

**THE
ERWIN
MUNICIPAL
CODE**

Prepared by the



Municipal Technical Advisory Service

In cooperation with the Tennessee Municipal League

April 2023

TOWN OF ERWIN, TENNESSEE

MAYOR

Dwight (Glenn) White

VICE MAYOR

James (Mickey) Hatcher

ALDERMEN

Michael Baker
Paula Edwards
Cathy Huskins
Angie Vaughn

RECORDER

Mark Moeller

CITY ATTORNEY

Thomas J. Seeley, III

PREFACE

The Town of Erwin Municipal Code contains the codification and revision of the ordinances of the Town of Erwin, Tennessee. By referring to the historical citation appearing at the end of each section, the user can determine the origin of each particular section. The absence of a historical citation means that the section was added by the codifier. The word "modified" in the historical citation indicates significant modification of the original ordinance.

The code is arranged into titles, chapters, and sections. Related matter is kept together, so far as possible, within the same title. Each section number is complete within itself, containing the title number, the chapter number, and the section of the chapter of which it is a part. Specifically, the first digit, followed by a hyphen, identifies the title number. The second digit identifies the chapter number, and the last two digits identify the section number. For example, title 2, chapter 1, section 6, is designated as § 2-106.

By utilizing the table of contents, code index and the analysis preceding each title and chapter of the code, together with the cross references and explanations included as footnotes, the user should locate all the provisions in the code relating to any question that might arise. However, the user should note that most of the administrative ordinances (e.g. Annual Budget, Zoning Map Amendments, Tax Assessments, etc...) do not appear in the code. Likewise, ordinances that have been passed since the last update of the code do not appear here. Therefore, the user should refer to the city's ordinance book or the recorder for a comprehensive and up to date review of the city's ordinances.

Following this preface is an outline of the ordinance adoption procedures, if any, prescribed by the town's charter.

The code has been arranged and prepared in loose-leaf form to facilitate keeping it up to date. MTAS will provide updating service under the following conditions:

- (1) That all ordinances relating to subjects treated in the code or which should be added to the code are adopted as amending, adding, or deleting specific chapters or sections of the code (see section 7 of the adopting ordinance).
- (2) That one copy of every ordinance adopted by the town is kept in a separate ordinance book and forwarded to MTAS annually.
- (3) That the town agrees to pay the annual update fee as provided in the MTAS codification service charges policy in effect at the time of the update.

When the foregoing conditions are met MTAS will reproduce replacement pages for the code to reflect the amendments and additions made by such ordinances. This service will be performed at least annually and more often if

justified by the volume of amendments. Replacement pages will be supplied with detailed instructions for utilizing them so as again to make the code complete and up to date.

The able assistance of the codes team: Kelley Myers and Nancy Gibson is gratefully acknowledged.

**ORDINANCE ADOPTION PROCEDURES PRESCRIBED BY THE
CITY CHARTER**

SECTION 1. Ordaining clause specified. Be it further enacted, That the Board of Mayor and Aldermen shall have the power, by majority vote, to pass ordinances, and all ordinances shall begin, "Be it ordained by the Town of Erwin, as follows:".

SECTION 2. Procedure for adopting; when effective; amendment of. Be it further enacted, that each and every ordinance shall, before the same becomes effective, be passed on two (2) different days, and not less than one (1) week shall elapse between the first and second reading. The first passage may be by the reading of the caption only. On the second passage, the proposed ordinance shall either be read in full or full copies of the said proposed ordinance shall be made available to each member of the Board of Mayor and Aldermen and to the public prior to said passage, which second passage shall be at a regular meeting of the Board.

No ordinance shall take effect until after the expiration of ten (10) days after the final passage thereof, except in the case of emergency ordinances. An emergency ordinance may become effective upon the day of the final passage, provided it shall contain the statement that an emergency exists and shall specify distinctly the facts and reasons constituting such emergency; and the unanimous vote of all members of the Board present shall be required to pass an emergency ordinance. No ordinance shall be amended except by ordinance. [As amended by Priv. Acts 1988, ch. 203, § 2; and as replace by Priv. Acts 2001, ch. 25]

SECTION 3. To be numbered and kept in ordinance book. Be it further enacted, That every ordinance shall be immediately taken in charge by the Recorder and by him numbered and copied in an ordinance book filed and preserved in his office.

SECTION 4. Publication requirements; codification of; proving. Be it further enacted, That all ordinances of a penal nature shall be published at least one time in a newspaper of the Town, unless such ordinance be of such length as would, in the opinion of the Board of Mayor and Aldermen, render the publication thereof unnecessarily expensive, in which event the facts shall be stated in the ordinance, whereupon the ordinance may be published by posting a certified copy thereof on a bulletin board at the Municipal Building. The said posting shall be at least ten days before the effective date of the ordinance, and, after such publication, the said ordinance shall be in full force and effect.

The said Town may codify, rearrange and publish in book form, under appropriate chapters and sections, all ordinances, and such revisions and codification may be in one ordinance, containing one or more subjects. The

publication of such revision and codification in book or pamphlet form, as aforesaid, shall be held to be sufficient publication of the ordinance or several ordinances contained in such codification so published.

Any such publication of a revision or codification of ordinances in a book or pamphlet form shall contain a certificate of the Mayor and Recorder of the correctness of such revision and publication (which certificate may be printed), and shall show the date on which printed and published, and shall be effective from and after such date.

All Town ordinances and resolutions and proceedings of said Board of Mayor and Aldermen may be proved by the seal of the said corporation, attested by the Recorder, and when purporting to be printed and published in book or pamphlet form by authority of the said Town, the same shall be received in evidence of the due enactment of any ordinance or resolution therein, and the date of the enactment thereof.

SECTION 5. Recorder to keep record of board's proceedings and a separate ordinance book. Be it further enacted, That the full and complete record of all the proceedings of the Board of Mayor and Aldermen shall be kept by the Recorder, who shall keep a separate book called "Ordinance Book," in which shall be recorded all the ordinances passed by the Board.

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TITLE 1

GENERAL ADMINISTRATION¹

CHAPTER

1. BOARD OF MAYOR AND ALDERMEN.
2. MAYOR.
3. RECORDER.
4. TOWN ENGINEER.
5. TOWN ATTORNEY.
6. CODE OF ETHICS.

CHAPTER 1

BOARD OF MAYOR AND ALDERMEN

SECTION

- 1-101. Time and place of regular meetings.
- 1-102. Order of business.
- 1-103. General rules of order.
- 1-104. Salaries of mayor and aldermen.
- 1-105. Budget amendments.

1-101. Time and place of regular meetings. The board of mayor and aldermen shall hold regular monthly meetings at 5:30 P.M. at the town hall. Provided, however, the mayor and a majority of the members of the board of mayor and aldermen may change the meeting time, but not the meeting date, from time to time as the needs of the town dictate, provided actual adequate notice of any such change is given to the other members of the board of mayor and aldermen and the local media. The public shall be notified of such change by posting notices on the doors of the municipal building at least twenty-four (24) hours prior to the new meeting time. Provided further, the board of

¹Charter references

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.

Wastewater treatment: title 18.

Zoning: title 14.

mayor and aldermen may from time to time cancel meetings. (2005 Code, § 1-101, modified)

1-102. Order of business. At each meeting of the board of mayor and aldermen, 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, and other officers.
- (7) Old business.
- (8) New business.
- (9) Adjournment. (2005 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 mayor and aldermen 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. (2005 Code, § 1-103)

1-104. Salaries of mayor and aldermen. The monthly salary of the mayor is set at five hundred dollars (\$500.00) and the monthly salary of each member of the board of aldermen is set at three hundred dollars (\$300.00). (Ord. #625-07, July 2007)

1-105. Budget amendments.¹ Prior to the approval of any amendment to the annual budget that would increase appropriations for the expenditure of town funds, the board of mayor and aldermen shall approve a resolution that identifies a corresponding source of funds to cover the proposed additional expenditure, and/or identifies a corresponding reduction in expenditure to compensate for the proposed additional expenditure. Nothing in this section shall be construed or interpreted as an explanation or limitation on any power or authority granted to the municipality by the State of Tennessee. (2005 Code, § 1-105)

¹Municipal code reference
Finance and taxation: title 5.

CHAPTER 2**MAYOR¹****SECTION**

1-201. Generally supervises town's affairs.

1-202. Executes town's contracts.

1-201. Generally supervises town's affairs. The mayor shall have general supervision of all municipal affairs and may require such reports from the officers and employees as he may reasonably deem necessary to carry out his executive responsibilities. (2005 Code, § 1-201)

1-202. Executes town's contracts. The mayor shall execute all contracts as authorized by the board of mayor and aldermen. (2005 Code, § 1-202)

¹Charter reference

Officers and corporate authority: art. IV.

CHAPTER 3**RECORDER**¹**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 such sum as may be fixed by, and with such surety as may be acceptable to, the board of mayor and aldermen. (2005 Code, § 1-301)

1-302. To keep minutes, etc. The recorder shall keep the minutes of all meetings of the board of mayor and aldermen and shall preserve the original copy of all ordinances in a separate ordinance book. (2005 Code, § 1-302)

1-303. To perform general administrative duties, etc. The recorder shall perform all administrative duties for the board of mayor and aldermen and for the town which are not assigned by the charter, this code, or the board to another corporate officer. He 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 shall provide. (2005 Code, § 1-303)

¹Charter references

Recorder: art. IV, § 14, and art. VI, § 5.

CHAPTER 4**TOWN ENGINEER**¹**SECTION**

1-401. Office established.

1-402. Responsibilities.

1-401. Office established. There is hereby established the office of the town engineer. (2005 Code, § 1-401)

1-402. Responsibilities. The town engineer is responsible to the board of mayor and aldermen for directing the operation of the public works department. This includes the organization, direction, and coordination of activities for construction and maintenance of streets, refuse collection and disposal, building inspections and permits, equipment and building maintenance and repair, and all other duties that may be assigned. (2005 Code, § 1-402)

¹Charter reference

Town engineer: art. IV, § 16.

CHAPTER 5

TOWN ATTORNEY

SECTION

- 1-501. Office established.
- 1-502. Term of office.
- 1-503. Responsibilities and duties.
- 1-504. Compensation.

1-501. Office established. There is hereby established the office of town attorney. (2005 Code, § 1-501)

1-502. Term of office. The term of office of the town attorney will be for a period of one (1) year and/or until his successor is elected and qualifies. Said attorney shall be elected by the board of mayor and aldermen at the first regular meeting in July of each year. (2005 Code, § 1-502)

1-503. Responsibilities and duties. It shall be the duty of the town attorney to appear for and represent the town in all lawsuits in any court in which the town is a party; to examine and pass upon all bonds submitted by the officers of the town and their agents or others; to examine and pass upon all land contracts, deeds and other instruments in which the town is a party or has an interest; to render legal opinions in matters affecting the town; to attend meetings of the board, when requested, and perform such other duties within the scope of the business of an attorney and counselor as may be required by the board of mayor and aldermen. (2005 Code, § 1-503)

1-504. Compensation. The board of mayor and aldermen shall set the salary of the town attorney at such figure as the board may deem proper at the beginning of each fiscal year. In addition to the regular salary approved by the board of mayor and aldermen, additional fees and expenses may be paid to said attorney, as follows:

(1) For services rendered said town in connection with litigation to which the town is a party, for prolonged negotiations of matters not in litigation, for extensive research of legal questions and matters of interest to said town and for the performance of any other legal service that involves substantial time and effort not ordinarily included within retainer compensation.

(2) To reimburse said attorney for travel and other incidental expenses incurred in connection with attending to the business or interests of said town.

Upon the performance of said additional services, or after incurring incidental expenses, said attorney will present a resume of his services, with charges therefor, and a list of expenses to the board for its approval. Upon

approval of same, the attorney will be paid from the general fund. (2005 Code, § 1-504)

CHAPTER 6

CODE OF ETHICS

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 members.
- 1-605. Acceptance of gratuities, etc.
- 1-606. Use of information.
- 1-607. Use of municipal facilities, etc.
- 1-608. Use of position or authority.
- 1-609. Outside employment.
- 1-610. Ethics complaints.
- 1-611. Violations and penalty.

1-601. Applicability. This chapter is the code of ethics for personnel of the Town of Erwin. 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, public works authority, corporation, or other instrumentality which has been appointed or created by the Town of Erwin. The words "municipal" and "municipality" include these separate entities. (Ord. #623-07, June 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;

(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), stepparent(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. (Ord. #623-07, June 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 from voting on the measure. (Ord. #623-07, June 2007)

1-604. Disclosure of personal interest in non-voting members. 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 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. #623-07, June 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. #623-07, June 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. #623-07, June 2007)

1-607. Use of municipal 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. #623-07, June 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. #623-07, June 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. #623-07, June 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 that the governing body 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. #623-07, June 2007)

1-611. Violations and penalty. 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. #623-07, June 2007)

TITLE 2

BOARDS AND COMMISSIONS, ETC.

CHAPTER

1. ERWIN BOARD OF PUBLIC UTILITIES.

CHAPTER 1

ERWIN BOARD OF PUBLIC UTILITIES¹

SECTION

2-101. Creation, membership, jurisdiction.

2-102. Temple Hill Department of Erwin Utilities--creation, membership, jurisdiction.

2-101. Creation, membership, jurisdiction. The Erwin Board of Public Utilities, consisting of five (5) members, is hereby created pursuant to the provisions of *Tennessee Code Annotated*, title 7, chapter 52. The board shall have such powers and duties with respect to the town's electric, water, and sewer systems as are authorized by said state law. (2005 Code, § 2-101)

2-102. Temple Hill Department of Erwin Utilities--creation, membership, jurisdiction. (1) In accordance with *Tennessee Code Annotated*, § 7-82-202(f), the Erwin Board of Mayor and Aldermen, acting by and through its (Town of Erwin) Board of Public Utilities (known hereafter as "Erwin Utilities"), shall be the governing board of the "Temple Hill Department of Erwin Utilities."

(2) Advisory committee. An advisory committee on the Temple Hill Department of Erwin Utilities is hereby created and shall be composed of residents and customers of the Temple Hill Department of Erwin Utilities. The members of the advisory committee shall be recommended by the Mayor of the Town of Erwin to the board of mayor and aldermen, and then elected on vote of the board of mayor and aldermen.

(3) This advisory committee of the Temple Hill Department of Erwin Utilities shall be composed of a total of six (6) members, who shall serve for terms of two (2) years. Initially, the terms of three (3) of those members shall

¹Municipal code references

Building code: title 12, ch. 1.

Electric code: title 12, ch. 3.

Fuel gas code: title 12, ch. 4.

Water and sewers: title 18.

first expire on June 30, 1996, with the terms of the other three (3) members expiring on June 30, 1997. As soon as reasonably practical after the expiration of a member(s) term, new member(s) to the advisory committee shall be appointed as per the procedure set out in subsection (2) above, so that there will be six (6) members serving on the advisory committee. Members of the advisory committee may be reappointed after the expiration of their term in the discretion of the mayor and the board of mayor and aldermen.

(4) This advisory committee of the Temple Hill Department of Erwin Utilities shall meet when needed and shall advise the Town of Erwin Board of Public Utilities (known hereafter as "Erwin Utilities"), with regard to operation of the Temple Hill Department of Erwin Utilities, as authorized by state law. Final decisions with regard to the Temple Hill Department of Erwin Utilities shall be by vote of the Town of Erwin Board of Public Utilities (known hereafter as "Erwin Utilities").

(5) When the Temple Hill Department of Erwin Utilities ceases to be operated as a separate department of Erwin Utilities and is fully merged into the other utility services of the Town of Erwin, the advisory committee of the Temple Hill Department of Erwin Utilities may be dissolved on resolution or vote of the Board of Mayor and Aldermen of the Town of Erwin.

(6) The Town of Erwin Board of Mayor and Aldermen does hereby designate all necessary powers and authority for the day to day operation of the Temple Hill Department of Erwin Utilities to its (Town of Erwin) Board of Public Utilities (known hereafter as "Erwin Utilities"). (2005 Code, § 2-102)

TITLE 3**MUNICIPAL COURT¹****CHAPTER**

1. TOWN COURT.
2. COURT ADMINISTRATION.
3. WARRANTS, SUMMONSES AND SUBPOENAS.
4. BONDS AND APPEALS.

CHAPTER 1**TOWN COURT****SECTION**

- 3-101. Town judge.
- 3-102. Town judge; employment, requirements.

3-101. Town judge. The officer designated by the charter to handle judicial matters within the town shall preside over the town court and shall be known as the town judge. (2005 Code, § 3-101)

3-102. Town judge; employment, requirements. (1) Pursuant to *Tennessee Code Annotated* §§ 16-18-101, *et seq.*:

(a) The Town Judge for the Town of Erwin shall be at least thirty (30) years of age, licensed in the State of Tennessee to practice law.

(b) The town judge shall be appointed by, and serve at the will and pleasure of, the governing body for a term of one (1) year.

(c) Vacancies in the office of town judge shall be filled by the governing body.

(d) The compensation of the town judge shall be two hundred dollars (\$200.00) per appearance on the bench.

(e) During the absence or disability of the town judge, the governing body may appoint a town judge pro tem to serve until the town judge returns to his/her duties. The judge pro tem shall have all qualifications required of the town judge under this chapter, and shall have all the authorities and powers of the town judge.

(2) Consistent with *Town of South Carthage v. Barrett*, 840 S.W. 2d 895 (Tenn. 1992), the town judge is an appointed judge and shall have

¹Charter reference

Judicial powers: art. 12, § 14.

jurisdiction only over violations of municipal ordinances. (Ord. #641-09, Feb. 2009)

CHAPTER 2

COURT ADMINISTRATION

SECTION

3-201. Maintenance of docket.

3-202. Imposition of fines, penalties, and costs.

3-203. Disposition and report of fines, penalties, and costs.

3-204. Disturbance of proceedings.

3-201. Maintenance of docket. The court clerk shall keep a complete docket of all matters coming before him in his judicial capacity. The docket shall include for each defendant such information as his name; warrant and/or summons numbers; alleged offense; disposition; fines and costs imposed and whether collected; and all other information that may be relevant. (2005 Code, § 3-201, modified)

3-202. Imposition of fines, penalties, and costs. All fines, penalties and costs shall be imposed and recorded by the court clerk on the town court docket in open court. The maximum penalty for town ordinance violations shall not exceed fifty dollars (\$50.00) for each violation. Each day any violation of the municipal code continues shall constitute a separate offense.

In all cases heard and determined by the city judge, he/she shall impose court costs in the amount of eighty-six dollars twenty-five cents (\$86.25). One dollar (\$1.00) of the court costs shall be forwarded by the court clerk to the state treasurer to be used by the administrative office of the courts for training and continuing education courses for municipal court judges and municipal court clerks. (2005 Code, § 3-202, as amended by Ord. #642-09, Feb. 2009, modified, as amended by Ord. #739-22, Nov. 2022)

3-203. Disposition and report of fines, penalties, and costs. All funds coming into the hands of the municipal court judge in the form of fines, penalties, costs, and forfeitures shall be recorded by him and paid over promptly to the town or state as appropriate. At the end of each month, he shall submit to the board of mayor and aldermen a report accounting for the collection or non-collection of all fines, penalties, and costs imposed by his court during the current month and to date for the current fiscal year. (2005 Code, § 3-203, modified)

3-204. Disturbance of proceedings. It shall be unlawful for any person to create any disturbance of any trial before the town court by making loud or unusual noises, by using indecorous, profane, or blasphemous language, or by any distracting conduct. (2005 Code, § 3-204, modified)

CHAPTER 3

WARRANTS, SUMMONSES AND SUBPOENAS

SECTION

3-301. Issuance of summonses.

3-302. Issuance of subpoenas.

3-301. Issuance of summonses. When a complaint of an alleged ordinance violation is made to the town judge, the judge may, in his discretion, issue a summons ordering the alleged offender to personally appear before the town court at a time specified therein to answer to the charges against him. The summons shall contain a brief description of the offense charged but need not set out verbatim the provisions of the ordinance alleged to have been violated. Upon failure of any person to appear before the town court as commanded in a summons lawfully served on him, the cause may be proceeded with ex parte, and the judgment of the court shall be valid and binding subject to the defendant's right of appeal. (2005 Code, § 3-302, modified)

3-302. Issuance of subpoenas. The town judge may subpoena as witnesses all persons whose testimony he believes will be relevant and material to matters coming before his court, and it shall be unlawful for any person lawfully served with such a subpoena to fail or neglect to comply therewith. (2005 Code, § 3-303)

CHAPTER 4

BONDS AND APPEALS

SECTION

3-401. Appeals.

3-402. Bond amounts, conditions, and forms.

3-401. Appeals. Any defendant who is dissatisfied with any judgment of the town court against him may, within ten (10) days¹ next after such judgment is rendered, appeal to the next term of the circuit court upon posting a proper appeal bond. (2005 Code, § 3-402)

3-402. Bond amounts, conditions, and forms. An appeal bond in any case shall be in the sum of two hundred fifty dollars (\$250.00) and shall be conditioned that if the circuit court shall find against the appellant the fine or penalty and all costs of the trial and appeal shall be promptly paid by the defendant and/or his sureties. An appeal bond in any case may be made in the form of a cash deposit or by any corporate surety company authorized to do business in Tennessee or by two (2) private persons who individually own real property located within the county. No other type bond shall be acceptable. (2005 Code, § 3-403, modified)

¹State law reference

See *Tennessee Code Annotated*, § 27-5-101.

TITLE 4

MUNICIPAL PERSONNEL

CHAPTER

1. PERSONNEL REGULATIONS.
2. OCCUPATIONAL SAFETY AND HEALTH PROGRAM.
3. INFECTIOUS DISEASE CONTROL POLICY.
4. TRAVEL REIMBURSEMENT REGULATIONS.

CHAPTER 1

PERSONNEL REGULATIONS

SECTION

4-101. Personnel rules and regulations.

4-101. Personnel rules and regulations.¹ The personnel rules and regulations for the Town of Erwin are adopted by Ord. # 740-23 as if set out verbatim herein.

¹The Personnel Rules and Regulations for the Town of Erwin, as amended from time to time, are available in the office of the recorder.

CHAPTER 2

OCCUPATIONAL SAFETY AND HEALTH PROGRAM¹

SECTION

4-201. Adopted.

4-201. Adopted. The occupational safety and health program provisions are hereby adopted and incorporated as fully as if set out at length herein. (Ord. #668-13, Sept. 2013)

¹The plan of operation for the Occupational Safety and Health Program for the Town of Erwin is available in the recorder's office.

CHAPTER 3

INFECTIOUS DISEASE CONTROL POLICY

SECTION

- 4-301. Purpose.
- 4-302. Coverage.
- 4-303. Administration.
- 4-304. Definitions.
- 4-305. Policy statement.
- 4-306. General guidelines.
- 4-307. Hepatitis B vaccinations.
- 4-308. Reporting potential exposure.
- 4-309. Hepatitis B virus post-exposure management.
- 4-310. Human immunodeficiency virus post-exposure management.
- 4-311. Disability benefits.
- 4-312. Training regular employees.
- 4-313. Training high risk employees.
- 4-314. Training new employees.
- 4-315. Records and reports.
- 4-316. Legal rights of victims of communicable diseases.

4-301. Purpose. It is the responsibility of the Town of Erwin to provide employees a place of employment which is free from recognized hazards that may cause death or serious physical harm. In providing services to the citizens of the Town of Erwin, employees may come in contact with life-threatening infectious diseases which can be transmitted through job related activities. It is important that both citizens and employees are protected from the transmission of diseases just as it is equally important that neither is discriminated against because of basic misconceptions about various diseases and illnesses.

The purpose of this policy is to establish a comprehensive set of rules and regulations governing the prevention of discrimination and potential occupational exposure to Hepatitis B Virus (HBV), the Human Immunodeficiency Virus (HIV), and Tuberculosis (TB). (2005 Code, § 4-401)

4-302. Coverage. Occupational exposures may occur in many ways, including needle sticks, cut injuries or blood spills. Several classes of employees are assumed to be at high risk for blood-borne infections due to their routinely increased exposure to body fluids from potentially infected individuals. Those high risk occupations include but are not limited to:

- (1) Paramedics and emergency medical technicians;
- (2) Occupational nurses;
- (3) Housekeeping and laundry workers;

- (4) Police and security personnel;
- (5) Firefighters;
- (6) Sanitation and landfill workers; and
- (7) Any other employee deemed to be at high risk per this policy and an exposure determination. (2005 Code, § 4-402)

4-303. Administration. This infection control policy shall be administered by the mayor or his/her designated representative who shall have the following duties and responsibilities:

- (1) Exercise leadership in implementation and maintenance of an effective infection control policy subject to the provisions of this chapter, other ordinances, the town charter, and federal and state law relating to OSHA regulations;
- (2) Make an exposure determination for all employee positions to determine a possible exposure to blood or body fluids;
- (3) Maintain records of all employees and incidents subject to the provisions of this chapter;
- (4) Conduct periodic inspections to determine compliance with the infection control policy by municipal employees;
- (5) Coordinate and document all relevant training activities in support of the infection control policy;
- (6) Prepare and recommend to the board of mayor and aldermen any amendments or changes to the infection control policy;
- (7) Identify any and all housekeeping operations involving substantial risk of direct exposure to body fluids and shall address the proper precautions to be taken while cleaning rooms and blood spills; and
- (8) Perform such other duties and exercise such other authority as may be prescribed by the board of mayor and aldermen. (2005 Code, § 4-403)

4-304. Definitions. (1) "Body fluids" means fluids that have been recognized by the Center for Disease Control as directly linked to the transmission of HIV and/or HBV, and/or to which universal precautions apply: blood, semen, blood products, vaginal secretions, cerebrospinal fluid, synovial fluid, pericardial fluid, amniotic fluid, and concentrated HIV or HBV viruses.

(2) "Exposure" means the contact with blood or other body fluids to which universal precautions apply through contact with open wounds, non-intact skin, or mucous membranes during the performance of an individual's normal job duties.

(3) "Hepatitis B Virus (HBV)" means a serious blood-borne virus with potential for life-threatening complications. Possible complications include: massive hepatic necrosis, cirrhosis of the liver, chronic active hepatitis, and hepatocellular carcinoma.

(4) "Human Immunodeficiency Virus (HIV)" means the virus that causes Acquired Immunodeficiency Syndrome (AIDS). HIV is transmitted

through sexual contact and exposure to infected blood or blood components and perinatally from mother to neonate.

(5) "Tuberculosis (TB)" means an acute or chronic communicable disease that usually affects the respiratory system, but may involve any system in the body.

(6) "Universal precautions" means a system of infectious disease control which assumes that every direct contact with body fluid is infectious and requires every employee exposed to direct contact with body fluids to be protected as though such body fluid were HBV or HIV infected. (2005 Code, § 4-404)

4-305. Policy statement. All blood and body fluids are potentially infectious for several blood-borne pathogens and some body fluids can transmit infections. For this reason, the Center for Disease Control developed the strategy that everyone should always take particular care when there is a potential exposure. These precautions have been termed "universal precautions."

Universal precautions stress that all persons should be assumed to be infectious for HIV and/or other blood-borne pathogens. Universal precautions apply to blood, tissues, and other body fluids which contain visible blood. Universal precautions also apply to semen, (although occupational risk or exposure is quite limited), vaginal secretions, and to cerebrospinal, synovial, pleural, peritoneal, pericardial and amniotic fluids. Universal precautions do not apply to feces, nasal secretions, human breast milk, sputum, saliva, sweat, tears, urine, and vomitus unless these substances contain visible blood. (2005 Code, § 4-405)

4-306. General guidelines. General guidelines which shall be used by everyone include:

(1) Think when responding to emergency calls and exercise common sense when there is potential exposure to blood or other body fluids which require universal precautions.

(2) Keep all open cuts and abrasions covered with adhesive bandages which repel liquids.

(3) Soap and water kill many bacteria and viruses on contact. If hands are contaminated with blood or body fluids to which universal precautions apply, then wash immediately and thoroughly. Hands shall also be washed after gloves are removed, even if the gloves appear to be intact. When soap and water or handwashing facilities are not available, then use a waterless antiseptic hand cleaner according to the manufacturers recommendation for the product.

(4) All workers shall take precautions to prevent injuries caused by needles, scalpel blades, and other sharp instruments. To prevent needle stick injuries, needles shall not be recapped, purposely bent or broken by hand,

removed from disposable syringes, or otherwise manipulated by hand. After they are used, disposable syringes and needles, scalpel blades and other sharp items shall be placed in puncture resistant containers for disposal. The puncture resistant container shall be located as close as practical to the use area.

(5) The town will provide gloves of appropriate material, quality and size for each affected employee. The gloves are to be worn when there is contact (or when there is a potential contact) with blood or body fluids to which universal precautions apply:

- (a) While handling an individual where exposure is possible;
- (b) While cleaning or handling contaminated items or equipment; and
- (c) While cleaning up an area that has been contaminated with one (1) of the above.

Gloves shall not be used if they are peeling, cracked, or discolored, or if they have punctures, tears, or other evidence of deterioration. Employees shall not wash or disinfect surgical or examination gloves for reuse.

(6) Resuscitation equipment shall be used when necessary. (No transmission of HBV or HIV infection during mouth-to-mouth resuscitation has been documented.) However, because of the risk of salivary transmission of other infectious diseases and the theoretical risk of HIV or HBV transmission during artificial resuscitation, bags shall be used. Pocket mouth-to-mouth resuscitation masks designed to isolate emergency response personnel from contact with a victims' blood and blood contaminated saliva, respiratory secretion, and vomitus, are available to all personnel who provide or potentially provide emergency treatment.

(7) Masks or protective eyewear or face shields shall be worn during procedures that are likely to generate droplets of blood or other body fluids to prevent exposure to mucous membranes of the mouth, nose, and eyes. They are not required for routine care.

(8) Gowns, aprons, or lab coats shall be worn during procedures that are likely to generate splashes of blood or other body fluids.

(9) Areas and equipment contaminated with blood shall be cleaned as soon as possible. A household (chlorine) bleach solution (one (1) part chlorine to ten (10) parts water) shall be applied to the contaminated surface as a disinfectant leaving it on for a least thirty (30) seconds. A solution must be changed and re-mixed every twenty-four (24) hours to be effective.

(10) Contaminated clothing (or other articles) shall be handled carefully and washed as soon as possible. Laundry and dishwashing cycles at one hundred twenty degrees Fahrenheit (120°) are adequate for decontamination.

(11) Place all disposable equipment (gloves, masks, gowns, etc.) in a clearly marked plastic bag. Place the bag in a second clearly marked bag (double bag). Seal and dispose of by placing in a designated "hazardous"

dumpster. Note: sharp objects must be placed in an impervious container and then taken to a hospital for disposal.

(12) Tags shall be used as a means of preventing accidental injury or illness to employees who are exposed to hazardous or potentially hazardous conditions, equipment or operations which are out of the ordinary, unexpected or not readily apparent. Tags shall be used until such time as the identified hazard is eliminated or the hazardous operation is completed.

All required tags shall meet the following criteria:

(a) Tags shall contain a signal word and a major message. The signal word shall be "BIOHAZARD," or the biological hazard symbol. The major message shall indicate the specific hazardous condition or the instruction to be communicated to employees.

(b) The signal word shall be readable at a minimum distance of five feet (5') or such greater distance as warranted by the hazard.

(c) All employees shall be informed of the meaning of the various tags used throughout the workplace and what special precautions are necessary.

(13) Linen soiled with body fluids shall be handled as little as possible and with minimum agitation to prevent contamination of the person handling the linen. All soiled linen shall be bagged at the location where it was used. It shall not be sorted or rinsed in the area. Soiled linen shall be placed and transported in bags that prevent leakage.

The employee responsible for transported soiled linen should always wear protective gloves to prevent possible contamination. After removing the gloves, hands or other skin surfaces shall be washed thoroughly and immediately after contact with body fluids.

(14) Whenever possible, disposable equipment shall be used to minimize and contain clean-up. (2005 Code, § 4-406)

4-307. Hepatitis B vaccinations. The Town of Erwin shall offer the appropriate hepatitis B vaccination to employees at risk of exposure free of charge and in amounts and at times prescribed by standard medical practices. The vaccination shall be voluntarily administered. High risk employees who wish to take the HBV vaccination should notify their department head who shall make the appropriate arrangements through the infectious disease control coordinator. (2005 Code, § 4-407)

4-308. Reporting potential exposure. Town employees shall observe the following procedures for reporting a job exposure incident that may put them at risk for HIV or HBV infections (i.e., needle sticks, blood contact on broken skin, body fluid contact with eyes or mouth, etc.):

(1) Notify the infectious disease control coordinator of the contact incident and details thereof.

(2) Complete the appropriate accident reports and any other specific form required.

(3) Arrangements will be made for the person to be seen by a physician as with any job-related injury.

Once an exposure has occurred, a blood sample should be drawn after consent is obtained from the individual from whom exposure occurred and tested for Hepatitis B Surface Antigen (HBsAg) and/or antibody to Human Immunodeficiency Virus (HIV antibody). Testing of the source individual should be done at a location where appropriate pretest counseling is available. Post-test counseling and referral for treatment should also be provided. (2005 Code, § 4-408)

4-309. Hepatitis B virus post-exposure management. For an exposure to a source individual found to be positive for HBsAg, the worker who has not previously been given the hepatitis B vaccine should receive the vaccine series. A single dose of Hepatitis B Immune Globulin (HBIG) is also recommended, if it can be given within seven (7) days of exposure.

For exposure from an HBsAg-positive source to workers who have previously received the vaccine, the exposed worker should be tested for antibodies to hepatitis B surface antigen (anti-HBs), and given one (1) dose of vaccine and one (1) dose of HBIG if the antibody level in the worker's blood sample is inadequate (i.e., ten (10) SRU by RIA, negative by EIA).

If the source individual is negative for HBsAg and the worker has not been vaccinated, this opportunity should be taken to provide the hepatitis B vaccine series. HBIG administration should be considered on an individual basis when the source individual is known or suspected to be at high risk of HBV infection. Management and treatment, if any, of previously vaccinated workers who receive an exposure from a source who refuses testing or is not identifiable should be individualized. (2005 Code, § 4-409)

4-310. Human immunodeficiency virus post-exposure management. For any exposure to a source individual who has AIDS, who is found to be positive for HIV infection, or who refuses testing, the worker should be counseled regarding the risk of infection and evaluated clinically and serologically for evidence of HIV infection as soon as possible after the exposure. The worker should be advised to report and seek medical evaluation for any acute febrile illness that occurs within twelve (12) weeks after the exposure. Such an illness, particularly one characterized by fever, rash, or lymphadenopathy, may be indicative of recent HIV infection.

Following the initial test at the time of exposure, seronegative workers should be retested six (6) weeks, twelve (12) weeks, and six (6) months after exposure to determine whether transmission has occurred. During this follow-up period (especially the first six to twelve (6-12) weeks after exposure) exposed workers should follow the U.S. Public Health service recommendation

for preventing transmission of HIV. These include refraining from blood donations and using appropriate protection during sexual intercourse. During all phases of follow-up, it is vital that worker confidentiality be protected.

If the source individual was tested and found to be seronegative, baseline testing of the exposed worker with follow-up testing twelve (12) weeks later may be performed if desired by the worker or recommended by the health care provider. If the source individual cannot be identified, decisions regarding appropriate follow-up should be individualized. Serologic testing should be made available by the town to all workers who may be concerned they have been infected with HIV through an occupational exposure. (2005 Code, § 4-410)

4-311. Disability benefits. Entitlement to disability benefits and any other benefits available for employees who suffer from on-the-job injuries will be determined by the Tennessee Worker's Compensation Bureau in accordance with the provisions of *Tennessee Code Annotated*, § 50-6-303. (2005 Code, § 4-411)

4-312. Training regular employees. On an annual basis all employees shall receive training and education on precautionary measures, epidemiology, modes of transmission and prevention of HIV/HBV infection and procedures to be used if they are exposed to needle sticks or body fluids. They shall also be counseled regarding possible risks to the fetus from HIV/HBV and other associated infectious agents. (2005 Code, § 4-412)

4-313. Training high risk employees. In addition to the above, high risk employees shall also receive training regarding the location and proper use of personal protective equipment. They shall be trained concerning proper work practices and understand the concept of "universal precautions" as it applies to their work situation. They shall also be trained about the meaning of color coding and other methods used to designate contaminated material. Where tags are used, training shall cover precautions to be used in handling contaminated material as per this policy. (2005 Code, § 4-413)

4-314. Training new employees. During the new employee's orientation to his/her job, all new employee will be trained on the effects of infectious disease prior to putting them to work. (2005 Code, § 4-414)

4-315. Records and reports. (1) Reports. Occupational injury and illness records shall be maintained by the infectious disease control coordinator. Statistics shall be maintained on the OSHA-200 report. Only those work-related injuries that involve loss of consciousness, transfer to another job, restriction of work or motion, or medical treatment are required to be put on the OSHA-200.

(2) Needle sticks. Needle sticks, like any other puncture wound, are considered injuries for recordkeeping purposes due to the instantaneous nature of the event. Therefore, any needle stick requiring medical treatment (i.e., gamma globulin, hepatitis B immune globulin, hepatitis B vaccine, etc.) shall be recorded.

(3) Prescription medication. Likewise, the use of prescription medication (beyond a single dose for minor injury or discomfort) is considered medical treatment. Since these types of treatment are considered necessary, and must be administered by physician or licensed medical personnel, such injuries cannot be considered minor and must be reported.

(4) Employee interviews. Should the town be inspected by the U.S. Department of Labor Office of Health Compliance, the compliance safety and health officer may wish to interview employees. Employees are expected to cooperate fully with the compliance officers. (2005 Code, § 4-415)

4-316. Legal rights of victims of communicable diseases. Victims of communicable diseases have the legal right to expect, and municipal employees, including police and emergency service officers are duty bound to provide, the same level of service and enforcement as any other individual would receive.

(1) Officers assume that a certain degree of risk exists in law enforcement and emergency service work and accept those risks with their individual appointments. This holds true with any potential risks of contacting a communicable disease as surely as it does with the risks of confronting an armed criminal.

(2) Any officer who refuses to take proper action in regard to victims of a communicable disease, when appropriate protective equipment is available, shall be subject to disciplinary measures along with civil and/or criminal prosecution.

(3) Whenever an officer mentions in a report that an individual has or may have a communicable disease, he shall write "contains confidential medical information" across the top margin of the first page of the report.

(4) The officer's supervisor shall ensure that the above statement is on all reports requiring that statement at the time the report is reviewed and initiated by the supervisor.

(5) The supervisor disseminating newspaper releases shall make certain the confidential information is not given out to the news media.

(6) All requests (including subpoenas) for copies of reports marked "contains confidential medical information" shall be referred to the town attorney when the incident involves an indictable or juvenile offense.

(7) Prior approval shall be obtained from the town attorney before advising a victim of sexual assault that the suspect has, or is suspected of having a communicable disease.

(8) All circumstance, not covered in this policy, that may arise concerning releasing confidential information regarding a victim, or suspected victim, of a communicable disease shall be referred directly to the appropriate department head or town attorney.

(9) Victims of a communicable disease and their families have a right to conduct their lives without fear of discrimination. An employee shall not make public, directly or indirectly, the identity of a victim or suspected victim of a communicable disease.

(10) Whenever an employee finds it necessary to notify another employee, police officer, firefighter, emergency service officer, or health care provider that a victim has or is suspected of having a communicable disease, that information shall be conveyed in a dignified, discrete and confidential manner. The person to whom the information is being conveyed should be reminded that the information is confidential and that it should not be treated as public information.

(11) Any employee who disseminates confidential information in regard to a victim, or suspected victim of a communicable disease in violation of this policy shall be subject to serious disciplinary action and/or civil and/or criminal prosecution. (2005 Code, § 4-416)

CHAPTER 4

TRAVEL REIMBURSEMENT REGULATIONS

SECTION

- 4-401. Purpose.
- 4-402. Enforcement.
- 4-403. Travel policy.
- 4-404. Travel reimbursement rate schedules.
- 4-405. Administrative procedures.

4-401. Purpose. The purpose of this chapter and referenced regulations is to bring the town into compliance with *Tennessee Code Annotated*, § 6-54-901--907. This law requires Tennessee municipalities to adopt travel and expense regulations covering expenses incurred by "any mayor and any member of the local governing body and any board or committee member elected or appointed by the mayor or local governing body, and any official or employee of the municipality whose salary is set by charter or general law."

To provide consistent travel regulations and reimbursement, this ordinance is expanded to cover regular city employees. It is the intent of this policy to assure fair and equitable treatment to all individuals traveling on town business at town expense.

4-402. Enforcement. The Chief Administrative Officer (CAO) of the town or his or her designee shall be responsible for the enforcement of these travel regulations.

4-403. Travel policy. (1) In the interpretation and application of this chapter, the term "traveler" or "authorized traveler" means any elected or appointed municipal officer or employee, including members of municipal boards and committees appointed by the mayor or the municipal governing body, and the employees of such boards and committees who are traveling on official municipal business and whose travel was authorized in accordance with this chapter. "Authorized traveler" shall not include the spouse, children, other relatives, friends, or companions accompanying the authorized traveler on town business, unless the person(s) otherwise qualifies as an authorized traveler under this chapter.

(2) Authorized travelers are entitled to reimbursement of certain expenditures incurred while traveling on official business for the town.

Reimbursable expenses shall include expenses for transportation; lodging; meals; registration fees for conferences, conventions and seminars; and other actual and necessary expenses related to official business as determined by the CAO. Under certain conditions, entertainment expenses may be eligible for reimbursement.

(3) Authorized travelers can request either a travel advance for the projected cost of authorized travel, or advance billing directly to the town for registration fees, air fares, meals, lodging, WIFI, conferences and similar expenses.

Travel advance requests are not considered documentation of travel expenses. If travel advances exceed documented expenses, the traveler must immediately reimburse the town. It will be the responsibility of the CAO to initiate action to recover any undocumented travel advances.

(4) Travel advances are available only for special travel and only after completion and approval of the travel authorization form.

(5) The travel expense reimbursement form will be used to document all expense claims.

(6) To qualify for reimbursement, travel expenses must be:

(i) Directly related to the conduct of the town business for which travel was authorized; and

(ii) Actual, reasonable and necessary under the circumstances.

The CAO may make exceptions for unusual circumstances.

Expenses considered excessive will not be allowed.

(7) Claims of five dollars (\$5.00) or more for travel expense reimbursement must be supported by the original paid receipt for lodging, vehicle rental, phone call, public carrier travel, conference fee and other reimbursable costs.

(8) Any person attempting to defraud the town or misuse town travel funds is subject to legal action for recovery of fraudulent travel claims and/or advances.

(9) Mileage and motel expenses incurred within the town are not ordinarily considered eligible expenses for reimbursement.

4-404. Travel reimbursement rate schedules. Authorized travelers shall be reimbursed according to the State of Tennessee travel regulation rates. The town's travel reimbursement rates will automatically change when the state rates are adjusted.

The municipality may pay directly to the provider for expenses such as meals, lodging and registration fees for conferences, conventions, seminars and other education programs.

4-405. Administrative procedures. The town adopts and incorporates by reference--as if fully set out herein--the administrative procedures submitted by MTAS to, and approved by letter by, the Comptroller of the Treasury, State

of Tennessee. A copy of the administrative procedures is on file in the office of the recorder.¹

¹State law reference

Tennessee Code Annotated, § 6-54-904, requires a town to notify the comptroller in writing that it has adopted the MTAS policy, including the date of such adoption.

TITLE 5

MUNICIPAL FINANCE AND TAXATION¹

CHAPTER

1. PURCHASING.
2. REAL PROPERTY TAXES.
3. PRIVILEGE TAXES.
4. WHOLESALE BEER TAX.
5. HOTEL/MOTEL TAX.
6. DEBT MANAGEMENT POLICY.

CHAPTER 1

PURCHASING

SECTION

- 5-101. Purchasing agent.
- 5-102. Sealed competitive bidding.
- 5-103. Competitive bids.
- 5-104. Purchases less than \$10,000.00.
- 5-105. Determination of lowest responsible bidder.

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)

TITLE 6**LAW ENFORCEMENT****CHAPTER****1. POLICE DEPARTMENT.****CHAPTER 1****POLICE DEPARTMENT****SECTION**

6-101. Police officers subject to chief's orders.

6-102. Police officers to preserve law and order, etc.

6-103. Police department records.

6-101. Police officers subject to chief's orders. All police officers shall obey and comply with such orders and administrative rules and regulations as the police chief may officially issue.

6-102. Police officers to preserve law and order, etc. Police officers shall preserve law and order within the town. They shall patrol the town and shall assist the town court during the trial of cases. Police officers shall also promptly serve any legal process issued by the city/town court.

6-103. Police department records. The police department shall keep a comprehensive and detailed daily record, in permanent form, showing at a minimum:

(1) All known or reported offenses and/or crimes committed within the corporate limits.

(2) All arrests made by police officers.

(3) All police investigations made, processions assisted, convoyed, fire calls answered, and other miscellaneous activities of the police department.

(4) Any other records required to be kept by the board of mayor and aldermen or by law.

The police chief shall be responsible for insuring that the police department complies with the section.

TITLE 7

FIRE PROTECTION AND FIREWORKS¹

CHAPTER

1. FIRE DISTRICT.
2. FIRE CODE.
3. FIRE DEPARTMENT.

CHAPTER 1

FIRE DISTRICT

SECTION

7-101. Fire limits described.

7-101. Fire limits described. The fire limits shall be the municipality's corporate limits of record. (Ord. #718-20, April 2020)

¹Municipal code references

Building, utility and residential codes: title 12.

False alarms: § 11-402.

Fire hydrants: §§ 18-231 and 18-236.

Fire in streets prohibited: § 16-113.

Private fire lines: § 18-232.

Sprinkler systems: § 18-229.

CHAPTER 2

FIRE CODE¹

SECTION

- 7-201. Fire code adopted.
- 7-202. Enforcement.
- 7-203. Definition of "municipality."
- 7-204. Storage of explosives, flammable liquids, etc.
- 7-205. Gasoline trucks.
- 7-206. Variances.
- 7-207. Violations and penalty.

7-201. Fire code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, § 6-54-502, and for the purpose of regulating governing conditions hazardous to life and property from fire or explosions, the *International Fire Code*, 2018 edition, including Appendices A, B, C, D, F, and I, is hereby adopted by reference and included as a part of this code. With regard to the codes and standards identified in section 102.7 and chapter 80 of the *International Fire Code*, the fire marshal will reference the latest published edition of said codes and standards. Said *International Fire Codes* are adopted and incorporated as referenced; with the exclusion of the residential one- and two-family dwellings. The *International Fire Code* shall be subject to the following local modification:

- (1) Chapter 1, Scope and Administration: Section 101.1 Title. is hereby amended locally in the Town of Erwin by inserting "Town of Erwin" as the name of the jurisdiction.
- (2) The *NFPA Life Safety Code 101*, 2018 edition, chapters 15, 17 and their references, is hereby adopted and incorporated by reference as fully as if set out verbatim herein, and the provisions thereof shall be controlling within the corporate limits of the city. Pursuant to the requirement of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of this code, has been filed with the city recorder and is available for public use and inspection. (Ord. #718-20, April 2020)

7-202. Enforcement. The fire prevention code herein adopted by reference shall require that this law and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect from and after the date of its final passage

¹Municipal code reference

Building, utility and residential codes: title 12.

and adoption. The code shall be enforced by the chief of the fire department and/or his/her designee. The designee shall have the same powers as the state fire marshal. (Ord. #718-20, April 2020)

7-203. Definition of "municipality". Whenever the word "municipality" is used in the fire prevention code herein adopted, it shall be held to mean the Town of Erwin, Tennessee. (Ord. #718-20, April 2020)

7-204. Storage of explosives, flammable liquids, etc. (1) The limits referred to in section 12.50 of the 2018 *International Fire Code*, in which storage of explosives and blasting agents are prohibited, are hereby declared to be the fire district as set out in § 7-101 of this code.

(2) The limits referred to in section 16.22a of the 2018 *International Fire Code*, in which storage of flammable liquids or combustible liquids in outside above ground tanks is prohibited, are hereby declared to be the fire district as set out in § 7-101 of this code.

(3) The limits referred to in section 16.61 of the 2018 *International Fire Code*, in which new bulk plants for flammable or combustible liquids are prohibited, are hereby declared to be the fire limits as set out in § 7-101 of this code.

(4) The limits referred to in section 21.6a of the 2018 *International Fire Code*, in which bulk storage of liquefied petroleum gas is restricted, are hereby declared to be the fire limits as set out in § 7-101 of this code. (Ord. #718-20, April 2020)

7-205. Gasoline trucks. No person shall operate or park any gasoline tank truck within the fire limits or within any residential area at any time except for the purpose of and while actually engaged in the expeditious delivery of gasoline. (Ord. #718-20, April 2020)

7-206. Variances. The chief of the fire department may recommend to the board of mayor and aldermen variances from the provisions of the fire prevention code upon application in writing by any property owner or lessee, or the duly authorized agent of either, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such variances when granted or allowed shall be contained in a resolution of the board of mayor and aldermen. (Ord. #718-20, April 2020)

7-207. Violations and penalty. It shall be unlawful for any person to violate any of the provisions of this chapter or the code hereby adopted, or fail to comply therewith, or violate or fail to comply with any order made thereunder; or build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued

thereunder, and from which no appeal has been taken; or fail to comply with such an order as affirmed or modified by the board of mayor and aldermen or by a court of competent jurisdiction, within the time fixed herein. The application of a penalty under the general penalty clause for the municipal code shall not be held to prevent the enforced removal of prohibited conditions. (Ord. #718-20, April 2020)

CHAPTER 3

FIRE DEPARTMENT

SECTION

- 7-301. Establishment, equipment, and membership.
- 7-302. Objectives.
- 7-303. Organization, rules, and regulations.
- 7-304. Records and reports.
- 7-305. Chief responsible for training and maintenance.
- 7-306. Equipment to be used only within corporate limits generally.
- 7-307. Chief to be assistant to state officer.
- 7-308. Police powers.

7-301. Establishment, equipment, and membership. There is hereby established a fire department to be supported and equipped from appropriations by the board of mayor and aldermen. All apparatus, equipment, and supplies shall be purchased by or through the town and shall be and remain the property of the town. The fire department shall be composed of a fire chief appointed by the board of mayor and aldermen and such number of physically fit officers and firefighters as the chief shall appoint. (Ord. #718-20, April 2020)

- 7-302. Objectives.** (1) To prevent uncontrolled fires from starting.
- (2) To prevent the loss of life and property because of fires.
 - (3) To confine fires to their places of origin.
 - (4) To extinguish uncontrolled fires.
 - (5) To prevent loss of life from asphyxiation or drowning.
 - (6) To perform such rescue work as its equipment and/or the training of its personnel makes practicable.
 - (7) To enforce fire codes and investigate the cause and origin of fires/explosives and to bring to prosecution persons who commit arson related crime.
 - (8) To provide basic life support medical care as its equipment and/or the training of its personnel makes practicable.
 - (9) To provide fire and life safety education to the public.
 - (10) To provide response and containment/isolation of hazardous materials.
 - (11) To Train regularly on firefighting and rescue procedures. (Ord. #718-20, April 2020)

7-303. Organization, rules, and regulations. The chief of the fire department shall set up the organization of the department, make definite assignments to individuals, and shall formulate and enforce such rules and regulations as shall be necessary for the orderly and efficient operation of the

fire department, under the direction of the board of mayor and aldermen. (Ord. #718-20, April 2020)

7-304. Records and reports. The chief of the fire department shall keep adequate records of all fires, inspections, apparatus, equipment, personnel, and work of the department. He shall submit a written report on such matters to the mayor once each month, and at the end of the year a detailed annual report shall be made. (Ord. #718-20, April 2020)

7-305. Chief responsible for training and maintenance. The chief of the fire department shall be fully responsible for the training of the firemen and for maintenance of all property and equipment of the fire department. The minimum training shall be defined by the fire chief to maintain basic proficiency in firefighting. (Ord. #718-20, April 2020)

7-306. Equipment to be used only within corporate limits generally. Fire calls outside the city will be answered only as authorized by a mutual aid agreement. (Ord. #718-20, April 2020)

7-307. Chief to be assistant to state officer. Pursuant to requirements of *Tennessee Code Annotated*, § 68-102-108, the chief of the fire department is designated as an assistant to the state commissioner of commerce and insurance and banking and is subject to all the duties and obligations imposed by *Tennessee Code Annotated*, title 68, chapter 102, and shall be subject to the directions of the fire prevention commissioner in the execution of the provisions thereof. (Ord. #718-20, April 2020)

7-308. Police powers. All members of the fire department are hereby appointed as special police officers and are vested with such police powers as are reasonably necessary to enable them properly and efficiently to protect life and property from fire within the city as well as enforce laws and ordinances. The fire chief may appoint a fire marshal, deputy fire marshals, and fire investigators who shall have full police powers and may be armed pursuant to *Tennessee Code Annotated*, § 39-17-1315. In the absence of the appointment of a fire marshal the fire chief shall assume all duties and responsibilities of the fire marshal. (Ord. #718-20, April 2020)

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.
3. RETAIL PACKAGE STORES.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

- 8-101. Definition of alcoholic beverages.
- 8-102. Consumption of alcoholic beverages on premises.
- 8-103. Privilege tax on retail sale of alcoholic beverages for consumption on premises.
- 8-104. Annual privilege tax to be paid to the town recorder.
- 8-105. Gross sales tax.
- 8-106. Sale otherwise prohibited.
- 8-107. Intoxicating liquor on public property.
- 8-108. Advertisement on alcoholic beverages.

8-101. Definition of alcoholic beverages. As used in this chapter, unless the context indicates otherwise, "alcoholic beverages" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol which is capable of being consumed by a human being, other than patented medicine or beer, is defined as "alcoholic beverages" as defined by *Tennessee Code Annotated*, § 57-3-101. (Ord. #679-15, March 2015)

8-102. Consumption of alcoholic beverages on premises. *Tennessee Code Annotated*, title 57, chapter 4, inclusive, is hereby incorporated so as to be applicable to all sales of alcoholic beverages for on-premises consumption which are regulated by the said code when such sales are conducted within the corporate limits of Erwin, Tennessee. It is the intent of the board of mayor and alderman that the said *Tennessee Code Annotated*, title 57, chapter 4 inclusive,

¹Municipal code reference

Minors in beer places: § 11-102.

Wholesale beer tax: title 5, ch. 4.

State law reference

Tennessee Code Annotated, title 57.

shall be effective in Erwin, Tennessee, the same as if said code sections were copied herein verbatim. (Ord. #679-15, March 2015)

8-103. Privilege tax on retail sale of alcoholic beverages for consumption on premises. Pursuant to the authority contained in *Tennessee Code Annotated*, § 57-4-301, there is hereby levied a privilege tax (in the same amounts levied by *Tennessee Code Annotated*, title 57, chapter 4, section 301 for the Town of Erwin General Fund to be paid annually as provided in this chapter) upon any person, firm, corporation, joint stock company, syndicate, or association engaging in the business of selling at retail in the Town of Erwin alcoholic beverages for consumption on the premises where sold. (Ord. #679-15, March 2015)

8-104. Annual privilege tax to be paid to the town recorder. Any person, firm, corporation, joint stock company, syndicate or association exercising the privilege of selling alcoholic beverages for consumption on the premises in the Town of Erwin shall remit annually to the town recorder the appropriate tax described in § 8-103. Such payment shall be remitted not less than thirty (30) days following the end of each twelve (12) month period from the original date of the license. Upon the transfer of ownership of such business or the discontinuance of such business, said tax shall be filed within thirty (30) days following each event. Any person, firm, corporation, joint stock company, syndicate, or association failing to make payment of the appropriate tax when due shall be subject to the penalty provided by law. (Ord. #679-15, March 2015)

8-105. Gross sales tax. It shall be the responsibility of the town recorder to ensure that the town receives its share of the fifteen percent (15%) tax levied on the gross sales of alcoholic beverages sold at retail for consumption on the premises and collected by the commissioner of the alcoholic beverage commission under *Tennessee Code Annotated*, § 57-4-301(c), and distributed to the state and its political subdivisions under *Tennessee Code Annotated*, § 57-4-306. (Ord. #679-15, March 2015)

8-106. Sale otherwise prohibited. Except as authorized by applicable laws, the provisions of this title and/or other ordinances, it shall be unlawful for any person to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for any alcoholic beverages within the Town of Erwin. "Intoxicating liquor" shall be defined to include whiskey, wine, "home break," "moonshine," and all other intoxicating, spirituous, vinous, or malt liquors and beer which are defined as "alcoholic beverages" by *Tennessee Code Annotated*, § 57-3-101. (Ord. #679-15, March 2015)

8-107. Intoxicating liquor on public property. It shall be unlawful for any person to drink or consume, or have an opened container of beer or

intoxicating liquor in or upon any public street, alley, avenue, highway, sidewalk, public park, public school ground, or other public place. (Ord. #679-15, March 2015)

8-108. Advertisement on alcoholic beverages. All advertisement of the availability of liquor for sale by those licensed pursuant to *Tennessee Code Annotated*, title 57, chapter 4, shall be in accordance with the rules and regulations of the Tennessee Alcoholic Beverage Commission. (Ord. #679-15, March 2015)

CHAPTER 2**BEER¹****SECTION**

- 8-201. Definitions.
- 8-202. Beverage board; creation, membership, duties, powers, organization; issuance, suspension, and revocation of permits.
- 8-203. Applicant must agree to comply with laws.
- 8-204. Contents of application.
- 8-205. Additional application requirements; effect of false statements; action of board on application; issuance of permit; term of permit.
- 8-206. Waiting period on new applications; temporary permits.
- 8-207. Discretionary powers of board; no permits for premises near churches or schools, or premises with attached living quarters.
- 8-208. Issuance of permit.
- 8-209. On-premises beer permits.
- 8-210. Off-premises beer permits.
- 8-211. "Grandfather" clause.
- 8-212. Display of permit; sales by manufacturers, etc.; term of permit; permits to be restrictive.
- 8-213. Bond required.
- 8-214. Permits not transferrable.
- 8-215. Hours of sales restricted.
- 8-216. Miscellaneous regulations for distributors, wholesalers, etc.
- 8-217. Persons underage.
- 8-218. Dancing.
- 8-219. Proper sanitary facilities required.
- 8-220. Visibility through front required.
- 8-221. Lighting of establishment.
- 8-222. Live entertainment permitted.
- 8-223. Purchases by or for underage persons prohibited.
- 8-224. Loitering and sales to certain persons prohibited.
- 8-225. Possession of open beer restricted.
- 8-226. Delivery of beer restricted.
- 8-227. Permits for non-conforming premises prohibited.
- 8-228. Inspections.

¹State law reference

For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in *Watkins v. Naifeh*, 635 S.W.2d 104 (1982).

- 8-229. Price reductions or adjustments by wholesalers for breakage, etc., restricted.
- 8-230. Taxes.
- 8-231. Privilege tax.
- 8-232. Notices of privilege tax.
- 8-233. Violations.
- 8-234. Civil penalty in lieu of suspension.
- 8-235. Revocation and suspension of beer permits.
- 8-236. Sale of beer to a minor.
- 8-237. Loss of clerk's clarification for sale to minor.
- 8-238. Limitations on number of beer permits issued for off-premises beer sales.
- 8-239. Violations and penalty.

8-201. Definitions. (1) "Convenience store or market." A business establishment whose business is the retail sale of gasoline and petroleum products, food merchandise, household supplies, and sundries. A "convenience store" or market shall maintain at all times an inventory of fuel products, food merchandise, household supplies, and sundries having a fair retail market value of not less than ten thousand dollars (\$10,000.00). A convenience store shall have not less than one thousand (1,000) square feet of food selling space.

(2) "Craft beer." A beer manufactured by breweries with an annual production of six million (6,000,000) barrels or less.

(3) "Craft beer enterprise." A business which the retail sale or manufacturing of craft beer constitutes at least eighty percent (80%) of the gross revenue of the business.

(4) "Drug store." A business establishment whose primary business is the retail sale of pharmaceuticals, food merchandise, household items, and sundries. A "drug store" shall maintain at all times an inventory of food merchandise, household supplies, and sundries having a fair retail market value of not less than ten thousand dollars (\$10,000.00).

(5) "Food sales." Sales at a restaurant or dining establishment of all food and nonalcoholic beverages.

(6) "Food store or grocery." A business establishment whose primary business is the retail sale of food merchandise and household items. A "food store or grocery" shall maintain at all times an inventory of food merchandise, household supplies, and sundries having a fair retail market value of not less than ten thousand dollars (\$10,000.00).

(7) "Growler." A refillable rigid glass, plastic, aluminum or stainless steel container with a flip-top or screw-on lid that is no larger than two (2) liters (0.5283 gallons) into which craft beer is prefilled, filled or refilled for off-premises consumption.

(8) "Live entertainment." A performance in person by an entertainer or entertainers on the premises of the establishment.

(9) "Manufacturing of craft beer." The manufacture or production of craft beer of at least two hundred (200) barrels each calendar year on the licensed premises.

(10) "Moral turpitude." Murder, all sex-related crimes, the illegal sale of schedule I and schedule II substances as designated under *Tennessee Code Annotated*, §§ 39-17-405 to 39-17-408, and embezzlement.

(11) "Restaurant or dining facility." Any place kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and a seating capacity of at least forty (40) people at tables, having employed a sufficient number and kind of employees to cook, prepare, and serve suitable food for its guests. At least one (1) meal per day shall be served at least five (5) days per week, with the exception of holidays, vacations and periods of redecorating, and the serving of such meals shall be the principal business conducted. At least sixty percent (60%) of the total annual business receipts of the restaurant or dining establishment must be received from the sale of food. (Ord. #700-18, May 2018, as amended by Ord. #742-23, Feb. 2023)

8-202. Beverage board; creation, membership, duties, powers, organization; issuance, suspension, and revocation of permits. (1) There is hereby created a board, which shall be known and designated as the "Beverage Board of the Town of Erwin," hereinafter referred to in this chapter as the "board." This board shall be composed of all members of the Town of Erwin Board of Mayor and Aldermen.

(2) It shall be the duty of the board to regulate and supervise the issuance of permits to manufacture, store more than five (5) gallons, distribute, and sell beer and other beverages which are not defined as "alcoholic beverages" as defined by *Tennessee Code Annotated*, § 57-3-101, hereinafter referred to as "beer," to the persons and in the manner provided in this chapter.

(3) It is hereby declared that the sale, storage, manufacture, and distribution of beer in the town is a privilege and such board is hereby empowered to issue, revoke, and suspend all permits to sell, store, manufacture, or distribute beer in the town, including the sole right to determine the suitability and approve the general appearance of the proposed structure according to the ordinance.

(4) The board is empowered to elect its own chairman and other officers to be elected to yearly terms from December to the following November, to make its own regulations with respect to meetings or hearings, and may deny the issuance of any permit whenever it determines that such issuance would be detrimental to the public health and safety. The board may likewise suspend or revoke the permit of any permit holder who violates any of the laws of the United States, the State of Tennessee, or the Town of Erwin, or whenever it

shall satisfactorily appear that the premises or business of any permit holder are being maintained and operated in such manner as to be detrimental to the public health and safety.

(5) Where a permit is revoked, no new permit shall be issued to such permit holder for a period of three (3) years. (Ord. #700-18, May 2018)

8-203. Applicant must agree to comply with laws. It is unlawful to operate any business engaged in the sale, distribution, manufacture, or storage of beer without a beer permit issued by the Town of Erwin. The applicant must agree in the application to comply with all of the laws of the United States and the State of Tennessee, and all ordinances of the Town of Erwin, and said application shall be supported by an affidavit or oath that the facts therein stated are true. (Ord. #700-18, May 2018)

8-204. Contents of application. The application shall be on a form provided by the Town of Erwin and shall contain:

(1) The name and residence of the applicant and how long the applicant has resided there;

(2) The particular place for which a permit is desired, designated by street and number, if practicable, and if not, by such other apt description as finitely locates it;

(3) The kind of permit desired, whether an "on-premises" or an "off-premises" beer permit:

(a) On-premises. On-premises permits shall be issued for the consumption of beer on the business premises in accordance with this chapter.

(b) Off-premises. Off-premises permits shall be issued for the sale of beer only for consumption off the business premises in accordance with the provisions of this chapter.

(4) The name of the owner of the premises upon which the business is licensed to be carried on;

(5) A sworn statement that the applicant will not engage in the sale, storage, manufacture, or distribution of beer except at the place for which the permit was issued to such applicant; and that no sale, storage, manufacture, or distribution of such beverage will be made except within the permit granted;

(6) A sworn statement that no sale of beer will be made to any person under twenty-one (21) years of age, that no person under eighteen (18) years of age may be employed in the direct sale, storage, manufacture, distribution, or serving of beer, and that no minors shall be allowed to loiter about the applicant's premises;

(7) A sworn statement that neither the applicant nor any person or persons employed by the applicant in the sale, storage, manufacture, or distribution of legalized beer has had a permit for the sale, storage, manufacture, or distribution of legalized beer revoked;

(8) A sworn statement that neither the applicant nor any person employed or to be employed by the applicant in the distribution, storage, manufacture, or sale of beer has been convicted of any violation of the law against prohibition, sale, manufacture, storage, distribution, usage, or transportation of intoxicating liquor, or of any felony crime, or of any crime involving moral turpitude within the past ten (10) years preceding the filing of such application. If the applicant or an employee or person to be employed by the applicant has been so convicted, the applicant will give the date, the nature of the offense, the name of court where convicted and the disposition of the conviction;

(9) A statement that the applicant will conduct the business in person, or if the applicant is acting as agent, the applicant shall state the person, firm, corporation, syndicate, association, or joint stock company for whom the applicant intends to act;

(10) That no brewer, manufacturer, distributor, or warehouseman of legalized beer has any interest in the business, financial or otherwise, or in the premises upon or in which the business to be permitted to sell beer at retail is to be carried on;

(11) A statement that the applicant is willing to be fingerprinted by the Police Department of the Town of Erwin and is willing to be investigated by municipal, county, and federal law enforcement agencies concerning the applicant's background and record, and the applicant will sign a general release for such investigation to be made;

(12) If the applicant is a partnership, the names and addresses of all partners in the business;

(13) If the applicant is a corporation, the names and addresses of the officers of the corporation, and the names and addresses of shareholders who hold more than a ten percent (10%) interest in the corporation;

(14) An oath or affidavit by the applicant that the facts set forth in the application are true;

(15) The date of the application;

(16) The signature of the applicant; and

(17) A statement that the applicant acknowledges receipt of a copy of the Town of Erwin beer ordinance and that the applicant has read and understands the same.

(18) All on-premise applications for permit shall have a current certificate of occupancy before the application can be considered for approval. (Ord. #700-18, May 2018, as amended by Ord. #742-23, Feb. 2023)

8-205. Additional application requirements; effect of false statements; action of board on application; issuance of permit; term of permit. (1) The applicant shall state distinctly whether the person so applying will conduct the business in person, or whether the applicant is acting as an agent for any other person, corporation, or association, and shall also state

specifically the name of the owner or owners of such business, and whether a wholesale or retail sale or distribution will be made.

(2) The application shall at all times be kept on file by said board and shall be open to inspection by the general public, and any person, firm, corporation, or association making any false statement in his/her/its application shall forfeit the permit issued, and shall not be eligible to receive any permit for a period of three (3) years.

(3) Upon filing of such written application at Erwin Town Hall, it shall be carefully examined by the members of said board and its action thereon shall be kept in writing as part of the regular proceedings of said board. The board may, in its discretion and subject to the provisions of this chapter, either approve or deny the permit application. The application, showing the disposition of the board, shall be signed and dated by the chairman of the board. If the permit application is approved, a permit shall be issued to the applicant, describing the type of permit issued, and bearing the name of the town recorder. The permit thus obtained shall entitle the applicant to sell, store, and/or distribute such beverage, but no permit shall be issued by the Town of Erwin until and unless the permit application has been approved by the beverage board. (Ord. #700-18, May 2018)

8-206. Waiting period on new applications; temporary permits.

New applications must be filed at Erwin Town Hall, with a two hundred and fifty dollar (\$250.00) cashier's check or other certified funds, which are non-refundable, for at least thirty (30) days before final action can be taken on the beer permit application. A temporary permit for thirty (30) days can be granted upon the discretion of the board. (Ord. #700-18, May 2018)

8-207. Discretionary powers of board; no permits for premises near churches or schools, or premises with attached living quarters (1)

All beer permits for the sale of beer in the Town of Erwin shall be issued at the discretion of the board subject to ordinances of the town, and the board shall issue such permits to such applicants for the sale of beer as said board, in the exercise of its discretion, feels shall serve the best interest of the Town of Erwin.

(2) No permit for the sale of beer shall be issued to any person or establishment whose place of business is within two hundred feet (200') of any established church or school building, except where such place of business is located within the downtown overlay district. The two hundred foot (200') measurement shall be measured in a straight line from the building of the applicant to the church or school building by a licensed Tennessee surveyor. The points of the building to be measured shall be from the nearest point of the building of the church or school. If the applicant's place of business is located within a building that has more than one (1) business, then the point of measurement shall be from the nearest point of the applicant's actual premises

within the larger building in relation to the nearest point of the building of the church or school. The applicant shall bear the expense of said survey.

(3) No permit for the sale of beer in the Town of Erwin shall be issued to any person or establishment which has any entrances directly from the business into living quarters within the building or doors or other openings from the business into any area used for a living quarter, unless the living quarters are exclusively used by the owner of the establishment as their private residence. (Ord. #700-18, May 2018)

8-208. Issuance of permit. (1) Applications for beer permits that are complete and accompanied by the required fee shall be acted upon by the board and be either approved or disapproved. The decision to deny the permit application cannot be arbitrary and/or capricious.

(2) If the application is approved by the board, a permit shall be issued by the town recorder upon payment of the privilege taxes set out herein.

(3) If the application is denied, the application becomes null and void, cannot be later considered, and shall not receive any priority in the granting of any future beer permits. (Ord. #700-18, May 2018)

8-209. On-premises beer permits. Beer permits for on-premises sales may be issued, in the discretion of the Beverage Board of the Town of Erwin, to restaurants and dining facilities, provided that:

(1) At least sixty percent (60%) of the total annual business receipts of the restaurant are received from the sale of food. When applying for a beer permit, the applicant must certify in its application a reasonable expectation that at least sixty percent (60%) of its total annual business receipts will be from the sale of food. Prior to renewing the beer permit (and in no event later than January 31 of each calendar year), the restaurant or dining facility must file with the Erwin Town Recorder's office a sworn affidavit setting out its total annual business receipts, total dollar food sales, and total beer sales for the prior calendar year. No beer permit for a restaurant or dining facility may be renewed until this annual affidavit is filed with the town recorder's office. The town recorder shall review the affidavit to confirm that the requirements of this section have been met.

(2) The restaurant or dining facility must have a minimum seating capacity of at least forty (40) persons, as verified by the Building Inspector for the Town of Erwin.

(3) Craft beer enterprise requirements and restrictions. (a) A craft beer enterprise shall meet that definition found in § 8-201.

(b) Have forty (40) seats in the interior of the building under a permanent roof and enclosed on all sides. Seats in an open-air or patio area, as permitted by subsection (3)(d) below, shall not count toward meeting the requirement of forty (40) interior seats required for this category of permit.

(c) A permittee having this category of license shall be allowed to sell and serve on a patio or open-air area, for which access is provided only by going through the interior of the building. The patio or open-air area shall be enclosed by a permanent fence, railing, or similar structure, a minimum of forty-two inches (42") in height, which obstructs normal walking access to the patio or open-air area, except by entry through the interior of the building. The fence, railing, or other structure shall have a least one (1) emergency exit, to be opened only in the event of an emergency and so marked, which will emit an audible sound, such as a bell, siren or other like sound, when the emergency exit is opened. Additional such exits may be required depending on the size of the fenced in area, as specified by the Erwin Fire Protection Ordinance.

(d) Within thirty (30) minutes from the time that sale of beer has ceased as required by § 8-215, all containers, glasses or other vessels of any type which have been used for serving and consumption of beer shall be removed by permittee from the area or areas where the beer had been consumed and shall be placed in areas not for access by patrons of the establishment. (Ord. #700-18, May 2018)

8-210. Off-premises beer permits. (1) New beer permits for off-premises sales shall be issued only to:

- (a) Food stores or grocery stores;
- (b) Convenience stores or markets;
- (c) Drug stores;
- (d) Beer distributors or manufacturers; and
- (e) Growler sales.

(2) Beer shall not be sold through any "drive-through" window. (Ord. #700-18, May 2018)

8-211. "Grandfather" clause. Provided that all requirements of this chapter are complied with, all existing permits for the sale of beer within the corporate limits of the town at the date of the passage of the ordinance comprising this chapter shall continue to be renewed as long as beer sales have not ceased for six (6) consecutive months pursuant to *Tennessee Code Annotated*, § 57-5-109. (Ord. #742-23, Feb. 2023)

8-212. Display of permit; sales by manufacturers, etc.; term of permit; permits to be restrictive. (1) All permit holders shall display and keep displayed their beer permit in a conspicuous place on the premises where they are permitted to conduct such business.

(2) No manufacturer, distributor, or warehouseman shall sell beer or alcoholic beverages to anyone except a licensed beer dealer.

(3) All beer permits shall be restrictive as to the type of beer business authorized under them, stating whether the permit is for on-premises

consumption or off-premises consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by the permit holder's permit. It shall likewise be unlawful for the permit holder not to comply with any and all expressed restrictions or conditions which may be written into his/her/its permit by the board.

(4) A permit shall be valid for all privately-owned decks, patios, and other outdoor serving areas that are owned by the business which holds the permit and are contiguous to the exterior of the building in which the business for which the permit is issued is located and that are operated by the same business unless a contiguous sidewalk or parking area is used by other businesses. Permits shall not be valid to serve alcohol on any public property.

(5) A permit is valid only for a business operating under the name identified in the permit application.

(6) It is unlawful for any person or entity to sell, distribute or manufacture beer without having a valid certificate indicating that purchases of beer by that person are for resale. Within ten (10) days after being issued a permit to sell, distribute, or manufacture beer, a person shall file with the Erwin Town Recorder and with each person from whom the person buys beer a copy of a valid certificate indicating that the purchases of beer are for resale, and shall subsequently maintain at all times a valid resale certificate on file with the Town of Erwin and with each person from whom the person buys beer. (Ord. #700-18, May 2018)

8-213. Bond required. Every person, firm, corporation, or association, before being issued a permit to sell at retail within the corporate limits of the Town of Erwin any of such beverages permitted to be sold hereunder, shall make and deliver to the town recorder a joint and several bond in the amount of one thousand, five hundred dollars (\$1,500.00) payable to the Town of Erwin, Tennessee. Said bond shall be signed by some solvent surety company authorized to carry on a general surety business within the State of Tennessee, or by solvent personal sureties, and shall be conditioned that the principal will pay any fine which may be assessed against such principal by any court of competent jurisdiction of any violation of the provisions of this chapter. At the end of the first twelve (12) months, and every twelve (12) months thereafter, said bond shall be renewed and a fee of ten dollars (\$10.00) shall be paid to the town recorder for taking and renewing said bond. (Ord. #700-18, May 2018)

8-214. Permits not transferrable. (1) A permit shall be valid only for the applicant to whom the permit was issued, and cannot be transferred to any other person or entity. A permit may, in the discretion of the board, be issued to the owner of the business, whether a person, firm, corporation, joint stock company, syndicate, or association. If the owner is a corporation, a change in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner.

(2) A separate permit shall be obtained for each location at which and from which any applicant is to manufacture, store, distribute, or sell beer. A permit is valid only for a single location and cannot be transferred to another location.

(3) When any person or entity shall move the location of his/her/its place of business or there is any change in the ownership of the business where such beverages are sold (whether voluntary or involuntary), then in all cases shall the permit holder be required to apply for a new permit in the manner herein provided by said board.

(4) A permit holder must return the permit to the Town of Erwin within fifteen (15) days of termination of the business, or a change in ownership of the business, or the death of the person to whom the permit is issued, or a relocation of the business, or a change in the name of the business; provided that, notwithstanding the failure of the permit holder to return his/her/its beer permit, the beer permit shall automatically expire upon a termination of the business, a change in ownership, a relocation of the business, or the death of the owner of the business, or a change of the name of the business, unless otherwise provided herein. (Ord. #700-18, May 2018)

8-215. Hours of sales restricted. It shall be unlawful for any person to sell beer on any day, Monday through Saturday, between the hours of 3:00 A.M. until 8:00 A.M. It shall be unlawful for any person to sell beer between 3:00 A.M. and 10:00 A.M. on Sunday. (Ord. #700-18, May 2018)

8-216. Miscellaneous regulations for distributors, wholesalers, etc. (1) In addition to other requirements set out in this chapter, all distributors, wholesalers, warehousemen, and manufacturers shall be duly licensed under the law to do business in the State of Tennessee.

(2) All distributors, wholesalers, manufacturers, and warehousemen of beer having a place of business within the corporate limits of the Town of Erwin shall locate in areas designated and zoned for manufacturing under laws and ordinances of the Town of Erwin, Tennessee.

(3) It shall be unlawful within the corporate limits of the Town of Erwin for any wholesaler, distributor, warehouseman, or manufacturer of beer or for any of their salesmen or representatives to sell or deliver beer enroute or from delivery vehicles to any person or place other than the holders of valid retail beer permits, and it shall be the duty of such wholesaler, representative, etc., to ascertain whether or not such person or place has been issued a valid retail beer permit by the Town of Erwin. (Ord. #700-18, May 2018)

8-217. Persons underage. It shall be unlawful for any person engaged in the sale of beer to make or permit to be made any sales of beer to any person under twenty-one (21) years of age. The burden of ascertaining the age of each patron shall be upon the permit holder of such place of business. Customers

must have upon their persons a valid photo ID which lists their correct birth dates. (Ord. #700-18, May 2018)

8-218. Dancing. Dancing is permitted in establishments that hold on-premises beer permits. However, all dancers must be fully clothed and shall not be clothed in wet t-shirts, lewd, or opaque clothing and no dancer shall engage in simulated sexual activity. (Ord. #700-18, May 2018)

8-219. Proper sanitary facilities required. In the places of business where such beverages will be sold or distributed, restrooms shall be provided as set out in the currently adopted plumbing code. (Ord. #700-18, May 2018)

8-220. Visibility through front required. Proper visibility through the front of the establishment shall be maintained, to the result that the interior of the establishment shall be visible to investigating officers. (Ord. #700-18, May 2018)

8-221. Lighting of establishment. All establishments who hold permits to sell beer within the corporate limits of Erwin, Tennessee shall maintain clear visibility within said establishment. The use of black lights, strobe lights, or any other type of lighting which restricts clear vision or which could restrict the identity of persons within the establishment is prohibited. (Ord. #700-18, May 2018)

8-222. Live entertainment permitted. In a place of business where such beverages will be sold or distributed, live entertainment is permitted. However; all entertainers shall be fully clothed. No wet t-shirts, opaque, or lewd attire shall be permitted, and no simulated sexual activity shall be permitted. In all such establishments, no loud music, or unusual or obnoxious noises shall be allowed, and the applicant shall conduct such place of business otherwise in an orderly, peaceable and lawful manner. (Ord. #700-18, May 2018)

8-223. Purchases by or for underage persons prohibited. It shall be unlawful for any person to purchase beer for the purpose of selling or giving same to any person under the age of twenty-one (21) years. (Ord. #700-18, May 2018)

8-224. Loitering and sales to certain persons prohibited. It shall be unlawful for any permit holder to allow persons to loiter around the place of business, and it shall be unlawful for any such permit holder to make, permit, or allow to be made, any sale of beer to any person who is intoxicated, feeble-minded, insane, or otherwise mentally incapacitated. (Ord. #700-18, May 2018)

8-225. Possession of open beer restricted. It shall be unlawful for any person to possess open cans, bottles, or containers of beer upon the public streets, sidewalks, or other public places in the Town of Erwin not otherwise permitted by this chapter. (Ord. #700-18, May 2018)

8-226. Delivery of beer restricted. It shall be unlawful for any holder of a beer permit to sell beer or deliver beer away from the premises designated and described in the permit. It shall further be unlawful for any owner or operator of a public conveyance such as a taxi or other form of public transportation to purchase or deliver beer or to any person who is not present at the premises designated and described in the permit. (Ord. #700-18, May 2018)

8-227. Permits for non-conforming premises prohibited. No beer permit shall be issued to any person to sell beer from any place, premises, or location which constitutes a "nonconforming use" under the zoning laws and ordinances of the Town of Erwin in effect at the time of application for such permit. (Ord. #700-18, May 2018)

8-228. Inspections. It shall be the duty of the Police Department of the Town of Erwin or of any special police officers appointed by the board of mayor and aldermen to inspect the places of business and premises of the holders of permits under this chapter, and it shall be unlawful for any permit holder or agent of the permit holder to refuse to permit any such inspection during any time that such place is open. (Ord. #700-18, May 2018)

8-229. Price reductions or adjustments by wholesalers for breakage, etc., restricted. In order to accurately determine the tax to be paid, no wholesaler shall make any reduction or adjustment for shortages or broken bottles, including chips and flats, except at the time of sale and delivery. All beer shall be inspected and accepted by the permit holder or the agent of the permit holder at the time of delivery, and no adjustment or refund for merchandise damage, breakage, or shortage shall be made by any wholesaler subsequent to the time of delivery. (Ord. #700-18, May 2018)

8-230. Taxes. The tax rate established by this chapter is the maximum allowed by statute which will be levied on and paid by the wholesaler or distributor, and precludes any other fee or tax except the privilege license fee now authorized by acts of the General Assembly of Tennessee on the sale of beer, either at retail or wholesale. (Ord. #700-18, May 2018)

8-231. Privilege tax. There is hereby imposed on the business of selling, distributing, storing, or manufacturing beer an annual privilege tax, which shall be the maximum amount set out in *Tennessee Code Annotated*,

§ 57-5-104(b), but shall be no less than one hundred dollars (\$100.00) annually for each permit. Any person, firm, corporation, joint stock company, syndicate, or association engaged in the sale, distribution, storage, or manufacture of beer shall remit the tax for the calendar year by January 31 of that year to the Town of Erwin. At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a pro rata basis for each month or portion thereof remaining until the next tax payment date. All privilege taxes thereafter shall be paid annually by January 31 in advance and shall not be subject to refund in whole or in part. No beer permits may be renewed until all property taxes, business taxes, or fines imposed by the state, county, or town governments which are due are paid. (Ord. #700-18, May 2018)

8-232. Notices of privilege tax. The Town of Erwin shall mail written notice to each permit holder of the payment date of the annual privilege tax at least thirty (30) days prior to each January 1. Notice shall be mailed to the address specified by the permit holder on its permit application. If a permit holder does not pay the tax by January 31, or within thirty (30) days after the written notice of the tax was mailed, whichever is later, the Town of Erwin shall notify the permit holder by certified mail that the tax payment is past due. If the permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the beer permit shall automatically terminate without further hearing before the board. (Ord. #700-18, May 2018)

8-233. Violations. (1) Any person violating any provision of this chapter shall be subject to a penalty under the general penalty clause for this chapter. Furthermore, any permit holder violating any provision of this chapter may, in the discretion of the board, be cited to the board for a hearing to determine whether the beer permit should be suspended or revoked.

(2) Each day's violation of any provision of this chapter by any permit holder, and each sale made in violation of any provision of this chapter shall constitute a separate offense. (Ord. #700-18, May 2018)

8-234. Civil penalty in lieu of suspension. The beverage board may, in its discretion, at the time it imposes a suspension or revocation, offer a permit holder the alternative of paying a civil penalty of:

(1) First offense: One thousand, five hundred dollars (\$1,500.00) civil penalty for violating any provision or section of this chapter other than making or permitting to be made the illegal sale of beer to a minor;

(2) Second offense: Three thousand dollars (\$3,000.00) civil penalty for violating any provision or section of this chapter other than making or permitting to be made the illegal sale of beer to a minor; or

(3) Third offense: Five thousand dollars (\$5,000.00) civil penalty for violating any provision or section of this chapter other than making or permitting to be made the illegal sale of beer to a minor.

If a civil penalty is offered as an alternative to suspension or revocation of permit, the permit holder shall have seven (7) calendar days within which to pay the civil penalty before the suspension or revocation shall be imposed. If the civil penalty is paid within that seven (7) calendar day period, the suspension or revocation of permit shall be deemed withdrawn, but the offense shall still be recorded as the establishment's first, second, or third offense. (Ord. #700-18, May 2018)

8-235. Revocation and suspension of beer permits. (1) Pursuant to *Tennessee Code Annotated*, § 57-5-608, the beverage board shall not revoke or suspend the permit of a "responsible vendor" qualified under the requirements of *Tennessee Code Annotated*, § 57-5-606 for a clerk's illegal sale of beer to a minor if the clerk is properly certified and has attended annual meetings since the clerk's original certification, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. If the responsible vendor's certification has been revoked, the vendor shall be punished by the beverage board as if the vendor was not certified as a responsible vendor. "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premises consumption.

(2) Under *Tennessee Code Annotated*, § 57-5-608, the alcoholic beverage commission shall revoke a vendor's status as a responsible vendor upon notification by the beverage board that the board has made a final determination that the vendor has sold beer to a minor for the second time in a consecutive twelve (12) month period. The revocation shall be for three (3) years.

(3) If the permit holder or any person employed by the permit holder who has applied for and received a permit is convicted of any violation of the law against prohibition, sale, manufacture, storage, usage or transportation of intoxicating liquor or any felony crime, or of any crime involving moral turpitude the permit holder shall report in writing the name of the person so convicted, the nature of the conviction, and the name of the court in which the person was convicted to the Town of Erwin within fifteen (15) days of the conviction. The Town of Erwin shall then set a show cause hearing before the beverage board to determine whether the permit will be revoked. Failure to notify the Town of Erwin of a conviction will also be grounds to revoke the permit. (Ord. #700-18, May 2018)

8-236. Sale of beer to a minor. (1) Definition. "Responsible vendor" means a person, corporation, or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the Tennessee Responsible Vendor Act of 2006 (*Tennessee Code Annotated*, §§ 57-5-601, *et seq.*).

(2) Penalty, revocation or suspension. The beverage board may impose the following penalties if the violation of sale of beer to a minor has been determined to have occurred and:

- (a) The permit holder is not a responsible vendor.
- (i) First offense: A ninety (90) day suspension of the permit holder's permit for the offense of making or permitting to be made any sales to minors; or, in the alternative, a civil penalty in the amount of one thousand, five hundred dollars (\$1,500.00), to be paid within seven (7) days of the penalty's imposition.
 - (ii) Second offense: A one hundred and eighty (180) day suspension of the permit holder's permit for the offense of making or permitting to be made any sales to minors; or, in the alternative, a civil penalty in the amount of three thousand dollars (\$3,000.00), to be paid within seven (7) days of the penalty's imposition.
 - (iii) Third offense: Revocation of the permit holder's permit for the offense of making or permitting to be made any sales to minors; or, in the alternative, a civil penalty in the amount of five thousand dollars (\$5,000.00), to be paid within seven (7) days of the penalty's imposition.

If a civil penalty is offered as an alternative to revocation or suspension, the permit holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time period, the revocation or suspension shall be deemed withdrawn.

Payment of the civil penalty in lieu of revocation or suspension by a permit holder shall be an admission by the permit holder of the violation so charged and shall be paid to the exclusion of any other penalty that the town may impose.

- (b) The permit holder is a responsible vendor.
- (i) First offense: A seven hundred and fifty dollar (\$750.00) civil penalty for the offense of making or permitting to be made any sales to minors.
 - (ii) Second offense: A one thousand dollar (\$1,000.00) civil penalty for the offense of making or permitting to be made any sales to minors.
 - (iii) Third offense: A one thousand dollar (\$1,000.00) civil penalty for the offense of making or permitting to be made any sales to minors.
 - (iv) In the event that the beverage board determines that a responsible vendor has sold beer to a minor for the second time in a consecutive twelve (12) month period, that vendor shall be reported to the alcoholic beverage commission and a three (3) year revocation of the vendor's responsible vendor status shall be requested. (Ord. #700-18, May 2018)

8-237. Loss of clerk's certification for sale to minor. If the beverage board determines that a clerk of an off-premises beer permit holder certified

under *Tennessee Code Annotated*, § 57-5-606 sold beer to a minor, the beverage board shall report the name of the clerk to the alcoholic beverage commission within fifteen (15) days of determination of the sale. The certification of the clerk shall be invalid, and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beverage board's determination. (Ord. #700-18, May 2018)

8-238. Limitations on number of beer permits issued for off-premise beer sales. Off-premise permits. Beer permits for off-premise sales shall be limited to two (2) per each thousand (1,000) people residing within the town limits as of the most recent official federal census. (Ord. #742-23, Feb. 2023)

8-239. Violations and penalty. Upon a finding by the beverage board that an establishment has violated any provision or section of this chapter other than making or permitting to be made the illegal sale of beer to a minor, the board shall, upon first offense, invoke a ninety (90) day suspension of the establishment's beer permit, or may revoke the establishment's beer permit. For a second offense, the board shall invoke a one hundred and eighty (180) day suspension of the establishment's beer permit, or may revoke the establishment's beer permit. For a third offense, there shall be a mandatory revocation of the establishment's permit. All establishments within the town who currently hold a valid beer permit on the effective date of this chapter shall be deemed to have no past offenses as of the effective date of this chapter. (Ord. #700-18, May 2018)

CHAPTER 3

RETAIL PACKAGE STORES

SECTION

- 8-301. Definition.
- 8-302. Sale authorized.
- 8-303. License and certificate required.
- 8-304. License restrictions.
- 8-305. License for application.
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- 8-318. Surrender of license if business is discontinued.
- 8-319. Revocation procedures.
- 8-320. Automatic revocation of certificate.
- 8-321. Violations and penalty.

8-301. Definition. "Package or retail liquor store." A store licensed by the State of Tennessee and the Town of Erwin to sell "alcoholic beverages" as defined by *Tennessee Code Annotated*, § 57-3-101 at retail in compliance with federal, state, and town rules and regulations. (Ord. #679-15, March 2015)

8-302. Sale authorized. It shall be lawful for a licensee to sell alcoholic beverages at retail in a package store within the corporate limits of Erwin, provided such license has been appropriately approved by the town and the state, and such sales are made in compliance with applicable state and federal statutes, rules, and regulations along with all applicable Town of Erwin rules and regulations, as well as the provisions established in this chapter. It shall be unlawful to engage in the business of selling, storing, transporting, distributing, or to purchase or possess alcoholic beverages within the corporate limits of the town except as provided by this chapter and *Tennessee Code Annotated*, title 57. (Ord. #679-15, March 2015)

8-303. License and certificate required. It shall be unlawful for any person, firm or corporation to sell alcoholic beverages at retail without first obtaining a license for such privilege through the State of Tennessee Alcoholic Beverage Commission and without obtaining a certificate of compliance for a specific store location from the Erwin Board of Mayor and Aldermen as required by *Tennessee Code Annotated*, § 57-3-208. (Ord. #679-15, March 2015)

8-304. License restrictions. The requirements or restrictions established in *Tennessee Code Annotated*, §§ 57-3-204 to 57-3-210 apply to applicants for a retail package store license in Erwin, including, but not limited to the following:

(1) No retail license shall be issued to a person who is a holder of public office, either appointive or elective, or who is a public employee, either national, state, town or county except as specified in *Tennessee Code Annotated*, § 57-3-210(b)(i).

(2) No retailer or employee shall be an individual who has been convicted of a felony involving moral turpitude within ten (10) years prior to the time of the application, with the exception of such person whose rights of citizenship have been restored or judgment of infamy has been removed by a court of competent jurisdiction. No license shall be issued to a retailer who within ten (10) years preceding the application has been convicted of any offense under the laws of Tennessee or any other state in the United States prohibiting or regulating the sale, possession, transportation, storing, or manufacturing or otherwise handling of intoxicating liquors.

(3) No person shall have ownership in, or participate in, either directly or indirectly, the profits of any wholesale or retail package business licensed through *Tennessee Code Annotated* unless the interest in such business and the nature, extent and character thereof shall appear on the application or unless such interest is fully disclosed to the alcoholic beverage commission and is approved by it.

(4) No person shall be employed in a retail package store within the Town of Erwin unless they are a citizen of the United States.

(5) No retailer or any employee thereof shall be a person under eighteen (18) years of age.

(6) The Town of Erwin, or their representative, may make unscheduled inspections of retail package stores within the Town of Erwin at any time. (Ord. #679-15, March 2015)

8-305. License for application. Any person, firm, or corporation desiring to sell alcoholic beverages at a retail package store and not for consumption on premises, shall make application to the alcoholic beverage commission for a retail package store license. The following conditions apply:

(1) Conditions established in *Tennessee Code Annotated*, § 57-3-204 must be met, including payment of the application fee mandated by the State

of Tennessee, as well as compliance with any applicable rules and regulations of the Alcoholic Beverage Commission.

(2) The license application must be accompanied by a certificate of compliance issued from the Town of Erwin.

(3) The license expires in twelve (12) months following the date of issuance. Each licensee must submit renewal applications annually to the alcoholic beverage commission accompanied by the annual license fee.

(4) The applicant for a license must meet the public notice requirements established in §§ 0100-03-.09(10) and (11) of the rules of the alcoholic beverage commission and must submit to the Town of Erwin a copy of the newspaper notice with paper header showing compliance with this requirement. (Ord. #679-15, March 2015)

8-306. Application for certificate of compliance. An applicant for a license shall first obtain a certificate of compliance from the Town of Erwin, as provided in *Tennessee Code Annotated*, § 57-3-208. The application for the certificate shall be in writing on forms prescribed and furnished by the town recorder or his/her designee. The application includes a request for a certificate of good moral character, as provided by *Tennessee Code Annotated*, §§ 57-3-208, *et seq.* Applications shall include, but are not limited to, the following information:

(1) The name, date of birth and street address of each person to have an interest, whether direct or indirect, in the license as owner, partner or shareholder who holds more than a ten percent (10%) interest in the corporation, director, officer, member or otherwise. In the event that a corporation, partnership, limited liability company or other legally recognized entity is an applicant or member of an applicant group, each person with an interest therein must be disclosed and must provide the information herein required by the town.

(2) Occupation or business name and location of such business of the applicant or persons in the applicant group, and length of time engaged in such occupation or business, including the name of the licensee and address of any other off-premises package stores in which an ownership interest is held by the applicant or any member of the applicant group, identifying the applicant or group members holding each interest.

(3) In the case where the applicant is a partnership, corporation, limited liability company or other such legally recognized entity, the application shall be accompanied by a copy of the partnership agreement, corporate charter, operations agreement or other such document as well as a breakdown of all partners, shareholders, members, etc. with their ownership percentages.

(4) The identity of the applicant(s) who will be in actual charge of the day-to-day operation of the retail package store.

(5) Certification that the applicant or applicant group and any employee, now intended or in the future, that will be employed to manage or

assist in the operation of the retail package store has not been convicted of a felony within the ten (10) year period immediately preceding the date of the application of any violation of any state or federal law, or of any violation of any municipal ordinance involving alcohol related offenses. This certification shall be accompanied by a criminal background check or consent to and request for same for each applicant, applicant group and management employee of the package store. The cost of obtaining such criminal background checks shall be borne and paid by the applicant, applicant group, or the employer of the management employee(s).

(6) Name of the retail package store proposed in the application and the zoning designation applicable to such location.

(7) Address of the retail package store proposed in the application.

(8) A site plan drawn to a scale by a licensed surveyor or engineer, of not less than one inch (1") equals twenty feet (20') that includes the following information:

(a) All information required by the Town of Erwin's Zoning Ordinance.

(b) Designation of the zoning district of the lot and the adjoining properties.

(c) Owner names, use designations, and business names of adjoining properties.

(d) The identification of every parcel within two hundred feet (200') of the lot which the package store is to be operated, indicating ownership thereof, and the locations of structures situated thereon and the use being made of every such parcel.

(9) Certification by the applicant stating that the premises of the proposed retail package store are in full compliance with the distance requirements established in § 8-308(2) of this chapter.

(10) The agreement of each applicant to comply with state and federal statutes, Erwin regulations governing retail package stores, and all state rules and regulations with reference to the sale of alcoholic beverages.

(11) Verification that the applicant has secured the location for the business at the location submitted in the application.

(12) A time schedule detailing any construction or renovation of the store building, improvements to the grounds, and store opening date.

(13) Copies of all submittal documentation required by the alcoholic beverage commission for a retail package store license from the State of Tennessee.

(14) Applicant's business plan for the retail package store including, but not limited to, start-up funding, cost of establishing and opening the business and projected sales for the first twenty-four (24) months of operation.

(15) The application form shall be signed and verified by each person who has any interest in the license either as owner, partner, shareholder who

holds more than a ten percent (10%) interest in the corporation , director, officer or otherwise.

(16) The application for a certificate of compliance shall be submitted with payment of the non-refundable application fee of five hundred dollars (\$500.00). This application fee is also required for existing businesses that are renewing their license with the alcoholic beverage commission. (Ord. #679-15, March 2015)

8-307. Review and consideration of applications for certificate of compliance. Applications to the town for a certificate of compliance shall be submitted to the town recorder. The town recorder or his/her designee will review materials submitted for compliance, and will to the extent possible, identify insufficient information. It is the responsibility of the applicant to provide all of the required information. An application shall not be deemed "filed" until it contains all of the required information. In reviewing the application, the board of mayor and alderman shall consider the following:

(1) Whether the application meets all state and federal requirements.
 (2) When there are more applications for a certificate of compliance than the maximum number of retail package store licenses authorized by this chapter, the board of mayor and alderman shall consider the following without necessity of regard for the order in which the applications were filed:

(a) The retail store locations submitted and the consideration of safety, lighting, ingress and egress, size of store, impact on traffic patterns, and ease of enforcement relative to each location.

(b) The most suitable circumstances and location in consideration of the health, safety and welfare of the citizens of Erwin and the lawful operation of a retail package store.

(c) The ability of the applicant to obtain the necessary license from the state, and to construct, renovate or otherwise develop the premises necessary for the retail store and open it to the public in a timely manner.

(d) The compatibility of the building and landscaping with the surrounding properties.

(e) An applicant for a certificate of compliance shall appear at the board of mayor and alderman meeting when the consideration of their application is on the agenda.

(3) If a retail package store makes any voluntary request to transfer an existing and operating store, the location shall be evaluated and considered based on the criteria in §§ 8-306 and 8-307 along with any other requirements of the alcoholic beverage commission.

(4) Applications and all matters submitted with or as a part of such applications become, at the time they are submitted, the sole and exclusive property of the town and constitute public records open to public inspection.

(5) Applications for a certificate of compliance shall be held by the town until the retail package store(s) approved are open and operating. At that time, the applications may be disposed of by the town. If an approved store is not licensed by the alcoholic beverage commission or fails to make substantial progress within six (6) months of the date the applicant was issued a license by the alcoholic beverage commission the certificate of compliance shall become null and void. However, the board of mayor and alderman may grant extensions due to hardships or unforeseen circumstances. At such time the applications on file for a certificate of compliance may be reactivated and considered submitted upon written request by the applicant. (Ord. #679-15, March 2015)

8-308. Restrictions on location of and access to retail package stores. Locations for a retail package store shall only be approved for premises that are:

- (1) Based on the current Town of Erwin Municipal Zoning Code.
- (2) No certificate of compliance for a retail package store shall be issued to any person or establishment whose place of business is within two hundred feet (200') of any established church or school building. The two hundred feet (200') measurement shall be measured in a straight line from the building of the applicant to the church or school building by a licensed Tennessee surveyor. The points of the building to be measured shall be from the nearest point on the building of the applicant in relation to the nearest point of the building of the church or school. If the applicant's place of business is located within a building that has more than one (1) business, then the point of measurement shall be from the nearest point of the applicant's actual premises within the larger building in relation to the nearest point of the building of the church or school. The applicant shall bear the expense of said survey. The restrictions set forth herein as to locations apply to conditions existing as of the time the application for a certificate is filed, and the future presence of any uses listed above in this subsection necessitating the two hundred foot (200') distance requirement shall not be grounds for revocation of a licensee or denial of a certificate if a valid license had been issued to any retail package store at the same location and the business has been in continuing operation since that date.
- (3) Located in or developed in a building in which the retail package store is only on the ground floor.
- (4) The retail package store shall have one (1) entrance for use by the public. However, in the event the building is located on a corner with building entrances and parking fronting on both intersecting streets the applicant may petition the board of mayor and alderman for approval of a second public entrance to the retail package store. Such petition must be accompanied by all supporting documentation as is required for a second entrance to a retail package store under the statutes and regulations provided by the State of Tennessee.

(5) The retail package store must meet all Town of Erwin regulations concerning commercial buildings and nothing shall be "grandfathered in" from a prior business location. Any non-conforming business premises, excluding property line setbacks, shall comply with current Town of Erwin standards prior to locating a retail package store on said premises. (Ord. #679-15, March 2015, as amended by Ord. #742-23, Feb. 2023)

8-309. Number of stores. There shall be only two (2) package stores within the Town of Erwin. However, the board of mayor and alderman retains the power and authority to modify the number of total retail package stores by resolution. (Ord. #679-15, March 2015)

8-310. Restrictions on issuance of certificate of compliance. No original or renewal certificate of compliance shall be issued for any location until:

- (1) An application has been filed with the town recorder.
- (2) All requirements to obtain a certificate have been met and the application complies with all restrictions as to location and number of retail package store licenses issued within the town.
- (3) A written certification is submitted by the applicant stating that the premises of the retail package store are in full and complete compliance with the distance requirements established in § 8-308(2) of this chapter.
- (4) The application has been signed and verified by each person to have an interest in the retail package store either as an owner, partner, member, shareholder who holds more than a ten percent (10%) interest in the corporation or otherwise.
- (5) The application has been considered at a regular or called meeting of the Erwin Board of Mayor and Aldermen and approved by majority vote.
- (6) The five hundred dollars (\$500.00) non-refundable application fee has been paid in full. (Ord. #679-15, March 2015)

8-311. Term of certificate of compliance. Once issued by the board of mayor and aldermen a certificate of compliance, required by *Tennessee Code Annotated*, § 57-3-208, shall be valid for two (2) years. Therefore, a new certificate of compliance is required every other year, to be submitted to the alcoholic beverage commission with the application for the annual license renewal. (Ord. #679-15, March 2015)

8-312. Full and accurate disclosure required. (1) It shall be unlawful for any person to have ownership in or participate, either directly or indirectly, in the profits of any retail store license under this chapter, unless his/her interest in the business and the nature, extent and character thereof shall appear on the application for a certificate of compliance; or if the interest is acquired after the issuance of a license, it is fully disclosed to and approved

by the board of mayor and aldermen. Where such interest is owned by such a person on or before the application for any certificate, the burden shall be upon such person to see that this section is not violated, whether he/she signs or prepares the application, or whether the same is prepared by another; or if the interest is acquired after the issuance of the certificate, the burden of disclosure of the acquisition of such interest shall be upon the seller and the purchaser.

(2) Misrepresentation of a material fact, or concealment of a material fact, required to be shown in the application for a license or certificate shall be a violation of this chapter. The board of mayor and aldermen may refuse to issue a certificate if, upon investigation, the town finds that the applicant for a certificate has concealed or misrepresented in writing or otherwise any material fact or circumstance concerning the operation of the retail package store, or if the interest of any applicant in the operation of the business is not truly stated in the application, or in case of any fraud or false swearing by any applicant concerning any matter related to the operation of the business. All data, written statements, affidavits, evidence, or other documents submitted in support of an application are part of the application.

(3) If the provisions of this section and chapter are alleged to have been violated, the board of mayor and aldermen may by majority vote revoke any certificate which has been issued, after first providing an opportunity for the applicant(s) or licensee to refute such allegations and give reasons for why the certificate should not be revoked. (Ord. #679-15, March 2015)

8-313. Regulations of retail sales. Retailers licensed under *Tennessee Code Annotated*, § 57-3-204 shall comply with the regulation of retail sales established in *Tennessee Code Annotated*, § 57-3-406 including, but not limited to, the following:

(1) Hours and days of operation. No retailer shall sell or give away or otherwise dispense any alcoholic beverages between the hours of 12:00 midnight and 6:00 A.M. on weekdays and between the hours of 12:00 midnight on Saturday and 12:00 noon on Sunday, except the holidays specified below. No retailer shall sell or give away alcoholic beverages between 11:00 P.M. on Saturday and 8:00 A.M. on Monday each week.

(2) Sale during holidays. No retailer shall sell or give away alcoholic beverages on Thanksgiving Day, Christmas Day, and Easter.

(3) No audible radio, pinball machine, slot machine, video game, audible music machine, or other amusement devices which would cause persons to congregate in such place shall be maintained in any retail package store. This provision shall not prevent the broadcast of background music or personal music devices heard only by one (1) person.

(4) The sale and delivery of alcoholic beverages at a retail package store shall be confined to the building premises of the licensee, and no curb or drive-thru service is permitted. (Ord. #679-15, March 2015, modified)

8-314. License display. Persons granted a license to carry on any business or undertaking contemplated herein shall, before being qualified to do business, display and post and keep displayed and posted, in the most conspicuous place in their premises, such license. (Ord. #679-15, March 2015)

8-315. Advertising and signage. Advertising by a licensee, including, but not limited to, signs, displays, posters and designs intended to advertise any alcoholic beverages, shall be governed by the applicable rules of the Tennessee Alcoholic Beverage Commission and the sign provisions and restrictions of the underlying zoning district. (Ord. #679-15, March 2015)

8-316. Transfer of license and certificate. The holder of a license for a retail package store may not sell, assign or transfer such license to any other person, and such license shall be good and valid only for the twelve (12) months after the same was issued. Except as expressly authorized, there shall be no transfer of any license from one (1) location to another. An application for a retail package store license from the alcoholic beverage commission resulting from a change in ownership or store location shall require a re-submittal of an application for a certificate of compliance. (Ord. #679-15, March 2015)

8-317. Inspection fee levied. For the purpose of providing a means of regulating the sale of alcoholic beverages within the town, and to provide means of enforcing the provisions of this chapter, there is hereby levied and imposed an inspection fee of eight percent (8%) of the wholesale price of all alcoholic beverages sold by wholesalers to any licensed retail package store within the corporate limits of Erwin. Collection of this inspection fee by wholesalers shall be undertaken under regulations established in *Tennessee Code Annotated*, §§ 57-3-501 to 57-3-503, including, but not limited to, the following:

(1) The inspection fee is imposed upon licensed retailers, but is collected by wholesalers.

(2) The inspection fee shall be collected by the wholesaler at the time of the sale or at the time the retailer makes payment for the delivery of the alcoholic beverages, and said fee may be added by the wholesaler to the invoice for alcoholic beverages sold to the licensed retailers.

(3) Each wholesaler making sales to retailers located within the Erwin town limits shall make monthly payments to the town of the inspection fees invoiced.

(4) Monthly payments shall be paid by the twentieth day of the month following which sales were made and shall be accompanied with monthly reports that include the information required in *Tennessee Code Annotated*, § 57-3-503.

(5) Wholesalers collecting and remitting inspection fees to the town shall be entitled to reimbursement for this collection service, a sum equal to five percent (5%) of the total amount of the inspection fees collected, and such

reimbursement may be deducted and shown on the monthly report to the Town of Erwin.

(6) Failure to collect, report, or pay the inspection fee collected by the day required shall result in a penalty of ten percent (10%) of the fee due, which shall also be paid to the town.

(7) The Town of Erwin has the authority to audit the records of wholesalers supplying retail package stores and reporting sales to retail package stores in Erwin to determine the accuracy of reports.

(8) Nothing herein shall relieve the licensee of the obligation for the payment of the inspection fee, and it shall be the licensee's duty to see that the payment of the inspection fee is made to the town recorder.

(9) The inspection fee levied in this chapter shall be in addition to any general gross receipts, sales and other general taxes applicable to the sale of alcoholic beverages, and shall not be in substitution for such taxes. (Ord. #679-15, March 2015)

8-318. Surrender of license if business is discontinued. Whenever any licensee discontinues business for any reason, he/she shall immediately notify the alcoholic beverage commission and the town recorder in writing and surrender the license and certificate of compliance. (Ord. #679-15, March 2015)

8-319. Revocation procedures. Whenever the board finds that a licensee has been, or is, in violation of the *Tennessee Code Annotated*, title 57, the rules and regulations of the alcoholic beverage commission, or the provisions of this chapter, the board shall certify such violation(s) to the alcoholic beverage commission, in such form as the commission requires. The alcoholic beverage commission shall have the responsibility for determining whether the offender's license shall be revoked. The board of mayor and aldermen, upon determination of violations of state or local regulations governing the retail sale of alcoholic beverages may revoke the town issued certificate of compliance, and shall communicate said revocation to the alcoholic beverage commission for possible further action. (Ord. #679-15, March 2015)

8-320. Automatic revocation of certificate. In the event that the Erwin Board of Mayor and Alderman issues a certificate of compliance to an applicant who is subsequently denied a license from the alcoholic beverage commission, the certificate of compliance shall become null and void. (Ord. #679-15, March 2015)

8-321. Violations and penalty. Any violation of the provisions of this chapter shall constitute a misdemeanor and shall, upon conviction, be punishable by a fine of fifty dollars (\$50.00). Each day such violation shall continue shall be deemed to be a separate violation. Upon conviction of any person under this chapter, it shall be mandatory for the town judge to

immediately certify such conviction, whether on appeal or not, directly to the alcoholic beverage commission, together with a petition that all licenses be revoked, pursuant to the provisions of *Tennessee Code Annotated*, chapter 3, title 57 and the rules and regulations of said commission. (Ord. #679-15, March 2015)

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

1. MISCELLANEOUS.
2. PEDDLERS, ETC.
3. CHARITABLE SOLICITORS.
4. TAXICABS.
5. POOL ROOMS.
6. CABLE TELEVISION.
7. SEXUALLY ORIENTED BUSINESSES.
8. MOBILE FOOD VEHICLE VENDORS.

CHAPTER 1

MISCELLANEOUS

SECTION

- 9-101. Ambulances, etc., to be insured.
 9-102. "Going out of business" sales.
 9-103. Central business district sign ordinance.

9-101. Ambulances, etc., to be insured. All emergency vehicles, such as ambulances, shall be covered by liability insurance in the amounts of fifty thousand dollars (\$50,000.00) and one hundred thousand dollars (\$100,000.00). Said insurance shall be carried with insurance companies authorized to do business in the State of Tennessee by the State of Tennessee Commissioner of Insurance and Banking. (2005 Code, § 9-101)

9-102. "Going out of business" sales. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of

¹Municipal code references

Building, plumbing, wiring and residential regulations: title 12.

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

business within ninety (90) days he shall prima facie be deemed to have violated this section. (2005 Code, § 9-102)

9-103. Central business district sign ordinance. (1) This section shall be known as the "central business district sign ordinance" for the Town of Erwin, Tennessee.

(2) This section authorizes the use of signs visible from public rights-of-way provided the signs are:

(a) Compatible with their surroundings, pursuant to the objectives of proper design and zoning amenities;

(b) Allowing and promoting optimum conditions for meeting the sign users' needs while at the same time promoting the amenable environment desired by the general public;

(c) Designed, constructed, installed, and maintained in such a manner that they do not endanger public safety or traffic safety;

(d) Legible, readable, and visible in the circumstances in which they are used; and

(e) Respectful of the reasonable rights of other advertisers whose messages are displayed.

(3) No sign may be so arranged that it interferes with traffic through glare, through blocking of reasonable sight lines for streets, sidewalks, or driveways, through confusion with a traffic control device (by reason of its color, location, shape, or other characteristics), or through any other means. Rotation beacons or flashing signs are prohibited.

(4) Any portion of a sign or a pole or standard for such sign, which is in contact with the ground shall be within the lot lines of the property.

(5) Signs painted directly on the structure are prohibited, with the exception of entrances, doorways, and window display areas.

(6) Signs that advertise a product, service, or other business not situated on the same premises are prohibited. Any sign which is constructed of wood, masonite, plywood, and other porous material of a non-permanent nature subject to deterioration is prohibited.

(7) Roof signs which are not an integral part of the buildings design are prohibited.

(8) Overhanging signs referring to businesses operated on the premises are permitted, provided that any such sign shall not be allowed to protrude more than two feet (2') from the building front, and shall not exceed one (1) square foot for each front foot of that business store front, up to a maximum of one hundred (100) square feet.

(9) Except as otherwise provided in this section, no sign or any portion thereof shall be permitted which moves or assumes any motion constituting a non-sanitary or fixed condition except for the rotation of barber poles, permissible changing signs, or permissible multi-prism units. Indexing multi-prism units must not exceed a speed of two (2) complete revolutions every

twenty (20) seconds. This section is not meant to prohibit any form of vehicular signage such as a sign attached to a bus or lettered on a motor vehicle.

(10) Any advertising structure or sign which was lawfully erected and maintained prior to the adoption of the provisions in this section shall be allowed to remain as a nonconforming sign. Any sign damaged to the extent of more than fifty percent (50%) of its appraised value as determined by the building inspector shall be removed. Nonconforming signs advertising a business which changes ownership must be removed within one (1) year of the date of said change of ownership.

(11) No person shall erect, construct or maintain any sign upon any property within the central business district without first submitting a drawing to the building inspector showing sign dimensions, etc., and the area in which the sign is to be located. Upon receiving written approval from the building inspector, the proposed sign may be constructed. (2005 Code, § 9-103)

CHAPTER 2

PEDDLERS, ETC.¹

SECTION

- 9-201. Permit required.
- 9-202. Exemptions.
- 9-203. Application for permit.
- 9-204. Issuance or refusal of permit.
- 9-205. Appeal.
- 9-206. Bond.
- 9-207. Loud noises and speaking devices.
- 9-208. Use of streets.
- 9-209. Exhibition of permit.
- 9-210. Police officers to enforce.
- 9-211. Revocation or suspension of permit.
- 9-212. Reapplication.
- 9-213. Expiration and renewal of permit.

9-201. Permit required. It shall be unlawful for any peddler, canvasser or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (2005 Code, § 9-201)

9-202. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic or philanthropic organizations. (2005 Code, § 9-202)

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

- (1) Name and physical description of applicant.
- (2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.
- (3) A brief description of the nature of the business and the goods to be sold.

¹Municipal code references

Privilege taxes: title 5, chapter 3.

(4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.

(5) The length of time for which the right to do business is desired.

(6) A recent clear photograph approximately two inches (2") square showing the head and shoulders of the applicant.

(7) The names of at least two (2) reputable local property owners who will certify as to the applicant's good moral reputation and business responsibility, or in lieu of the names of references, such other available evidence as will enable an investigator to properly evaluate the applicant's moral reputation and business responsibility.

(8) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed therefor.

(9) The last three (3) cities or towns, if that many, where the applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities.

(10) At the time of filing the application, a fee of five dollars (\$5.00) shall be paid to the town to cover the cost of investigating the facts stated therein. (2005 Code, § 9-203)

9-204. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the recorder within seventy-two (72) hours.

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

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the town recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The recorder shall keep a permanent record of all permits issued. (2005 Code, § 9-204)

9-205. Appeal. Any person aggrieved by the action of the chief of police and/or the town recorder in the denial of a permit shall have the right to appeal to the board of mayor and aldermen. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be

delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (2005 Code, § 9-205)

9-206. Bond. Every permittee shall file with the recorder a surety bond running to the town in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of the town and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the municipality that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the town doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (2005 Code, § 9-206)

9-207. Loud noises and speaking devices. No permittee, nor any person on his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks or other public places of the municipality or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (2005 Code, § 9-207)

9-208. Use of streets. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of such streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (2005 Code, § 9-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any police officer or citizen. (2005 Code, § 9-209)

9-210. Police officers to enforce. It shall be the duty of all police officers to see that the provisions of this chapter are enforced. (2005 Code, § 9-210)

9-211. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the board of mayor and aldermen after notice and hearing, for any of the following causes:

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

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

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

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

(3) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (2005 Code, § 9-211)

9-212. Reapplication. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (2005 Code, § 9-212)

9-213. Expiration and renewal of permit. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (2005 Code, § 9-213)

CHAPTER 3

CHARITABLE SOLICITORS

SECTION

9-301. Permit required.

9-302. Prerequisites for a permit.

9-303. Denial of a permit.

9-304. Exhibition of permit.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (2005 Code, § 9-301)

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

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

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

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

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

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (2005 Code, § 9-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the board of mayor and aldermen if he has not been granted a permit within fifteen (15) days after he makes application therefor. (2005 Code, § 9-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any police officer or person solicited. (2005 Code, § 9-304)

CHAPTER 4

TAXICABS¹

SECTION

- 9-401. Taxicab franchise and privilege license required.
- 9-402. Requirements as to application and hearing.
- 9-403. Liability insurance or bond required.
- 9-404. Revocation or suspension of franchise.
- 9-405. Mechanical condition of vehicles.
- 9-406. Cleanliness of vehicles.
- 9-407. Inspection of vehicles.
- 9-408. License and permit required for drivers.
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- 9-415. Miscellaneous prohibited conduct by drivers.
- 9-416. Transportation of more than one passenger at the same time.
- 9-417. Fares.

9-401. Taxicab franchise and privilege license required. It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the town and has a currently effective privilege license. (2005 Code, § 9-401)

9-402. Requirements as to application and hearing. No person shall be eligible to apply for a taxicab franchise if he has a bad character or has been convicted of a felony within the last ten (10) years. Applications for taxicab franchises shall be made under oath and in writing to the chief of police. The application shall state the name and address of the applicant, the name and address of the proposed place of business, the number of cabs the applicant desires to operate, the makes and models of said cabs, and such other pertinent information as the chief of police may require. The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good character and reputation of the applicant. Within ten (10) days after receipt of an application the chief of police shall make a thorough investigation of the applicant; determine if there is a public need for additional taxicab

¹Municipal code reference
Privilege taxes: title 5.

service; present the application to the board of mayor and aldermen; and make a recommendation to either grant or refuse a franchise to the applicant. The board shall thereupon hold a public hearing at which time witnesses for and against the granting of the franchise shall be heard. In deciding whether or not to grant the franchise the board shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional franchise. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (2005 Code, § 9-402)

9-403. Liability insurance or bond required. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy or bond for each vehicle authorized in the amount equal to that required by the state's financial responsibility law as set out in *Tennessee Code Annotated*, title 55, chapter 12. The insurance policy required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the town. (2005 Code, § 9-403, modified)

9-404. Revocation or suspension of franchise. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (2005 Code, § 9-404)

9-405. Mechanical condition of vehicles. It shall be unlawful for any person to operate any taxicab in the town unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear view mirror, all of which shall conform to the requirements of the state motor vehicle law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (2005 Code, § 9-405)

9-406. Cleanliness of vehicles. All taxicabs operated in the town shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (2005 Code, § 9-406)

9-407. Inspection of vehicles. All taxicabs shall be inspected at least semiannually by the chief of police to ensure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (2005 Code, § 9-407)

9-408. License and permit required for drivers. No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the chief of police. (2005 Code, § 9-408)

9-409. Qualifications for driver's permit. No person shall be issued a taxicab driver's permit unless he complies with the following to the satisfaction of the chief of police:

- (1) Makes written application to the chief of police.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the town who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent traffic offenses.
- (7) Is familiar with the state and local traffic laws. (2005 Code, § 9-409)

9-410. Revocation or suspension of driver's permit. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-409. (2005 Code, § 9-410)

9-411. Drivers not to solicit business. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the town for the purpose of obtaining patronage for their cabs. (2005 Code, § 9-411)

9-412. Parking restricted. It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the town for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging

passengers if such stops are made in such manner as not to unreasonably interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (2005 Code, § 9-412)

9-413. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (2005 Code, § 9-413)

9-414. Taxicabs not to be used for illegal purposes. No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (2005 Code, § 9-414)

9-415. Miscellaneous prohibited conduct by drivers. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise unreasonably disturb the peace, quiet and tranquility of the town in any way. (2005 Code, § 9-415)

9-416. Transportation of more than one passenger at the same time. No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (2005 Code, § 9-416)

9-417. Fares. Fares for taxicab service shall be charged in accordance with such rate schedule as may be approved by resolution of the board of mayor and aldermen. (2005 Code, § 9-417)

CHAPTER 5**POOL ROOMS¹****SECTION**

9-501. Hours of operation regulated.

9-502. Minors to be kept out.

9-501. Hours of operation regulated. It shall be unlawful for any person, firm, or corporation owning, operating, or conducting a pool room in the Town of Erwin, to operate, conduct, or open for the purpose of operating or conducting, such pool room between the hours of 10:30 P.M. and 6:00 A.M. on any day, except that on Saturday nights the closing hour may be extended to 11:30 P.M.

It shall be unlawful for any person, firm, or corporation owning, operating, or conducting a pool room in said town to operate or conduct, or open the same for the purpose of operating or conducting it, at any time on Sunday.

It shall be unlawful for any person, firm, or corporation owning, operating, or conducting a pool room in said town to suffer or permit persons to loiter, loaf, or congregate in said pool room during the closing hours thereof as provided herein. (2005 Code, § 9-501)

9-502. Minors to be kept out. It shall be unlawful for any minors under eighteen (18) years of age, to congregate, loaf, or loiter in a pool room within the Town of Erwin.

Furthermore, no owner or manager of a pool room shall permit the same to be done. (2005 Code, § 9-502)

¹Municipal code reference
Privilege taxes: title 5.

CHAPTER 6

CABLE TELEVISION

SECTION

9-601. To be furnished under franchise.

9-601. To be furnished under franchise. Cable television service shall be furnished to the Town of Erwin and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the Town of Erwin and its inhabitants and the grantee of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.¹

¹For complete details relating to the cable television franchise agreement, see Ord. #464, dated December 1983 in the office of the town recorder.

CHAPTER 7

SEXUALLY ORIENTED BUSINESSES

SECTION

- 9-701. Purpose and findings.
- 9-702. Definitions.
- 9-703. Classification.
- 9-704. License required.
- 9-705. Issuance of license.
- 9-706. Fees.
- 9-707. Inspections.
- 9-708. Expiration of license.
- 9-709. Suspension.
- 9-710. Revocation.
- 9-711. Transfer of license.
- 9-712. Location of sexually oriented businesses.
- 9-713. Additional regulations for adult motels.
- 9-714. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms.
- 9-715. Additional regulations for escort agencies.
- 9-716. Additional regulations for nude model studios.
- 9-717. Additional regulations concerning public nudity.
- 9-718. Prohibition against children in a sexually oriented business.
- 9-719. Hours of operation.
- 9-720. Exemptions.
- 9-721. Violations and penalty.

9-701. Purpose and findings. (1) Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(2) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the board, and on findings incorporated in the cases of *City of*

Renton V. Playtime Theatres, Inc., 475 U.S. 41 (1986), *Young V. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes V. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney Generals Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the council finds:

(a) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(b) Certain employees of sexually oriented businesses defined in this chapter as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(c) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(d) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(e) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(f) At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, non A, non B amebiasis, salmonella infections and shigella infections.

(g) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States—six hundred (600) in 1982, two thousand two hundred (2,200) in 1983, four thousand six hundred (4,600) in 1984, eight thousand five hundred and fifty-five (8,555) in 1985 and two hundred fifty-three thousand, four hundred forty-eight (253,448) through December 31, 1992.

(h) There have been thousands of reported cases of AIDS in the State of Tennessee.

(i) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Tennessee.

(j) The number of cases of early (less than one (1) year) syphilis in the United States reported annually has risen, with thirty-three thousand, six hundred thirteen (33,613) cases reported in 1982 and forty-five thousand, two hundred (45,200) through November of 1990.

(k) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million (500,000) cases being reported in 1990.

(l) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

(m) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(n) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(o) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(p) The findings noted in subsections (2)(a) through (2)(o) raise substantial governmental concerns.

(q) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(r) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(s) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial

governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

(t) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(u) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(v) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this chapter is designed to prevent or who are likely to be witnesses to such activity.

(w) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this chapter.

(x) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(y) The general welfare, health, morals and safety of the citizens of the town will be promoted by the enactment of this chapter. (2005 Code, § 9-701)

9-702. Definitions. (1) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specific sexual activities" or "specific anatomical areas."

(2) "Adult bookstore, adult novelty store or adult video store" means a commercial establishment which, as one (1) of its principal purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore, adult novelty store, or adult video store." Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "adult bookstore, adult novelty store, or adult video store" so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(3) "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(a) Persons who appear in a state of nudity or semi-nude;

(b) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or

(c) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(4) "Adult motel" means a hotel, motel or similar commercial establishment which:

(a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;

(b) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(5) "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(7) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for delivery of goods to the premises.

(8) "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(9) "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one (1) of its primary business purposes for a fee, tip, or other consideration.

(10) "Establishment" means and includes any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(c) The additions of any sexually oriented business to any other existing sexually oriented business; or

(d) The relocation of any sexually oriented business.

(11) "Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

(12) "Nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" shall not include a proprietary school licensed by the State of Tennessee or a college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(a) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

(b) Where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(c) Where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.

(13) "Nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

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

(15) "Semi-nude" or in a "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(16) "Sexual encounter center" means a business or commercial enterprise that, as one (1) of its principal business purposes, offers for any form of consideration:

(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) Activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in a state of nudity or semi-nude.

(17) "Sexually oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(18) "Specified anatomical areas" means:

(a) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(b) Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(19) "Specified criminal activity" means any of the following offenses:

(a) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(b) For which:

(i) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the

conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense;

(iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period; and

(iv) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(20) "Specified sexual activities" means any of the following:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(c) Excretory functions as part of or in connection with any of the activities set forth in (20)(a) through (20)(b) above.

(21) "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this chapter takes effect.

(22) "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (2005 Code, § 9-702)

9-703. Classification. Sexually oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores, adult novelty stores, or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult theaters;

(7) Escort agencies;

- (8) Nude model studios; and
- (9) Sexual encounter centers. (2005 Code, § 9-703)

9-704. License required. (1) It is unlawful:

(a) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the town pursuant to this chapter.

(b) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the town pursuant to this chapter.

(c) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

(2) An application for a license must be made on a form provided by the town clerk.

(3) All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the town to determine whether the applicant meets the qualifications established in this chapter.

(4) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

(5) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

(i) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen (18) years of age;

(ii) A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any; or

(iii) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(b) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state:

- (i) The sexually oriented business's fictitious name; and
- (ii) Submit the required registration documents.

(c) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this chapter, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(d) Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter or other similar sexually oriented business ordinances from another town or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(e) Whether the applicant or a person residing with the applicant holds any other licenses under this chapter or other similar sexually oriented business ordinance from another town or county and, if so, the names and locations of such other licensed businesses.

(f) The single classification of license for which the applicant is filing.

(g) The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(h) The applicant's mailing address and residential address.

(i) A recent photograph of the applicant(s).

(j) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.

(k) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").

(l) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor

depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand feet (1,000') of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within one thousand feet (1,000') of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(m) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in § 9-714.

(6) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the town the following information:

- (a) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- (b) Age, date, and place of birth;
- (c) Height, weight, hair and eye color;
- (d) Present residence address and telephone number;
- (e) Present business address and telephone number;
- (f) Date, issuing state and number of driver's permit or other identification card information;
- (g) Social Security number; and
- (h) Proof that the individual is at least eighteen (18) years of age.

(7) Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

(a) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(b) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, town, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial,

revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(c) A statement whether the applicant has been convicted of a specified criminal activity as defined in this chapter and, if so, the specified criminal activity involved, the date, place and jurisdiction of each. (2005 Code, § 9-704)

9-705. Issuance of license. (1) Upon the filing of said application for a sexually oriented business employee license, the town shall issue a temporary license to said applicant. The application shall then be referred to the appropriate town departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the town shall issue a license, unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

(a) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(b) The applicant is under the age of eighteen (18) years;

(c) The applicant has been convicted of a "specified criminal activity" as defined in this chapter;

(d) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or

(e) The applicant has had a sexually oriented business employee license revoked by the town within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in § 9-710.

(2) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the town that the applicant has not been convicted of any "specified criminal activity" as defined in this chapter or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in § 9-706.

(3) Within thirty (30) days after receipt of a completed sexually oriented business application, the town shall approve or deny the issuance of a license to an applicant. The town shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

(a) An applicant is under eighteen (18) years of age.

(b) An applicant or a person with whom applicant is residing is overdue in payment to the town of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

(c) An applicant or a person with whom applicant is residing is overdue in payment to the town of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

(d) An applicant or a person with whom the applicant is residing has been denied a license by the town to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(e) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this chapter.

(f) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.

(g) The license fee required by this chapter has not been paid.

(h) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

(4) The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to § 9-703. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

(5) The health department, fire department, and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the town.

(6) A sexually oriented business license shall be issued for only one (1) classification as found in § 9-703. (2005 Code, § 9-705)

9-706. Fees. (1) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a one thousand dollar (\$1,000.00) non-refundable application and investigation fee.

(2) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the town an annual non-refundable license fee of five hundred dollars (\$500.00) within thirty (30) days of license issuance or renewal.

(3) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be

accompanied by an annual one thousand dollars (\$1,000.00) non-refundable application, investigation, and license fee. (2005 Code, § 9-706)

9-707. Inspections. (1) An applicant or licensee shall permit representatives of the police department, health department, fire department, building inspection department, or other town departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(2) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business. (2005 Code, § 9-707)

9-708. Expiration of license. (1) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in § 9-704. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

(2) When the town denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial, the town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final. (2005 Code, § 9-708)

9-709. Suspension. The town shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any section of this chapter.

(2) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter. (2005 Code, § 9-709)

9-710. Revocation. (1) The town shall revoke a license if a cause of suspension in § 9-709 occurs and the license has been suspended within the preceding twelve (12) months.

(2) The town shall revoke a license if it determines that:

(a) A licensee gave false or misleading information in the material submitted during the application process;

(b) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(c) A licensee has knowingly allowed prostitution on the premises;

(d) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(e) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or

(f) A licensee is delinquent in payment to the town, county, or state for any taxes or fees past due.

(3) When the town revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the town finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

(4) After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court. (2005 Code, § 9-710)

9-711. Transfer of license. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. (2005 Code, § 9-711)

9-712. Location of sexually oriented businesses. (1) A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than in an M-1 (Industrial) Zoning District as defined by the Town of Erwin Comprehensive Zoning Ordinance.

(2) A person commits an offense if the person operates or causes to be operated a sexually oriented business within one thousand feet (1,000') of:

(a) The property line of a church, cemetery, funeral home, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

(b) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

(c) A boundary of a residential district as defined in the Erwin Municipal Zoning Code;

(d) A public park or recreational area which has been designated for park or recreational activities including but not limited to

a park, playground, nature trails, swimming pool, reservoir, wilderness areas, or other similar public land within the town which is under the control, operation, or management of the town park and recreation authorities;

(e) The property line of a lot devoted to a residential use as defined in the zoning code;

(f) An entertainment business which is oriented primarily towards children or family entertainment; or

(g) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the state and town.

(3) A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand feet (1,000') of another sexually oriented business.

(4) A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(5) For the purpose of subsection (2) of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection (2). Presence of a town, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

(6) For purposes of subsection (3) of this section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

(7) Any sexually oriented business lawfully operating on April 1, 1998 that is in violation of subsection (1) through (6) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one thousand feet (1,000') of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is/are nonconforming. (2005 Code, § 9-712)

9-713. Additional regulations for adult motels. (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(2) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(3) For purposes of subsection (2) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration. (2005 Code, § 9-713)

9-714. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms. (1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(b) The application shall be sworn to be true and correct by the applicant.

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the town.

(d) It is the duty of the licensee of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(f) It shall be the duty of the licensee to ensure that the view area specified in subsection (1)(e) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1)(a) of this section.

(g) No viewing room may be occupied by more than one (1) person at any time.

(h) The premises shall be lighted with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) footcandles as measured at the floor level.

(i) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(j) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(k) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(l) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(m) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(n) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight inches (48") of the floor.

(2) A person having a duty under subsections (a) through (n) of subsection (1) above commits a misdemeanor if he knowingly fails to fulfill that duty. (2005 Code, § 9-714)

9-715. Additional regulations for escort agencies. (1) An escort agency shall not employ any person under the age of eighteen (18) years.

(2) A person commits an offense if the person acts an escort or agrees to act as an escort for any person under the age of eighteen (18) years. (2005 Code, § 9-701)

9-716. Additional regulations for nude model studios. (1) A nude model studio shall not employ any person under the age of eighteen (18) years.

(2) A person under the age of eighteen (18) years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

(3) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

(4) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. (2005 Code, § 9-716)

9-717. Additional regulations concerning public nudity. (1) It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

(2) It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet (10') from any patron or customer and on a stage at least two feet (2') from the floor.

(3) It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

(4) It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer. (2005 Code, § 9-717)

9-718. Prohibition against children in a sexually oriented business. A person commits a misdemeanor if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business. (2005 Code, § 9-718)

9-719. Hours of operation. No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 A.M. and 8:00 A.M. on weekdays and Saturdays. No sexually oriented business may remain open at any time between the hours of 1:00 A.M. Sunday and 12:00 midnight Sunday. (2005 Code, § 9-719)

9-720. Exemptions. It is a defense to prosecution under § 9-717 that a person appearing in a state of nudity did so in a modeling class operated:

(1) By a proprietary school, licensed by the State of Tennessee; a college, junior college, or university supported entirely or partly by taxation;

(2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) In a structure:

(a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;

(b) Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(c) Where no more than one (1) nude model is on the premises at any one (1) time. (2005 Code, § 9-720)

9-721. Violations and penalty. Any violation of this chapter shall subject the offender to a penalty under the general penalty provision of this municipal code. Each day a violation is allowed to continue shall constitute a separate offense. (2005 Code, § 9-721)

CHAPTER 8

MOBILE FOOD VEHICLE VENDORS¹

SECTION

- 9-801. Short title.
- 9-802. Definitions.
- 9-803. Scope.
- 9-804. License required.
- 9-905. Regulations.
- 9-906. Enforcement.

9-801. Short title. This chapter may be referred to as the Town of Erwin Mobile Food Vehicle Ordinance. (Ord. #716-20, March 2020)

9-802. Definitions. (1) "Mobile food vehicle." A mobile food vehicle which may upon issuance of a license by the city recorder and conformance with the regulations established by this chapter may temporarily park upon a public street or other public or private property and engage in the service, sale or distribution of ready to eat food for individual portion service to the general public directly from the vehicle.

(2) "Mobile food vehicle vendor." The registered owner of a mobile food vehicle or the owner's agent or employee; and referred to in this chapter as "vendor."

(3) "Operate." To "operate" or "operation" shall mean all activities associated with the conduct of business, including, but not limited to, set up, take down, and actual hours where the mobile food vehicle is open for business. (Ord. #716-20, March 2020)

9-803. Scope. The provisions of this chapter apply to mobile food vehicles engaged in the business of cooking, preparing, and distributing food or beverage with or without charge upon or in public and private restricted spaces. This chapter does not apply to vehicles which dispense food and that move from place to place and are stationary in the same location for no more than fifteen (15) minutes at a time, such as ice cream trucks, or food vending pushcarts and stands located on sidewalks. (Ord. #716-20, March 2020)

9-804. License required. (1) Any person, including any religious, charitable, or nonprofit organization operating a mobile food vehicle within the

¹Erwin food truck parking area maps, and any amendments thereto, may be found in the recorder's office.

town without having obtained from the city recorder a license for that purpose shall be unlawful.

(2) A person desiring to operate a mobile food vehicle shall make written application for such license to the city recorder. The application for a license shall be on forms provided by the city recorder and shall include the following:

(a) Name, signature, phone number, email contact, and business address of the applicant.

(b) A description of the preparation methods and food product offered for sale including the intended menu.

(c) Information on the mobile food vehicle to include year, make, and model of the vehicle and dimensions, which shall not exceed thirty-six feet (36') length or nine feet (9') in width, and color photographs of the unit including front, both sides, and rear.

(d) Information setting forth the proposed hours of operation, area of operations, plans for power access, water supply, and wastewater disposal.

(e) Proof of compliance with all health and sanitation regulations and requirements for food trucks/trailers and vending carts and for selling food and/or non-alcoholic beverages and copies of all required permits.

(f) A copy of health department approval.

(g) Written approval of the mobile food vehicle and its systems by the fire marshal, or equivalent approval by another local government entity and posted in the mobile food vehicle.

(h) A valid business license issued in Tennessee.

(i) Copy of valid government-issued driver's license for all drivers.

(j) Insurance coverage:

(i) Proof of general comprehensive liability policy with limits of no less than one million dollars (\$1,000,000.00) combined single limit coverage issued by an insurer licensed to do business in Tennessee and which names the Town of Erwin as an additional injured.

(ii) Proof of public liability and property damage motor vehicle policy with the minimum limits per state law, and issued by an insurer licensed to do business in Tennessee.

(iii) A license issued under this chapter shall not be transferrable from person to person.

(iv) A license is valid for one vehicle only and shall not be transferred between vehicles. (Ord. #716-20, March 2020)

9-805. Regulations. (1) No operator of a mobile food vehicle shall park, stand, or move a vehicle and conduct business within areas of the town where

the license holder has not been authorized to operate. The board of mayor and aldermen shall by ordinance identify those streets and public areas where parking by mobile food vehicles is permitted.

(2) The customer service area for mobile food vehicles shall be on the side of the truck that faces a curb, lawn or sidewalk when parked. No food service or customer service area shall be provided on the driving lane side of the truck. No food shall be prepared, sold, or displayed outside of mobile food vehicles area.

(3) No mobile food vehicle vendor shall provide or allow any dining area on the exterior of the mobile food vehicle when operating on public property or in the right-of-way, including but not limited to tables and chairs, booths, stools, benches, or stand up counters, unless approved by the fire marshal.

(4) Customers shall be provided with single service articles such as plastic utensils and paper plates and a waste container for their disposal. All mobile food vehicle vendors shall offer a waste container for public use which the vendor shall empty at its own expense. All trash and garbage originating from the operation of mobile food vehicles shall be collected and disposed of off-site by the operators each day. Spills of food or food by-products shall be cleaned up, and no dumping of gray water on the streets is allowed.

(5) No mobile food vehicle shall make or cause to be made any unreasonable or excessive noise. The operation of all mobile food vehicles shall meet the town noise ordinance, including generators. No loud music, other high-decibel sounds, horns, or amplified announcements are allowed.

(6) Signage is only allowed when placed on mobile food vehicles. No separate freestanding signs are permitted.

(7) No flashing or blinking lights, or strobe lights are allowed on mobile food vehicles or related signage when the vehicle is parked and engaged in serving customers. All exterior lights with over sixty (60) watts shall contain opaque, hood shields to direct the illumination downward.

(8) Mobile food vehicles when parked on public streets shall be parked in conformance with all applicable parking restrictions and shall not hinder the lawful parking or operation of other vehicles. Placement of mobile food vehicles and any related devices, including trailers, shall not obstruct or impede pedestrian or vehicular traffic, access to driveways, and sight distance for drivers.

(9) A mobile food vehicle shall not be parked on the street overnight or left unattended and unsecured at any time food is in the vehicle. Any mobile food vehicle found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.

(10) A vendor shall not operate a mobile food vehicle within two hundred feet (200') of any fair, festival, special event, or civic event that is licensed or sanctioned by the town unless the vendor has obtained written permission from the event sponsor.

(11) The issuance of a mobile food vehicle license does not grant or entitle the vendor to the exclusive use of any service route or parking space to the license holder, except where approved by the town.

(12) A vendor shall not operate on private property without first obtaining written consent to operate from the affected private property owner. A private property owner shall not permit operation of a mobile food vehicle on their property unless the operator is licensed by the town.

(13) When extended, awnings for mobile food vehicles shall have a minimum clearance of seven feet (7') between the ground level and the lowest point of the awning or support structure.

(14) Any power required for the mobile food vehicle operating on a public right-of-way shall be self-contained and a mobile food vehicle shall not use utilities drawn from the public right-of-way, except where approved by the town. Mobile food vehicles on private property may use electrical power from the property being occupied or an adjacent property, but only when the property owner provides written consent to do so. No power cable or equipment shall be extended at or across any public street, alley, or sidewalk unless properly secured with an electric cord cover.

(15) Mobile food vehicles shall not be parked within fifty feet (50') of an existing brick and mortar restaurant during the hours when such restaurant is open to the public for business.

(16) Each mobile food vehicle vendor shall display the following in a conspicuous manner: The mobile food vehicle permit issued by the town, a business license issued in Tennessee, all state and local health and sanitation permits, and all other permits required by law to be displayed.

(17) Mobile food vehicles must meet or exceed all food handling, equipment standards, maintenance, and sanitation requirements set forth by the State of Tennessee.

(18) Separation distances between mobile food vehicles shall be determined by the fire marshal.

(19) All mobile food vehicles must be equipped with a sufficient fire extinguisher that is certified annually by a licensed company. Additionally, mobile food vehicles that produce grease laden vapors (e.g., those with deep fat fryers or flat top griddles) must have a listed fire suppression system certified bi-annually by a licensed company. All certifications must be kept in the mobile food vehicle and must be able to make available immediately upon request.

(20) A vendor may only sell food or beverage items as described in the mobile food vehicle license application. The sale or distribution of merchandise and alcoholic beverages is prohibited. (Ord. #716-20, March 2020)

9-806. Enforcement. (1) Any license holder operating a mobile food vehicle in violation of any provision of this chapter or any rules and regulations promulgated by the town shall be subject to a civil fine of fifty dollars (\$50.00)

per day up to a total fine not to exceed five hundred dollars (\$500.00) per day. Each day a violation exists shall constitute a separate and distinct offense.

(2) Once a license has been issued it may be revoked, suspended, or not renewed by the city recorder for failure to comply with the provisions of this chapter and any rules or regulations promulgated by the town. (Ord. #716-20, March 2020)

TITLE 10**ANIMAL CONTROL**¹**CHAPTER**

1. IN GENERAL.
2. DOGS.

CHAPTER 1**IN GENERAL****SECTION**

- 10-101. Running at large prohibited.
- 10-102. Permit required for keeping.
- 10-103. Pen or enclosure to be kept clean.
- 10-104. Adequate food, water, and shelter, etc., to be provided.
- 10-105. Keeping in such manner as to become a nuisance prohibited.
- 10-106. Seizure and disposition of animals.
- 10-107. Inspections of premises.
- 10-108. Revocation of permits.
- 10-109. Violations and penalty.

10-101. Running at large prohibited. It shall be unlawful for any person owning or being in charge of any cows, swine, sheep, horses, mules, goats, or any chickens, ducks, geese, turkeys, or other domestic fowl, cattle, or livestock, knowingly or negligently to permit any of them to run at large in any street, alley, or unenclosed lot within the corporate limits. (2005 Code, § 10-101)

10-102. Permit required for keeping. No person shall keep any animals or fowls enumerated in the preceding section without a permit from the recorder. The recorder shall issue a permit only when the health officer, after an inspection, finds that the keeping of such animals or fowls, under the circumstances as set forth in the application for the permit, will not injuriously affect the public health. (2005 Code, § 10-102)

10-103. Pen or enclosure to be kept clean. When animals or fowls are kept within the corporate limits, the building, structure, corral, pen, or enclosure in which they are kept shall at all times be maintained in a clean and sanitary condition. (2005 Code, § 10-103)

¹Wherever this title mentions dogs it pertains to dogs and cats.

10-104. Adequate food, water, and shelter, etc., to be provided. No animal or fowl shall be kept or confined in any place where the food, water, shelter, and ventilation are not adequate and sufficient for the preservation of its health and safety.

All feed shall be stored and kept in a rat-proof and fly-tight building, box, or receptacle. (2005 Code, § 10-104)

10-105. Keeping in such manner as to become a nuisance prohibited. No animal or fowl shall be kept in such a place or condition as to become a nuisance because of noise, odor, contagious disease, or other reason. (2005 Code, § 10-105)

10-106. Seizure and disposition of animals. Any animal or fowl found running at large or otherwise being kept in violation of this chapter may be seized by the health officer or by any police officer and confined in a pound provided or designated by the board of mayor and aldermen. If the owner is known he shall be given notice in person, by telephone, or by a postcard addressed to his last-known mailing address. If the owner is not known or cannot be located, a notice describing the impounded animal or fowl will be posted in at least three (3) public places within the corporate limits. In either case, the notice shall state that the impounded animal or fowl must be claimed within five (5) days by paying the pound costs or the same will be humanely destroyed or sold. If not claimed by the owner, the animal or fowl shall be sold or humanely destroyed, or it may otherwise be disposed of as authorized by the board of mayor and aldermen.

The pound keeper shall be entitled to collect from each person claiming an impounded animal or fowl reasonable fees, in accordance with a schedule approved by the board of mayor and aldermen, to cover the costs of impoundment and maintenance. (2005 Code, § 10-107)

10-107. Inspections of premises. For the purpose of making inspections to ensure compliance with the provisions of this title, the health officer, or his authorized representative, shall be authorized to enter, at any reasonable time, any premises where he has reasonable cause to believe an animal or fowl is being kept in violation of this chapter. (2005 Code, § 10-108)

10-108. Revocation of permits. When any permittee is convicted of violating any provision of this chapter and fails to correct the offending situation within a reasonable period of time the recorder shall revoke his permit and promptly notify him of such revocation. (2005 Code, § 10-109)

10-109. Violations and penalty. Any violation of any section of this chapter shall subject the offender to a penalty under the general penalty

provision of this code. Each day the violation shall continue shall constitute a separate offense.

CHAPTER 2

DOGS

SECTION

- 10-201. Rabies vaccination and registration required.
- 10-202. Dogs to wear tags.
- 10-203. Running at large prohibited.
- 10-204. Vicious dogs.
- 10-205. Noisy dogs prohibited.
- 10-206. Confinement of dogs suspected of being rabid.
- 10-207. Seizure and disposition of dogs.
- 10-208. Establishment and duties of rabies control officer.
- 10-209. Excrement.
- 10-210. Violations and penalty.

10-201. Rabies vaccination and registration required. It shall be unlawful for any person to own, keep, or harbor any dog without having the same duly vaccinated against rabies and registered in accordance with the provisions of the "Tennessee Anti-Rabies Law" (*Tennessee Code Annotated*, §§ 68-8-101 to 68-8-114) or other applicable law. (2005 Code, § 10-201)

10-202. Dogs to wear tags. It shall be unlawful for any person to own, keep, or harbor any dog which does not wear a tag evidencing the vaccination and registration required by the preceding section. (2005 Code, § 10-202)

10-203. Running at large prohibited.¹ It shall be unlawful for any person knowingly to permit any dog owned by him or under his control to run at large within the corporate limits. (2005 Code, § 10-203)

10-204. Vicious dogs. (1) Definition of terms:

(a) "Owner" means any person, firm, corporation, organization or department possessing or harboring or having the care or custody of a dog, or the parents or guardian of a child claiming ownership.

(b) "Vicious dog" means:

(i) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals; or

(ii) Any dog which because of its size, physical nature, or vicious propensity is capable of inflicting serious physical harm or

¹State law reference

Tennessee Code Annotated, §§ 68-8-108 and 68-8-109.

death to humans and which would constitute a danger to human life or property if it were not kept in the manner required by this ordinance; or

(iii) Any dog which, without provocation, attacks or bites, or has attacked or bitten, a human being or domestic animal; or

(iv) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting;

(c) A vicious dog is "unconfined" if the dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the dog. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition.

(2) Confinement. The owner of a vicious dog shall not suffer or permit the dog to go unconfined.

(3) Leash and muzzle. The owner of a vicious dog shall not suffer or permit the dog to go beyond the premises of the owner unless the dog is securely muzzled and restrained by a chain or leash, and under the physical restraint of a person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

(4) Signs. The owner of a vicious dog shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a vicious dog on the premises. A similar sign is required to be posted on the pen or kennel of the animal.

(5) Dog fighting. No person, firm, corporation, organization or department shall possess or harbor or maintain care or custody of any dog for the purpose of dog fighting, or train, torment, badger, bait or use any dog for the purpose of causing or encouraging the dog to attack human beings or domestic animals.

(6) Insurance. Owners of vicious dogs must within thirty (30) days of the effective date of this section provide proof to the city/town clerk of public liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00), insuring the owner for any personal injuries inflicted by his or her vicious dog.

(7) Penalties. Whoever violates any provision of this section shall be guilty of a gross misdemeanor and may be punished by a fine of not less than ten dollars (\$10.00) and not more than fifty dollars (\$50.00). The conviction of any owner of three (3) or more offenses under this chapter for any dog during one (1) calendar year shall require a confiscation and forfeiture of that animal

based on the danger and incorrigibility of owner and animal. Failure to abide by a lawful order of forfeiture is punishable by contempt.

10-205. Noisy dogs prohibited. No person shall own, keep, or harbor any dog which, by loud and frequent barking, whining, or howling, annoys, or disturbs the peace and quiet of any neighborhood. (2005 Code, § 10-205)

10-206. Confinement of dogs suspected of being rabid. If any dog has bitten any person or is suspected of having bitten any person or is for any reason suspected of being infected with rabies, the rabies control officer, health officer or chief of police may cause such dog to be confined or isolated, at the owner's expense, for such time as the officer deems reasonably necessary to determine if such dog is rabid. (2005 Code, § 10-206)

10-207. Seizure and disposition of dogs. Any dog found running at large may be seized by the rabies control officer, the health officer, or any similarly appointed officer or any police officer and placed in a pound provided or designated by the board of mayor and aldermen. If said dog is wearing a tag the owner shall be notified in person, by telephone, or by a postcard addressed to his last-known mailing address to appear within five (5) days and redeem his dog by paying a reasonable pound fee, in accordance with a schedule approved by the board of mayor and aldermen, or the dog will be humanely destroyed or sold. If said dog is not wearing a tag it shall be humanely destroyed or sold unless legally claimed by the owner within two (2) days. No dog shall be released in any event from the pound unless or until such dog has been vaccinated and had a tag evidencing such vaccination placed on its collar.

When reasonably necessary in order to retrieve or capture a dog running at large, the impounding officer may use any humane means such as a "snare," "dart gun," or other similar equipment. Neither the officer nor the Town of Erwin shall be held liable if a dog running at large is accidentally injured or destroyed in the process of being impounded. (2005 Code, § 10-207)

10-208. Establishment and duties of rabies control officer. There is hereby created in the Town of Erwin the position of rabies control officer. Said rabies control officer shall have all authority and powers given to "health officers," under "The Tennessee Anti-Rabies Law," *Tennessee Code Annotated*, §§ 68-8-101 to 68-8-114. (2005 Code, § 10-208)

10-209. Excrement. A dog owner shall clean up and remove any excrement left by his or her dog(s) on any public property or private property not owned or lawfully possessed by the dog owner. Violation of this section shall be punishable by a fifty dollar (\$50.00) fine. (Ord. #735-22, Aug. 2022)

10-210. Violations and penalty. Any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable under the general penalty provision of this code. Each day a violation shall be allowed to continue shall constitute a separate offense.

TITLE 11

MUNICIPAL OFFENSES¹

CHAPTER

1. ALCOHOL.
2. OFFENSES AGAINST THE PEACE AND QUIET.
3. FIREARMS, WEAPONS AND MISSILES.
4. TRESPASSING AND INTERFERENCE WITH TRAFFIC.
5. LITTERING.

CHAPTER 1

ALCOHOL²

SECTION

- 11-101. Drinking beer, etc., on streets, etc.
 11-102. Minors in beer places.
 11-103. Violations and penalty.

11-101. Drinking beer, etc., on streets, etc. It shall be unlawful for any person to drink or consume, or have an open can or bottle of beer or intoxicating liquor in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground, or other public place, except in a permitted outdoor use area with a permitted special event or town sponsored activity, or in a permitted outdoor use area with a restaurant or establishment with a current alcoholic beverage commission permit and town beer permit. (Ord. #687-17, May 2017)

¹Municipal code references

Animal control: title 10.

Fireworks and explosives: title 7.

Residential and utility codes: title 12.

Streets and sidewalks (non-traffic): title 16.

Traffic offenses: title 15.

²Municipal code reference

Sale of alcoholic beverages, including beer: title 8.

State law reference

See *Tennessee Code Annotated* § 33-10-203 (*Arrest for Public Intoxication*, cities may not pass separate legislation).

11-102. Minors in beer places. No person under twenty-one (21) years of age shall loiter in or around, work in, or otherwise frequent any place where beer is sold at retail for consumption on the premises. (2005 Code, § 11-102, modified)

11-103. Violations and penalty. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code.

CHAPTER 2

OFFENSES AGAINST THE PEACE AND QUIET

SECTION

11-201. Anti-noise regulations.

11-201. Anti-noise regulations. Subject to the provisions of this section, the creating of any unreasonably loud, disturbing, and unnecessary noise is prohibited. Noise of such character, intensity, or duration as to be detrimental to the life or health of any individual, or in disturbance of the public peace and welfare is prohibited.

(1) Miscellaneous prohibited noises enumerated. The following acts, among others, are declared to be loud, disturbing, and unnecessary noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:

(a) Radios, etc. The playing of any radio, or any musical instrument or sound device, including but not limited to loudspeakers or other devices for reproduction or amplification of sound, either independently of or in connection with motion pictures, radio, or television, in such a manner or with such volume, particularly during the hours between 11:00 P.M. and 7:00 A.M., as to annoy or disturb the quiet, comfort, or repose of persons in any office or hospital, or in any dwelling, hotel, or other type of residence, or of any person in the vicinity.

(b) Yelling, shouting, etc. Yelling, shouting, whistling, or singing on the public streets, particularly between the hours of 11:00 P.M. and 7:00 A.M. or at any time or place so as to annoy or disturb the quiet, comfort, or repose of any persons in any hospital, dwelling, hotel, or other type of residence, or of any person in the vicinity.

(c) Pets. The keeping of any animal, bird, or fowl, which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.

(d) Use of vehicle. The use of any automobile, motorcycle, truck, or vehicle so out of repair, so loaded, or in such manner as to cause loud and unnecessary grating, grinding, rattling, or other noise.

(e) Blowing whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper municipal authorities.

(f) Exhaust discharge. To discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, or boat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(g) Building operations. The erection (including excavation), demolition, alteration, or repair of any building in any residential area or section or the construction or repair of streets and highways in any residential area or section, other than between the hours of 7:00 A.M. and 6:00 P.M. on weekdays, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building inspector granted for a period while the emergency continues not to exceed thirty (30) days. If the building inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration, or repair of any building or the excavation of streets and highways between the hours of 6:00 P.M. and 7:00 A.M. and if he shall further determine that loss or inconvenience would result to any party in interest through delay, he may grant permission for such work to be done between the hours of 6:00 P.M. and 7:00 A.M. upon application being made at the time the permit for the work is awarded or during the process of the work.

(h) Noises near schools, hospitals, churches, etc. The creation of any excessive noise on any street adjacent to any hospital or adjacent to any school, institution of learning, church, or court while the same is in session.

(i) Loading and unloading operations. The creation of any loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates, and other containers.

(j) Noises to attract attention. The use of any drum, loudspeaker, or other instrument or device emitting noise for the purpose of attracting attention to any performance, show, or sale, or display of merchandise.

(k) Loudspeakers or amplifiers on vehicles. The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other purposes.

(2) Exceptions. None of the terms or prohibitions hereof shall apply to or be enforced against:

(a) Municipal vehicles. Any vehicle of the town while engaged upon necessary public business.

(b) Repair of streets, etc. Excavations or repairs of bridges, streets, or highways at night, by or on behalf of the town, the county, or the state, when the public welfare and convenience renders it impracticable to perform such work during the day.

(c) Noncommercial and nonprofit use of loudspeakers or amplifiers. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character and in the course of advertising functions sponsored by nonprofit organizations. However, no such use shall be made until a permit therefor is secured

from the recorder. Hours for the use of an amplifier or public address system will be designated in the permit so issued and the use of such systems shall be restricted to the hours so designated in the permit. (2005 Code, § 11-302, modified)

CHAPTER 3**FIREARMS, WEAPONS AND MISSILES****SECTION**

11-301. Air rifles, etc.

11-302. Weapons and firearms generally.

11-301. Air rifles, etc. It shall be unlawful for any person in the town to discharge any air gun, air pistol, air rifle, "BB" gun, or sling shot capable of discharging a metal bullet or pellet, whether propelled by spring, compressed air, expanding gas, explosive, or other force-producing means or method. (2005 Code, § 11-501)

11-302. Weapons and firearms generally. It shall be unlawful for any unauthorized person to discharge a firearm within the town. (2005 Code, § 11-503)

CHAPTER 4

TRESPASSING AND INTERFERENCE WITH TRAFFIC

SECTION

11-401. Trespassing.

11-402. Trespassing on trains.

11-403. Interference with traffic.

11-401. Trespassing. The owner or person in charge of any lot or parcel of land or any building or other structure within the corporate limits may post the same against trespassers. It shall be unlawful for any person to go upon any such posted lot or parcel of land or into any such posted building or other structure without the consent of the owner or person in charge.

It shall also be unlawful and deemed to be a trespass for any peddler, canvasser, solicitor, transient merchant, or other person to fail to leave promptly the private premises of any person who requests or directs him to leave. (2005 Code, § 11-601)

11-402. Trespassing on trains. It shall be unlawful for any person to climb, jump, step, stand upon, or cling to, or in any other way attach himself to any locomotive engine or railroad car unless he works for the railroad corporation and is acting in the scope of his employment or unless he is a lawful passenger or is otherwise lawfully entitled to be on such vehicle. (2005 Code, § 11-602)

11-403. Interference with traffic. It shall be unlawful for any person to stand, sit, or engage in any activity whatever on any public street, sidewalk, bridge, or public ground in such a manner as to prevent, obstruct, or interfere unreasonably with the free passage of pedestrian or vehicular traffic thereon. (2005 Code, § 11-603)

CHAPTER 6

LITTERING

SECTION

- 11-601. Definitions.
- 11-602. Littering offenses.
- 11-603. Scope of regulation.
- 11-604. Violations and penalty.

11-601. Definition. As used in this chapter, unless the context otherwise requires:

- (1) "Garbage" includes putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food;
- (2) "Litter" includes garbage, refuse, rubbish and all other waste material, including a tobacco product as defined in *Tennessee Code Annotated*, § 39-17-1503(11) and any other item primarily designed to hold or filter a tobacco product while the tobacco is being smoked.
- (3) "Refuse" includes all putrescible and nonputrescible solid waste; and
- (4) "Rubbish" includes nonputrescible solid waste consisting of both combustible and non-combustible waste.

11-602. Littering offenses. (1) A person commits the civil offense of littering who:

- (a) Knowingly places, drops or throws litter on any public or private property without permission and does not immediately remove it;
 - (b) Negligently places or throws glass or other dangerous substances on or adjacent to water to which the public has access for swimming or wading, or on or within fifty feet (50') of a public highway; or
 - (c) Negligently discharges sewage, minerals, oil products or litter into any public waters or lakes within this state.
- (2) Whenever litter is placed, dropped, or thrown from any motor vehicle, boat, airplane, or other conveyance in violation of this section, the city/town judge may, in his or her discretion and in consideration of the totality of the circumstances, infer that the operator of the conveyance has committed littering.
- (3) Whenever litter discovered on public or private property is found to contain any article or articles, including, but not limited to, letters, bills, publications, or other writings that display the name of a person thereon in such a manner as to indicate that the article belongs or belonged to such person, the city/town judge may, in his or her discretion and in consideration of the totality of the circumstances, infer that such person has committed littering.

11-603. Scope of regulation. The regulation of litter in this chapter is limited to amounts of litter less than or equal to five pounds (5 lbs.) in weight or seven and one-half (7.5) cubic feet in volume.¹

11-604. Violations and penalty. Littering is a civil offense punishable by a penalty under the general penalty provision of this code.

¹State law reference
Tennessee Code Annotated, § 39-14-503.

TITLE 12

BUILDING, UTILITY, ETC. CODES

CHAPTER

1. BUILDING CODE.
2. PLUMBING CODE.
3. PROPERTY MAINTENANCE CODE.
4. FUEL GAS CODE.
5. RESIDENTIAL CODE.
6. SWIMMING POOL AND SPA CODE.
7. EXISTING BUILDING CODE.
8. MECHANICAL CODE.
9. ENERGY CONSERVATION CODE.
10. ACCESSIBILITY CODE.

CHAPTER 1

BUILDING CODE¹

SECTION

- 12-101. Building code adopted.
 12-102. Modifications.
 12-103. Violations and penalty.

12-101. Building code adopted. Pursuant to the authority granted by *Tennessee Code Annotated*, § 6-54-502, that certain document, one (1) copy of which is on file in the office of the Town Recorder of the Town of Erwin, being marked and designated as the *International Building Code*² (IBC), 2018 edition including the Appendix Chapters F and G and ICC A117.1-2009, as published without amendment, by the International Code Council, be and is hereby adopted as the building code of the Town of Erwin for regulating and governing the conditions and maintenance of all property, building and structures; by providing the standards for supplied utilities and facilities and other physical

¹Municipal code references

Fire protection, fireworks, and explosives: title 7.

Planning and zoning: title 14.

Streets and other public ways and places: title 16.

Utilities and services: title 18.

²Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said building code on file in the office of the Town of Erwin are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions and changes, if any, prescribed in § 12-102 of this chapter. (Ord. #689-17, May 2017, modified, as amended by Ord. #725-21, June 2021)

12-102. Modifications. The following sections of the *International Building Code*, 2018 edition, are hereby modified and revised:

- (1) Section 101.1. Insert: "Town of Erwin."
- (2) Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense. (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-103. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense. (Ord. #689-17, May 2017)

CHAPTER 2

PLUMBING CODE¹

SECTION

- 12-201. Plumbing code adopted.
- 12-202. Modifications.
- 12-203. Violations and penalty.

12-201. Plumbing code adopted. Pursuant to the authority granted by *Tennessee Code Annotated*, § 6-54-502, that certain document one (1) copy of which is on file in the office of the Town Recorder of the Town of Erwin, being marked and designated as the *International Plumbing Code (IPC)*,² 2018 edition including appendix chapters D, E and F, without amendment, as published by the International Code Council, be and is hereby adopted as the Plumbing Code of the Town of Erwin, in the State of Tennessee regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of plumbing systems as herein provided; providing for the issuance of permits and collection of fees therefor; and each are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions, and changes, if any, prescribed in § 12-202 of this chapter. (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-202. Modifications. The following sections of the *International Plumbing Code*, 2018 edition, are hereby modified and revised:

Section 101.1. Insert: "Town of Erwin." (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-203. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each

¹Municipal code references

Cross-connections: title 18.

Street excavations: title 16.

Wastewater treatment: title 18.

Water and sewer system administration: title 18.

²Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

day that a violation continues after due notice has been served shall be deemed a separate offense. (Ord. #689-17, May 2017)

CHAPTER 3

PROPERTY MAINTENANCE CODE

SECTION

- 12-301. Property maintenance code adopted.
- 12-302. Modifications.
- 12-303. Violations and penalty.

12-301. Property maintenance code adopted. Pursuant to the authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, that certain document one (1) copy of which is on file in the office of the Town Recorder of the Town of Erwin, being marked and designated as the *International Property Maintenance Code (IPMC)*,¹ 2018, as published by the International Code Council, be and is hereby adopted as the Property Maintenance Code of the Town of Erwin, in the State of Tennessee regulating the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions, and changes, if any, prescribed in § 12-302 of this chapter.

12-302. Modifications. The following sections of the *International Property Maintenance Code*, 2018 edition, are hereby modified and revised:
Section 101.1. Insert: "Town of Erwin."

12-303. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense.

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

CHAPTER 4

FUEL GAS CODE

SECTION

- 12-401. Fuel gas code adopted.
- 12-402. Modifications.
- 12-403. Violations and penalty.

12-401. Fuel gas code adopted. Pursuant to the authority granted by *Tennessee Code Annotated*, § 6-54-502, that certain document, one (1) copy of which is on file in the office of the Town Recorder of the Town of Erwin, being marked and designated as the *International Fuel Gas Code*, (IFGC),¹ 2018 edition, including appendix chapters A, B, C and D, without amendment, as published by the International Code Council, be and is hereby adopted as the Fuel Gas Code of the Town of Erwin, in the State of Tennessee for regulating and governing fuel gas systems and gas-fired appliances as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said fuel gas code on file in the office of the Town of Erwin are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions and changes, if any, prescribed in § 12-402 of this chapter. (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-402. Modifications. The following sections *International Fuel Gas Code*, 2018 edition, are hereby modified and revised:

Section 101.1. Insert: "Town of Erwin." (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-403. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense. (Ord. #689-17, May 2017)

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

CHAPTER 5

RESIDENTIAL CODE

SECTION

- 12-501. Residential code adopted.
- 12-502. Modifications.
- 12-503. Violations and penalty.

12-501. Residential code adopted. Pursuant to the authority granted by *Tennessee Code Annotated*, § 6-54-502, that certain document, one (1) copy of which is on file in the office of the Town Recorder of the Town of Erwin, being marked and designated as the *International Residential Code (IRC)*,¹ 2018 edition, including appendix chapters A, B, C, E, G, J, K, N, P, and Q, with the following amendments, as published by the International Code Council, be and is hereby adopted as the Residential Code of the Town of Erwin, in the State of Tennessee for regulating and governing the construction, alteration, movement, enlargement, replacement, repair, equipment, location, removal and demolition of detached one- and two-family dwellings and multiple single family dwellings (townhouses) not more than three (3) stories in height with separate means of egress as herein provided; providing for the issuance of permits and collection of fees there for; and each and all of the regulations, provisions, penalties, conditions, and terms of said residential code on file in the office of the Town of Erwin, are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions and changes, if any, prescribed in § 12-106 of this chapter. (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-502. Modifications. The following sections of the *International Residential Code*, 2018 edition, are hereby modified and revised:

- (1) Section R313. Automatic Fire Sprinkler Systems is not mandatory, Pursuant to T.C.A 68-120-101 (a)(8).
- (2) Chapters 34-43 relating to electrical installations are deleted and electrical standards adopted in State of Tennessee rule 0780-02-01 Electrical Installations shall apply.
- (3) Figure R301.2(2). Seismic Design Categories is deleted and replaced with Figure R301.2(2) Seismic design Categories Site Class D from the 2015 edition of the IRC.
- (4) Section R314.6. Power Source relating to Smoke Alarms is amended to create exception #3 that shall read:

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

Exception 3. Interconnection and hardwiring of smoke alarms in existing areas shall not be required where the alterations or repairs do not result in the removal of interior walls or ceiling finishes exposing the structure.

- (5) Section N1102.4.1.2 (R402.4.1.2). Testing is replaced with Section N1102.4.2.1 Testing Option and Section N1102.4.2.2 Visual Inspection from the 2009 IRC.
- (6) Section N1103.3.3 (R403.3.3). Duct Testing (Mandatory) and Section N1103.3.4 (R403.3.4) Duct Leakage (Prescriptive) are optional.
- (7) Table N1102.1.2 (R402.1.2). Insulation and Fenestration Requirement by Component and Table N1102.1.4 (R402.1.4) Equivalent U-Factors from IRC are replaced with Table N1102.1 Insulation and Fenestration Requirements by Component and Table N1102.1.2 Equivalent U- Factor from the 2009 IRC.
- (8) Section N1102.4.4 (R402.4.4). Rooms Containing Fuel-Burning Appliances is deleted in its entirety.
- (9) Table N1102.1. Insulation and Fenestration Requirements by Component in the 2009 edition is adopted and amended by adding the following as Footnote "L": "Log walls complying with ICC 400 and with a minimum average wall thickness of 5" or greater shall be permitted in Zone 4 When a fenestration U-Factor of .35 or lower is used, a skylight U-Factor of .60 or lower is used, a 90 AFUE Furnace is used, an 85 AFUE Boiler is used, and a 9.0 HSPF Heat Pump (Heating) and 15 SEER (Colling) are used. This table replaces Table N1102.1.2 (R402.1.2) of the 2018 IRC. (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-503. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense.

CHAPTER 6

SWIMMING POOL AND SPA CODE¹

SECTION

- 12-601. Swimming pool and spa code adopted.
- 12-602. Modifications.
- 12-603. Violations and penalty.

12-601. Swimming pool and spa code adopted. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of setting standards for the design, construction, or installation, alteration, repair or alterations of swimming pools, public or private and equipment related thereto. The *International Swimming Pool and Spa Code*, (ISPSC),² 2018 edition, without amendment, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the swimming pool code. In the event that any matters in said swimming pool code are contrary to any existing ordinances of the Town of Erwin, the swimming pool code shall prevail and any sections or subsections of any existing Town of Erwin ordinances that are inconsistent therewith, are hereby repealed in that respect only. (2005 Code, § 12-701, as amended by Ord. #725-21, June 2021)

12-602. Modifications. Within said swimming pool and spa code, when reference is made to the duties of a certain official named therein, the designated official of the Town of Erwin who has duties corresponding to those of the named official in said swimming pool code shall be deemed to be the responsible official insofar as enforcing the provisions of said swimming pool code are concerned. (2005 Code, § 12-702, modified)

12-603. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each

¹Municipal code references

Fire protection, fireworks, and explosives: title 7.

Planning and zoning: title 14.

Streets and other public ways and places: title 16.

Utilities and services: title 18.

²Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

day that a violation continues after due notice has been served shall be deemed a separate offense.

CHAPTER 7

EXISTING BUILDING CODE

SECTION

- 12-701. Existing building code adopted.
- 12-702. Modifications.
- 12-703. Violations and penalty.

12-701. Existing building code adopted. Pursuant to the authority granted by *Tennessee Code Annotated*, § 6-54-502, that certain document, one (1) copy of which is on file in the office of the Town Recorder of the Town of Erwin, being marked and designates as the *International Existing Building Code* (IEBC)¹, 2018 edition, without amendment, as published by the International Code Council, be and is hereby adopted as the Existing Building Code of the Town of Erwin, in the State of Tennessee for regulating and governing the repair, alteration, change of occupancy, addition, and relocation of existing buildings, including historic buildings, as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said existing building code on file in the office of the Town of Erwin are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions and changes, if any, prescribed in § 12-104 of this chapter. (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-702. Modifications. The following sections of the *International Existing Building Code*, 2018 edition, are hereby modified and revised:
Section 101.1. Insert: "Town of Erwin." (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-703. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense.

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

CHAPTER 8

MECHANICAL CODE¹

SECTION

- 12-801. Mechanical code adopted.
- 12-802. Modifications.
- 12-903. Violations and penalty.

12-801. Mechanical code adopted. Pursuant to the authority granted by *Tennessee Code Annotated*, § 6-54-502, that certain document, one (1) copy of which is on file in the office of the Town Recorder of the Town of Erwin, being marked and designated as the *International Mechanical Code (IMC)*,² 2012 edition, including appendix chapter A, without amendment, as published by the International Code Council, be and is hereby adopted as the Mechanical Code of the Town of Erwin, in the State of Tennessee regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of mechanical systems as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said mechanical code on file in the office of the Town of Erwin are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions, and changes, if any, prescribed in § 12-802 of this chapter. (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-802. Modifications. The following sections of the *International Mechanical Code*, 2018 edition, are hereby modified and revised:

Section 101.1. Insert: "Town of Erwin." (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-803. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each

¹Municipal code references

Street excavations: title 16.

Wastewater treatment: title 18.

Water and sewer system administration: title 18.

²Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

day that a violation continues after due notice has been served shall be deemed a separate offense. (Ord. #689-17, May 2017)

CHAPTER 9

ENERGY CONSERVATION CODE

SECTION

- 12-901. Energy conservation code adopted.
- 12-902. Modifications.
- 12-903. Violations and penalty.

12-901. Energy conservation code adopted. Pursuant to the authority granted by *Tennessee Code Annotated*, § 6-54-502, that certain document, one (1) copy of which is on file in the office of the Town Recorder of the Town of Erwin, being marked and designated as the *International Energy Conservation Code* (IECC),¹ 2018 edition, with the following amendments, as published by the International Code Council, be and is hereby adopted as the Energy Conservation Code of the Town of Erwin in the State of Tennessee for regulating and governing energy efficient building envelopes and installation of energy efficient mechanical, lighting, and power systems as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said energy conservation code on file in the office of the Town of Erwin are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions and changes, if any, prescribed in § 12-802 of this chapter. (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

12-902. Modifications. The following sections of the *International Energy Conservation Code*, 2018 edition, are hereby modified and revised:

- (1) Section R402.4.1.2. Testing is deleted and replaced with Section 402.4.2.1 Testing Option and Section 402.4.2.2 Visual Inspection Option from the 2009 IECC.
- (2) Section R403.3.3., Duct Testing (Mandatory) and Section R403.3.4 Duct Leakage (Prescriptive) are optional.
- (3) Table 402.1.2. Insulation and Fenestration Requirements by Component and Table R402.1.4 Equivalent U-Factors are deleted and replaced with Table 402.1.1 Insulation and Fenestration Requirements by Component and Table 402.1.3 Equivalent U-Factors 2009 IECC. (Ord. #689-17, May 2017, as amended by Ord. #725-21, June 2021)

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

12-903. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense. (Ord. #689-17, May 2017)

CHAPTER 10**ACCESSIBILITY CODE**¹**SECTION**

12-1001. Accessibility code adopted.

12-1002. Violations and penalty.

12-1001. Accessibility code adopted. The *State of North Carolina Accessibility Code*, 2002 edition, with 2004 amendments, is hereby adopted into this code. (Ord. #633-07, Jan. 2008)

12-1002. Violations and penalty. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or work in violation of the approved construction documents or directive of the code official, is punishable by a fine of not more than fifty dollars (\$50.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense.

¹The *State of North Carolina Accessibility Code*, 2002 edition, with 2004 amendments, is on file and available to view in the office of the town recorder.

TITLE 13

PROPERTY MAINTENANCE REGULATIONS¹

CHAPTER

1. MISCELLANEOUS.
2. JUNKED MOTOR VEHICLES.
3. SLUM CLEARANCE.
4. VACANT BUILDING ENFORCEMENT PROGRAM.

CHAPTER 1

MISCELLANEOUS

SECTION

- 13-101. Health officer.
- 13-102. House trailers.
- 13-103. Temporary/permanent structures.
- 13-104. Smoke, soot, cinders, etc.
- 13-105. Stagnant water.
- 13-106. Garage/yard sales.
- 13-107. Garage/yard sale signs.
- 13-108. Dead animals.
- 13-109. Health and sanitation nuisances.
- 13-110. Automobile wrecking and junkyards.
- 13-111. Prohibited practices.
- 13-112. Duty of owner and occupant to clear on notice.
- 13-113. Hearing rights.
- 13-114. Appeals.
- 13-115. Town's right to remedy violations; collection of costs.
- 13-116. Brush.
- 13-117. Permit required.
- 13-118. Application for permit.
- 13-119. Issuance or refusal of permit.
- 13-120. Enforcement.
- 13-121. Appeal.
- 13-122. Violations and penalty.

¹Municipal code references

Animal control: title 10.

International Property Maintenance Code: title 12, chapter 3.

Littering streets, etc.: § 16-107.

13-101. Health officer. The "health officer" shall be such municipal, county, or state officer as the board of mayor and aldermen shall appoint or designate to administer and enforce health and sanitation regulations within the town. (Ord. #648-09, Jan. 2010)

13-102. House trailers. It shall be unlawful for any person to occupy any house trailer or portable building unless it complies with all plumbing, electrical, sanitary, and building provisions applicable to stationary structures. The proposed location of the house trailer or portable building shall also conform to the zoning provisions of the town and a permit shall have been first obtained from the building official, as provided for in the building code, before it may be occupied. (Ord. #648-09, Jan. 2010)

13-103. Temporary/permanent structures. Any structure including, but not limited to outbuildings, carports and structures with poles, that remain assembled and standing for thirty (30) days or more shall be considered a permanent structure. The property owner shall be required to obtain a building permit for such structures and the structure shall be required to meet all requirements of the building permit. (Ord. #648-09, Jan. 2010)

13-104. Smoke, soot, cinders, etc. It shall be unlawful for any person to permit or cause the escape of such quantities of dense smoke, soot, cinders, noxious acids, fumes, dust, or gases as to be detrimental to or to endanger the health, comfort and safety of the public or so as to cause or have a tendency to cause injury or damage to property or business. (Ord. #648-09, Jan. 2010)

13-105. Stagnant water. It shall be unlawful for any person knowingly to allow any stagnant water to accumulate and stand on their property without treating it so as effectively to prevent the breeding of mosquitoes. (Ord. #648-09, Jan. 2010)

13-106. Garage/yard sales. Garage/yard sales are permitted when conducted by the owners or tenants of the property, provided that no person is compensated for conducting the sale. No more than four (4) garage/yard sales shall occur at the same location in any calendar year, and the duration of a single garage/yard shall not exceed two (2) days. Additionally, one (1) auction or other sale to dispose of the household assets of a deceased resident or a resident who is relocating may be held at the resident's home, and the person or agency conducting such a sale may be compensated. No sale of merchandise purchased for resale shall be permitted at a garage/yard sale. The restriction of no more than four (4) garage/yard sales per calendar year shall not apply to fundraising events held on the property of nonprofit organizations and any garage/yard sale held in districts that are zoned B or M1. (Ord. #648-09, Jan. 2010)

13-107. Garage/yard sale signs. Garage/yard sale signs shall not be placed on any public property including right-of-way, street sign posts, or power/telephone poles. Signs may be located only on private property and only displayed during the actual days of the sale. "Public property" is defined as the space between sidewalks and the street (known as the parkway), between power poles and the street, and the area between the private property boundary line and the street. (Ord. #648-09, Jan. 2010)

13-108. Dead animals. Any person owning or having possession of any dead animal not intended for use as food shall promptly bury the same or notify the health officer and dispose of such animal in such manner as the health officer shall direct. (Ord. #648-09, Jan. 2010)

13-109. Health and sanitation nuisances. It shall be unlawful for any person to permit any premises owned, occupied, or controlled by him to become or remain in a filthy condition, or permit the use or occupation of same in such a manner as to create noxious or offensive smells and odors in connection therewith, or to allow the accumulation or creation of unwholesome and offensive matter or the breeding of flies, rodents, or other vermin on the premises to the menace of the public health or the annoyance of people residing within the vicinity. (Ord. #648-09, Jan. 2010)

13-110. Automobile wrecking and junkyards. Because of the nature and character of their operations, automobile wrecking, junk, or salvage yards, and similar uses of land can have a decidedly detrimental effect upon surrounding properties. These uses tend to create problems of noise, dust, traffic and health hazards, and may adversely affect property values by their general appearance. The following standards shall be used as a guide in evaluating whether proposed land uses, such as those outlined above, have properly minimized their objectionable characteristics.

(1) Location. Because of the tendency for salvage yards to promote the breeding of vermin, no such operation shall be permitted closer than three hundred feet (300') from any established residential district.

(2) Screening. All outdoor storage of salvage and wrecking operations shall be conducted entirely within an enclosed opaque fence or wall, excepting driveway areas, at least eight feet (8') in height. Such fence or wall shall be constructed on or inside the front, side and rear yard setback lines required within the district in which located and shall be constructed in such a manner that no outdoor storage or salvage operations shall be visible from an adjacent property, street or highway. Storage, either temporary or permanent, between such fence or wall and any property line is expressly prohibited.

(3) Ingress and egress. The number of vehicular access driveways permitted on any single street frontage should be limited to:

(a) One (1) driveway where the parcel to be used has a maximum street frontage of one hundred feet (100') or less.

(b) Two (2) driveways where the street frontage exceeds one hundred feet (100').

Driveways used for ingress and egress shall be limited to twenty-five feet (25') in width, exclusive of curb returns.

(4) New junkyards or transfer of junkyards prohibited. No new junkyards shall hereafter be established or maintained nor shall any existing junkyard be transferred as such to any new, additional, or other owner.

For purposes of this chapter, a junkyard is any enclosed or unenclosed, roofed or unroofed, area or place, in or upon which is stored or kept for sale, scrap metal, rope, paper, rags, used automobile parts, wrecked automobiles or other refuse or waste material. (Ord. #648-09, Jan. 2010)

13-111. Prohibited practices. Pursuant to the authority granted municipalities by *Tennessee Code Annotated*, § 6-54-113 and the powers and authority granted by the charter and municipal code of the town, as the same may be amended or replaced, it shall be unlawful for any person or occupant of property to:

(1) Fail to cut grass, weeds and other overgrown vegetation on improved property or on vacant parcels less than fifteen (15) acres when such vegetation is of a height greater than one foot (1') on the average, such condition being declared a nuisance in that it may permit the property to serve as a refuge for rodents, snakes and/or other vermin, or create a fire hazard. All other vacant parcels adjacent to improved property shall be similarly kept cut within one hundred feet (100') of such improved property. Weeds and grass on heavily wooded parcels where equipment cannot maneuver because of the natural density of the vegetation are exempt from these provisions. In addition, the tilling, planting and harvesting of agricultural crops are exempt from the provisions stated herein.

(2) Permit or cause trash, garbage or miscellaneous refuse, or any other substance which may cause a foul odor on improved property or vacant parcels so as to serve as a refuge for rodents, snakes and/or other vermin. Such condition is or may become a nuisance, or may endanger or threaten the health, safety and/or welfare of residents or occupants of nearby property.

(3) Have on their premises materials that could permit or cause a littered condition, such as, but not limited to, dilapidated furniture, appliances, machinery, equipment, building materials, automobile parts, tires, or any other items, which are in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition, which are not completely enclosed within a building, dwelling or opaque fencing/screening. Such materials may endanger or cause injury to the residents or occupants of nearby property. (Ord. #648-09, Jan. 2010)

13-112. Duty of owner and occupant to clear on notice. (1) Within ten (10) days' written notice of a violation of this article from the Town of Erwin's Building Official or his designee, it shall be the duty of the owner and occupant to cut and remove all grass, weeds and other overgrowth vegetation and to remove all trash, litter, materials and other offending conditions from the property. The notice shall include a brief statement of this section and the consequences of failing to remedy the noted condition; and the person, office, address and telephone number of the person giving official notice.

(2) If the property owner is a carrier engaged in the transportation of personal property or is a utility transmitting communications, electricity, gas, liquids, steam, sewerage or other materials, the ten (10) day period of this section shall be twenty (20) days, excluding Saturdays, Sundays and legal holidays. (Ord. #648-09, Jan. 2010)

13-113. Hearing rights. Should the owner or occupant of any property notified of a violation of this article request a hearing, the town shall provide for a hearing by the town recorder or his designee. A request for such hearing must be made within ten (10) days following the receipt of the notice issues pursuant to this chapter. Failure to make the request within this time shall without exception constitute a waiver of the right to a hearing. (Ord. #648-09, Jan. 2010)

13-114. Appeals. Any person aggrieved by an order or act of the town under the provisions of this chapter may seek judicial review of the order or act. The time period established in this chapter shall be stayed during the pendency of the hearing. (Ord. #648-09, Jan. 2010)

13-115. Town's right to remedy violations; collection of costs. (1) Should the owner or occupant of any parcel fail to remove such weeds, trash, garbage, grass or other objects or substances within ten (10) days after notice of violation of this chapter, thereafter the town shall have the authority to enter onto such parcel and immediately cause the offending conditions to be remedied or removed; and to charge the cost or expense of such action, including associated legal fees and/or other administrative costs, against such owner and/or occupant. The town is authorized to use either internal labor and equipment or private contractors at its discretion to enforce the provisions of this chapter.

(2) If the owner fails to pay the expense of the clean up within thirty (30) days from receipt of a certified invoice, the amount shall be certified to the town attorney who shall process a lien with the register of deeds on the properties upon which the expenditure was made. These costs shall be collected by the municipal tax collector at the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes

are collected and shall be subject to the same penalty and interest as delinquent property taxes. (Ord. #648-09, Jan. 2010)

13-116. Brush. Tree trimmings, hedge clippings and similar materials stacked in accordance with this chapter at the public street will be picked up by the town on a weekly basis; however, the pick up schedule is not guaranteed and will occur only under the following conditions:

- (1) The brush and limbs set out for pick up that have a diameter of three inches (3") or less, must not exceed ten feet (10') in length.
- (2) The brush and limbs set out for pick up that have a diameter of more than three inches (3"), must not exceed six feet (6') in length.
- (3) The brush shall be stacked neatly, not crisscrossed, either parallel or perpendicular to the street at the town's right-of-way with the larger ends placed all in the same direction.
- (4) All smaller brush that can be removed by pitchfork (referred to as forkings).
- (5) Shrubs that have had the root balls removed.

Tree trimmings, hedge clippings and similar materials will not be picked up by the town under the following conditions:

- (1) The brush is located in an alley.
- (2) The brush or debris is hanging over into the street.
- (3) More than five (5) trees have been cut down on the property.
- (4) The brush is so small that it would have to be raked to be removed (referred to as rakings), or contains wire, rock, or concrete mixed in with the brush piles.
- (5) The brush pile is stacked higher than five feet (5').
- (6) The brush contains limbs that are larger than six inches (6") in diameter, or contain blocks of wood, logs, stumps or sawdust. (Ord. #652-10, Oct. 2010)

13-117. Permit required. It shall be unlawful for any commercial tree cutting service or for any individual who is in the business of cutting trees, branches or shrubs to ply his trade within the town limits without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one (1) to whom it is issued. A permit shall be required for each job undertaken. Therefore, if the applicant's information has not changed from a previous application, the application for permit shall contain primarily the same information with the exception of the new address of the new job site. (Ord. #652-10, Oct. 2010)

13-118. Application for permit. Applications for a permit under this chapter must be filed with the town recorder, sworn to by the applicant and contain the following:

- (1) Name of applicant.

- (2) Complete permanent home address and business address of applicant.
- (3) A brief description of the nature of the business and a copy of the applicant's business license.
- (4) Address of job site.
- (5) If employed, the name and address of the employer, together with credentials establishing the exact relationship.
- (6) The length of time for which the right to do business in the town is desired.
- (7) A recent clear photograph, approximately two inches (2") square, showing the head and shoulders of the applicant.
- (8) Proof of insurance. A copy of the policy or certificate that the applicant carries a minimum of one-hundred thousand dollars (\$100,000.00) in liability insurance.
- (9) The names of at least two (2) references who will certify as to the applicant's good reputation and business responsibility.
- (10) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed.
- (11) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and the name, address and phone number of the last three (3) property owners from which such business was conducted in those municipalities.
- (12) At the time of filing the application, a fee of five dollars (\$5.00) shall be paid to the town to cover the cost of investigating the facts stated therein. (Ord. #652-10, Oct. 2010)

13-119. Issuance or refusal of permit. (1) Each application shall be referred to the town recorder for investigation. The recorder shall report his findings to the applicant within seventy-two (72) hours.

(2) If as a result of such investigation the recorder reports the applicant's reputation and/or business responsibility to be unsatisfactory, the recorder shall notify the applicant that his application is not approved and that no permit will be issued.

(3) If the recorder's report indicates that the reputation and business responsibility of the applicant are satisfactory, the town recorder shall issue a permit upon the payment of all applicable privilege taxes. The recorder shall keep a permanent record of all permits issued. (Ord. #652-10, Oct. 2010)

13-120. Enforcement. The provisions of this chapter shall be administered and enforced by the municipal building inspector and the Erwin Police Department. These officials shall have the right to enter upon any premises necessary to carry out their duties in the enforcement of this chapter. (Ord. #652-10, Oct. 2010)

13-121. Appeal. Any person aggrieved by the action of the town recorder as the result of the denial of a permit shall have the right to appeal to the board of mayor and alderman. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (Ord. #652-10, Oct. 2010)

13-122. Violations and penalty. Any person violating any provision of this chapter shall be guilty of a class C misdemeanor, and upon conviction shall be fined not more than fifty dollars (\$50.00) for each offense. Each day such violation continues shall constitute a separate offense. (Ord. #652-10, Oct. 2010)

CHAPTER 2

JUNKED MOTOR VEHICLES

SECTION

- 13-201. Definitions.
- 13-202. Violations a civil offense.
- 13-203. Exceptions.
- 13-204. Enforcement.
- 13-205. Violations and penalty.

13-201. Definitions. For the purpose of the interpretation and application of this chapter, the following words and phrases shall have the indicated meanings:

(1) "Person" shall mean any natural person, or any firm, partnership, association, corporation or other organization of any kind and description.

(2) "Private property" shall include all property that is not public property, regardless of how the property is zoned or used.

(3) "Traveled portion of any public street or highway" shall mean the width of the street from curb to curb, or where there are no curbs, the entire width of the paved portion of the street, or where the street is unpaved, the entire width of the street in which vehicles ordinarily use for travel.

(4) (a) "Junk vehicle" shall mean a vehicle of any age that is damaged or defective, including but not limited to, any one or combination of any of the following ways that either makes the vehicle immediately inoperable, or would prohibit the vehicle from being operated in a reasonably safe manner upon the public streets and highways under its own power if self-propelled, or while being towed or pushed, if not self-propelled:

(i) Flat tires, missing tires, missing wheels, or missing or partially or totally disassembled tires and wheels.

(ii) Missing or partially or totally disassembled essential part or parts of the vehicle's drive train, including, but not limited to, engine, transmission, transaxle, drive shaft, differential, or axle.

(iii) Extensive exterior body damage or missing or partially or totally disassembled essential body parts, including, but not limited to, fenders, doors, engine hood, bumper or bumpers, windshield, or windows.

(iv) Missing or partially or totally disassembled essential interior parts, including, but not limited to, driver's seat, steering wheel, instrument panel, clutch, brake, gear shift lever.

(v) Missing or partially or totally disassembled parts essential to the starting or running of the vehicle under its own

power, including, but not limited to, starter, generator or alternator, battery, distributor, gas tank, carburetor or fuel injection system, spark plugs, or radiator.

(vi) Interior is a container for metal, glass, paper, rags or other cloth, wood, auto parts, machinery, waste or discarded materials in such quantity, quality and arrangement that a driver cannot be properly seated in the vehicle.

(vii) Lying on the ground (upside down, on its side, or at other extreme angle), sitting on block or suspended in the air by any other method.

(viii) General environment in which the vehicle sits, including, but not limited to, vegetation that has grown up around, in or through the vehicle, the collection of pools of water in the vehicle, and the accumulation of other garbage or debris around the vehicle.

(b) "Vehicle" shall mean any machine propelled by power other than human power, designed to travel along the ground by the use of wheels, treads, self-laying tracks, runners, slides or skids, including but not limited to automobiles, trucks, motorcycles, motor scooters, go-carts, campers, tractors, trailers, tractor-trailers, buggies, wagons, and earth-moving equipment, and any part of the same.

13-202. Violations a civil offense. It shall be unlawful and a civil offense for any person:

(1) To park and or in any other manner place and leave unattended on the traveled portion of any public street or highway a junk vehicle for any period of time, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle.

(2) To park or in any other manner place and leave unattended on the untraveled portion of any street or highway, or upon any other public property, a junk vehicle for more than forty-eight (48) continuous hours, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle.

(3) To park, store, keep, maintain on private property a junk vehicle.

13-203. Exceptions. (1) It shall be permissible for a person to park, store, keep and maintain a junked vehicle on private property under the following conditions:

(a) The junk vehicle is completely enclosed within a building where neither the vehicle nor any part of it is visible from the street or from any other abutting property. However, this exception shall not exempt the owner or person in possession of the property from any zoning, building, housing, property maintenance, and other regulations governing the building in which such vehicle is enclosed.

(b) The junk vehicle is parked or stored on property lawfully zoned for business engaged in wrecking, junking or repairing vehicles. However, this exception shall not exempt the owner or operator of any such business from any other zoning, building, fencing, property maintenance and other regulations governing business engaged in wrecking, junking or repairing vehicles.

(2) No person shall park, store, keep and maintain on private property a junk vehicle for any period of time if it poses an immediate threat to the health and safety of citizens of the town.

13-204. Enforcement. Pursuant to *Tennessee Code Annotated*, § 7-63-101, the building inspector is authorized to issue ordinance summons for violations of this ordinance on private property. The building inspector shall upon the complaint of any citizen, or acting on his own information, investigate complaints of junked vehicles on private property. If after such investigation the building inspector finds a junked vehicle on private property, he shall issue an ordinance summons. The ordinance summons shall be served upon the owner or owners of the property, or upon the person or persons apparently in lawful possession of the property, and shall give notice to the same to appear and answer the charges against him or them. If the offender refuses to sign the agreement to appear, the building inspector may:

(1) Request the town judge to issue a summons, or

(2) Request a police officer to witness the violation. The police officer who witnesses the violation may issue the offender a citation in lieu of arrest as authorized by *Tennessee Code Annotated*, § 7-63-101 *et seq.*, or if the offender refuses to sign the citation, may arrest the offender for failure to sign the citation in lieu of arrest.

13-205. Violations and penalty. Any person violating this chapter shall be subject to a civil penalty of fifty dollars (\$50.00) plus court costs for each separate violation of this chapter. In addition, pursuant to *Tennessee Code Annotated*, § 55-5-122, the municipal court may issue an order to remove vehicles from private property. Each day the violation of this chapter continues shall be considered a separate violation.

CHAPTER 3

SLUM CLEARANCE¹

SECTION

- 13-301. Findings of board.
- 13-302. Definitions.
- 13-303. "Public officer" designated; powers.
- 13-304. Initiation of proceedings; hearings.
- 13-305. Orders to owners of unfit structures.
- 13-306. When public officer may repair, etc.
- 13-307. When public officer may remove or demolish.
- 13-308. Lien for expenses; sale of salvage materials; other powers not limited.
- 13-309. Basis for a finding of unfitness.
- 13-310. Service of complaints or orders.
- 13-311. Enjoining enforcement of orders.
- 13-312. Additional powers of public officer.
- 13-313. Powers conferred are supplemental.
- 13-314. Structures unfit for human habitation deemed unlawful.

13-301. Findings of board. Pursuant to *Tennessee Code Annotated*, § 13-21-101, *et seq.*, the board of mayor and aldermen finds that there exists in the town structures which are unfit for human occupation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the town.

13-302. Definitions. (1) "Dwelling" means any building or structure, or part thereof, used and occupied for human occupation or use or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

(2) "Governing body" shall mean the board of mayor and aldermen charged with governing the town.

(3) "Municipality" shall mean the Town of Erwin, Tennessee, and the areas encompassed within existing town limits or as hereafter annexed.

(4) "Owner" shall mean the holder of title in fee simple and every mortgagee of record.

¹State law reference

Tennessee Code Annotated, title 13, chapter 21.

(5) "Parties in interest" shall mean all individuals, associations, corporations and others who have interests of record in a dwelling and any who are in possession thereof.

(6) "Place of public accommodation" means any building or structure in which goods are supplied or services performed, or in which the trade of the general public is solicited.

(7) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the town or state relating to health, fire, building regulations, or other activities concerning structures in the town.

(8) "Public officer" means any officer or officers of a municipality or the executive director or other chief executive officer of any commission or authority established by such municipality or jointly with any other municipality who is authorized by this chapter to exercise the power prescribed herein and pursuant to *Tennessee Code Annotated*, § 13-21-101, *et seq.*

(9) "Structure" means any dwelling or place of public accommodation or vacant building or structure suitable as a dwelling or place of public accommodation.

13-303. "Public officer" designated; powers. There is hereby designated and appointed a "public officer," to be the building inspector of the town, to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by the building inspector.

13-304. Initiation of proceedings; hearings. Whenever a petition is filed with the public officer by a public authority or by at least five (5) residents of the town charging that any structure is unfit for human occupancy or use, or whenever it appears to the public officer (on his own motion) that any structure is unfit for human occupation or use, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and parties in interest of, such structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the service of the complaint; and the owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint; and the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

13-305. Orders to owners of unfit structures. If, after such notice and hearing as provided for in the preceding section, the public officer determines that the structure under consideration is unfit for human occupation or use, he shall state in writing his finding of fact in support of such

determination and shall issue and cause to be served upon the owner thereof an order:

(1) If the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure (not exceeding fifty percent (50%) of the reasonable value), requiring the owner, within the time specified in the order, to repair, alter, or improve such structure to render it fit for human occupation or use or to vacate and close the structure for human occupation or use; or

(2) If the repair, alteration or improvement of said structure cannot be made at a reasonable cost in relation to the value of the structure (not to exceed fifty percent (50%) of the value of the premises), requiring the owner within the time specified in the order, to remove or demolish such structure.

13-306. When public officer may repair, etc. If the owner fails to comply with the order to repair, alter, or improve or to vacate and close the structure as specified in the preceding section hereof, the public officer may cause such structure to be repaired, altered, or improved, or to be vacated and closed; and the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human occupation or use. The use or occupation of this building for human occupation or use is prohibited and unlawful."

13-307. When public officer may remove or demolish. If the owner fails to comply with an order, as specified above, to remove or demolish the structure, the public officer may cause such structure to be removed and demolished.

13-308. Lien for expenses; sale of salvaged materials; other powers not limited. The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer, as well as reasonable fees for registration, inspections and professional evaluations of the property, shall be assessed against the owner of the property, and shall, upon the certification of the sum owed being presented to the municipal tax collector, be a lien on the property in favor of the municipality, second only to liens of the state, county and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right, or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. These costs shall be collected by the municipal tax collector or county trustee at the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes as set forth in *Tennessee Code Annotated*, § 67-5-2010 and § 67-5-2410. In addition, the municipality may collect the costs assessed against the owner

through an action for debt filed in any court of competent jurisdiction. The municipality may bring one (1) action for debt against more than one (1) or all of the owners of properties against whom said costs have been assessed, and the fact that multiple owners have been joined in one (1) action shall not be considered by the court as a misjoinder of parties. If the structure is removed or demolished by the public officer, the public officer shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the chancery court of Unicoi County by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the person found to be entitled thereto by final order or decree of such court. Nothing in this section shall be construed to impair or limit in any way the power of the Town of Erwin to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

13-309. Basis for a finding of unfitness. The public officer defined herein shall have the power and may determine that a structure is unfit for human occupation and use if he finds that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants or users of such structure, the occupants or users of neighboring structures or other residents of the Town of Erwin. Such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; or uncleanliness.

13-310. Service of complaints or orders. Complaints or orders issued by the public officer pursuant to this chapter shall be served upon persons, either personally or by registered mail, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) consecutive weeks in a newspaper printed and published in the town, or , in the absence of such newspaper, one (1) printed and published in the county and circulating in the town. In addition, a copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order. A copy of such complaint or order shall also be filed for record in the Register's Office of Unicoi County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law.

13-311. Enjoining enforcement of orders. Any person affected by an order issued by the public officer served pursuant to this chapter may file a bill in chancery court for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon the filing of such suit,

issue a temporary injunction restraining the public officer pending the final disposition of the cause; provided, however, that within sixty (60) days after the posting and service of the order of the public officer, such person shall file such bill in the court.

The remedy provided herein shall be the exclusive remedy and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer, or because of noncompliance by such person with any order of the public officer.

13-312. Additional powers of public officer. The public officer, in order to carry out and effectuate the purposes and provisions of this chapter, shall have the following powers in addition to those otherwise granted herein:

(1) To investigate conditions of the structures in the town in order to determine which structures therein are unfit for human occupation or use;

(2) To administer oaths, affirmations, examine witnesses and receive evidence;

(3) To enter upon premises for the purpose of making examination, provided that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter; and

(5) To delegate any of his functions and powers under this chapter to such officers and agents as he may designate.

13-313. Powers conferred are supplemental. This chapter shall not be construed to abrogate or impair the powers of the town with regard to the enforcement of the provisions of its charter or any other ordinances or regulations, nor to prevent or punish violations thereof, and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by the charter and other laws.

13-314. Structures unfit for human habitation deemed unlawful. It shall be unlawful for any owner of record to create, maintain or permit to be maintained in the town structures which are unfit for human occupation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the town.

Violations of this section shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 4

VACANT BUILDING ENFORCEMENT PROGRAM

SECTION

- 13-401. Scope and definition.
- 13-402. Standard of care for vacant property.
- 13-403. Exemptions.
- 13-404. Certificate required.
- 13-405. Certificate of inspection application; inspection; and issuance.
- 13-406. Fees.
- 13-407. Escrow deposit required prior to sale.
- 13-408. Correction of violations.
- 13-409. Dispersal of funds by escrow agents.
- 13-410. Certificate of occupancy.
- 13-411. Violations and penalty.

13-401. Scope and definition. (1) This chapter applies to any building in the following zoning districts as designated by the Erwin Zoning Ordinance and Zoning Map: Downtown overlay district.

(2) "Vacant building" shall be defined for the purposes of this chapter as a building which is not occupied by its owner, lessee or other person in lawful possession, or at which substantially all lawful business operations have ceased, or which is substantially devoid of content. Special event, short term, and seasonal commercial lessees or occupants of ninety (90) days or less are excluded from the provisions of this chapter and shall not be used in determining the length of vacancy for any building in the designated district. (Ord. #711-19, July 2019)

13-402. Standard of care for vacant property. (1) The owner, lessee, or party in control of any vacant building, or a mortgagee that has filed and is currently maintaining an open foreclosure action regarding a vacant building shall maintain the vacant building as follows:

(a) Grass, weeds and other overgrown vegetation shall not be of a height greater than one foot (1') on the average. Shrubbery must be kept trimmed and neat and kept from encroaching on or touching the building.

(b) Protective treatment: All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition, weather tight and in such condition so as to prevent the entry of rodents and other pests. All exposed wood or metal surfaces subject to rust or corrosion, other than decay resistant woods or surfaces designed for stabilization by oxidation shall be protected from the elements and

against decay or rust by periodic application of weather coating materials such as paint or similar surface treatment. All surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. All siding, cladding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight.

(c) Premises identification: The property shall have address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of four inches (4" or 102mm) high with a minimum stroke width of one-half inch (1/2" or 12.7mm). All buildings shall display a vacant building identification placard as required by the director.

(d) Structure: All structural members and foundation shall be maintained free from deterioration, and shall be capable of safely supporting the imposed loads.

(e) Exterior walls: All exterior walls shall be kept in good condition and shall be free from holes, breaks, and loose or rotting materials. Exterior walls shall be maintained weatherproof and properly surface coated where necessary to prevent deterioration.

(f) Roof and drainage: The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent accumulation, dampness or deterioration. Roof drains, gutters and downspouts shall be maintained in good repair, free from obstructions and operational.

(g) Decorative features: All cornices, belt courses, corbels, applications, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

(h) Overhang extensions and awnings: All overhang extensions including, but not limited to canopies, marquees, signs, awnings, and fire escapes shall be maintained in good repair and be properly anchored and supported as to be kept in a sound and safe condition.

(i) Stairways, decks, porches and balconies: Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

(j) Chimneys and towers: All chimneys, cooling towers, smoke stacks and similar appurtenances shall be maintained structurally safe and sound, and in good repair.

(k) Handrails and guards: Every exterior handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

(l) Window, skylight and door: Every window, storefront, skylight and exterior door part, including but not limited to the frame, the trim, window screens and hardware shall be kept in sound condition and good repair. All broken or missing windows shall be replaced with glass and secured in a manner so as to prevent unauthorized entry. All broken or missing doors shall be replaced with new doors which shall be secured to prevent unauthorized entry. All glass shall be maintained in sound condition and good repair. All exterior doors, door assemblies and hardware shall be maintained in good condition and secured. Locks at all exterior doors, exterior attic access, windows, or exterior hatchways shall tightly secure the opening. Windows and doors shall not be secured by plywood or other similar means mounted on the exterior except as a temporary securing measure, and the same shall be removed within a period of time designated by the director.

(m) Basement hatchways and windows: Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water. Every basement window that is openable shall be supplied with rodent shields, storm windows or other approved protection against entry of rodents.

(2) Adherence to this section does not relieve the owner or agent in control of the property of any obligations set forth in any covenants, conditions, restrictions, homeowners' association rules and regulations and/or codified ordinances or building codes which may apply to the property.

(3) The owner, agent, lessee, party in control, or mortgagee in foreclosure of any vacant building agrees to grant unrestricted access to the vacant building after receiving forty-eight (48) hours' notice from the Town of Erwin for inspections and appraisals as necessary.

(4) Registration required. (a) The owner, agent, lessee, or party in control of any vacant building, or a mortgagee that has filed a foreclosure action that is currently pending regarding any vacant building with the town recorder and maintain the registration up to date.

(b) An application for registration of a vacant building shall include all of the following information on forms provided by the town:

(i) The name of the owner, agent, lessee or party in control of the property and/or foreclosing entity submitting the registration application;

(ii) Physical and mailing address of the applicant as well as the address of the vacant property;

(iii) A contact name, telephone number and email address for the applicant;

(iv) In the case of an applicant whose name or business address is located outside Unicoi County, the applicant shall provide the name and mailing address of a local property management company as well as the contact name, telephone

number and email address of the person responsible for the security, maintenance, and marketing of the property; and

(v) The fee required by this chapter.

(c) Registration shall remain valid for twelve (12) months from the date of issuance. The owner, agent, lessee or party in control, or mortgagee in foreclosure, shall renew the registration upon expiration for as long as the property remains vacant.

(d) The owner, agent, lessee, party in control, or mortgagee in foreclosure of any vacant building, shall inspect the property at least one (1) time each month on the interior and exterior of the property to verify that the requirements of this section, the codified ordinances of the town, and any other applicable laws are being met. A written report of such inspections shall be provided to the town upon request. (Ord. #711-19, July 2019)

13-403. Exemptions. Waivers exempting compliance with the provisions of this chapter can be obtained in writing on a form provided by the town under the following circumstances as long as the property is kept in safe, secure, and habitable condition in the owner's absence:

(1) Buildings substantially damaged by fire, vandalism, natural disaster, or act of God; provided clean up, repair or demolition is initiated within ninety (90) days from the date of the fire.

(2) An owner or the estate of a deceased owner who is actively attempting to sell the property; provided however the sale price must be at or below the fair market value of the property according to a State of Tennessee Licensed Appraiser meeting the education and licensure requirements of the State of Tennessee.

(3) An owner or the estate of a deceased owner who is actively attempting to rent or lease the property at fair market value provided the advertisement for rental/lease is published in a newspaper of general circulation or other commonly used media outlet for such listings.

(4) The Erwin Board of Appeals may grant exemptions from the requirements of this chapter for special circumstances at their discretion. (Ord. #711-19, July 2019)

13-404. Certificate required. (1) The owner, agent, or party in control of any vacant building, shall apply for and obtain certificate of inspection from the town recorder within ninety (90) days of the premises becoming a vacant building and annually thereafter.

(2) Upon selling, transferring or conveying an interest in property or entering into an agreement to sell, transfer or otherwise convey an interest in such property the owner shall provide the certificate of inspection to the purchaser or transferee. The certificate of inspection shall list thereon all

known violations of town ordinances found as a result of an exterior and interior inspection.

(3) The owner shall deposit in escrow a statement signed by the purchaser or transferee acknowledging receipt of the certificate of inspection, and such statement shall list thereon the date the certificate was given to the purchaser or transferee. (Ord. #711-19, July 2019)

13-405. Certificate of inspection application; inspection; and issuance. An application for a certificate of inspection required by this chapter shall be made upon forms supplied by the town recorder.

(1) The town recorder shall cause a general exterior and interior inspection for the building to be made.

(2) The certificate of inspection shall contain the following information:

(a) The street address or other identifying characteristics of the dwelling structure;

(b) The name and address of the owners; lessee or party in control;

(c) The authorized use and occupancy of the building; and

(d) The listing of all known violations of the building code existing at the time of such inspection.

(3) Once a certificate of inspection is issued, it shall be valid for a period of one (1) year from the date of the inspection required herein, and that certificate of inspection is only good the date of the inspection required herein, and that certificate of inspection is only good for one (1) transfer. In the event of resale within the one (1) year period, the certificate shall be transferred to any subsequent bona fide purchaser and shall be valid for the remainder of that period. (Ord. #711-19, July 2019)

13-406. Fees. (1) The fee for a certificate of inspection shall be two hundred dollars (\$200.00).

(2) There shall be no fee for one (1) re-inspection requested by the same owner within twelve (12) months from the date of the initial inspection to verify correction of violations stated within the certificate of inspection. All subsequent re-inspections may be billed at twenty-five dollars (\$25.00) per inspection.

(3) The owner of a vacant building shall pay an annual fee of eight hundred dollars (\$800.00) for the first year the building remains vacant. For every consecutive year that the building remains vacant, the annual fee will be assessed at double the previous year's fee amount for a maximum annual fee equaling the four (4) year fee of six thousand four hundred dollars (\$6,400.00) to be used for the fourth and for all consecutive, subsequent years of vacancy.

(4) The first annual fee shall be paid at the time the building is registered.

(5) Absent a showing of good cause, if the building is not registered within the timeframe required herein, or the registration is not renewed within thirty (30) days after the expiration of one (1) year from the date of the previous registration, a penalty shall be paid in addition to the annual registration fee. The penalty shall be equal to one-half (1/2) of the current annual fee or one thousand dollars (\$1,000.00), whichever is less.

(6) Registration fees generated by this section shall be deposited into a fund to be established for the benefit of property owners within the affected area at the board of mayor and aldermen's discretion. (Ord. #711-19, July 2019)

13-407. Escrow deposit required prior to sale. (1) If all violations listed on the certificate of inspection are not corrected prior to transfer of title, an escrow account shall be established by a party to the transfer, in an amount not less than one thousand dollars (\$1,000.00) and equal to one hundred percent (100%) of the estimated cost of repairs, and shall be deposited therein to pay for the cost to correct all remaining violations. No party to a transfer of a vacant building shall authorize or accept such transfer without ensuring compliance with this section.

(2) The amount to be held in escrow shall be determined by a party of the transfer procuring written estimates from at least two (2) companies capable of performing the work, which are currently registered to do business in Unicoi County. The amount deposited into escrow shall be one hundred percent (100%) of the higher of the two (2) estimates.

(3) If the parties establishing the escrow can demonstrate to the town recorder that after a good faith effort he/she is unable to obtain two (2) written estimates, the town recorder shall establish the amount to be placed in escrow. (Ord. #711-19, July 2019)

13-408. Correction of violations. Any violations found upon inspection of the premises shall be corrected prior to issuance of the certificate of occupancy. Violations that cannot be corrected due to seasonal conditions shall not preclude the issuance of a certificate of occupancy provided that issuance of such certificate shall be upon written acknowledgment of all violations an agreement to correct all violations within six (6) months of the inspection date. In addition written notice must be received by the town that funds are being held in an escrow account in a sufficient amount to correct all violations, but in no case less than one thousand dollars (\$1,000.00). Such account shall be held by an independent escrow agent and shall be closed only upon written notice by the town recorder. (Ord. #711-19, July 2019)

13-409. Dispersal of funds by escrow agents. (1) No person acting in the capacity of an escrow agent in any real estate transaction involving the sale or transfer of a vacant building shall disperse any funds held in escrow in compliance with § 13-407 unless there has been compliance with § 13-408.

(2) Funds shall be dispersed only upon written authorization from the town recorder as follows:

(a) The town recorder or his/her designee may authorize the release of funds from the escrow agent established per § 13-407 as payment in full to a contractor as each violation is corrected, provided the amount due does not exceed the written estimates; or

(b) The town recorder or his/her designee may authorize a release of funds from the escrow account established per § 13-407 as payment in full to a contractor as each violation is corrected, provided that when the amount due does exceed the written estimates such release can only be made upon the town recorder's or his/her designee's written finding that sufficient funds will remain in escrow to correct all other remaining violations. (Ord. #711-19, July 2019)

13-410. Certificate of occupancy. At the request of the owner of property or his/her agent, the town shall issue a letter or other written document signed and dated by the building inspector stating that all violations listed on the certificate of inspection have been completed to the town's satisfaction, and the property is eligible for occupancy. No vacant building can be occupied until this certificate of occupancy is obtained. (Ord. #711-19, July 2019)

13-411. Violations and penalty. (1) Any violation of this chapter shall subject the offender to the Erwin Municipal Court and a penalty under the general penalty provision of this municipal code. Each day a violation is allowed to continue shall constitute a separate offense.

(2) Unpaid registration fees and fines shall be an assessment on the property enforceable in the same manner as assessments for delinquent property taxes. (Ord. #711-19, July 2019)

TITLE 14**ZONING AND LAND USE CONTROL****CHAPTER**

1. MUNICIPAL PLANNING COMMISSION.
2. ZONING ORDINANCE.
3. MOBILE HOME PARKS.
4. SHOPPING CENTERS.

CHAPTER 1**MUNICIPAL PLANNING COMMISSION****SECTION**

- 14-101. Creation and membership.
14-102. Organization, powers, duties, etc.

14-101. Creation and membership. Pursuant to the provisions of *Tennessee Code Annotated*, § 13-4-101 there is hereby created a municipal planning commission, hereinafter referred to as the planning commission. The planning commission shall consist of five (5) members; two (2) of these shall be the mayor and an aldermen selected by the board of mayor and aldermen; the other three (3) members shall be appointed by the mayor. All members of the planning commission shall serve as such without compensation. Except for the initial appointments, the terms of the three (3) members appointed by the mayor shall be for three (3) years each. The three (3) members first appointed shall be appointed for terms of one (1), two (2), and three (3) years respectively so that the term of one (1) member expires each year. The terms of the mayor and the member selected by the board of mayor and aldermen shall run concurrently with their terms of office. Any vacancy in an appointive membership shall be filled for the unexpired term by the mayor. (2005 Code, § 14-101)

14-102. Organization, powers, duties, etc. The planning commission shall be organized and shall carry out its powers, functions, and duties in accordance with all applicable provisions of *Tennessee Code Annotated*, title 13. (2005 Code, § 14-102)

CHAPTER 2

ZONING ORDINANCE

SECTION

14-201. Land use to be governed by zoning ordinance.

14-201. Land use to be governed by zoning ordinance. Land use within the Town of Erwin shall be governed by Ord. #383, titled "Zoning Ordinance, Erwin, Tennessee," and any amendments thereto.¹

¹Ord. #383, and any amendments thereto, are published as separate documents and are of record in the office of the recorder.

The town's subdivision regulations are also published as a separate document which is of record in the recorder's office.

CHAPTER 3

MOBILE HOME PARKS

SECTION

- 14-301. Permit required.
- 14-302. Definitions.
- 14-303. General plan requirements.
- 14-304. Development standards.
- 14-305. Permits.
- 14-306. Inspection of mobile home parks.
- 14-307. Enforcement.
- 14-308. Responsibilities of the management.

14-301. Permit required. It shall be unlawful for any person to construct, alter or extend any mobile home park within the limits of Erwin, Tennessee, unless mobile home parks are a permitted use within the district and a valid permit is issued by the building inspector in the name of such person for the specific construction, alteration or extension proposed. (2005 Code, § 14-301)

14-302. Definitions. (1) "Accessory structure." Any structural addition to the mobile home which includes awnings, cabanas, carports, Florida rooms, porches, storage cabinets, and similar appurtenant structures.

(2) "Buffer strip." A plant material or other material as may be approved by the Erwin Planning Commission which will provide a screen not less than six feet (6') in height.

(3) "Building inspector." The Building Inspector of Erwin, Tennessee, or his authorized representative.

(4) "Electrical inspector." The Electrical Inspector of Erwin, Tennessee, or his authorized representative.

(5) "Health officer." The Health Officer of Erwin, Tennessee, or his authorized representative.

(6) "Lot area." The total area reserved for exclusive use of the occupants of a mobile home.

(7) "Lot line." The total area reserved for exclusive use of the occupants of a mobile home.

(8) "Mobile home." A detached single-family unit with all of the following:

- (a) Designed for long-term occupancy and containing sleeping accommodations, a flush toilet, a tub or shower bath, and kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems.

(b) Designed to be transported after fabrication on its own wheels or on a flatbed or other trailer or detachable wheels.

(c) Arriving at the site where it is to be occupied as a dwelling complete, including major appliances and furniture, and ready for occupancy except for minor and incidental unpacking and assembly operations, location on foundation supports, connection to utilities, and the like.

(9) "Mobile home park." Any plot of ground containing a minimum of two (2) acres upon which two (2) or more mobile homes are located or are intended to be located, but does not include sites where unoccupied mobile homes are on display for sale.

(10) "Permanent buildings." A building, except a mobile home, or accessory structure.

(11) "Permit." A written document issued by the enforcing agent permitting the construction, alteration, or expansion of a mobile home park.

(12) "Plumbing inspector." The plumbing inspector of Erwin, Tennessee, or his authorized representative.

(13) "Private drive." A private way which affords the principal means of access to abutting individual mobile home lots and auxiliary buildings.

(14) "Public street." A public way which affords the principal means of access to abutting properties.

(15) "Shall." Indicates that which is required. (2005 Code, § 14-302)

14-303. General plan requirements. The owner or lessee of the property proposed for a mobile home park shall submit a plan for development to the Erwin Planning Commission for approval. All applications shall contain the following:

- (1) Name and address of applicant.
- (2) Location and dimensions of proposed park.
- (3) The park plan, drawn to scale, showing the following:
 - (a) The number, location, and size of all mobile home lots.
 - (b) The location and widths of roadways and walkways.
 - (c) The location of water and sewer lines.
 - (d) The location and dimensions of any proposed service buildings.
 - (e) The location of all equipment and facilities for refuse disposal and other park improvements.
 - (f) A plan for drainage of the park.
 - (g) The location and details of lighting and electrical systems.
 - (h) A certificate of accuracy signed by the surveyor or engineer that the engineering work is correct.
 - (i) Certificates and signatures of the health officer and buildings, housing, electrical, plumbing, and fire inspectors.
 - (j) A certificate for planning commission approval.

(k) Any other information deemed pertinent by the planning commission.

When upon review of the application, the planning commission is satisfied that the proposed plan meets the requirements of this chapter, a permit shall be issued. (2005 Code, § 14-303)

14-304. Development standards. (1) General. (a) Location. A mobile home park shall be located only within a district designated for the use by the zoning ordinance.

(b) Physiography. Condition of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, dust, noise, odors, or other adverse influences, and no portion subject to predictable sudden flooding or erosion shall be used for any purpose which would expose persons or property to hazards.

(2) Objectives. (a) Site planning improvements. Site planning improvements shall provide for facilities and amenities appropriate to the needs of the occupants.

(b) Conditions. Safe, comfortable, and sanitary use by the occupants under all weather conditions.

(3) Recreation area. Not less than ten percent (10%) of the gross site area shall be devoted to recreational facilities, generally provided in a central location.

(4) Buffer strips. The planning commission may require buffer strips along the side, rear, and front lot lines of the park.

(5) Density. The mobile home park shall contain not more than eight (8) individual mobile home spaces per gross acre, provided, however, all other standards are met.

(6) Driveways. All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means.

(7) Entrance drives. Entrances to mobile home parks shall have direct connections to a public street and shall be designed to allow movement of traffic. No parking shall be permitted on the entrance street for a distance of one hundred feet (100') from its point of beginning. The location and design of entrance streets shall be approved by the planning commission.

(8) Pavement widths. Twenty-eight foot (28') width, or where two (2) off-street parking spaces are provided for each lot.

(a) Entrance drives. Twenty-four foot (24') width where two (2) off-street parking spaces are provided for each lot.

(b) Collector drives. Twenty-four foot (24') width.

(c) Minor drives. Twenty feet (20').

(d) Loop or cul-de-sac serving fifteen (15) lots or less. Twenty feet (20').

(9) Improvements. All streets shall have at least a double bituminous surface, well drained under normal weather conditions.

(10) Walks. Where walkways are planned or required by the planning commission, they shall be safe, convenient, and shall provide an adequate access for pedestrian traffic.

(a) Common walkways. Shall have a minimum width of three feet (3').

(b) Individual walkways. Minimum width of two feet (2').

(11) Service buildings. Shall be of permanent construction, adequately ventilated and lighted, and built in conformity to all town codes and ordinances. All service buildings shall be convenient to the spaces which they solely serve and shall be maintained in a clean and sanitary condition.

(12) Water and sanitary sewers. Connections shall be provided to each mobile home space. Piping and connections shall be as specified and approved by the plumbing inspector.

(13) Landscaping. Any part of the park area not used for building or other structures, parking, or access ways shall be landscaped with grass, trees, and shrubs.

(14) Lighting. The park shall be adequately lighted.

(15) Required setbacks. Each mobile home shall be set back a minimum of thirty feet (30') from any public street and a minimum of fifteen feet (15') from all property lines.

(16) Parking. Each mobile home park shall provide at least one (1) off-street parking space for each mobile home unit plus an additional space for every four (4) mobile home units for guest parking and two (2) car tenants and for delivery and service vehicles. The parking spaces shall be located for convenient access to mobile home units. Insofar as practicable, one (1) car space shall be located on each lot and the remainder located in adjacent parking bays. (2005 Code, § 14-304)

14-305. Permits. (1) Valid permit. It shall be unlawful for any person to operate a mobile home park within the limits of Erwin, Tennessee, unless he holds a valid permit issued annually by the building inspector. All applications for a permit shall be made to the building inspector, who shall issue a permit upon compliance by the applicant with provisions of this chapter.

(2) Property transfer. Every person holding a permit shall give notice in writing to the building inspector within seventy-two (72) hours after having sold, transferred, given away, or otherwise disposed of interest in or control of any mobile home park. Such notice shall include the name and address of the person succeeding to the ownership or control of such mobile home park.

(3) Original permit. Application for an original permit shall be in writing and have the approval of the planning commission and shall be accompanied by a permit fee of twenty-five dollars (\$25.00). The application shall contain:

- (a) Name of applicant.
- (b) Address of applicant.
- (c) Name of mobile home park.
- (d) Location of mobile home park.

(4) Renewal of permits. Applications for renewal of permits shall be made in writing by the permit holders, and shall be accompanied by the permit fee of twenty-five dollars (\$25.00). (2005 Code, § 14-305)

14-306. Inspection of mobile home parks. The building inspector is hereby authorized and directed to make such inspections as are necessary to determine satisfactory compliance with this chapter. However, an inspection is required prior to the issuance of a renewal permit. (2005 Code, § 14-306)

14-307. Enforcement. (1) Enforcement officer. These regulations shall be enforced by the building inspector.

(2) Violations. Any person or persons who shall willfully neglect or refuse to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined under the general penalty clause for this municipal code of ordinances. (2005 Code, § 14-307)

14-308. Responsibilities of the management. (1) Supervision. The person to whom a mobile home park permit is issued shall provide adequate supervision to maintain the park in compliance with this chapter and to keep its facilities and equipment in good repair and in a clean and sanitary condition.

(2) Notification of duties and responsibilities. The management shall notify the park residents of all applicable provisions of this chapter and inform them of their duties and responsibilities under this chapter.

(3) Placement of mobile home. The management shall supervise the placement of each mobile home on its mobile home lot which includes securing its stability and installing all utility connections.

(4) Register. The management shall maintain a register containing the names of all park residents identified by lot number or street address. Such register shall be available to any authorized person inspecting the park.

(5) Rental period. No space shall be rented for residential use of a mobile home in any such park except for a period of thirty (30) days or more. (2005 Code, § 14-308)

CHAPTER 4

SHOPPING CENTERS

SECTION

- 14-401. Location restricted; defined.
- 14-402. Application and general procedure.
- 14-403. Preliminary plan.
- 14-404. Minimum standards.
- 14-405. Use regulations.
- 14-406. Height regulations.
- 14-407. Limitations.
- 14-408. Approved general plan.
- 14-409. Permits and licenses.
- 14-410. Violations and penalty.

14-401. Location restricted; defined. No shopping center shall be developed unless located in a district permitting shopping centers. A "shopping center" is defined as a group of commercial establishments planned, developed, owned, and managed as a unit, with off-street parking provided on the property. (2005 Code, § 14-401)

14-402. Application and general procedure. The owner or lessee of any tract of land comprising an area of not less than two (2) acres may submit to the board of mayor and aldermen and planning commission a preliminary plan for the use and development of all or part of the tract for the purpose of, and meeting the requirements set forth in, this chapter. This preliminary plan shall be referred to the planning commission for study and recommendation. If the planning commission approves the preliminary plan in accordance with the provisions of § 14-408, which shall then be submitted to the board of mayor and aldermen for consideration and action. The approval and recommendations of the planning commission may be accompanied by a report stating the reasons for approval and that the application meets the requirements of this chapter. (2005 Code, § 14-402)

14-403. Preliminary plan. The preliminary plan submitted shall be drawn to scale and shall show all roads and drainage, existing and proposed, drives and parking areas, building lines enclosing the portion of the tract within which buildings are to be erected, typical groups of buildings which might be erected within the building lines shown, boundaries of tracts, and proposed use of land and buildings. The relation of the project to the street system and the surrounding property and to surrounding use districts shall also be shown. (2005 Code, § 14-403)

14-404. Minimum standards. The plan for a shopping center shall meet, as a minimum, the following specifications and requirements:

(1) The aggregate of all buildings proposed shall not exceed thirty percent (30%) of the entire lot area of the project. All buildings shall be set back not less than sixty feet (60') from all streets bounding the project area.

(2) There shall be customer parking facilities as follows:

(a) For recreation or amusement buildings, restaurants, or other establishments serving food or drinks: One (1) parking space for each one hundred (100) square feet of total floor space in the building.

(b) Theater or any place of public assembly: One (1) parking space for each six (6) seats.

(c) Clinic, or medical or dental offices: Five (5) parking spaces for each professional occupant.

(d) Hotel and motel: One (1) parking space for each guest room.

(e) Other permitted uses: One (1) parking space for each two hundred (200) square feet of retail floor space in the building.

(f) Each mercantile establishment shall provide one (1) space ten feet (10') by fifty feet (50'), for truck loading and unloading, for each ten thousand (10,000) square feet, or fraction thereof, in the building; provided, however, that a loading space adjacent and accessible to two (2) buildings may be used to serve both buildings if the aggregate area of both does not exceed ten thousand (10,000) square feet.

(3) The streets, parking areas, and walks shall be paved with hard surface material meeting applicable specifications of the town engineer.

(4) Any part of the project area not used for buildings or other structures, parking, loading, and access ways, shall be landscaped with grass, trees, shrubs, or pedestrian walks.

(5) The shopping center buildings shall be designed as a whole unified and single project, or in stages following the approved general plan, as described in § 14-408, and separate building permits may be taken out for separate portions of said property. (2005 Code, § 14-404)

14-405. Use regulations. A building or premises may be used only for the following purposes:

(1) Stores and shops conducting retail business.

(2) Personal, business, and professional services.

(3) Offices, hotels, motels, and restaurants.

(4) Amusements and recreation.

(5) Business signs, provided they are erected flat against the front or side wall of a building or within eighteen inches (18") thereof. Such signs shall have no flashing, intermittent, or moving illumination and shall not project above the building, and no sign which faces a dwelling district shall be illuminated.

(6) One (1) detached business sign advertising the shopping center may be erected provided the location, height, size, illumination, and description of such sign has been set forth in the application, approved, and shown on the plan. (2005 Code, § 14-405)

14-406. Height regulations. No building shall exceed three (3) stories or thirty-five feet (35') in height, except by permission of the Erwin Planning Commission, provided that this limitation shall not apply to:

- (1) Chimneys.
- (2) Cooling towers.
- (3) Ornamental towers and spires.
- (4) Radio and television towers, antennae or aerials.
- (5) Stage towers or scenery lofts.
- (6) Water tanks and towers. (2005 Code, § 14-406)

14-407. Limitations. Before recommending approval of a plan within the appropriate district, the planning commission may make reasonable additional requirements concerning, but not limited to, the limitation of uses, landscaping, lighting, signs, and advertising devices, screening or planting, setback and height of buildings, paving and location of drives and parking areas, drainage, and the location of access ways, taking into consideration the character of the surrounding area so as to protect adjoining residentially zoned lots or residential uses, to provide for public safety and prevent traffic congestion. (2005 Code, § 14-407)

14-408. Approved general plan. A general plan embodying all additional requirements imposed by the planning commission shall be prepared and submitted by the applicant in the same manner as a plan of a subdivision. This plan, to be known as the approved general plan, shall be drawn to scale and shall show, in addition to requirements set forth in §§ 14-403 and 14-404, the boundaries of the entire district and a certificate by an engineer or surveyor that said boundaries have been surveyed and are correct. In addition, said plan shall bear a form for certificate of approval by the board of mayor and aldermen and a certificate of the owner and trustee of the mortgagee, if any, that they adopt said plan and that the premises are not encumbered by delinquent taxes. After approval by the board of mayor and aldermen, said plans shall be placed on record with the town engineer.

Provided further, that the public health, safety, morals, and general welfare of the town shall be taken into full consideration, by the planning commission, and/or the board of mayor and aldermen in any action coming before it in regard to the matters herein set forth. (2005 Code, § 14-408)

14-409. Permits and licenses. The boundaries of the shopping center district shall be established upon approval by the board of mayor and aldermen.

However, no building permit, use and occupancy permit, nor license to operate a business on the premises, shall be issued until after the approval by the board of mayor and aldermen of the plan for the shopping center or that portion thereof upon which said permit or license is sought. (2005 Code, § 14-409)

14-410. Violations and penalty. All things shown on the approved general plan, upon final approval by the board of mayor and aldermen, become part of the zoning regulations of the district, and nothing in conflict therewith shall be done on the premises shown on the plan. Enforcement and penalties for violation shall be as herein provided as to other zoning regulations. (2005 Code, § 14-410)

TITLE 15**MOTOR VEHICLES, TRAFFIC AND PARKING¹****CHAPTER**

1. MISCELLANEOUS.
2. EMERGENCY VEHICLES.
3. SPEED LIMITS.
4. TURNING MOVEMENTS.
5. STOPPING AND YIELDING.
6. PARKING.
7. ENFORCEMENT.

CHAPTER 1**MISCELLANEOUS²****SECTION**

- 15-101. Motor vehicle requirements.
- 15-102. Driving on streets closed for repairs, etc.
- 15-103. One-way streets.
- 15-104. Unlaned streets.
- 15-105. Laned streets.
- 15-106. Yellow lines.
- 15-107. Miscellaneous traffic control signs, etc.
- 15-108. General requirements for traffic control signs, etc.
- 15-109. Unauthorized traffic control signs, etc.
- 15-110. School safety patrols.
- 15-111. Driving through funerals or other processions.

¹Municipal code reference

Excavations and obstructions in streets, etc.: title 16.

²State law references

Under *Tennessee Code Annotated*, § 55-10-307(b), the following offenses are exclusively state offenses and must be tried in a state court or a court having state jurisdiction: driving while intoxicated or drugged, as prohibited by *Tennessee Code Annotated*, § 55-10-401; failing to stop after a traffic accident where death or injury occurs, as prohibited by *Tennessee Code Annotated*, § 55-10-101, *et seq.*; driving while license is suspended or revoked, as prohibited by *Tennessee Code Annotated*, § 55-50-504; and drag racing, as prohibited by *Tennessee Code Annotated*, § 55-10-501.

- 15-112. Clinging to vehicles in motion.
- 15-113. Riding on outside of vehicles.
- 15-114. Backing vehicles.
- 15-115. Projections from the rear of vehicles.
- 15-116. Causing unnecessary noise.
- 15-117. Vehicles and operators to be licensed.
- 15-118. Passing.
- 15-119. Motorcycles, motor driven cycles, motorized bicycles, bicycles, etc.
- 15-120. Delivery of vehicle to unlicensed driver, etc.
- 15-121. Compliance with financial responsibility law required.
- 15-122. Adoption of state traffic statutes.

15-101. Motor vehicle requirements. It shall be unlawful for any person to operate any motor vehicle within the corporate limits unless such vehicle is equipped with properly operating muffler, lights, brakes, horn, and such other equipment as is prescribed and required by *Tennessee Code Annotated*, title 55, chapter 9.

15-102. Driving on streets closed for repairs, etc. Except for necessary access to property abutting thereon, no motor vehicle shall be driven upon any street that is barricaded or closed for repairs or other lawful purpose.

15-103. One-way streets. On any street for one-way traffic with posted signs indicating the authorized direction of travel at all intersections offering access thereto, no person shall operate any vehicle except in the indicated direction.

15-104. Unlaned streets. (1) Upon all unlaned streets of sufficient width, a vehicle shall be driven upon the right half of the street except:

(a) When lawfully overtaking and passing another vehicle proceeding in the same direction.

(b) When the right half of a roadway is closed to traffic while under construction or repair.

(c) Upon a roadway designated and signposted by the town for one-way traffic.

(2) All vehicles proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven as close as practicable to the right hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.

15-105. Laned streets. On streets marked with traffic lanes, it shall be unlawful for the operator of any vehicle to fail or refuse to keep his vehicle within the boundaries of the proper lane for his direction of travel except when

lawfully passing another vehicle or preparatory to making a lawful turning movement.

On two (2) lane and three (3) lane streets, the proper lane for travel shall be the right hand lane unless otherwise clearly marked. On streets with four (4) or more lanes, either of the right hand lanes shall be available for use except that traffic moving at less than the normal rate of speed shall use the extreme right hand lane. On one-way streets either lane may be lawfully used in the absence of markings to the contrary.

15-106. Yellow lines. On streets with a yellow line placed to the right of any lane line or center line, such yellow line shall designate a no-passing zone, and no operator shall drive his vehicle or any part thereof across or to the left of such yellow line except when necessary to make a lawful left turn from such street.

15-107. Miscellaneous traffic control signs, etc.¹ It shall be unlawful for any pedestrian or the operator of any vehicle to violate or fail to comply with any traffic control sign, signal, marking, or device placed or erected by the state or the town unless otherwise directed by a police officer.

No person shall willfully fail or refuse to comply with any lawful order of any police officer invested by law with the authority to direct, control or regulate traffic.

15-108. General requirements for traffic control signs, etc. Pursuant to *Tennessee Code Annotated*, § 54-5-108, all traffic control signs, signals, markings, and devices shall conform to the latest revision of the *Tennessee Manual on Uniform Traffic Control Devices for Streets and Highways*,² and shall be uniform as to type and location throughout the town.

15-109. Unauthorized traffic control signs, etc. No person shall place, maintain, or display upon or in view of any street, any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic control sign, signal, marking, or device or railroad sign or signal, or which attempts to control the movement of traffic or parking of vehicles, or which hides from view or interferes with the effectiveness of any

¹Municipal code references

Stop signs, yield signs, flashing signals, pedestrian control signs, traffic control signals generally: §§ 15-505--15-509.

²For the latest revision of the *Tennessee Manual on Uniform Traffic Control Devices for Streets and Highways*, see the Official Compilation of the Rules and Regulations of the State of Tennessee, § 1680-3-1, *et seq.*

official traffic control sign, signal, marking, or device or any railroad sign or signal.

15-110. School safety patrols. All motorists and pedestrians shall obey the directions or signals of school safety patrols when such patrols are assigned under the authority of the chief of police and are acting in accordance with instructions; provided, that such persons giving any order, signal, or direction shall at the time be wearing some insignia and/or using authorized flags for giving signals.

15-111. Driving through funerals or other processions. Except when otherwise directed by a police officer, no driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated.

15-112. Clinging to vehicles in motion. It shall be unlawful for any person traveling upon any bicycle, motorcycle, coaster, sled, roller skates, or any other vehicle to cling to, or attach himself or his vehicle to any other moving vehicle upon any street, alley, or other public way or place.

15-113. Riding on outside of vehicles. It shall be unlawful for any person to ride, or for the owner or operator of any motor vehicle being operated on a street, alley, or other public way or place, to permit any person to ride on any portion of such vehicle not designed or intended for the use of passengers. This section shall not apply to persons engaged in the necessary discharge of lawful duties nor to persons riding in the load-carrying space of trucks.

15-114. Backing vehicles. The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

15-115. Projections from the rear of vehicles. Whenever the load or any projecting portion of any vehicle shall extend beyond the rear of the bed or body thereof, the operator shall display at the end of such load or projection, in such position as to be clearly visible from the rear of such vehicle, a red flag being not less than twelve (12) inches square. Between one half (1/2) hour after sunset and one half (1/2) hour before sunrise, there shall be displayed in place of the flag a red light plainly visible under normal atmospheric conditions at least two hundred feet (200') from the rear of such vehicle.

15-116. Causing unnecessary noise. It shall be unlawful for any person to cause unnecessary noise by unnecessarily sounding the horn, "racing" the motor, or causing the "screeching" or "squealing" of the tires on any motor vehicle.

15-117. Vehicles and operators to be licensed. It shall be unlawful for any person to operate a motor vehicle in violation of the "Tennessee Motor Vehicle Title and Registration Law" or the "Uniform Classified and Commercial Driver License Act of 1988."

15-118. Passing. Except when overtaking and passing on the right is permitted, the driver of a vehicle passing another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the street until safely clear of the overtaken vehicle. The driver of the overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

When the street is wide enough, the driver of a vehicle may overtake and pass upon the right of another vehicle which is making or about to make a left turn.

The driver of a vehicle may overtake and pass another vehicle proceeding in the same direction either upon the left or upon the right on a street of sufficient width for four (4) or more lanes of moving traffic when such movement can be made in safety.

No person shall drive off the pavement or upon the shoulder of the street in overtaking or passing on the right.

When any vehicle has stopped at a marked crosswalk or at an intersection to permit a pedestrian to cross the street, no operator of any other vehicle approaching from the rear shall overtake and pass such stopped vehicle.

No vehicle operator shall attempt to pass another vehicle proceeding in the same direction unless he can see that the way ahead is sufficiently clear and unobstructed to enable him to make the movement in safety.

15-119. Motorcycles, motor driven cycles, motorized bicycles, bicycles, etc. (1) Definitions For the purpose of the application of this section, the following words shall have the definitions indicated:

(a) "Motorcycle." Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, including a vehicle that is fully enclosed, has three (3) wheels in contact with the ground, weighs less than one thousand five hundred pounds (1,500 lbs.), and has the capacity to maintain posted highway speed limits, but excluding a tractor or motorized bicycle.

(b) "Motor-driven cycle." Every motorcycle, including every motor scooter, with a motor which produces not to exceed five (5) brake horsepower, or with a motor with a cylinder capacity not exceeding one hundred and twenty-five cubic centimeters (125cc);

(c) "Motorized bicycle." A vehicle with two (2) or three (3) wheels, an automatic transmission, and a motor with a cylinder capacity

not exceeding fifty (50) cubic centimeters which produces no more than two (2) brake horsepower and is capable of propelling the vehicle at a maximum design speed of no more than thirty (30) miles per hour on level ground.

(2) Every person riding or operating a bicycle, motorcycle, motor driven cycle or motorized bicycle shall be subject to the provisions of all traffic ordinances, rules, and regulations of the town applicable to the driver or operator of other vehicles except as to those provisions which by their nature can have no application to bicycles, motorcycles, motor driven cycles, or motorized bicycles.

(3) No person operating or riding a bicycle, motorcycle, motor driven cycle or motorized bicycle shall ride other than upon or astride the permanent and regular seat attached thereto, nor shall the operator carry any other person upon such vehicle other than upon a firmly attached and regular seat thereon.

(4) No bicycle, motorcycle, motor driven cycle or motorized bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(5) No person operating a bicycle, motorcycle, motor driven cycle or motorized bicycle shall carry any package, bundle, or article which prevents the rider from keeping both hands upon the handlebars.

(6) No person under the age of sixteen (16) years shall operate any motorcycle, motor driven cycle or motorized bicycle while any other person is a passenger upon said motor vehicle.

(7) (a) Each driver of a motorcycle, motor driven cycle, or motorized bicycle and any passenger thereon shall be required to wear on his head, either a crash helmet meeting federal standards contained in 49 CFR 571.218, or, if such driver or passenger is twenty-one (21) years of age or older, a helmet meeting the following requirements:

(i) Except as provided in subdivisions (a)(ii)-(iv), the helmet shall meet federal motor vehicle safety standards specified in 49 CFR 571.218;

(ii) Notwithstanding any provision in 49 CFR 571.218 relative to helmet penetration standards, ventilation airways may penetrate through the entire shell of the helmet; provided, that no ventilation airway shall exceed one and one-half inches (1 1/2") in diameter;

(iii) Notwithstanding any provision in 49 CFR 571.218, the protective surface shall not be required to be a continuous contour; and

(iv) Notwithstanding any provision in 49 CFR 571.218 to the contrary, a label on the helmet shall be affixed signifying that such helmet complies with the requirements of the American Society for Testing Materials (ASTM), the Consumer Product

Safety Commission (CSPM), or the Snell Memorial Foundation, Inc..

(b) This section does not apply to persons riding:

(i) Within an enclosed cab;

(ii) Motorcycles that are fully enclosed, have three (3) wheels in contact with the ground, weigh less than one thousand five hundred pounds (1,500 lbs.) and have the capacity to maintain posted highway speed limits;

(iii) Golf carts; or

(iv) In a parade, at a speed not to exceed thirty (30) miles per hour, if the person is eighteen (18) years or older.

(8) Every motorcycle, motor driven cycle, or motorized bicycle operated upon any public way within the corporate limits shall be equipped with a windshield or, in the alternative, the operator and any passenger on any such motorcycle, motor driven cycle or motorized bicycle shall be required to wear safety goggles, faceshield or glasses containing impact resistant lens for the purpose of preventing any flying object from striking the operator or any passenger in the eyes.

(9) It shall be unlawful for any person to operate or ride on any vehicle in violation of this section, and it shall also be unlawful for any parent or guardian knowingly to permit any minor to operate a motorcycle, motor driven cycle or motorized bicycle in violation of this section.

15-120. Delivery of vehicle to unlicensed driver, etc.

(1) Definitions. (a) "Adult" shall mean any person eighteen (18) years of age or older.

(b) "Automobile" shall mean any motor driven automobile, car, truck, tractor, motorcycle, motor driven cycle, motorized bicycle, or vehicle driven by mechanical power.

(c) "Custody" means the control of the actual, physical care of the juvenile, and includes the right and responsibility to provide for the physical, mental, moral and emotional well being of the juvenile. "Custody" as herein defined, relates to those rights and responsibilities as exercised either by the juvenile's parent or parents or a person granted custody by a court of competent jurisdiction.

(d) "Drivers license" shall mean a motor vehicle operators license or chauffeurs license issued by the State of Tennessee.

(e) "Juvenile" as used in this chapter shall mean a person less than eighteen years of age, and no exception shall be made for a juvenile who has been emancipated by marriage or otherwise.

(2) It shall be unlawful for any adult to deliver the possession of or the control of any automobile or other motor vehicle to any person, whether an adult or a juvenile, who does not have in his possession a valid motor vehicle operators or chauffeurs license issued by the Department of Safety of the State of

Tennessee, or for any adult to permit any person, whether an adult or a juvenile, to drive any motor vehicle upon the streets, highways, roads, avenues, parkways, alleys or public thoroughfares in the Town of Erwin unless such person has a valid motor vehicle operators or chauffeurs license as issued by the Department of Safety of the State of Tennessee.

(3) It shall be unlawful for any parent or person having custody of a juvenile to permit any such juvenile to drive a motor vehicle upon the streets, highways, roads, parkways, avenues or public ways in the town in a reckless, careless, or unlawful manner, or in such a manner as to violate the ordinances of the town.

15-121. Compliance with financial responsibility law required.

(1) This section shall apply to every vehicle subject to the state registration and certificate of title provisions.

(2) At the time the driver of a motor vehicle is charged with any moving violation under *Tennessee Code Annotated*, title 55, chapters 8 and 10, parts 1-5, chapter 50; any provision in this title of this municipal code; or at the time of an accident for which notice is required under *Tennessee Code Annotated*, § 55-10-106, the officer shall request evidence of financial responsibility as required by this section. In case of an accident for which notice is required under *Tennessee Code Annotated*, § 55-10-106, the officer shall request such evidence from all drivers involved in the accident, without regard to apparent or actual fault. For the purposes of this section, "financial responsibility" shall be defined by *Tennessee Code Annotated*, § 55-12-139:

(3) It is a civil offense to fail to provide evidence of financial responsibility pursuant to this section. Any violation is punishable by a civil penalty of up to fifty dollars (\$50.00).

(4) The penalty imposed by this section shall be in addition to any other penalty imposed by the laws of this state or this municipal code.

(5) On or before the court date, the person so charged may submit evidence of financial responsibility at the time of the violation. If it is the person's first violation of this section and the court is satisfied that the financial responsibility was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility shall be dismissed. Upon the person's second or subsequent violation of this section, if the court is satisfied that the financial responsibility was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility may be dismissed. Any charge that is dismissed pursuant to this subsection shall be dismissed without costs to the defendant and no litigation tax shall be due or collected, notwithstanding any law to the contrary.

15-122. Adoption of state traffic statutes. By the authority granted under *Tennessee Code Annotated*, § 16-18-302, the town adopts by reference as if fully set forth in this section, the "Rules of the Road," as codified in *Tennessee*

Code Annotated, §§ 55-8-101 to 55-8-131, and §§ 55-8-133 to 55-8-180. Additionally, the town adopts *Tennessee Code Annotated*, § 55-4-101 through 55-4-135, §§ 55-8-181 to 55-8-193, §§ 55-8-199, 55-8-204, §§ 55-9-601 to 55-9-606, § 55-12-139, § 55-21-108, and § 55-50-351 by reference as if fully set forth in this section.

CHAPTER 2

EMERGENCY VEHICLES

SECTION

15-201. Authorized emergency vehicles defined.

15-202. Operation of authorized emergency vehicles.

15-203. Following emergency vehicles.

15-204. Running over fire hoses, etc.

15-201. Authorized emergency vehicles defined. Authorized emergency vehicles shall be fire department vehicles, police vehicles, and such ambulances and other emergency vehicles as are designated by the chief of police.

15-202. Operation of authorized emergency vehicles. (1) The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, subject to the conditions herein stated.

(2) The driver of an authorized emergency vehicle may:

(a) Park or stand, irrespective of the provisions of this title;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the maximum speed limit so long as life or property is not thereby endangered; and

(d) Disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of the applicable laws of this state, except that an authorized emergency vehicle operated as a police vehicle may be equipped with or display a red light only in combination with a blue light visible from in front of the vehicle.

15-203. Following emergency vehicles. No driver of any vehicle other than one on official business shall follow any authorized emergency vehicle apparently traveling in response to an emergency call closer than five hundred feet (500') or drive or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

15-204. Running over fire hoses, etc. It shall be unlawful for any person to drive over any hose lines or other equipment of the fire department except in obedience to the direction of a fire fighter or police officer.

CHAPTER 3

SPEED LIMITS

SECTION

15-301. In general.

15-302. At intersections.

15-303. In school zones.

15-301. In general. It shall be unlawful for any person to operate or drive a motor vehicle upon any highway or street at a rate of speed in excess of thirty (30) miles per hour except where official signs have been posted indicating other speed limits, in which cases the posted speed limit shall apply.

15-302. At intersections. It shall be unlawful for any person to operate or drive a motor vehicle through any intersection at a rate of speed in excess of fifteen (15) miles per hour unless such person is driving on a street regulated by traffic control signals or signs which require traffic to stop or yield on the intersecting streets.

15-303. In school zones. Pursuant to *Tennessee Code Annotated*, § 55-8-152, the town shall have the authority to enact special speed limits in school zones. Such special speed limits shall be enacted based on an engineering investigation; shall not be less than fifteen (15) miles per hour; and shall be in effect only when proper signs are posted with a warning flasher or flashers in operation. It shall be unlawful for any person to violate any such special speed limit enacted and in effect in accordance with this paragraph.

In school zones where the board of mayor and aldermen has not established special speed limits as provided for above, any person who shall drive at a speed exceeding fifteen (15) miles per hour when passing a school during a recess period when a warning flasher or flashers are in operation, or during a period of ninety (90) minutes before the opening hour of a school, or a period of ninety (90) minutes after the closing hour of a school, while children are actually going to or leaving school, shall be prima facie guilty of reckless driving.

CHAPTER 4

TURNING MOVEMENTS

SECTION

15-401. Generally.

15-402. Right turns.

15-403. Left turns on two-way roadways.

15-404. Left turns on other than two-way roadways.

15-405. U-turns.

15-401. Generally. Every driver who intends to turn, or partly turn from a direct line, shall first see that such movement can be made in safety, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal required in *Tennessee Code Annotated*, § 55-8-143, plainly visible to the driver of such other vehicle of the intention to make such movement.

15-402. Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right hand curb or edge of the roadway.

15-403. Left turns on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection, and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

15-404. Left turns on other than two-way roadways. At any intersection where traffic is restricted to one (1) direction on one (1) or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and after entering the intersection, the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

15-405. U-turns. U-turns are prohibited.

CHAPTER 5

STOPPING AND YIELDING

SECTION

- 15-501. When emerging from alleys, etc.
- 15-502. To prevent obstructing an intersection.
- 15-503. At railroad crossings.
- 15-504. At "stop" signs.
- 15-505. At "yield" signs.
- 15-506. At traffic control signals generally.
- 15-507. At flashing traffic control signals.
- 15-508. At pedestrian control signals.
- 15-509. Stops to be signaled.

15-501. When emerging from alleys, etc. The drivers of all vehicles emerging from alleys, parking lots, driveways, or buildings shall stop such vehicles immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on the roadway.

15-502. To prevent obstructing an intersection. No driver shall enter any intersection or marked crosswalk unless there is sufficient space on the other side of such intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of traffic in or on the intersecting street or crosswalk. This provision shall be effective notwithstanding any traffic control signal indication to proceed.

15-503. At railroad crossings. (1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet (50') but not less than fifteen feet (15') from the nearest rail of such railroad, and shall not proceed until that driver can do so safely. The foregoing requirements shall apply when:

- (a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
- (b) A crossing gate is lowered or when a human flagger gives or continues to give a signal of the approach or passage of a railroad train;
- (c) A railroad train approaching within approximately one thousand five hundred feet (1,500') of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; and

(d) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

15-504. At "stop" signs. The driver of a vehicle facing a "stop" sign shall stop before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, except when directed to proceed by a police officer or traffic control signal.

15-505. At "yield" signs. (1) The driver of a vehicle who is faced with a yield sign at the entrance to a through highway or other public roadway is not necessarily required to stop, but is required to exercise caution in entering the highway or other roadway and to yield the right-of-way to other vehicles which have entered the intersection from the highway or other roadway, or which are approaching so closely on the highway or other roadway as to constitute an immediate hazard, and the driver having so yielded may proceed when the way is clear.

(2) Where there is provided more than one (1) lane for vehicular traffic entering a through highway or other public roadway, if one (1) or more lanes at such entrance are designated a yield lane by an appropriate marker, this section shall control the movement of traffic in any lane so marked with a yield sign, even though traffic in other lanes may be controlled by an electrical signal device or other signs, signals, markings or controls.

15-506. At traffic control signals generally. Whenever traffic is controlled by traffic control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and the terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green alone, or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) Yellow alone, or "Caution," when shown following the green or "Go" signal:

(a) Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter, and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing the signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(3) Red alone, or "Stop":

(a) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone. A right turn on a red signal shall be permitted at all intersections within the town, provided that the prospective turning car shall come to a full and complete stop before turning and that the turning car shall yield the right-of-way to pedestrians and cross traffic traveling in accordance with their traffic signal. However, such turn will not endanger other traffic lawfully using the intersection. A right turn on red shall be permitted at all intersections, except those that are clearly marked by a "No Turns On Red" sign, which may be erected by the town at intersections which the town decides require no right turns on red in the interest of traffic safety.

(b) No pedestrian facing such signal shall enter the roadway unless such entry can be made safely and without interfering with any vehicular traffic.

(c) A left turn on a red or stop signal shall be permitted at all intersections within the town where a one-way street intersects with another one-way street moving in the same direction into which the left turn would be made from the original one-way street. Before making such a turn, the prospective turning car shall come to a full and complete stop and shall yield the right-of-way to pedestrians and cross traffic traveling in accordance with the traffic signal so as not to endanger traffic lawfully using the intersection. A left turn on red shall be permitted at any applicable intersection except that clearly marked by a "No Turn of Red" sign, which may be erected by the town at intersections which the town decides requires no left turns on red in the interest of traffic safety.

(d) The driver of a motorcycle approaching an intersection that is controlled by a traffic-control signal utilizing a vehicle detection device that is inoperative due to the size of the motorcycle shall come to a full and complete stop at the intersection and, after exercising due care as provided by law, may proceed with due caution when it is safe to do so. It is not a defense to § 15-506, "At traffic control signals generally," that the driver of a motorcycle proceeded under the belief that a traffic-control signal utilized a vehicle detection device or was inoperative due to the

size of the motorcycle when such signal did not utilize a vehicle detection device or that any such device was not in fact inoperative due to the size of the motorcycle.

(4) Steady red with green arrow:

(a) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.

(b) No pedestrian facing such signal shall enter the roadway unless such entry can be made safely and without interfering with any vehicular traffic.

(5) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

15-507. At flashing traffic control signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal, it shall require obedience by vehicular traffic as follows:

(a) Flashing red (stop signal). When a red lens is illuminated with intermittent flashes, and the light is clearly visible for a sufficient distance ahead to permit such stopping, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules set forth in § 15-504 of this code.

15-508. At pedestrian control signals. Wherever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" are in place, such signals shall indicate as follows:

(1) Walk. Pedestrians facing such signals may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) Wait or Don't Walk. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed

crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

15-509. Stops to be signaled. Every driver operating a motor vehicle who intends to stop such vehicle, shall first see that such movement can be made in safety, and whenever the operation of any other vehicle may be affected by such movement, shall give the signal required in *Tennessee Code Annotated*, § 55-8-143, plainly visible to the driver of such other vehicle of the intention to make such movement.

CHAPTER 6

PARKING

SECTION

- 15-601. Generally.
- 15-602. Angle parking.
- 15-603. Occupancy of more than one space.
- 15-604. Where prohibited.
- 15-605. Loading and unloading zones.
- 15-606. Regulation by parking meters.
- 15-607. Lawful parking in parking meter spaces.
- 15-608. Unlawful parking in parking meter spaces.
- 15-609. Unlawful to occupy more than one parking meter space.
- 15-610. Unlawful to deface or tamper with meters.
- 15-611. Unlawful to deposit slugs in meters.
- 15-612. Presumption with respect to illegal parking.

15-601. Generally. No person shall leave any motor vehicle unattended on any street without first setting the brakes thereon, stopping the motor, removing the ignition key, and turning the front wheels of such vehicle toward the nearest curb or gutter of the street.

Except as hereinafter provided, every vehicle parked upon a street within this town shall be so parked that its right wheels are approximately parallel to and within eighteen inches (18") of the right edge or curb of the street. On one-way streets where the town has not placed signs prohibiting the same, vehicles may be permitted to park on the left side of the street, and in such cases the left wheels shall be required to be within eighteen inches (18") of the left edge or curb of the street.

Notwithstanding anything else in this code to the contrary, no person shall park or leave a vehicle parked on any public street or alley within the fire limits between the hours of 1:00 A.M. and 5:00 A.M. or on any other public street or alley for more than seventy-two (72) consecutive hours without the prior approval of the chief of police.

Furthermore, no person shall wash, grease, or work on any vehicle, except to make repairs necessitated by an emergency, while such vehicle is parked on a public street.

15-602. Angle parking. On those streets which have been signed or marked by the town for angle parking, no person shall park or stand a vehicle other than at the angle indicated by such signs or markings. No person shall angle park any vehicle which has a trailer attached thereto or which has a length in excess of twenty-four feet (24').

15-603. Occupancy of more than one space. No person shall park a vehicle in any designated parking space so that any part of such vehicle occupies more than one (1) such space or protrudes beyond the official markings on the street or curb designating such space unless the vehicle is too large to be parked within a single designated space.

15-604. Where prohibited. No person shall park a vehicle in violation of any sign placed or erected by the state or town, nor:

- (1) On a sidewalk; provided, however, a bicycle may be parked on a sidewalk if it does not impede the normal and reasonable movement of pedestrian or other traffic.
- (2) In front of a public or private driveway;
- (3) Within an intersection;
- (4) Within fifteen feet (15') of a fire hydrant;
- (5) Within a pedestrian crosswalk;
- (6) Within twenty feet (20') of a crosswalk at an intersection;
- (7) Within thirty feet (30') upon the approach of any flashing beacon, stop sign or traffic control signal located at the side of a roadway;
- (8) Within fifty feet (50') of the nearest rail of a railroad crossing;
- (9) Within twenty feet (20') of the driveway entrance to any fire station, and on the side of the street opposite the entrance to any fire station within seventy-five feet (75') of such entrance when properly signposted;
- (10) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
- (11) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- (12) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
- (13) In a parking space clearly identified by an official sign as being reserved for the physically handicapped, unless, however, the person driving the vehicle is:
 - (a) Physically handicapped, or
 - (b) Parking such vehicle for the benefit of a physically handicapped person.

A vehicle parking in such a space shall display a certificate of identification or a disabled veteran's license plate issued under *Tennessee Code Annotated*, title 55, chapter 21.

15-605. Loading and unloading zones. No person shall park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers or merchandise in any place marked by the town as a loading and unloading zone.

15-606. Regulation by parking meters. In the absence of an official sign to the contrary which has been installed by the town, between the hours of 8:00 A.M. and 6:00 P.M., on all days except Sundays and holidays declared by the board of mayor and aldermen, parking shall be regulated by parking meters where the same have been installed by the town. The presumption shall be that all installed parking meters were lawfully installed by the town.

15-607. Lawful parking in parking meter spaces. Any parking space regulated by a parking meter may be lawfully occupied by a vehicle only after a proper coin has been deposited in the parking meter and the said meter has been activated or placed in operation in accordance with the instructions printed thereon.

15-608. Unlawful parking in parking meter spaces. It shall be unlawful for the owner or operator of any vehicle to park or allow his vehicle to be parked in a parking space regulated by a parking meter for more than the maximum period of time which can be purchased at one time. Insertion of additional coin or coins in the meter to purchase additional time is unlawful.

No owner or operator of any vehicle shall park or allow his vehicle to be parked in such a space when the parking meter therefor indicates no parking time allowed, whether such indication is the result of a failure to deposit a coin or to operate the lever or other actuating device on the meter, or the result of the automatic operation of the meter following the expiration of the lawful parking time subsequent to depositing a coin therein at the time the vehicle was parked.

15-609. Unlawful to occupy more than one parking meter space. It shall be unlawful for the owner or operator of any vehicle to park or allow his vehicle to be parked across any line or marking designating a parking meter space or otherwise so that such vehicle is not entirely within the designated parking meter space; provided, however, that vehicles which are too large to park within one (1) space may be permitted to occupy two (2) adjoining spaces provided proper coins are placed in both meters.

15-610. Unlawful to deface or tamper with meters. It shall be unlawful for any unauthorized person to open, deface, tamper with, willfully break, destroy, or impair the usefulness of any parking meter.

15-611. Unlawful to deposit slugs in meters. It shall be unlawful for any person to deposit in a parking meter any slug or other substitute for a coin of the United States.

15-612. Presumption with respect to illegal parking. When any unoccupied vehicle is found parked in violation of any provision of this chapter,

there shall be a prima facie presumption that the registered owner of the vehicle is responsible for such illegal parking.

CHAPTER 7

ENFORCEMENT

SECTION

- 15-701. Issuance of traffic citations.
- 15-702. Failure to obey citation.
- 15-703. Illegal parking.
- 15-704. Impoundment of vehicles.
- 15-705. Disposal of abandoned motor vehicles.
- 15-706. Violations and penalty.

15-701. Issuance of traffic citations.¹ When a police officer halts a traffic violator other than for the purpose of giving a warning, he shall take the name, address, and operator's license number of said person, the license number of the motor vehicle involved, and such other pertinent information as may be necessary, and shall issue to him a written traffic citation containing a notice to answer to the charge against him in the town court at a specified time. The officer, upon receiving the written promise of the alleged violator to answer as specified in the citation, shall release such person from custody. It shall be unlawful for any alleged violator to give false or misleading information as to his name or address.

[Optional] Authorization to issue electronic citations in lieu of written citations or arrest in certain situations. *Tennessee Code Annotated*, § 40-7-118 defines "citations" to include electronic citation, allowing an electronic signature to be used to sign a citation issued electronically, and providing that the electronic signature has the same force and effect as a written signature. The officer is required to provide the individual cited with a paper copy of the electronic citation. Replicas of the citation data is to be sent by electronic transmission to be sent within three (3) days of issuance to the court having jurisdiction the alleged offense. An electronic signature may be used to sign a citation issued electronically and that electronic signature has the same force and effect as a written signature.

15-702. Failure to obey citation. It shall be unlawful for any person to violate his written promise to appear in court after giving said promise to an

¹Municipal code reference

Issuance of citations in lieu of arrest and ordinance summonses in non-traffic related offenses: title 6, chapter 3.

State law reference

Tennessee Code Annotated, § 7-63-101, *et seq.*

officer upon the issuance of a traffic citation, regardless of the disposition of the charge for which the citation was originally issued.

15-703. Illegal parking. Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by this code, the officer finding such vehicle shall take its license number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a citation for the driver and/or owner to answer for the violation within thirty (30) days during the hours and at a place specified in the citation.

15-704. Impoundment of vehicles. Members of the police department are hereby authorized, when reasonably necessary for the security of the vehicle or to prevent obstruction of traffic, to remove from the streets and impound any vehicle whose operator is arrested or any unattended vehicle which is parked so as to constitute an obstruction or hazard to normal traffic, or which has been parked for more than one (1) hour in excess of the time allowed for parking in any place, or which has been involved in two (2) or more violations of this title for which citation tags have been affixed to the vehicle and the vehicle not removed. Any impounded vehicle shall be stored until the owner or other person entitled thereto claims it, gives satisfactory evidence of ownership or right to possession, and pays all applicable fees and costs of impoundment and storage, or until it is otherwise lawfully disposed of.

15-705. Disposal of abandoned motor vehicles. "Abandoned motor vehicles," as defined in *Tennessee Code Annotated*, § 55-16-103, shall be impounded and disposed of by the police department in accordance with the provisions of *Tennessee Code Annotated*, §§ 55-16-103 to 55-16-109.

15-706. Violations and penalty. Any violation of this title shall be a civil offense punishable as follows:

(1) **Traffic citations.** Traffic citations shall be punishable by a civil penalty up to fifty dollars (\$50.00) for each separate offense.

(2) (a) **Other parking violations excluding handicapped parking.** For other parking violations, excluding handicapped parking violations, the offender may, within thirty (30) days, have the charge against him disposed of by paying to the recorder a fine of ten dollars (\$10.00) provided he waives his right to a judicial hearing. If he appears and waives his right to a judicial hearing after thirty (30) days, his civil penalty shall be twenty-five dollars (\$25.00).

(b) **Disabled parking violations, or parking in a space designated for disabled drivers without legal authority, shall be punishable as provided in state law, *Tennessee Code Annotated*, § 55-21-108. (modified)**

TITLE 16

STREETS AND SIDEWALKS, ETC¹

CHAPTER

1. MISCELLANEOUS.
2. EXCAVATIONS AND CUTS.
3. HOUSE AND BUSINESS NUMBERING.

CHAPTER 1

MISCELLANEOUS

SECTION

- 16-101. Obstructing streets, alleys, or sidewalks prohibited.
- 16-102. Trees projecting over streets, etc., regulated.
- 16-103. Trees, etc., obstructing view at intersections prohibited.
- 16-104. Projecting signs and awnings, etc., restricted.
- 16-105. Banners and signs across streets and alleys restricted.
- 16-106. Gates or doors opening over streets, alleys, or sidewalks prohibited.
- 16-107. Littering streets, alleys, or sidewalks prohibited.
- 16-108. Obstruction of drainage ditches.
- 16-109. Abutting occupants to keep sidewalks clean, etc.
- 16-110. Parades, etc., regulated.
- 16-111. Animals and vehicles on sidewalks.
- 16-112. Use of skateboards, roller skates, etc., on streets, sidewalks, etc.
- 16-113. Fires in streets, etc.
- 16-114. Street acceptance policy.

16-101. Obstructing streets, alleys, or sidewalks prohibited. No person shall use or occupy any portion of any public street, alley, sidewalk, or right-of-way for the purpose of storing, selling, or exhibiting any goods, wares, merchandise, or materials. (2005 Code, § 16-101)

16-102. Trees projecting over streets, etc., regulated. It shall be unlawful for any property owner or occupant to allow any limbs of trees on his property to project out over any street, alley at a height of less than fourteen feet (14') or over any sidewalk at a height of less than eight feet (8'). (2005 Code, § 16-102)

¹Municipal code reference

Related motor vehicle and traffic regulations: title 15.

16-103. Trees, etc., obstructing view at intersections prohibited.

It shall be unlawful and a nuisance for any property owner or occupant to have or maintain on his property any tree, shrub, sign, or other obstruction which prevents persons driving vehicles on public streets or alleys from obtaining a clear view of traffic when approaching an intersection. When such property owner or occupant fails to abate such nuisance after reasonable notice and order to do so, the Town of Erwin, acting through and by its street committee, may abate such nuisance, and remove such obstruction. The cost and expense thereof shall be and stand assessed as a lien against the property involved and shall be immediately due and payable. (2005 Code, § 16-103)

16-104. Projecting signs and awnings, etc., restricted.

Signs, awnings, or other structures which project over any street or other public way shall be erected subject to the requirements of the building code.¹ (2005 Code, § 16-104)

16-105. Banners and signs across streets and alleys restricted.

It shall be unlawful for any person to place or have placed any banner or sign across any public street or alley except when expressly authorized by the board of mayor and aldermen after a finding that no hazard will be created by such banner or sign. (2005 Code, § 16-105)

16-106. Gates or doors opening over streets, alleys, or sidewalks prohibited. It shall be unlawful for any person owning or occupying property to allow any gate or door to swing open upon or over any street, alley, or sidewalk except when required by statute. (2005 Code, § 16-106)

16-107. Littering streets, alleys, or sidewalks prohibited. It shall be unlawful for any person to litter, place, throw, track, or allow to fall on any street, alley, or sidewalk any refuse, glass, tacks, mud, or other objects or materials which are unsightly or which obstruct or tend to limit or interfere with the use of such public ways and places for their intended purposes. (2005 Code, § 16-107)

16-108. Obstruction of drainage ditches. It shall be unlawful for any person to permit or cause the obstruction of any drainage ditch in any public right of way. (2005 Code, § 16-108)

16-109. Abutting occupants to keep sidewalks clean, etc. The occupants of property abutting on a sidewalk are required to keep the sidewalk

¹Municipal code reference

Building code: title 12, chapter 1.

clean. Also, immediately after a snow or sleet, such occupants are required to remove all accumulated snow and ice from the abutting sidewalk. (2005 Code, § 16-109)

16-110. Parades, etc., regulated. It shall be unlawful for any person, club, organization, or other group to hold any meeting, parade, demonstration, or exhibition on the public streets without some responsible representative first securing a permit from the recorder. No permit shall be issued by the recorder unless such activity will not unreasonably interfere with traffic and unless such representative shall agree to see to the immediate cleaning up of all litter which shall be left on the streets as a result of the activity. Furthermore, it shall be unlawful for any person obtaining such a permit to fail to carry out his agreement to clean up the resulting litter immediately. (2005 Code, § 16-110)

16-111. Animals and vehicles on sidewalks. It shall be unlawful for any person to ride, lead, or tie any animal, or ride, push, pull, or place any vehicle across or upon any sidewalk in such manner as unreasonably interferes with or inconveniences pedestrians using the sidewalk. It shall also be unlawful for any person knowingly to allow any minor under his control to violate this section. (2005 Code, § 16-111)

16-112. Use of skateboards, roller skates, etc., on streets, sidewalks, etc. It shall be unlawful to operate skateboards, roller skates, scooters, coasters, bicycles, wagons or other toys of like kind, by whatever name called, upon the streets, sidewalks, avenues and other public places within the central business district (B-3) and the supporting central business district (B-4) of the Town of Erwin, Tennessee, and within that portion of the arterial business district (B-2) of the Town of Erwin, Tennessee, which lies adjacent to North Main Avenue in the Town of Erwin, Tennessee; provided however, it shall not be unlawful to operate bicycles having wheels each of which equals or exceeds twenty inches (20") in diameter, and which meets all other specifications of any applicable laws or ordinances, upon the streets and avenues within said specified districts of the Town of Erwin, Tennessee. (2005 Code, § 16-112)

16-113. Fires in streets, etc. It shall be unlawful for any person to set or contribute to any fire in any public street, alley, or sidewalk. (2005 Code, § 16-113)

16-114. Street acceptance policy. In order to provide for adequate street improvements, elimination of traffic congestion, and the health, safety, and general welfare of the citizens of the Town of Erwin, the board of mayor and aldermen shall not accept as a public street any recorded right-of-way until it has met the minimum standards herein described.

(1) The proposed street shall have a right-of-way width of at least fifty feet (50') unless the requirement would cause undue hardship.

(2) All roadway improvements of proposed streets shall meet the roadway standards as outlined in article IV, section A, subsections a, b, c and d of the Erwin, Tennessee, Subdivision Regulations,¹ said subdivision regulations adopted by the Erwin Planning Commission on November 18, 1968.

(3) Prior to final acceptance of a proposed street as the public street, the Erwin Planning Commission shall study a plat of the proposed street and make its approval or disapproval known to the board of mayor and aldermen. (2005 Code, § 16-114)

¹Subdivision regulations for the Town of Erwin, Tennessee are of record in the office of the town recorder.

CHAPTER 2

EXCAVATIONS AND CUTS¹

SECTION

- 16-201. Permit required.
- 16-202. Applications.
- 16-203. Fee.
- 16-204. Deposit or bond
- 16-205. Manner of excavating-barricades and lights-temporary sidewalks.
- 16-206. Restoration of streets. etc.
- 16-207. Insurance.
- 16-208. Time limits.
- 16-209. Supervision.
- 16-210. Driveway curb cuts.

16-201. Permit required. It shall be unlawful for any person, firm, corporation, association or others, to make any excavation in any street, alley, or public place, or to tunnel under any street, alley or public place in the town without having first obtained a permit as herein required, and without complying with the provisions of this chapter; and it shall also be unlawful to be in violation of or variance from the terms of any such permit; provided, however, any person maintaining pipes, lines, or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately, provided the permit could not reasonably and practically have been obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the town recorder is open for business and said permit shall be retroactive to the date when the work was begun. (Ord. #719-20, June 2020)

16-202. Applications. Applications for such permits shall be made to the town recorder or such person as he may designate to receive such applications, and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the person, firm, corporation, association or others doing the actual excavating, the name of the person, firm, corporation, association, or others for whom the work is being done, and shall

¹State law reference

This chapter was patterned substantially after the ordinance upheld by the Tennessee Supreme Court in the case of *City of Paris, Tennessee v. Paris-Henry County Public Utility District*, 207 Tenn. 388, 340 S.W.2d 885 (1960).

contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done. Such application shall be rejected or approved by the town recorder within twenty-four (24) hour of its filing. (Ord. #719-20, June 2020)

16-203. Fee. The fee for such permits shall be two dollars (\$2.00) for excavations which do not exceed twenty-five (25) square feet in area or tunnels not exceeding twenty-five feet (25') in length; and twenty-five cents (\$.25) for each additional square foot in the case of excavations, or lineal foot in the case of tunnels; but not to exceed one hundred dollars (\$100.00) for any permit. (Ord. #719-20, June 2020)

16-204. Deposit or bond. No such permit shall be issued unless and until the applicant therefore has deposited with the town recorder a cash deposit. The deposit shall be in the sum of twenty-five dollars (\$25.00) if pavement is involved or seventy-five dollars (\$75.00) if the excavation is in a paved area and shall insure the proper restoration of the ground and laying of the pavement, if any. Where the amount of the deposit is clearly inadequate to cover the cost of restoration, the town recorder may increase the amount of the deposit to an amount considered by him to be adequate to cover the said cost. From this deposit shall be deducted the expense to the town of relaying the surface of the ground or pavement, and of making the refill if this is done by the town or at its expense. The balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored. Provided, however, that all public utility companies operating under license or franchise by the governing bodies of the Town of Erwin, County of Unicoi, State of Tennessee, or the Government of the United States of America, shall be exempt from the provisions of this section.

In lieu of a deposit the applicant may deposit with the town recorder a surety bond in such form and amount as the town recorder shall deem adequate to cover the cost to the town if the applicant fails to make proper restoration. (Ord. #719-20, June 2020)

16-205. Manner of excavating--barricades and lights--temporary sidewalks. Any person, firm, corporation, association, utility or other entity making any excavation of tunnel shall do so according to the terms and conditions of the application and permit authorizing the work to be done. Sufficient and proper barricades and lights shall be maintained to protect persons and property from injury by or because of the excavations being made. If any sidewalk is blocked by any such work a temporary sidewalk shall be constructed and provided which shall be safe for travel and convenient for users. (Ord. #719-20, June 2020)

16-206. Restoration of streets, etc. Any person, firm, corporation, association, utility or other entity making any excavation or tunnel in or under any street, alley or public place in the town shall restore said street, alley or public place to its original condition as outlined in the subsection of "restoration of streets, etc." In case of unreasonable delay in restoring the street, alley or public place, the public works director shall give notice to the person, firm, corporation, association, utility or other entity that unless the excavation or tunnel is refilled properly within a specified reasonable period of time, the town will do the work and charge the expense of doing the same to such person, firm, corporation, association, utility or other entity. If within the time mentioned the conditions of the above notice have not be complied with, the work shall be done by the town, an accurate account of the expense involved shall be kept, and the total cost shall be charged to the person, firm, corporation, association, utility or other entity, who made the excavation or tunnel.

(1) When applicable, repair work shall be in accordance with the provisions outlined in the Department of Transportation's "Standard Specifications for Road and Bridge Construction." All other repairs shall be made as outlined in the provisions herein or in as good as or better condition than prior to excavation.

(2) One-call provision. In accordance with *Tennessee Code Annotated*, § 65-31-101 to §65-31-120; all work being performed in the public right-of-way shall require a one-call to Tennessee 811 and a locate ticket placed.

(3) Temporary repair. Temporary utility patches shall consist, at a minimum, of two inches (2") of hot or cold-mix asphalt pavement above the backfill material. Steel plates may be used to ensure the safety of vehicle traffic and preserve the integrity of the underground utilities throughout the duration of the repairs being made. Crushed surface material may be used if the final repair cannot be immediately done. The temporary repair shall only be allowed for a period of forty-eight (48) hours and then the Final Repair must be done. Weather conditions shall not be grounds for the extension of the forty-eight (48) hour period. The permittee shall preserve the integrity of the patched surface until a permanent solution can be done to restore the structural integrity of the surface prior to the excavation.

(4) Final repair. Upon completion of the work performed in the roadway infrastructure a final inspection may be required by the public works director. Repairs to concrete structures shall be maintained to three thousand pounds per second (3000 psi) or greater concrete specifications. Repairs to asphalt infrastructure and striping shall be the same or better than the surface prior to the excavation of utilities. Fill materials shall be placed and packed to ensure settling will not damage the final repair to be conducted. The surface mix shall be as good as or better than the roadway asphalt surface that was there previously. When necessary infrared or heating up of asphalt surface may be necessary to ensure bonding will occur. Squared off cuts may be necessary to ensure the cleanest possible repair for damages done to the roadway surface.

When applicable crowning should follow the contours of the current roadway surface and shall ensure that no standing water is present following completion.

(5) **Warranty requirements.** (a) Pavement cuts on streets shall be warranted and maintained until the road is repaved. The patch shall be repaired as necessary until the warranty has passed. Work performed on previously repaired underground utilities needing reopened shall meet the provisions of this chapter.

(b) Pavement cuts that are performed in-house will be held to the same provisions of this chapter.

(c) All curb, sidewalk, and structural repairs affected by excavation shall be included in the provisions outlined in the warranty requirements. (Ord. #719-20, June 2020)

16-207. Insurance. In addition to making the deposit or giving the bond hereinbefore proved to be made, each person applying for such a permit shall file a certificate of insurance indicating that he is insured against claims for damages for personal injury as well as against claims for property damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The amount of insurance shall be prescribed by the town recorder in accordance with the nature of the risk involved; provided however, that the liability insurance for bodily injury in effect shall not be in an amount less than one hundred thousand dollars (\$100,000.00) for each person and three hundred thousand dollars (\$300,000.00) for each accident and for property damages in an amount not less than twenty-five thousand dollars (\$25,000.00), with an aggregate of seventy-five thousand dollars (\$75,000.00). (Ord. #719-20, June 2020)

16-208. Time limits. Each application for a permit shall state the length of time it is estimated will elapse from the commencement of the work until the restoration of the surface of the ground or pavement, or until the refill is made ready for the pavement to be put on by the town if the town restores such surface pavement. It shall be unlawful to fail to comply with this time limitation unless permission for an excavation of time is granted by the town recorder. (Ord. #719-20, June 2020)

16-209. Supervision. The public works director shall from time to time inspect all excavations and tunnels being made in or under any public street, alley or other public place in the town and see to the enforcement of the provisions of this chapter. Notice shall be given to him at least ten (10) hours before the work of refilling any such excavation or tunnel commences. (Ord. #719-20, June 2020)

16-210. Driveway curb cuts. No one shall cut, build, or maintain a driveway across a curb or sidewalk without first obtaining a permit from the town recorder. Such a permit will not be issued when the contemplated driveway is to be so located or constructed as to create an unreasonable hazard to pedestrians a/or vehicular traffic. No driveway shall exceed thirty-five feet (35') in width at its outer or street edge when two (2) or more adjoining driveways are provided for the same property a safety island of not less than ten feet (10') in width at its outer or street edge shall be provided. Driveway aprons shall not extend out into the street. (Ord. #719-20, June 2020)

CHAPTER 3

HOUSE AND BUSINESS NUMBERING

SECTION

- 16-301. Town recorder's responsibility.
- 16-302. Placement of numbers.
- 16-303. Size of numbers.
- 16-304. Approval.

16-301. Town recorder's responsibility. The town recorder shall be responsible for determining the correct number of properties located within the corporate limits of the Town of Erwin. (2005 Code, § 16-301)

16-302. Placement of numbers. All numbers shall be placed conspicuously above, on, or at the side of the proper door of each building, or each unit of the building which has an outside entrance, so that the number can be plainly seen from the street line. Should the distance from the street line to the door inhibit discernment of numbers placed on the building, then the numbers should be placed upon a gate post, fence post or other appropriate place easily seen from the street line. (2005 Code, § 16-302)

16-303. Size of numbers. All numbers placed on buildings shall be at least three inches (3") high. (2005 Code, § 16-303)

16-304. Approval. No final approval of the remodeling or construction of buildings shall be granted by the town building inspection department or the town recorder until conspicuous numbers have been placed thereon. (2005 Code, § 16-304)

TITLE 17

REFUSE AND TRASH DISPOSAL¹

CHAPTER

1. REFUSE.

CHAPTER 1

REFUSE

SECTION

- 17-101. Premises to be kept clean.
- 17-102. Definitions.
- 17-103. Accumulation of refuse.
- 17-104. Confiscation of unsatisfactory storage containers.
- 17-105. No refuse to be collected unless properly stored.
- 17-106. Collection of garbage and refuse.
- 17-107. Disposal of garbage and refuse.
- 17-108. Dumping in streams, sewers, and drains prohibited.
- 17-109. Service of orders.
- 17-110. Additional definitions.
- 17-111. Collection service provided by town.
- 17-112. Placement of containers.
- 17-113. Trespassing on dumpsters.
- 17-114. Burning regulated.
- 17-115. Collection service provided by the town for building materials.

17-101. Premises to be kept clean. All persons, firms, and corporations within the corporate limits of the Town of Erwin are hereby required to keep their premises in a clean and sanitary condition, free from accumulations of refuse, offal, filth, and trash. Such persons, firms, and corporations are hereby required to store such refuse in sanitary containers of the type described in this chapter between intervals of collection or to dispose of such material in a manner prescribed by the health officer so as not to cause a nuisance or become injurious to the public health and welfare. (2005 Code, § 17-101)

17-102. Definitions. (1) "Ashes." Includes the waste products from coal, wood, and other fuels used for cooking and heating from all public and private residences and establishments.

¹Municipal code reference

Property maintenance regulations: title 13.

(2) "Building materials." Materials of any type, kind or description, such as those customarily used in the construction, remodeling or demolition of any dwelling or part thereof, or any outbuilding, such as garages or tool sheds. The terms "refuse," "garbage" and "rubbish" as provided in this chapter shall not include building materials.

(3) "Collector." Any person, firm, or corporation, that collects, transports, or disposes of any refuse within the corporate limits of Erwin.

(4) "Garbage." Includes all putrescible wastes, except sewage and body wastes, including vegetable and animal offal carcasses of dead animals, but excluding recognizable industrial by-products from all public and private residences and establishments.

(5) "Health officer." The health authority of the Town of Erwin or his authorized representative.

(6) "Refuse." As hereinafter referred to in this chapter, shall include garbage, rubbish, ashes, and all other putrescible and non-putrescible, combustible and noncombustible, materials originating from the preparation, cooking, and consumption of food; market refuse; and waste from the handling and sale of produce and other similar unwanted materials; but shall not include sewage, body wastes, or recognizable industrial by-products from all residences and establishments public and private.

(7) "Rubbish." Includes all nonputrescible waste materials except ashes from all public and private residences and establishments. (2005 Code, § 17-102)

17-103. Accumulation of refuse. Each owner, occupant, tenant, subtenant, lessee, or others, using or occupying any building, house, structure, or grounds within the corporate limits of the Town of Erwin where refuse materials or substances as defined in this chapter accumulate, or are likely to accumulate, shall provide an adequate number of suitable containers, of a type approved by the health officer, for the storage of such type approved by the health officer, for the storage of such refuse. Such containers shall be constructed of plastic or metal, be strong and durable, not readily corrodible, rodent and insect-proof, of a capacity not exceeding thirty (30) gallons and not less than ten (10) gallons, except that the maximum capacity shall not apply in cases where the collector is equipped to handle containers of similar construction mechanically. Such containers shall be equipped with handles to facilitate emptying and shall be equipped with tight-fitting lids or covers, constructed of the same material and of such design as to preclude the free access of flies and other insects and to prevent the container from collecting water during rains. The lid or cover shall be kept in place at all times except when refuse is being deposited therein or removed therefrom by an official collector. Such storage containers shall be placed in such convenient, accessible location for trucking as may be designated by the official refuse collection agency.

Wet garbage or refuse must be drained of all liquids and wrapped in paper or other equivalent material prior to placing it into the storage receptacle. The containers shall be maintained in a clean and sanitary manner and shall be thoroughly cleaned by washing or other methods as often as necessary to prevent the breeding of flies and the occurrence of offensive odors. (2005 Code, § 17-103)

17-104. Confiscation of unsatisfactory storage containers. The official refuse collecting agency of the town is herein authorized to confiscate or to remove unsatisfactory storage containers from the premises of residences and establishments, public and private, when at the discretion of the health officer such containers are not suitable for the unhealthful and sanitary storage of refuse substances. Such unsatisfactory containers shall be removed and disposed of at a place and in a manner designated by the official collecting agency only after the owner or owners of such containers have been duly notified of such impending action. (2005 Code, § 17-104)

17-105. No refuse to be collected unless properly stored. In no case will it be the responsibility of the refuse collecting agency of the town to shovel or pick up from the ground any accumulations of refuse, including leaves, lawn clippings, brush, or packing material. All such materials are to be placed in containers of the type described in this chapter or of a type and design which will meet with the approval of the health officer and the requirements of the official refuse collecting agency. (2005 Code, § 17-105)

17-106. Collection of garbage and refuse. (1) Permits. No person, firm, or corporation (other than the owner) shall engage in the business of collecting refuse or removing the contents of any refuse container, for any purpose whatsoever, who does not possess a permit to do so from the appropriate authority of the Town of Erwin. Such permits may be issued only after the applicant's capability of complying with the requirements of this chapter has been fully determined. Such permits may be suspended or revoked upon the violation of any of the terms of this chapter.

(2) Collection vehicles. The collection of refuse shall be by means of vehicles with beds constructed of impervious materials which are easily cleanable and so constructed that there will be no leakage of liquids draining from the refuse onto the streets and public thoroughfares. Provision shall be made to prevent the scattering of refuse over the streets and thoroughfares by effective coverings or closed truck beds. (2005 Code, § 17-106)

17-107. Disposal of garbage and refuse. The disposal of refuse in any quantity by any individual, householder, establishment, firm, or corporation in any place, public or private, other than at the site or sites designated by the constituted authority of the Town of Erwin is expressly prohibited. All disposal

of refuse and garbage shall be by methods approved by the department of health, and provided that such methods shall include the maximum practical rodent, insect, and nuisance control at the place of disposal, and provided that no garbage shall be fed to swine unless said garbage has first been heated to at least two hundred twelve degrees Fahrenheit (212°F), and held there at least thirty (30) minutes in apparatus and by methods approved by the Tennessee Department of Agriculture as set forth in chapter 94 of the Public Acts of 1953. Provided further that animal offal and carcasses of dead animals shall be buried or cremated under circumstances approved by the health officer, or shall be rendered at forty (40) psi. steam pressure, or higher, or similarly heated by equivalent cooking. (2005 Code, § 17-107)

17-108. Dumping in streams, sewers, and drains prohibited. It shall be unlawful for any person, firm, or corporation to dump refuse in any form into any stream, ditch, storm sewer, sanitary sewer, or other drain within the Town of Erwin. (2005 Code, § 17-108)

17-109. Service of orders. It shall be the duty of the health officer or his authorized representative to issue orders requiring the proper handling of garbage and refuse on private and public premises to owners, occupants, tenants, or lessees of such properties where violations of this chapter are known to exist and to require that such violations be corrected within the time specified by the health officer. (2005 Code, § 17-109)

17-110. Additional definitions. The following additional definitions shall apply in the interpretation and application of this chapter.

(1) "Apartment house." A building or buildings where three (3) or more dwellings exist.

(2) "Class I." Retail business, as defined per Business Tax Act of 1971.

(3) "Class II." Persons engaged in making sales--as defined per Business Tax Act of 1971.

(4) "Class III." Barbers, beauty salons, shoe shines, veterinarians--as defined per Business Tax Act of 1971.

(5) "Class IV." Exterminators and contractors as defined per Business Tax Act of 1971.

(6) "Dwelling." A building designed or used as the permanent living quarters for one (1) or more families.

(7) "Family." One (1) or more persons occupying a premises and living together as a single house-keeping unit.

(8) "Industry." Any industrial or manufacturing business concerned with the production of consumable goods or services.

(9) "Institutions." Any educational, religious, recreational groups, or associations functioning within the corporate limits of Erwin who are not taxable under the Business Tax Act.

(10) "Mobile home park." Any plot of ground containing a minimum of two (2) acres upon which two (2) or more mobile homes are located or intended to be located.

(11) "Professional services." Any professional service such as lawyers, doctors, dentists, insurance, banking, etc., who are not taxable under the Business Tax Act.

(12) "Public utilities." Public utilities operating within the corporate limits of Erwin and not taxable under the Business Tax Act.

(13) "Wholesale business." Any enterprise engaged in the exchange of goods and services and not taxable under the Business Tax Act. (2005 Code, § 17-110)

17-111. Collection service provided by town. The following solid waste collection service herein stated shall be provided by the town through one (1) or more private contractors:

(1) Dwellings. One (1) weekly service to all dwellings provided said dwellings' solid waste is stored in heavy-duty bags provided by the contractors.

(2) Apartment houses. One (1) containerized service per week in the event the solid waste generated exceeds eight (8) cubic yards per week. As deemed necessary by the board of mayor and aldermen.

(3) Mobile home parks. One (1) containerized service per week in the event the solid waste generated exceeds eight (8) cubic yards per week or as deemed necessary by the board of mayor and aldermen.

(4) Class I. No service.

(5) Class II. No service.

(6) Class III. No service.

(7) Class IV. No service.

(8) Wholesale business. No service.

(9) Professional service. No service, however the sharing of containers with Classes I, II, III, and IV is permissible with the approval of the board of mayor and aldermen.

(10) Institutions. No service.

(11) Industry. No service.

(12) Public utilities. No service. (2005 Code, § 17-111, as amended by Ord. #729-21, Sept. 2021, modified)

17-112. Placement of containers. It shall be the responsibility of each business, apartment house, or mobile home park to provide the containers in such size as deemed necessary by the board of mayor and aldermen. Further, the purchase and/or lease of the container specified shall be from the contractor and adaptable to his mechanical system. Further, the geographic location of these containers shall be as deemed necessary by the board of mayor and aldermen to ensure a highly mechanized and functional system. (2005 Code, § 17-112)

17-113. Trespassing on dumpsters. (1) All garbage disposal dumpsters located within the Town of Erwin are hereby set aside as depositories for garbage, refuse, etc., which accumulates from businesses being operated within said town.

(2) All residents of the Town of Erwin are hereby prohibited from using dumpsters located within the town limits of the town as depositories for garbage, refuse, etc., which accumulates on the premises where they reside.

(3) All persons residing and/or operating businesses outside the town limits of Erwin, Tennessee, are hereby prohibited from using dumpsters located within the town limits of the town as depositories for garbage or refuse of any kind. (2005 Code, § 17-113)

17-114. Burning regulated. It shall be unlawful for any person, firm, or corporation to burn upon any lot or parcel of land any paper, rags, rubber, or any other refuse or garbage, by whatever name called, nearer than one hundred fifty feet (150') to any business building.

However, this section shall not apply where such paper, rags, rubber, or other refuse or garbage is burned in wire baskets or wire retainers so as to prevent the scattering of same. (2005 Code, § 17-114)

17-115. Collection service provided by the town for building materials. The following regulations apply to the collection of building materials by the town.

(1) No building materials created by the work of a contractor under a contract or other work arrangement with the property owner and/or occupant will be collected. It is the responsibility of the property owner and/or occupant to contract with his or her contractor or with another individual for the removal of any such building materials.

(2) No building materials will be collected from any property unless and until the proper building permits are obtained and paid for by the property owner or occupant.

(3) Only those building materials which are properly containerized in cans as provided in this chapter or in strong cardboard boxes each having a maximum weight of fifty (50) pounds and a maximum length of four feet (4') shall be collected.

(4) In no event will the town pick up roofing materials or shingles, aluminum or board siding, wire fencing, plywood or other types of sheeting, or any other material unless properly containerized as provided herein, and at no time will the town pick-up anything that has to be shoveled from the ground. (2005 Code, § 17-115)

TITLE 18

WATER AND SEWERS

[RESERVED FOR FUTURE USE]

TITLE 19

ELECTRICITY AND GAS

[RESERVED FOR FUTURE USE]

TITLE 20

MISCELLANEOUS

CHAPTER

1. ERWIN-UNICOI COUNTY CIVIL DEFENSE ORGANIZATION.
2. MEMORIAL PARK.

CHAPTER 1

ERWIN-UNICOI COUNTY CIVIL DEFENSE ORGANIZATION¹

SECTION

- 20-101. Erwin-Unicoi County Civil Defense Organization created.
- 20-102. Authority and responsibilities.
- 20-103. Office of director, his authority and responsibility.
- 20-104. Erwin-Unicoi County Civil Defense Corps created.
- 20-105. No municipal or private liability.
- 20-106. Expenses of civil defense.

20-101. Erwin-Unicoi County Civil Defense Organization created.

There is hereby created the Erwin-Unicoi County Civil Defense Organization, which shall be a joint operation by the Town of Erwin, and the County of Unicoi for the purpose of organizing and directing civil defense for the citizens of the entire county. All other civil defense agencies within the corporate limits of Unicoi County shall be considered as a total part of the county-wide civil defense emergency resources and when such agencies operate out of its corporate limits it shall be at the direction of, subordinate to, and as a part of the Erwin-Unicoi County Civil Defense Organization. (2005 Code, § 20-101)

20-102. Authority and responsibilities. In accordance with federal and state enactments of law, the Erwin-Unicoi County Civil Defense Organization is hereby authorized to assist the regular government of the county and governments of all political subdivisions therein, as may be necessary due to enemy caused emergencies or natural disasters, including but not limited to: storms, floods, fires, explosions, tornadoes, hurricanes, droughts, or peace-time man-made disasters, which might occur affecting the lives, health, safety, welfare, and property of the citizens of Unicoi County. The Erwin-Unicoi County Civil Defense Organization is hereby authorized to perform such duties

¹This joint organization was created by ordinance of the Town of Erwin and resolution of Unicoi County pursuant to *Tennessee Code Annotated*, title 7, chapter 6.

and functions as may be necessary on account of said disasters. The Erwin-Unicoi County Civil Defense Organization is hereby designated the official agency to assist regular forces in time of said emergencies.

The Erwin-Unicoi County Civil Defense Organization shall be responsible for preparation and readiness against enemy caused and natural emergencies arising in Erwin-Unicoi County, to establish and coordinate emergency plans, forces, means, and resources, and is hereby designated the official agency to establish such emergency plans. (2005 Code, § 20-102)

20-103. Office of director, his authority and responsibility. The office of the director of civil defense is hereby created. The director shall have the authority to request the declaration of the existence of an emergency by the mayor and county judge, or either, or by higher authority as appropriate.

The director shall have overall responsibility for the preparation of all plans and recruitment and training of personnel. All local civil defense plans will be in consonance with state plans and shall be approved by the state civil defense office.

The director is hereby given the authority to delegate such responsibility and authority as is necessary to carry out the purposes of this chapter, subject to the approval of the chief executive officers of the town and county.

The director shall be responsible to the chief executive officers of the town and county for the execution of the authorities, duties, and responsibilities of the Erwin-Unicoi County Civil Defense Organization, for the preparation of all plans and administrative regulations, and for recruitment and training of personnel. (2005 Code, § 20-103)

20-104. Erwin-Unicoi County Civil Defense Corps created. The Erwin-Unicoi County Civil Defense Corps is hereby created. The corps shall be under the direction of the director of civil defense and his staff members with delegated authority. It shall consist of designated regular government employees and volunteer workers. Duties and responsibilities of the corps members shall be outlined in the civil defense emergency plan. (2005 Code, § 20-104)

20-105. No municipal or private liability. The duties prescribed in this document is an exercise by the town and county of their governmental functions for the protection of the public peace, health, and safety, and neither the Town of Erwin nor Unicoi County, nor the agents and representatives of said town and county nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with, or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this document shall be liable for any damage sustained to person or property as the result of said activity. Any person owning or controlling real estate or other premises for the purpose of

sheltering persons during an actual, impending, or practice enemy attack, shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege, or other permission or for loss of, or damage to, the property of such person. (2005 Code, § 20-105)

20-106. Expenses of civil defense. No person shall have the right to expend any public funds of the town or county in carrying out any civil defense activities authorized by this document without prior approval by the governing bodies of the town or county or both; nor shall any person have any right to bind the town or county by contract, agreement, or otherwise without prior and specific approval by the governing body of the town or county or both. The civil defense director shall disburse such monies as may be provided annually by appropriation of the town and county for the operation of the civil defense organization. Control of disbursements will be as prescribed by agreement between the treasurers of the town and county. He shall be responsible for the preparation and submission of a budget with recommendations as to its adoption by the town and county. All funds shall be disbursed upon vouchers properly executed by the director of civil defense, subject to audit by either the Town of Erwin or Unicoi County. The civil defense director is hereby authorized to accept federal contributions in money, equipment, or otherwise, when available, or state contributions to the civil defense organization from individuals and other organizations, such funds becoming liable for audit by the town and county. (2005 Code, § 20-106)

CHAPTER 2

MEMORIAL PARK

SECTION

- 20-201. Establishment and purpose.
- 20-202. Permitted uses.
- 20-203. Prohibited uses.

20-201. Establishment and purpose. All that strip or parcel of land represented in the triangle enclosed by Ohio Avenue, Unaka Way, and a paved street which if extended would form a part of Catawba Street, is hereby declared, denominated, called, and forever known as "Memorial Park," to be occupied, employed and used for the purposes set forth in the preamble the ordinance from which this section is derived.¹ Provided, however, that this shall not be construed as such dedication of said property as will divest title to the land out of the Town of Erwin, or circumvent it in the supervisory control thereof in conjunction with the United Daughters of the Confederacy to whom certain proprietary rights have been extended by a prior ordinance of the board of mayor and aldermen. (2005 Code, § 20-301)

20-202. Permitted uses. Under the control and with the sanction of the proper authorities, it will be lawful for any person, organization, or patriotic league or association, to plant shrubbery or flowers on said plat of land, and otherwise employ appropriate artificial means to adorn the same, or to set up and erect thereon permanent memorials, monuments, and markers. (2005 Code, § 20-302)

¹The preamble to Ord. #201 provided as follows:

"WHEREAS, the Town of Erwin owns a triangular strip or parcel of land lying between Ohio Avenue, Unaka Way and a paved street, which if extended would form a part of Catawba Street; and

WHEREAS, there has heretobefore been created thereon, with the sanction of the municipal authorities of the town, a monument commemorative of the valor of the Confederate soldiers, and women of the Confederacy, and the soldiers of the World War and the women of the World War; and

WHEREAS, the Town of Erwin wishes to encourage the erection of other memorials on said plat of land, and to adorn and beautify the same, so that it may become a fitting testimonial to the soldiers of the Confederacy, and the women of the Confederacy, and the World War soldiers and the women of the World War."

20-203. Prohibited uses. It is hereby declared to be a misdemeanor for any person to trespass on said property by invading the same for the purpose of committing waste, desecrating the memorials thereon, or defacing the same, or otherwise to deposit trash, refuse, debris, or other foreign matter on said premises, or doing malicious injury to said property, shrubbery, flowers, or other natural or artificial adornments, memorials, or markers. (2005 Code, § 20-303)

ORDINANCE NO. 747-23

AN ORDINANCE ADOPTING AND ENACTING A COMPREHENSIVE CODIFICATION AND REVISION OF THE ORDINANCES OF THE TOWN OF ERWIN, TENNESSEE.

WHEREAS some of the ordinances of the Town of Erwin of are obsolete, and

WHEREAS some of the other ordinances of the town are inconsistent with each other or are otherwise inadequate, and

WHEREAS the Board of Mayor and Aldermen of the Town of Erwin, Tennessee, has caused its ordinances of a general, continuing, and permanent application or of a penal nature to be codified and revised and the same are embodied in a code of ordinances known as the "Erwin Municipal Code," now, therefore:

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF ERWIN, TENNESSEE, THAT:

Section 1. Ordinances codified. The ordinances of the Town of Erwin of a general, continuing, and permanent application or of a penal nature, as codified and revised in the following "titles," namely "titles" 1 to 20, both inclusive, are ordained and adopted as the "Erwin Municipal Code," hereinafter referred to as the "Municipal Code."

Section 2. Ordinances repealed. All ordinances of a general, continuing, and permanent application or of a penal nature not contained in the municipal code are hereby repealed from and after the effective date of said code, except as hereinafter provided in section 3 below.

Section 3. Ordinances saved from repeal. The repeal provided for in section 2 of this ordinance shall not affect: Any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of the municipal code; any ordinance or resolution promising or requiring the payment of money by or to the town or authorizing the issuance of any bonds or other evidence of said town's indebtedness; any appropriation ordinance or ordinance providing for the levy of taxes or any budget ordinance; any contract or obligation assumed by or in favor of said town; any ordinance establishing or authorizing the establishment of a social security system or providing or changing coverage under that system; any administrative ordinances or resolutions not in conflict or inconsistent with the provisions of such code; the portion of any ordinance not in conflict with such

code which regulates speed, direction of travel, passing, stopping, yielding, standing, or parking on any specifically named public street or way; any right or franchise granted by the town; any ordinance dedicating, naming, establishing, locating, relocating, opening, closing, paving, widening, vacating, etc., any street or public way; any ordinance establishing and prescribing the grade of any street; any ordinance providing for local improvements and special assessments therefor; any ordinance dedicating or accepting any plat or subdivision; any prosecution, suit, or other proceeding pending or any judgment rendered on or prior to the effective date of said code; any zoning ordinance or amendment thereto or amendment to the zoning map; nor shall such repeal affect any ordinance annexing territory to the town.

Section 4. Continuation of existing provisions. Insofar as the provisions of the municipal code are the same as those of ordinances existing and in force on its effective date, said provisions shall be considered to be continuations thereof and not as new enactments.

Section 5. Penalty clause. Unless otherwise specified in a title, chapter or section of the municipal code, including the codes and ordinances adopted by reference, whenever in the municipal code any act is prohibited or is made or declared to be a civil offense, or whenever in the municipal code the doing of any act is required or the failure to do any act is declared to be a civil offense, the violation of any such provision of the municipal code shall be punished by a civil penalty of not more than fifty dollars (\$50.00) and costs for each separate violation; provided, however, that the imposition of a civil penalty under the provisions of this municipal code shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the provisions of the municipal code or other applicable law. In any place in the municipal code the term "it shall be a misdemeanor" or "it shall be an offense" or "it shall be unlawful" or similar terms appears in the context of a penalty provision of this municipal code, it shall mean "it shall be a civil offense." Anytime the word "fine" or similar term appears in the context of a penalty provision of this municipal code, it shall mean "a civil penalty."

Each day any violation of the municipal code continues shall constitute a separate civil offense.¹

Section 6. Severability clause. Each section, subsection, paragraph, sentence, and clause of the municipal code, including the codes and ordinances adopted by reference, is hereby declared to be separable and severable. The

¹State law reference

For authority to allow deferred payment of fines, or payment by installments, see Tennessee Code Annotated, § 40-24-101 et seq.

invalidity of any section, subsection, paragraph, sentence, or clause in the municipal code shall not affect the validity of any other portion of said code, and only any portion declared to be invalid by a court of competent jurisdiction shall be deleted therefrom.

Section 7. Reproduction and amendment of code. The municipal code shall be reproduced in loose-leaf form. The board of mayor and aldermen, by motion or resolution, shall fix, and change from time to time as considered necessary, the prices to be charged for copies of the municipal code and revisions thereto. After adoption of the municipal code, each ordinance affecting the code shall be adopted as amending, adding, or deleting, by numbers, specific chapters or sections of said code. Periodically thereafter all affected pages of the municipal code shall be revised to reflect such amended, added, or deleted material and shall be distributed to town officers and employees having copies of said code and to other persons who have requested and paid for current revisions. Notes shall be inserted at the end of amended or new sections, referring to the numbers of ordinances making the amendments or adding the new provisions, and such references shall be cumulative if a section is amended more than once in order that the current copy of the municipal code will contain references to all ordinances responsible for current provisions. One copy of the municipal code as originally adopted and one copy of each amending ordinance thereafter adopted shall be furnished to the Municipal Technical Advisory Service immediately upon final passage and adoption.

Section 8. Construction of conflicting provisions. Where any provision of the municipal code is in conflict with any other provision in said code, the provision which establishes the higher standard for the promotion and protection of the public health, safety, and welfare shall prevail.

Section 9. Code available for public use. A copy of the municipal code shall be kept available in the recorder's office for public use and inspection at all reasonable times.

Section 10. Date of effect. This ordinance shall take effect (10) days after the final passage thereof, the public welfare requiring it, and the municipal code, including all the codes and ordinances therein adopted by reference, shall be effective on and after that date.

Passed 1st reading 5-08, 2023.

Passed 2nd reading 5-22, 2023.

Public hearing held on 5-22-2023.

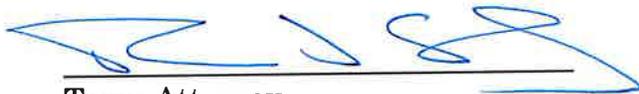


Mayor



Recorder

APPROVED AS TO FORM:



Town Attorney