course of proceedings--hearing open to public.
- 1-713. Evidence and affidavits; notice.
- 1-714. Final orders.
- 1-715. Final order effective date.
- 1-716. Collection of fines, judgments and debts.
- 1-717. Judicial review of final order.
- 1-718. Appeal to court of appeals.

**1-701. 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 Town of Englewood, Tennessee Municipal Code relating to building and property maintenance including:

- (a) Building codes found at title 12, chapter 1;
- (b) Residential codes found at title 12, chapter 6;
- (c) Plumbing codes found at title 12, chapter 2.
- (d) Electrical codes found at title 12, chapter 3;
- (e) Gas codes found at title 12, chapter 4;
- (f) Mechanical codes found at title 12, chapter 8;
- (g) Energy codes found at title 12, chapter 5;
- (h) Property maintenance codes title 13, chapter 1; and
- (i) All ordinances regulating any subject matter commonly found in the above-described codes.

The administrative hearing officer is not authorized to hear violation codes adopted by the state fire marshal pursuant to Tennessee Code Annotated, § 68-120-101(a) enforced by 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 administrative hearing officer and shall be an alternative to the enforcement in the Town of Englewood Municipal Court.

(2) There is hereby created one (1) administrative hearing officer position to be appointed pursuant to § 1-705 below.

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

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

(5) The administrative hearing officer shall perform all of the duties and abide by all of the requirements provided in Tennessee Code Annotated, title 6, chapter 54, section 1001, et seq. (as added by Ord. #10-10-11-63, Oct. 2011)

**1-702. Communication by administrative hearing officer and parties.** (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 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. #10-10-11-63, Oct. 2011)

**1-703. Appearance by parties and/or 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. #10-10-11-63, Oct. 2011)

**1-704. Pre-hearing conference and 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. #10-10-11-63, Oct. 2011)

**1-705. Appointment of administrative hearing officer/administrative judge.** (1) The administrative hearing officer shall be appointed by the town manager and serve at the pleasure of the town manager. Such administrative hearing officer may be hired on a part-time or full-time basis, by contract or by interlocal agreement with one (1) or more eligible municipalities.

(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 town may also contract with the administrative procedures division, office of the treasury 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 subsection 6-54-1007(a) and (b). (as added by Ord. #10-10-11-63, Oct. 2011)

**1-706. Training and continuing education.** (1) Each person appointed to serve as an administrative hearing officer shall, within 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 certification 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. (as added by Ord. #10-10-11-63, Oct. 2011)

**1-707. 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 town manager may direct a municipal officer or employee to develop criteria for determining when to exercise administrative enforcement. (as added by Ord. #10-10-11-63, Oct. 2011)

**1-708. Citations for violations--written notice.** (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 town's administrative hearing process including references to state and local statutory authority;

(c) Contact information for the town'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 town'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 not 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 town's administrative hearing ordinance shall be transmitted to an administrative hearing officer within two (2) business days of issuance. (as added by Ord. #10-10-11-63, Oct. 2011)

**1-709. Review of citation--levy of fines.** (1) Upon receipt of a citation issued pursuant to § 1-707, 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. #10-10-11-63, Oct. 2011)

**1-710. 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. #10-10-11-63, Oct. 2011)

**1-711. Petitions for intervention.** (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 intervener 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 intervener'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 intervener 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. #10-10-11-63, Oct. 2011)

**1-712. Regulating course of proceedings--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. #10-10-11-63, Oct. 2011)

**1-713. Evidence and affidavits; notice.** (1) In an administrative hearing:

(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 subsection (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 subsection (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, our 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. #10-10-11-63, Oct. 2011)

**1-714. Final orders.** (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 therefor, 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. #10-10-11-63, Oct. 2011)

**1-715. Final order effective date.** (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. #10-10-11-63, Oct. 2011)

**1-716. Collection of fines, judgments and debts.** The town 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. #10-10-11-63, Oct. 2011)

**1-717. Judicial review of final order.** (1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to Tennessee Code Annotated, title 6, chapter 54, part 10, 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. #10-10-11-63, Oct. 2011)

**1-718. 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. #10-10-11-63, Oct. 2011)