

**THE  
WHITWELL  
MUNICIPAL  
CODE**

Prepared by the



February 2018

**CITY OF WHITWELL, TENNESSEE**

**MAYOR**

Linda Hooper

**VICE MAYOR**

Jim Nunley

**COMMISSIONERS**

Micah Atterton  
Sandra Crabtree  
Terry Parker

**MANAGER**

Todd Mistrat

**RECORDER**

Tina Green

## PREFACE

The Whitwell Municipal Code contains the codification and revision of the ordinances of the City of Whitwell, 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 city 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 city'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 city is kept in a separate ordinance book and forwarded to MTAS annually.
- (3) That the city 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.

Codification Consultant

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

6-2025. Style of ordinances. All ordinances shall begin, "Be it ordained by the city of (here inserting name) as follows:". [Acts 1921, ch. 173, art. 5, § 1; Shan. Supp., § 1997a149; Code 1932, § 3546.]

6-2026. Ordinance procedure--Emergency ordinances. Every ordinance shall be read on three (3) different days in open session before its adoption and not less than one (1) week shall elapse between first and third readings, and any ordinance not so read shall be null and void.

An ordinance shall not take effect until fifteen (15) days thereof, except in case of an emergency ordinance. An emergency ordinance may become effective upon the day of its final passage, provided it shall contain the statement that an emergency exists and shall specify with distinctness the facts and reasons constituting such an emergency.

The unanimous vote of all members of the board present shall be required to pass an emergency ordinance.

No ordinance making a grant, renewal, or extension of a franchise or other special privilege, or regulating the rate to be charged for its service by any public utility shall ever be passed as an emergency ordinance. No ordinance shall be amended except by a new ordinance. [Acts 1921, ch. 173, art. 5, § 2; Shan. Supp., § 1997a150; Code 1932, § 3547.]

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

1. BOARD OF COMMISSIONERS.
2. MAYOR.
3. CITY MANAGER.
4. RECORDER.
5. CODE OF ETHICS.
6. POLICIES.

**CHAPTER 1****BOARD OF COMMISSIONERS****SECTION**

- 1-101. Time and place of regular meetings.
- 1-102. Order of business.
- 1-103. General rules of order.
- 1-104. Ordinance procedure.

**1-101. Time and place of regular meetings.** The board of commissioners shall hold regular monthly meetings at 6:00 P.M. on the second Thursday of each month at the Whitwell City Hall. (1994 Code, § 1-101, as amended by Ord. #327, July 2016)

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

- (1) Call to order by the mayor;
- (2) Roll call by the recorder;

<sup>1</sup>Charter reference

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

Municipal code references

- Building, plumbing, electrical, and gas inspectors: title 12.
- Electricity and gas: title 19.
- Fire department: title 7.
- Wastewater treatment: title 18.
- Zoning: title 14.

- (3) Reading of minutes of the previous meeting by the recorder, and approval or correction;
- (4) Communications from the city manager;
- (5) Reports from committees, members of the board of commissioners, and other officers;
- (6) Old business;
- (7) New business;
- (8) Grievances from citizens; and
- (9) Adjournment. (1994 Code, § 1-102)

**1-103. General rules of order.** The rules of order and parliamentary procedure contained in *Robert's Rules of Order, Newly Revised*, shall govern the transaction of business by and before the board of commissioners at its meetings in all cases to which they are applicable and in which they are not inconsistent with provisions of the charter or this code. (1994 Code, § 1-103)

**1-104. Ordinance procedure.** (1) Every ordinance shall be read on three (3) different days in open session before its adoption and not less than one (1) week shall elapse between first and third readings, and any ordinance not so read shall be null and void.

An ordinance shall not take effect until fifteen (15) days thereof, except in case of an emergency ordinance. An emergency ordinance may become effective upon the day of its final passage, provided it shall contain the statement that an emergency exists and shall specify with distinctness the facts and reasons constituting such an emergency.

The unanimous vote of all members of the board present shall be required to pass an emergency ordinance.

No ordinance making a grant, renewal, or extension of a franchise or other special privilege, or regulating the rate to be charged for its service by any public utility shall ever be passed as an emergency ordinance. No ordinance shall be amended except by a new ordinance.

(2) Every ordinance shall be immediately taken charge of by the recorder and by him numbered, copied in an ordinance book, filed and preserved in his office.

(3) All ordinances of a penal nature passed shall be published at least once in the official newspaper of the city or county, and no such ordinance shall be in force until it is published.<sup>1</sup> (1994 Code, § 1-104)

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<sup>1</sup>Charter reference

Ordinance procedures: §§ 6-2026, 6-2028, 6-2029.

## CHAPTER 2

### MAYOR<sup>1</sup>

#### SECTION

1-201. Duties and powers.

**1-201. Duties and powers.** The mayor shall preside at all meetings of the board of commissioners, sign the journal of the board and all ordinances on their final passage, execute all deeds, bonds, and contracts made in the name of the city, and perform all acts that may be required of him by the charter, and any ordinances duly enacted by the board of commissioners, consistent with the charter. (1994 Code, § 1-201)

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<sup>1</sup>Charter reference

For general charter provisions dealing with the election and duties of the mayor and vice mayor, see chapter 20, of the Whitwell Charter.

## CHAPTER 3

### CITY MANAGER<sup>1</sup>

#### SECTION

1-301. Duties and powers.

**1-301. Duties and powers.** The city manager shall be the chief administrative officer of the city and shall exercise such authority and control over law and ordinance violations, departments, officers and employees, and city purchases and expenditures as the charter prescribes, and shall perform all other duties required of him pursuant to the charter. (1994 Code, § 1-301)

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<sup>1</sup>Charter reference

Appointment and removal of the city manager: Chapter 21.

## CHAPTER 4

### **RECORDER<sup>1</sup>**

#### **SECTION**

- 1-401. To keep minutes, etc.
- 1-402. To perform general administrative duties, etc.

**1-401. To keep minutes, etc.** The recorder shall keep the minutes of all meetings of the board of commissioners and shall preserve the original copy of all ordinances in a separate ordinance book. (1994 Code, § 1-401)

**1-402. To perform general administrative duties, etc.** The recorder shall perform all administrative duties for the board of commissioners, the city manager, and for the city which are assigned to him. The recorder shall also have custody of, and be responsible for, maintaining all corporate bonds, records, and papers of the city. (1994 Code, § 1-402)

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<sup>1</sup>Charter references

Duties and powers of the recorder: § 6-2201.

Recorder may also serve as the treasurer: § 6-2220.

## **CHAPTER 5**

### **CODE OF ETHICS**

#### **SECTION**

1-501. Adoption.

**1-501. Adoption.** The City of Whitwell does hereby adopt the Code of Ethics<sup>1</sup> as developed by MTAS, a copy of which is attached to the ordinance codified herein, which shall be the Code of Ethics for the City of Whitwell. (Ord. #264, July 2007)

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<sup>1</sup>The Code of Ethics for the City of Whitwell (and any amendments) is available in the office of the recorder.

## CHAPTER 6

### POLICIES

#### SECTION

1-601. Record management policy.

**1-601. Record management policy.**<sup>1</sup> The City of Whitwell does hereby adopt the MTAS record management policy, which is attached to the ordinance codified herein as Exhibit "A" to direct the officials of the City of Whitwell as to the management policy for the various records held by the City of Whitwell, Tennessee. (Ord. #283, July 2011)

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<sup>1</sup>The records management policy (and any amendments) is available in the office of the recorder.

## TITLE 2

### BOARDS AND COMMISSIONS, ETC.

#### **CHAPTER**

##### 1. PARKS AND RECREATION ADVISORY BOARD.

#### **CHAPTER 1**

##### PARKS AND RECREATION ADVISORY BOARD

#### **SECTION**

- 2-101. Creation of the board.
- 2-102. Membership and terms.
- 2-103. Officers.
- 2-104. Powers and duties.
- 2-105. Park rules and regulations.

**2-101. Creation of the board.** Pursuant to *Tennessee Code Annotated*, § 11-24-103(b)(1), there is hereby created a Parks and Recreation Advisory Board (board) for the City of Whitwell, Tennessee. (Ord. #295, July 2012)

**2-102. Membership and terms.** The board shall consist of seven (7) members to be appointed by the board of mayor and commissioners following recommendation by the current members of the parks and recreation board. Members shall serve without pay. Except for the initial appointments, the term of each member shall be four (4) years, or until their successors are appointed. Each position on the board shall be numbered one (1) through seven (7) and the odd-numbered positions shall be appointed in odd-numbered years and the even-numbered positions shall be appointed in even-numbered years. A member shall be eligible for reappointment at the expiration of his term. Vacancies on the board occurring other than by expiration of a member's term shall be filled by the mayor for the duration of the unexpired term. Any member who is absent from three (3) consecutive meetings without justification may be removed from the board by the board of mayor and commissioners. The board of mayor and commissioners may determine other requirements as it sees fit for representation on the board. (Ord. #295, July 2012)

**2-103. Officers.** (1) The officers of the board shall consist of a chairman, vice-chairman, secretary, and treasurer. Officers shall serve for an appointment of two (2) years. A nomination from the board followed by a majority vote shall elect an officer.

(2) The chairman shall preside at all meetings of the board and shall perform such other duties as the board shall authorize. The chairman shall exercise his voice and vote as a member of the board.

(3) The vice-chairman shall assume the duties of the chairman during his absence.

(4) The secretary shall keep minutes of all meetings and perform other duties as the board shall authorize.

(5) The treasurer shall be responsible for any financial matters the board may have and be responsible for the preparation of a proposed budget to the board of mayor and commissioners. (Ord. #295, July 2012)

**2-104. Powers and duties.** The board shall have the following powers and duties:

(1) Advise the board of mayor and commissioners in the supervision, control, and operation of the parks and recreation system of the City of Whitwell;

(2) Propose a budget to the board of mayor and commissioners for the adequate operation and maintenance of the parks and recreation system;

(3) Recommend to the board of mayor and commissioners the employment of personnel necessary to conduct recreation programs and provide for the operation and maintenance of the parks;

(4) Make recommendations to the board of mayor and commissioners as to the sale and purchase of lands for parks and recreation purposes;

(5) Recommend to the board of mayor and commissioners proposed fees and charges to be established or amended in connection with the operation of the parks and recreation system and shall recommend policy for the operation of concessions, if any, in the parks or other recreational facilities;

(6) The board shall be without the power or authority to incur any indebtedness;

(7) The board shall not be responsible for the expenditure of public funds;

(8) The board may act on behalf of the board of mayor and commissioners on any of the matters listed in this section, on a case by case basis, if so authorized by the board of mayor and commissioners; and

(9) The board may adopt by-laws for its internal operations as it sees fit so long as such by-laws are not contradictory to the board's powers and duties. (Ord. #295, July 2012)

**2-105. Park rules and regulations.** The board may recommend to the board of mayor and commissioners rules and regulations for the protection, operation, and control of parks and recreational facilities under the control of the City of Whitwell. No rules or regulations adopted shall be contrary to, or inconsistent with, the laws of the State of Tennessee, the laws of the United States, or the ordinances of the City of Whitwell. Rules and regulations shall be

adopted by resolution of the board of mayor and commissioners to take effect fifteen (15) days after their adoption. Rules and regulations shall be posted at the entrance to every park and recreational facility to which they apply. Copies of all parks and recreation rules and regulations shall be available for public inspection at the Whitwell City Hall. (Ord. #295, July 2012)

**TITLE 3****MUNICIPAL COURT<sup>1</sup>****CHAPTER**

## 1. CITY COURT.

**CHAPTER 1****CITY COURT<sup>2</sup>****SECTION**

- 3-101. City judge.
- 3-102. Jurisdiction.
- 3-103. Maintenance of docket.
- 3-104. Issuance of summonses.
- 3-105. Issuance of subpoenas.
- 3-106. Disposition and report of fines, penalties, and costs.
- 3-107. Disturbance of proceedings.
- 3-118. Violations and penalty.

**3-101. City judge.** Pursuant to *Tennessee Code Annotated*, § 16-18-102, the office of city judge is established. The city judge shall be vested with the judicial powers and functions of the city recorder and shall be subject to the provisions of law and the city charter governing the recorder's court presided over by the city recorder.

(1) **Appointment and term.** The city judge designated by the charter to handle judicial matters within the city shall be appointed by the board of commissioners and shall serve at the pleasure of the board of commissioners. Vacancies in the office of the city judge arising from resignation, disqualification, or for any other reason whatsoever, shall be filled for the unexpired term by the board of commissioners.

(2) **Qualifications.** The city judge shall be licensed by the State of Tennessee to practice law.

<sup>1</sup>State law reference

See *Tennessee Code Annotated*, §§ 17-17-101, *et seq.*, for provisions regarding city courts in Home Rule Municipalities.

<sup>2</sup>Charter reference

Judicial functions of recorder, appeal from judgment, etc.: §§ 6-2119 *et seq.*

(3) Oath of office; bond. The city judge shall take the oath of office prescribed in § 6-2103 of the city charter and shall be bonded before entering upon the duties of this office. The cost of making the bond shall be paid by the City of Whitwell.

(4) Salary. The salary of the city judge shall be fixed by the board of commissioners before the city judge's appointment and shall not be altered during the city judge's term of service.

(5) Judge pro tem. During the absence of the city judge from his duties for any reason or at any time the office of the city judge is vacant, the board of commissioners shall appoint a city judge pro tem to serve until the city judge returns to his duties or the office of city judge is no longer vacant. The city judge pro tem shall have all the qualifications required, and powers, of the city judge. (1994 Code, § 3-101)

**3-102. Jurisdiction.** The city judge shall have the authority to try persons charged with the violation of municipal ordinances, and to punish persons convicted of such violations by levying a civil penalty not to exceed fifty dollars (\$50.00). (1994 Code, § 3-102, modified)

**3-103. 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, penalties, and costs imposed and whether collected; and all other information which may be relevant. The duties provided in this section may be delegated by the city judge to a court magistrate. (1994 Code, § 3-103, modified)

**3-104. Issuance of summonses.**<sup>1</sup> When a complaint of an alleged ordinance violation is made to the city judge, the court clerk may, in his discretion, issue a summons ordering the alleged offender personally to appear before the city 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 municipal code or ordinance alleged to have been violated. Upon failure of any person to appear before the city 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. (1994 Code, § 3-105, modified)

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<sup>1</sup>Municipal code references

Issuance of citations in lieu of arrest: title 15, chapter 7.

**3-105. Issuance of subpoenas.** The court clerk 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. (1994 Code, § 3-106, modified)

**3-106. Disposition and report of fines, penalties, and costs.** All funds coming into the hands of the city judge in the form of fines, penalties, costs, and forfeitures shall be recorded by him and paid over daily to the city. At the end of each month he shall submit to the board of commissioners 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. (1994 Code, § 3-108)

**3-107. Disturbance of proceedings.** It shall be unlawful for any person to create any disturbance of any trial before the city court by making loud or unusual noises, by using indecorous, profane, or blasphemous language, or by any distracting conduct whatsoever. (1994 Code, § 3-109)

**3-108. Violations and penalty.** All fines and penalties imposed by judicial officers for violation of the municipal ordinances of this city shall be punishable by a penalty under the general penalty provision of this code. Any offense that is a state offense, the range of punishment will be governed by *Tennessee Code Annotated*. Any municipal offenses could range between zero dollars (\$0.00) and fifty dollars (\$50.00). (1994 Code, § 3-110, modified)

## TITLE 4

### MUNICIPAL PERSONNEL

#### **CHAPTER**

##### 1. TRAVEL REIMBURSEMENT.

#### **CHAPTER 1**

##### TRAVEL REIMBURSEMENT

#### **SECTION**

- 4-101. Purpose.
- 4-102. Enforcement.
- 4-103. Travel policy.
- 4-104. Rate schedules.
- 4-105. Administrative procedures.

**4-101. Purpose.** The purpose of this chapter and referenced regulations is to bring the city into compliance with *Tennessee Code Annotated*, § 6-54-901 to 6-54-907. 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 chapter 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 city business at city expense. (Ord. #285, Oct. 2011)

**4-102. Enforcement.** The city manager or his or her designee shall be responsible for the enforcement of these travel regulations. (Ord. #285, Oct. 2011)

**4-103. 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 city 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 city. 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 city manager. 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 city for registration fees, air fares, meals, lodging, conferences and similar expenses.

(a) Travel advance requests are not considered documentation of travel expenses.

(b) If travel advances exceed documented expenses, the traveler must immediately reimburse the city.

(c) It will be the responsibility of the city manager 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:

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

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

The city manager 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 city or misuse city travel funds is subject to legal action for recovery of fraudulent travel claims and/or advances.

(9) Mileage and motel expenses incurred within the city are not ordinarily considered eligible expenses for reimbursement. (Ord. #285, Oct. 2011)

**4-104. Rate schedules.** Authorized travelers shall be reimbursed according to the State of Tennessee travel regulation rates. The city'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. (Ord. #285, Oct. 2011)

**4-105. Administrative procedures.** The city 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 city recorder.

This chapter shall take effect upon its final reading by the municipal governing body, it shall cover all travel and expenses occurring on or after the date of adoption. (Ord. #285, Oct. 2011)

## TITLE 5

### MUNICIPAL FINANCE AND TAXATION<sup>1</sup>

#### **CHAPTER**

1. MISCELLANEOUS.
2. REAL AND PERSONAL PROPERTY TAXES.
3. PRIVILEGE TAXES.
4. WHOLESALE BEER TAX.
5. PURCHASING.

#### **CHAPTER 1**

##### MISCELLANEOUS

#### **SECTION**

- 5-101. Official depository for city funds.
- 5-102. Fiscal year of the city.
- 5-103. Checks to be countersigned.
- 5-104. City officials to post bond.
- 5-105. Expenditures.
- 5-106. Investment management policy.
- 5-107. Internal financial controls policy.
- 5-108. Debt policy.
- 5-109. Corrective action plan; unauthorized transfer of utility revenues.

**5-101. Official depository for city funds.** All banks in the city limits are hereby designated as the official depository for all city funds. (1994 Code, § 5-101)

**5-102. Fiscal year of the city.** The fiscal year of the city shall be from the 1st day of July to the 30th day of June of the year next following. (1994 Code, § 5-102)

**5-103. Checks to be countersigned.** All checks drawn upon the bank account of the city in said depository shall be signed by the recorder, and shall be countersigned by the mayor of the said municipality. In the absence of the mayor, or if for any reason he is not available to sign checks, they may be countersigned by the vice-mayor of the city, or any other designated commissioner. (1994 Code, § 5-103)

<sup>1</sup>Charter reference

Finance and taxation: see §§ 6-2201, *et seq.*

**5-104. City officials to post bond.** The city manager, recorder, treasurer, and any other officers, agent, or employee, having duties embracing the receipt, disbursement, custody, or handling of money shall, before entering upon his duties, execute a fidelity bond with some corporate surety authorized to do business, as a surety, in the State of Tennessee. The amounts of said bonds shall be as follows:

City manager		\$1,000.00
Recorder		\$5,000.00
Treasurer		\$5,000.00
All others	--	Such bond as shall be fixed by the city manager but not less than \$1,000.00

Whenever one (1) person holds more than one (1) office a single bond covering the duties of both offices in the amount of the larger bond specified above shall be sufficient. Any official bonded hereunder, may be required to increase his bond to whatever amount the board of commissioners deems necessary for the protection of the municipality whenever, in the discretion of the board of commissioners, such action is necessary. (1994 Code, § 5-104)

**5-105. Expenditures.** The city manager may make any purchase or expenditure provided said expenditure does not exceed five hundred dollars (\$500.00), without the approval of the board of commissioners. (1994 Code, § 5-105)

**5-106. Investment management policy.** (1) Investment objective. It shall be the philosophy of the City of Whitwell, Tennessee to be fully invested in instruments which ensure the earning of an acceptable yield and which minimize risks for loss of principal. Investments in different instruments shall be limited to those covered by this policy. The purpose of the maturity components of our investment portfolio shall be devised so as to take advantage of market opportunities which maximize yield and reduce the adverse effect of price volatility and in instruments which represent minimal risk of default by the issuing institution.

(2) Investment policies. (a) Ratings. Investments shall only be made in debt instruments of commercial banks or investment institutions or other obligors having a Standard and Poors (A) and Moody's (P) short-term credit rating of at least an A1 P1. For instruments not rated, deposits must be insured by the maximum authorized under the Federal Deposit Insurance Corporation, in instances where such insurance is applicable or a participant in the State of Tennessee's Bank Collateral Pool. Securities may also be pledged by the institutions to the city in accordance with state guidelines for collateralization of deposits.

## (b) Portfolio diversification.

(i) The total investment with any particular bank, investment firm or obligor shall not exceed fifty percent (50%) of the total investment portfolio. Exceptions to this limit are investments in direct obligations of the United States and the State of Tennessee Local Government Investment Pool (LGIP).

(ii) Maximum components of the portfolio are limited to:

U.S. government securities	100%
Certificates of deposit	50%
Other government agency securities	25%
Banker's acceptances	25%
Commercial paper	25%
Repurchase agreements	10%
Pooled funds	100%

(c) Length of maturities. Maturities shall be utilized which ensure having funds available to meet current working capital and other capital requirements. Under normal circumstances, maturities will range from one (1) day to periods not in excess of two (2) years, invested, funds will have an average maturity of less than one (1) year.

(d) Foreign investments. Investments in foreign securities are not qualified investments and shall not be included in the investment portfolio.

(e) Definitions of and restrictions on accepted instruments. The city shall be permitted to invest in any of the following, subject to the allocation percentages and other policies stated above:

(i) U.S. government securities. Certain government securities, including U.S. Treasury Bills, Notes, and Bonds, and securities of the Government National Mortgage Association and the Federal Housing Administration, are issued or guaranteed by the U.S. Government and supported by the full faith and credit of the United States. Other U.S. government securities are issued or guaranteed by federal agencies or government sponsored enterprises and are not direct obligations of the United States but involve sponsorship or guarantees by government agencies or enterprises. These obligations include securities that are supported by the right of the issuer to borrow from the treasury, such as obligations of the Federal Home Loan Banks and securities that are supported only by the credit of the instrumentality such as

Federal National Mortgage Association bonds. Because the U.S. Government is not obligated to provide support to its instrumentalities, the city will invest in obligations issued by these instrumentalities where the city is satisfied that the credit risk with respect to the issuers is minimal.

(ii) Repurchase agreements. The city may invest in eligible investments subject to repurchase agreements with any member bank of the federal reserve system or primary dealer in ITS.

(iii) Treasury securities. Under such instruments, the purchaser acquires ownership of the debt security and the seller agrees, at the time of the sale, to repurchase the obligation at the mutually agreed upon time and price, thereby determining the yield during the purchasers holding period. This will result in a fixed rate of return insulated from market fluctuations during such period. Repurchase agreements generally have a term of one (1) day but may require a term of up to thirty (30) days or longer.

(iv) Certificates of deposit. Domestic CDs are money market instruments which certify a time deposit with a domestic commercial bank or thrift institution. Certificates of deposit are permitted and shall be invested so as to mature according to expected needs of the city. Maturities may vary from seven (7) days to a maximum of two (2) years.

(v) Banker's acceptances. Domestic BAs are time drafts drawn on and accepted by domestic banks for payment of merchandise. Banker's acceptances are short-term non-interest bearing notes sold at a discount and redeemed by the accepting bank at maturity for full face value. They are backed by both the issuing bank and the borrower of the money.

(vi) Commercial paper. Commercial paper is short-term unsecured promissory notes issued by corporations to finance short-term credit needs. Commercial paper is sold on a discounted basis with a maximum maturity of two hundred seventy (270) days.

(vii) Pooled funds. Certain approved pooled funds maintained by investment firms or the State of Tennessee, through which the city may maintain investments, may utilize other instruments than those listed as may be necessary to achieve the performance objectives of the portfolio. In each case a prospectus shall be provided to the director of finance. Under normal circumstances, the value of a pooled fund's total assets will be invested in securities approved by the fund that have a dollar-weighted average maturity of less than five (5) years. Maturities may be shortened or the fund may hold its assets in

cash to meet unusual market or economic conditions for temporary defensive purposes. The fund must have an objective of maintaining a net asset value of one dollar (\$1.00).

(f) Investment reporting requirements. The director of finance shall provide a quarterly investment portfolio report to the city manager and board of commissioners, specifying the components of the portfolio, average yield, and institutions in which the investments are made. Any deviation from above policy requires prior written approval from the city manager.

(g) Responsibility section. It shall be the responsibility of the director of finance to obtain bids for investments. All investments must have approval of the board of commissioners.

(h) Investments by various funds. Each fund has its own needs for investments. An investment may be distributed among the various funds of the city. Investments are to be acquired and maturities scheduled based upon the following.

(i) General fund investments shall have maturities not to exceed six (6) months. The general fund's purpose is for highly liquid investments since it is the main operating fund for the city.

(ii) Debt service fund investments are to have maturities coordinated with the repayment of debt principal and interest. Maturities should be scheduled so that sufficient funds are available to repay these amounts as necessary on a monthly, quarterly, semiannual or annual basis. If sufficient funds are available for more than one (1) year's debt service requirements, maturities may be scheduled for up to two (2) year's cash requirements.

(iii) General obligation bond fund investments are based upon anticipated projects to be completed in the city. Investments in this fund should typically not exceed one (1) year in length since grant funds are applied for on an annual basis. Investment terms should be determined based upon knowledge of projects as discussed with the city manager and the board of commissioners.

(iv) Capital projects fund investments are to be based upon the anticipated projects to be completed. Terms should generally be staggered over a two (2) year period as well as having a portion of the funds in checking or pooled funds. This will allow for funds to be available for purchase of industrial property or other unanticipated needs. By staggering investment terms over a two (2) year period, cash will be available on a regular basis. Any additional funds needed may be advanced from the general fund until investments mature. (Ord. #315, Feb. 2015)

**5-107. Internal financial controls policy.** (1) Introduction. The City of Whitwell has adopted and implemented this internal financial controls policy to safeguard public funds and to provide clear instructions to city officers and employees as to how such funds should be processed and recorded. All city officers and employees handling city funds shall be subject to the requirements of this policy. This policy may be amended from time to time by the board of commissioners.

(2) Receipts and deposits of funds. The city clerk shall be responsible for opening all incoming mail and stamping "For Deposit Only" on all checks immediately upon receipt. This employee should also prepare a list of checks or payments and calculate the total amount of all money/checks received, in addition, any checks received without payment stubs, shall be receipted in duplicate. The list of payments received shall be signed by this employee and remitted along with the money/checks, stubs, and receipts to the city recorder for processing.

All cash payments should be received by the city clerk who shall be responsible for preparing a written receipt and duplicate for all such funds. All cash and duplicate receipts should be turned over to the city recorder not later than the end of each business day. A daily collection report should be prepared by each employee receiving any cash payments summarizing all collections by source.

Any time custody of money changes from one (1) employee to another the money should be counted by both. A pre-numbered receipt or other document recording the count should be prepared and signed by both employees indicating concurrence with the amount transferred. This document should be retained by the individual turning the money over.

All deposits of cash, checks, or other payments should be posted to the city's cash receipts journal by city recorder. The city recorder shall be responsible for making deposits and all collections must be deposited no later than three (3) working days after initial receipt. Deposit receipts should also be retained and matched against the collection reports

(3) Check writing and disbursements. All persons with authority to write and sign checks on the behalf of the city shall be approved by resolution of the governing body of the city. The city recorder who is responsible for reconciling the bank statements shall not be authorized to sign checks.

Two (2) authorized signatures are required for all checks. Before signing checks, each signator should review the supporting documentation (such as vendor invoices, purchase authorizations, etc.) to verify that the expenditure is legitimate before the check is signed.

All debit/credit card statements should be reviewed by multiple persons, including by individuals independent of those who are authorized to use such cards, to ensure the legitimacy of the charges. All persons using city debit/credit cards shall be specifically authorized to do so by resolution of the governing body and shall comply with the city's credit card use policy.

(4) Petty cash. Petty cash disbursements are only allowable for legitimate purposes, are not for personal use and must be properly documented. An invoice/receipt, accompanied by a written petty cash voucher/request, showing the items purchased, and signed by the person receiving the cash, is required in each transaction at the time the petty cash is withdrawn. The amount on hand and the petty cash vouchers and related invoices/receipts written must total to the originally authorized amount. The city recorder shall be responsible for monitoring the petty cash account and shall "audit" the petty cash account for any discrepancies at least once a week. This employee shall not make any withdrawals from petty cash. The petty cash account may be used only for withdrawals of less than fifty dollars (\$50.00), and the total account balance shall not exceed fifty dollars (\$50.00).

(5) Conclusion. All city employees are responsible for safeguarding public funds and the public trust. Any violations of this policy observed by any city employees shall be reported to the city commission. Any employees found to have violated this policy may be disciplined up to and including termination. (Ord. #300, Oct. 2012)

**5-108. Debt policy.**<sup>1</sup> (1) The purpose of this debt policy is to establish a set of parameters by which debt obligations will be undertaken by the City of Whitwell, Tennessee. This policy reinforces the commitment of the city and its officials to manage the financial affairs of the city so as to minimize risks, avoid conflicts of interest, and ensure transparency while still meting the capital needs of the city. A debt management policy signals to the public and the rating agencies that the city is using a disciplined and defined approach to financing capital needs and fulfills the requirements of the State of Tennessee regarding the adoption of a debt management policy.

The goal of this policy is to assist decision makers in planning, issuing, and managing debt obligations by providing clear directions as to the steps, substance, and outcomes desired, in addition, greater stability over the long-term will be generated by the use of consistent guidelines in issuing debt.

(2) Definition of debt. All obligations of the city to repay, with or without interest, in installments and/or at a later date, some amount of money utilized for the purchase, construction, or operation of city resources. This includes, but is not limited to, notes, bond issues, capital leases, and loans of any

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<sup>1</sup>State law reference

For contracts, leases, and lease purchase agreements, see *Tennessee Code Annotated*, title 7, part 9

For Local Government Public Obligations Law, see *Tennessee Code Annotated*, title 9, part 21

type (whether from an outside source such as a bank or from another internal fund).

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

(4) Transparency. (a) The city shall comply with legal requirements for notice and for public meetings related to debt issuance.

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

(c) All costs (including principal, interest, issuance, continuing, and one (1) time) shall be clearly presented and disclosed to the citizens, city commission, and other stakeholders in a timely manner.

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

(e) A debt service schedule outlining the rate of retirement for the principal amount shall be clearly presented and disclosed to the citizens/members, city commission, and other stakeholders in a timely manner.

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

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

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

(ii) Debt issued for operating expenses must be repaid within the same fiscal year of issuance or incurrence.

(6) Types and limits of debt. (a) The city will seek to limit total outstanding debt obligations to twenty-five percent (25%) (percent of

assessments, per capita amount, etc.), excluding overlapping debt, enterprise debt, and revenue debt.

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

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

(d) The city is authorized to issue general obligation on bonds, revenue bonds, TIFs, loans, notes, and other debt allowed by law.

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

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

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

(h) Bonds backed with a general obligations pledge often have lower interest rates than revenue bonds. The city may use its general obligation pledge with revenue bond issues when the populations served by the revenue bond projects overlap or significantly are the same as the property tax base of the city. The city commission and management are committed to maintaining rates and fee structures of revenue supported debt at levels that will not require a subsidy from the city's general fund.

(7) Use of variable rate debt. (a) The city recognizes the value of variable rate debt obligations and that cities have greatly benefitted from the use of variable rate debt in the financing of needed infrastructure and capital improvements.

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

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

(ii) Prior to entering into any variable rate debt obligation that is backed by insurance and secured by a liquidity

provided, the city commission 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 city commission 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 city commission will be informed of any terms, conditions, fees, or other costs associated with the repayment of variable rate debt obligations.

(v) The city shall consult with persons familiar with the arbitrage rules to determine applicability, legal responsibility, and potential consequences associated with any variable rate debt obligation.

(8) Use of derivatives. (a) The city chooses not to use derivative or other exotic financial structures in the management of the city's debt portfolio.

(b) Prior to any reversal of this provision:

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

(ii) The city commission must adopt a specific amendment to this policy concerning the use of derivatives or interest rate agreements that complies with the state funding board guidelines.

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

(b) In cases 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.

(c) 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).

(10) Refinancing outstanding debt. (a) The city will refund debt when it is in the best financial interest of the city to do so, and the chief financial officer shall have the responsibility to analyze outstanding bond issues for refunding opportunities. The decision to refinance must be

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

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

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

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

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

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

(v) Arbitrage. The city shall consult with persons familiar with the arbitrage rules to determine applicability, legal responsibility, and potential consequences associated with any refunding.

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

(a) Counsel. The city shall enter into an engagement letter agreement with each lawyer or law firm representing the city in debt transaction. (No engagement letter is required for any lawyer who is an employee of the city or lawyer or law firm which is under a general

appointment or contract to serve as counsel not representing the city, such as underwriter's counsel.)

(b) Financial advisor. (If the city chooses to hire financial advisors, the city must select between the following options.) The city shall enter into a written agreement with each person or firm serving as financial advisor in debt management and transaction.

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

(ii) In a publicly offered, negotiated sale, the financial advisor (either): shall not be permitted to resign as financial advisor in order to underwrite an issue for which they are or have been providing advisory services; or

(iii) Underwriter (if there is no financial advisor). In advance of pricing of the debt in a publicly offered, negotiated sale, the underwriter must provide pricing information both as to interest rates and to takedown per maturity to the city commission (or its designated official).

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

(b) Professionals who become involved in the debt transaction as 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.

(13) Review of policy. This policy shall be reviewed at least annually by the city commission with the approval of the annual budget. Any amendments shall be considered and approved in the same process as the initial adoption of this policy, with opportunity for public input.

(14) Compliance. The city recorder is responsible for ensuring compliance with this policy. (Ord. #288, Dec. 2011)

**5-109. Corrective action plan; unauthorized transfer of utility revenues.** (1) Repayment. Within thirty (30) days, an amortization schedule for the repayment of one hundred ninety-seven thousand two hundred seventy-seven dollars and thirty-five cents (\$197,277.35) over a period of five (5) years

at an interest rate of one and three-quarters percent (1.75%) shall be forwarded to the state comptroller's office, and the first payment shall be made to the waterworks fund. Semiannual payments shall be made thereafter until the funds are repaid.

(2) Balanced budget. The commission commits to maintaining a balanced cash basis budget throughout the entire repayment period for all funds. Maintaining a balanced budget means spending no more than the cash available to pay expenses/expenditures throughout the repayment period while maintaining sufficient working capital for each fund.

(3) Required commission action. The commission shall, within one hundred and twenty (120) days, adopt written enforceable accounting, budgeting, cash management, department and purchasing policies and procedures by ordinance to include:

(a) A risk assessment shall be performed to use in developing policies and procedures, with a copy being provided to the office of the state comptroller;

(b) The policies shall incorporate controls for compliance with state law. MTAS recommended controls shall be adopted and a copy shall be forwarded to the office of the state comptroller;

(c) The policies shall address budgetary transfers and all interfund loans. The budgetary, cash, and debt management policies shall specifically address the use of interfund tax and revenue anticipation notes when sufficient working capital has not been maintained to support operations. These polices will ensure compliance with the procedures for the issuance of notes and repayment for such interfund loans;

(d) The policies shall address the level of spendable fund balance and working capital for each fund. These polices will require a sufficient level of spendable fund balance and working capital to adequately support operations in all funds as reasonably determined with the assistance of MTAS. These levels shall be achieved within three (3) fiscal years from the date of the adoption of a spendable fund balance and working capital policy with a default working capital amount of one-fourth (1/4th) of the last audited fiscal year's expenditures/expenses. This policy shall be reviewed during the preparation of each fiscal year's budget process;

(e) The city commission shall receive monthly written reports from the city manager to allow monthly monitoring of the city's financial condition. The reports in this subsection (3) are the minimum reporting; but, policy must allow for any report necessary to be provided for adequate monitoring and require the city manager to report any matter negatively impacting the city's financial condition; and

(f) The city finance director shall within thirty (30) days establish separate checking accounts for each utility and the general fund.

(4) Reports to the city commission. The city manager shall report the city's financial condition for every fund to the city commission on a monthly basis and such written report shall include at a minimum:

- (a) A budget to actual on a monthly basis, including year to date information, and projections for the current year; and
- (b) A cash flow statement showing monthly status, year to date information, and a projection for the current and future months.

(5) Reports to the office of the comptroller. The city commission shall provide monthly reports to the office of the comptroller that shall include:

- (a) A fiscal year progress report in repaying the improper transfer;
- (b) A written monthly report from the city manager outlining progress in implementing written enforceable policies; evidenced in commission meeting minutes;
- (c) The city will provide evidence of the commission's receiving monthly financial condition reports by providing a copy of each report and the minutes of the public meeting that they were presented; and
- (d) The annual operating and capital budget ordinance and tax levy shall be approved prior to July 1 of each fiscal year and a copy shall be forwarded to the office of the comptroller prior to July 15 of each fiscal year.

(6) The city manager. The city manager shall be responsible for the development and implementation of the policies, procedures, and corrective actions outlined in subsection (1) above.

(7) Binding provisions. This corrective action plan shall be considered a contract between the City of Whitwell and the office of the comptroller, and all newly elected commissioners shall be bound to its provisions. (Ord. #301, Oct. 2012)

## CHAPTER 2

### **REAL AND PERSONAL PROPERTY TAXES**

#### **SECTION**

5-201. When due and payable.

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

**5-201. When due and payable.**<sup>1</sup> Taxes levied by the city against real and personal property shall become due and payable annually on the first day of November of the year for which levied. (1994 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 for delinquent county real property taxes.<sup>2</sup> (1994 Code, § 5-202)

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<sup>1</sup>Charter references

See § 6-2211 setting the last due date as November 1 of the year for which the taxes are assessed, but see §§ 6-2211 and 6-2213 which provide that a different tax due date may be set by ordinance (with a unanimous veto of the board of commissioners.)

<sup>2</sup>State law reference

A municipality has the option of collecting delinquent property taxes any one (1) of three (3) ways:

- (1) Under the provisions of its charter for the collection of delinquent property taxes.
- (2) Under *Tennessee Code Annotated*, §§ 6-55-201 to 6-55-206.
- (3) By the county trustee under *Tennessee Code Annotated*, § 67-5-2005.

## 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*, title 67, chapter 4, part 7) are hereby expressly enacted, ordained, and levied on the businesses, business activities, vocations, and occupations carried on within the city at the rates and in the manner prescribed by the act. (1994 Code, § 5-301, modified)

**5-302. License required.** No person shall exercise any such privilege within the city without a currently effective privilege license, which shall be issued by the city manager to each applicant therefor upon the applicant's payment of the appropriate privilege tax. (1994 Code, § 5-302)

## CHAPTER 4

### WHOLESALE BEER TAX

#### SECTION

5-401. To be collected.

**5-401. To be collected.** The city manager is hereby directed to take appropriate action to assure payment to the city of the wholesale beer tax levied by the Wholesale Beer Tax Act, as set out in *Tennessee Code Annotated*, title 57, chapter 6.<sup>1</sup> (1994 Code, § 5-401)

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<sup>1</sup>State law reference

*Tennessee Code Annotated*, title 57, chapter 6 provides for a tax of seventeen percent (17%) on the sale of beer at wholesale. 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.

## CHAPTER 5

### PURCHASING

#### SECTION

- 5-501. Definitions.
- 5-502. Purchasing agent.
- 5-503. General procedures.
- 5-504. Rejection of bids.
- 5-505. Conflict of interest.
- 5-506. Purchasing from employee.
- 5-507. Competitive bidding on purchases over \$1,000.00.
- 5-508. Sealed bid requirements over \$5,000.00 or more.
- 5-509. Purchases and contracts costing less than \$1,000.00.
- 5-510. Bid deposit.
- 5-511. Performance bond.
- 5-512. Record of bids.
- 5-513. Consideration in determining bid awards.
- 5-514. Statement when award not given to low bidder.
- 5-515. Award in case of tie bids.
- 5-516. Back orders.
- 5-517. Emergency purchases.
- 5-518. Waiver of the competitive bidding process.
- 5-519. Goods and services exempt from competitive bidding.
- 5-520. Procedures upon taking delivery of purchased items.
- 5-521. Property control.
- 5-522. Disposal of surplus property.
- 5-523. Employee participation in disposal of surplus property.
- 5-524. Surplus property; items consumed in the course of work thought to be worthless.
- 5-525. Surplus property; items estimated to have monetary value.
- 5-526. Surplus property; city identification removed prior to sale.
- 5-527. Liability for excess purchases.
- 5-528. Additional forms and procedures.

**5-501. Definitions.** For the purpose of implementing this chapter, the following definitions shall apply.

- (1) "Accept." To receive with approval or satisfaction.
- (2) "Acknowledgment." Written confirmation from the vendor to the purchaser of an order implying obligation or incurring responsibility.
- (3) "Agreement." A coming together in opinion or determination; understanding and agreement between two (2) or more parties.
- (4) "All or none." In procurement, the city reserves the right to award each item individually or to award all items on an all or none basis.

- (5) "Annual." Recurring, done, or performed every year.
- (6) "Appropriations." Public funds set aside for a specific purpose or purposes.
- (7) "Approved." To be satisfied with; admit the propriety or excellence of; to be pleased with; to confirm or ratify.
- (8) "Approved equal." Alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount, or rights.
- (9) "Attest." To certify to the verity of a public document formally by signature; to affirm to be true or genuine.
- (10) "Award." The presentation of a contract to a vendor; to grant; to enter into with all required legal formalities.
- (11) "Awarded bidder." Any individual, company, firm, corporation, partnership, or other organization to whom an award is made by the city.
- (12) "Back order." The portion of a customer's order undelivered due to temporary unavailability of a particular product or material.
- (13) "Bid." A vendor's response to an invitation for bids or request for proposal; the information concerning the price or cost of materials or services offered by a vendor.
- (14) "Bidder." Any individual, company, firm, corporation, partnership, or other organization or entity bidding on solicitations issued by the city and offering to enter into contracts with the city.
- (15) "Bid bond." An insurance agreement in which a third party agrees to be liable to pay a certain amount of money should a specific vendor's bid be accepted and the vendor fails to sign the contract as bid.
- (16) "Bid file." A folder containing all of the documentation concerning a particular bid. This documentation includes the names of all vendors to whom the invitation to bid was mailed, the responses of the vendors, the bid tabulation forms and any other information as may be necessary.
- (17) "Bid opening." The opening and reading of the bids, conducted at the time and place specified in the invitation for bids and in the presence of anyone who wishes to attend.
- (18) "Bid solicitation." Invitations for bids.
- (19) "Blanket bid order." A type of bid used by buyers to purchase repetitive products. The city establishes its need for a product for a specified period of time. The vendor is then informed of the city's expected usage during the duration of the proposed contract. The city may then order small quantities of these items from the vendor, at the bid price, over the term of the contract.
- (20) "Business." Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or legal entity through which business is conducted.
- (21) "Cancel." To revoke a contract or bid.
- (22) "Capital items." The purchase of assets which have a life expectancy of more than one (1) year and value are as follows:

Land	\$500.00
Buildings	\$10,000.00
Improvements other than buildings	\$5,000.00
Equipment	\$500.00
Infrastructure	\$1,000.00
Construction in process	Tied to asset class

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

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

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

(26) "City." The City of Whitwell, Tennessee.

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

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

(29) "Construction." The building, alteration, demolition, or repair of public buildings, structures, highways, and other improvements or additions to real property.

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

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

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

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

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

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

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

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

- (38) "Goods." All materials, equipment, supplies, and printing.
- (39) "Invitation for bid." All documents utilized for soliciting bids.
- (40) "Invoice." A written account of merchandise and process, delivered to the purchaser; a bill should be on official vendor letterhead or invoice form, show the number of items purchased, the cost per item, the total cost, the date of purchase, and the date of delivery.
- (41) "Lead time." The period of time from the date of ordering to the date of delivery which the buyer must reasonably allow the vendor to prepare goods for shipment.
- (42) "Life cycle costing." A procurement technique that considers the total cost of purchasing, maintaining, operating, and disposal of a piece of equipment when determining the low bid.
- (43) "Local bidder." A bidder who has and maintains a business office located within the corporate city limits of Whitwell, Tennessee.
- (44) "Material receiving report." A form used by the department head or supervisor to inform others of the receipt of good purchased.
- (45) "Performance bond." A bond given to the purchaser by a vendor or contractor guaranteeing the performance of certain services or delivery of goods within a specified period of time. The purpose is to protect the purchaser against a cash loss which might result if the vendor did not deliver as promised.
- (46) "Pre-bid conference." A meeting held with potential vendors a few days after an invitation for bids has been issued to promote uniform interpretation of work statements and specifications by all prospective contractors.
- (47) "Procurement or purchasing." Buying, renting, leasing, or otherwise obtaining supplies, services, construction, insurance, or any other item. It also includes functions that pertain to the acquisition of such supplies, services, construction, insurance, and other items, including descriptions of requirements, selection and solicitation of sources, preparation and award of contracts, contract administration, and all phases of warehousing and disposal.
- (48) "Public." Open to all.
- (49) "Public purchasing unit." The State of Tennessee, any county, city, town, governmental entity and other subdivision of the State of Tennessee, or any public agency, or any other public authority.
- (50) "Purchasing order." A legal document used to authorize a purchase from a vendor. A purchase order, when given to a vendor, should contain statements about the quantity, description, and price of goods or services ordered, agreed terms of payment, discounts, date of performance, transportation terms, and all other agreements pertinent to the purchase and its execution by the vendor.
- (51) "Reject." Refuse to accept, recognize, or make use of; repudiate, to refuse to consider or grant.
- (52) "Responsive bidder." One who has submitted a bid which conforms in all materials respects to the invitation for bids.

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

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

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

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

(57) "Using department." The city department seeking to purchase goods and services or which will be the ultimate user of the purchased goods and services.

(58) "Vendor." The person who transfers property, goods, or services by sale. (Ord. #324, May 2016)

**5-502. Purchasing agent.** The city manager shall be the purchasing agents for the municipality. Except as otherwise provided in this policy, all supplies, materials, equipment, and services of any nature shall be approved and acquired by the purchasing agent or his representative. (Ord. #324, May 2016)

**5-503. General procedures.** The following procedures shall be followed by all city employees when purchasing goods or services on behalf of the city.

Items expected to cost more than one thousand dollars (\$1,000.00) for all funds:

(1) The department head of the using department shall deliver to the purchasing agent a written purchase request for the item(s) to be purchased. Such request shall include a brief description of the item(s) to be purchased, specifications for the item being purchased, the estimated cost of the items, the general ledger account code to be used, and shall indicate whether the item(s) have been approved in the annual budget; and

(2) The purchasing agent shall review the purchase request for completeness and accuracy. The request shall then be forwarded to the board of commissioners for final review and approval. The board shall have the authority to adjust or eliminate various specifications for goods and services, or may disapprove the purchase request, to comply with city policy, the annual budget, or for any other reason it deems in the public interest. (Ord. #324, May 2016)

**5-504. Rejection of bids.** The city manager shall have the authority to reject any and all bids, parts of bids, or all bids for any one (1) or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby. The purchasing agent shall not accept the bid

of a vendor or contractor who is in default on the payment of taxes, licenses, fees, or other monies of whatever nature that may be due the city by said vendor or contractor. (Ord. #324, May 2016)

**5-505. Conflict of interest.** (1) No one holding a municipal office, elected or appointed, can contract with the municipality for any work that is to be paid for out of the treasury. That same person cannot also hold nor have any direct interest in such a contract. Direct interest is defined as any business in which the official is the sole proprietor, a partner, or the person who has the controlling interest. "Controlling interest" means the person with the ownership or control of the largest number of outstanding shares owned by any individual or corporation. No municipal officer can be indirectly interested in any contract with the municipality unless the officer publicly acknowledges his interest. "Indirectly interested" is defined as any contract in which the officer is interested, but not directly. It includes contracts where the officer is directly interested, but is the sole supplier of goods or services in the municipality.

(2) It is unlawful for any person whose duty is to vote for or to supervise any contract with a municipality to be directly interested in such a contract. No municipal officer or other person whose duty is to superintend any contract with a municipality shall be indirectly interested in any such contract unless the officer or person publicly acknowledges his interest. (Ord. #324, May 2016)

**5-506. Purchasing from employee.** It shall be the policy of the city not to purchase any goods or services from any employee or close relative of the city employee. (Ord. #324, May 2016)

**5-507. Competitive bidding on purchases over \$1,000.00.** (1) All purchases of supplies, equipment, services, and contracts estimated to be in excess of one thousand dollars (\$1,000.00) shall be by competitive bidding and may be awarded to the lowest responsive bidder.

(2) A written record shall be required and available for public inspection showing that competitive bids were obtained by one (1) of the following methods:

- (a) Direct mail advertisement or newspaper advertisement;
- (b) Telephone bids; or
- (c) Public notice.

(3) The city recorder shall verify account balances, prior to purchasing agent issuing approval to purchase, for all purchases over one thousand dollars (\$1,000.00). (Ord. #324, May 2016)

**5-508. Sealed bid requirements over \$5,000.00 or more.**

(1) On all purchases and contracts estimated to be in excess of five thousand dollars (\$5,000.00), except as otherwise provided in this chapter,

formal sealed bids shall be submitted at a specified time and place to the purchasing agent. The purchasing agent shall submit all such bids for award by the board of commissioners at the next regularly scheduled board meeting or special-called meeting together with the recommendation as to the lowest and best responsive bidder,

(2) Notice inviting bids shall be published at least once in a newspaper of general circulation in Marion County and any other venue deemed to be beneficial, and at least five (5) days preceding the last day to receive bids. The newspaper notice shall contain a general description of the article(s) to be secured, and the date, time, and place for opening bids.

(3) In addition to publication in a newspaper, the purchasing agent may take other actions deemed appropriate to notify all prospective bidders of the invitation to bid, including, but not limited to, advertisement in community bulletin boards, metropolitan newspapers, professional journals, and electronic media. (Ord. #324, May 2016)

**5-509. Purchases and contracts costing less than \$1,000.00.** The purchasing agent is expected to obtain the best prices and services available for purchases and contracts estimated to be less than one thousand dollars (\$1,000.00), but are exempted from the formal bid requirements specified in §§ 5-507 and 5-508. (Ord. #324, May 2016)

**5-510. Bid deposit.** When necessary, bid deposits deemed may be prescribed and noted in the public notices inviting bids. The deposit shall be in such amount as the purchasing agent shall determine and unsuccessful bidders shall be entitled to a return of such deposits within ten (10) calendar days of the bid opening. A successful bidder shall forfeit any required deposit upon failure on his part to enter a contract within ten (10) days after the award. (Ord. #324, May 2016)

**5-511. Performance bond.** The purchasing agent may require a performance bond before entering into a contract, in such amount as he shall find reasonably necessary to protect the best interests of the city and furnishers of labor and materials in the penalty of not less than the amount provided by *Tennessee Code Annotated*. (Ord. #324, May 2016)

**5-512. Record of bids.** (1) The purchasing agent shall keep a record of all open market orders and bids submitted in competition thereon, including a list of the bidders, the amount bid by each, and the method of solicitation and bidding, and such records shall be open to public inspection and maintained in the city recorder's office. All bid documents should be retained a minimum of seven (7) years after the contract expires.

(2) As a minimum, the bid file shall contain the following information:  
(a) Request to start bid procedures;

- (b) A copy of the bid advertisement;
- (c) A copy of the bid specifications;
- (d) A list of bidders and their responses;
- (e) A copy of the purchase order; and
- (f) A copy of the invoice. (Ord. #324, May 2016)

**5-513. Consideration in determining bid awards.** The following criteria shall be considered in determining all bid awards:

- (1) The ability of the bidder to perform the contract or provide the material or service required;
- (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (4) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (5) The quality of performance of previous contracts or services, including the quality of such contracts or services in other municipalities, or performed for private sector contractors;
- (6) The sufficiency of financial resources and the ability of the bidder to perform the contract or provide the service;
- (7) The ability of the bidder to provide future maintenance and service for the use of the supplies or contractual service contracted;
- (8) Compliance with all specifications in the solicitation for bids;
- (9) The ability to deliver and maintain any requisite bid bonds or performance bonds; and
- (10) Total cost of the bid, including life expectancy of the commodity, maintenance costs, and performance. (Ord. #324, May 2016)

**5-514. Statement when award not given to low bidder.** When the award for purchases and contracts in excess of one thousand dollars (\$1,000.00) is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the purchasing agent or department head and filed with all the other papers relating to the transaction. (Ord. #324, May 2016)

**5-515. Award in case of tie bids.** When two (2) or more vendors have submitted the low bid, the following criteria shall be used to award the bid:

- (1) If two (2) or more bidders have submitted the low bid, quality of service being equal, the purchase contract shall be awarded by a coin toss or drawing lots; and
- (2) When the award is to be decided by coin toss or drawing lots, representatives of the bidders shall be invited to observe. In no event shall such

coin toss or drawing lots be performed with less than three (3) witnesses. (Ord. #324, May 2016)

**5-516. Back orders.** All orders must be completed, whether through complete fulfillment of the purchase order or through closing the purchase order with items not received. The non-delivered items shall be cancelled from the purchase order and the check will be issued to the equal amount of the amended purchase order. (Ord. #324, May 2016)

**5-517. Emergency purchases.** Emergency purchases should be rare. According to state law an actual emergency exists when there is a threat to the health, property, or lives of the inhabitants of the city, and it must be declared by a two-thirds (2/3) vote of all members of the governing body present when there is a quorum. When an emergency exists, the provisions of this chapter may be waived; provided, however, the purchasing agent shall report the purchases and/or contracts to the board of commissioners at the next regular Board meeting stating the item(s) purchased, the amount(s) paid, from whom the purchase(s) was made, and the nature of the emergency. (Ord. #324, May 2016)

**5-518. Waiver of the competitive bidding process.** Upon the recommendation and the subsequent approval of the board of commissioners, that it is clearly to the advantage of the city not to contract by competitive bidding, the requirements of competitive bidding may be waived provided that the following criteria are met and documented in a written report to the board of commissioners.

(1) Single source of supply. The availability of only one (1) vendor of a product or service as determined after a complete and thorough search by the using department and the purchasing agent.

(2) State Department of General Services. A thorough effort was made to purchase the product or service through or in conjunction with the State Department of General Services or via a state contract, such effort being unsuccessful.

(3) Purchase from other governmental entities. A thorough effort was made to purchase the product or service through or in conjunction with other municipalities or from any federal or state agency. These purchases may be made without competitive bidding and public advertisement.

(4) Purchases from non-profit organizations. A thorough effort was made to purchase the goods or services from any non-profit organization whose sole purpose is to provide goods and services specifically to municipalities.

(5) Purchases from instrumentalities created by two (2) or more co-operating governments. An effort was made to purchase the goods or services from a co-op or group of governments which was formed to purchase goods and services for their members. (Ord. #324, May 2016)

**5-519. Goods and services exempt from competitive bidding.** The following goods and services need not be awarded on the basis of competitive bidding; provided, however, that the purchasing agent and/or the department head shall make a reasonable effort to assure that such purchases are made efficiently and in the best interest of the city.

(1) Certain insurance. The city may purchase tort liability insurance, without competitive bidding, from the Tennessee Municipal League or any other plan offered by a governmental entity representing cities and counties. All other insurance plans, however, are to be awarded on the basis of competitive bidding.

(2) Certain investments. The city may make investments of municipal funds in, or purchases from, the pooled investment fund established pursuant to *Tennessee Code Annotated*, § 9-4-702.

(3) Motor fuel, fuel products, or perishable commodities, such commodities may be purchased without competitive bidding.

(4) Professional service contracts. Any services of a professional person or firm, including attorneys, accountants, physicians, architects, engineers, and other consultants required by the city, whose fee is less than one thousand dollars (\$1,000.00), may be hired without competitive bidding. A request for qualification will be submitted to these firms, or persons. In those instances, where such professional service fees are expected to exceed one thousand dollars (\$1,000.00), a written contract shall be developed and approved by the board of commissioners based on the qualification statements received from these firms prior to the provision of any goods or services. Contracts for professional services shall not be awarded on the basis of competitive bidding; rather, professional service contracts shall be awarded on the basis of recognized competence and integrity. (Ord. #324, May 2016, modified)

**5-520. Procedures upon taking delivery of purchased items.**

Before accepting delivery of purchased equipment, supplies, materials, and other tangible goods, the department head of the using department shall:

(1) Inspect the goods to verify that they are in acceptable condition;  
 (2) Verify that all operating manuals and warranty cards are included in the delivery of the goods, if applicable;

(3) Verify that the number of items purchased has been delivered; making special note when part or all of a particular purchase has been back ordered;

(4) Record serial numbers for all capital items, notifying the city recorder of same; and

(5) Complete and return to the purchasing agent a material receiving report form. (Ord. #324, May 2016)

**5-521. Property control.** (1) A physical inventory of the city's fixed assets shall be taken annually.

(2) The goals of the annual inventory shall be as follows:

- (a) To identify unneeded and duplicate assets;
  - (b) To provide a basis for insurance claims, if necessary;
  - (c) To deter the incidence of theft and negligence;
  - (d) To aid in the establishment of replacement schedules for equipment; and
  - (e) To note transfers of surplus property.
- (3) To be classified as a fixed asset, an item must be tangible, have an expected life longer than the current fiscal year, and have a value as noted under the caption "capital items" above. Any property or equipment that meets these criteria shall be assigned an asset number (affixed with a property sticker), have a completed property card, and be inventoried annually. Such records shall be controlled and maintained by the city recorder. (Ord. #324, May 2016)

**5-522. Disposal of surplus property.** The purchasing agent shall be in charge of the disposal of surplus property and make a full report to the board of commissioners after the items are disposed of. When a department head determines there is surplus equipment or materials within the department, he shall notify the purchasing agent in writing of any such equipment. The purchasing agent may transfer surplus equipment or materials from one (1) department to another. (Ord. #324, May 2016)

**5-523. Employee participation in disposal of surplus property.** No city employee shall be permitted to bid on surplus property; nor shall any surplus property be sold or given to a city employee by the board of commissioners, the purchasing agent, or any city department head. For the purposes of this chapter, members of the board of commissioners shall be considered city employees. (Ord. #324, May 2016)

**5-524. Surplus property; items consumed in the course of work thought to be worthless.** City property which may be consumed in the course of normal city business and items thought to be worthless shall be disposed of in a like manner as any other refuse. For accounting purposes, such items shall be charged off as a routine cost of doing business. (Ord. #324, May 2016)

**5-525. Surplus property: items estimated to have monetary value.** When disposing of surplus property estimated to have monetary value, the purchasing agent shall comply with the following procedures:

- (1) Obtain from the board of commissioners a resolution declaring said items to be surplus property and fixing the date, time, and location for the purchasing agent to receive bids, including a notice of listing on government-specific online auction sites such as [www.govdeals.com](http://www.govdeals.com) and [www.publicsurplus.com](http://www.publicsurplus.com);

(2) A copy of the resolution shall be posted in at least three (3) locations in the community;

(3) Such equipment or materials shall be sold to the highest bidder. In the event the highest bidder is unable to pay within twenty-four (24) hours, or a time frame agreed upon by both the buyer and the seller, the item shall be awarded to the second highest bidder;

(4) All pertinent information concerning the sale shall be noted in the fixed asset records of the city; and

(5) The advertisement, bids, and property cards shall be retained for a minimum period of five (5) years. (Ord. #324, May 2016)

**5-526. Surplus property: city identification removed prior to sale.**

No surplus city property shall be sold unless and until all decals, emblems, lettering, or coloring which identifies the item as belonging to the City of Whitwell have been removed or repainted. (Ord. #324, May 2016)

**5-527. Liability for excess purchases.** This chapter shall authorize only the purchase of materials and supplies and the procurement of contracts for which funds have been appropriated and are within the limits of the funds estimated for each department in the annual budget or which have been authorized and lawfully funded by the board of commissioners. The city shall have no liability for any purchase made in violation of this chapter. (Ord. #324, May 2016)

**5-528. Additional forms and procedures.** The purchasing agent is hereby authorized and directed to develop such forms and procedures as are necessary to comply with this chapter. (Ord. #324, May 2016)

## TITLE 6

### LAW ENFORCEMENT<sup>1</sup>

#### **CHAPTER**

##### 1. POLICE AND ARREST.

#### **CHAPTER 1**

#### POLICE AND ARREST

##### **SECTION**

6-101. When police officers to make arrests.

6-102. Disposition of persons arrested.

**6-101. When police officers to make arrests.** Unless otherwise authorized or directed in this code or other applicable law and arrest of the person shall be made by a police officer in the following cases:

(1) Whenever he is in possession of a warrant for the arrest of the person;

(2) Whenever an offense is committed or a breach of the peace is threatened in the officer's presence by the person; and

(3) Whenever a felony has in fact been committed and the officer has reasonable cause to believe the person has committed it. (1994 Code, § 6-101)

**6-102. Disposition of persons arrested.** (1) For code or ordinance violations. Unless otherwise provided by law, a person arrested for a violation of this code or other city ordinances shall be brought before a court of competent jurisdiction. However, if the city court is not in session, the arrested person shall be allowed to post bond with the city court clerk, or, if the city court clerk is not available, with the ranking police officer on duty. If the arrested person fails or refuses to post bond, he shall be confined pending his release by the city judge. In addition, if the arrested person is under the influence of alcohol or drugs when arrested, even if he is arrested for an offense unrelated to the consumption of alcohol or drugs, the person shall be confined until he does not pose a danger to himself or to any other person.

(2) Felonies or misdemeanors. A person arrested for a felony or a misdemeanor shall be disposed of in accordance with applicable federal and state law and the rules of the court which has jurisdiction over the offender. (1994 Code, § 6-102, modified)

<sup>1</sup>Municipal code reference

Issuance of citations in lieu of arrest: §§ 15-701 and 15-706.

## TITLE 7

### FIRE PROTECTION AND FIREWORKS

#### **CHAPTER**

1. FIRE CODE.
2. VOLUNTEER FIRE DEPARTMENT.
3. FIREWORK DISCHARGE.
4. INTERFERENCE WITH FIRE APPARATUS PROHIBITED.
5. FIRE SERVICE OUTSIDE CITY LIMITS.

#### **CHAPTER 1**

##### FIRE CODE<sup>1</sup>

#### **SECTION**

- 7-101. Fire code adopted.
- 7-102. Enforcement.
- 7-103. Gasoline trucks.
- 7-104. Variances.
- 7-105. Available in recorder's office.
- 7-106. Violations and penalty.

**7-101. Fire code adopted.** Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures, and premises, and to provide safety to fire fighters and emergency responders during emergency operations, the *International Fire Code*,<sup>2</sup> 2015 edition, and all subsequent amendments or additions to said code, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim, and is hereinafter referred to as the fire code. Said fire code is shall be controlling within the corporate limits.

**7-102. Enforcement.** The fire code herein adopted by reference shall be enforced by the chief of the fire department. He shall have the same powers as the state fire marshal.

<sup>1</sup>Municipal code reference

Building, utility and residential codes: title 12.

<sup>2</sup>Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

**7-103. Gasoline trucks.** No person shall operate or park any gasoline tank truck within the central business district or within any residential area at any time except for the purpose of and while actually engaged in the expeditious delivery of gasoline.

**7-104. Variances.** The chief of the fire department may recommend to the board of commissioners variances from the provisions of the fire 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 commissioners.

**7-105. Available in recorder's office.** Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the fire code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

**7-106. Violations and penalty.** It shall be unlawful for any person to violate or fail to comply with any provision of the fire code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

## CHAPTER 2

### **VOLUNTEER FIRE DEPARTMENT<sup>1</sup>**

#### **SECTION**

- 7-201. Establishment, equipment, and membership.
- 7-202. Objectives.
- 7-203. Organization, rules, and regulations.
- 7-204. Records and reports.
- 7-205. Tenure and compensation of members.
- 7-206. Chief responsible for training and maintenance.
- 7-207. Chief to be assistant to state officer.

**7-201. Establishment, equipment, and membership.** There is hereby established a volunteer fire department to be supported and equipped from appropriations of the board of commissioners. Any funds raised by the volunteer fire department as a whole, or by any individual or group of volunteer firemen in the name of the volunteer fire department, and any gifts to the volunteer fire department shall be turned over to and become the property of, the city and the city shall use such funds in the equipping of the volunteer fire department. All other apparatus, equipment, and supplies of the volunteer fire department shall be purchased by or through the city and shall be and remain the property of the city. The volunteer fire department shall be composed of a chief appointed by the city manager and the fire chief shall appoint such number of subordinate officers and firemen as the board of commissioners shall approve. (1994 Code, § 7-101)

**7-202. Objectives.** The volunteer fire department shall have as its 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; and
- (6) To perform such rescue work as its equipment and/or the training of its personnel makes practicable. (1994 Code, § 7-102)

**7-203. Organization, rules, and regulations.** The chief of the volunteer fire department shall set up the organization of the department, make

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<sup>1</sup>Municipal code reference

Special privileges with respect to traffic: title 15, chapter 2.

definite assignments to individuals, and formulate and enforce such rules and regulations as shall be necessary for the orderly and efficient operation of the volunteer fire department. (1994 Code, § 7-103)

**7-204. Records and reports.** The chief of the volunteer fire department shall keep adequate records of all fires, inspections, apparatus, equipment, personnel, and work of the department. He shall submit such written reports on those matters to the city manager as he may require. (1994 Code, § 7-104)

**7-205. Tenure and compensation of members.** The fire chief shall have the authority to suspend or discharge any other member of the volunteer fire department when he deems such action to be necessary for the good of the department. The fire chief may be dismissed by the city manager.

All personnel of the volunteer fire department shall receive such compensation for their services as the board of commissioners may from time to time prescribe. (1994 Code, § 7-105)

**7-206. 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, under the direction and subject to the requirements of the board of commissioners. (1994 Code, § 7-106)

**7-207. Chief to be assistant to state officer.** Pursuant to requirements of *Tennessee Code Annotated*, § 68-102-108, the fire chief is designated as an assistant to the state commissioner of insurance 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 commissioner in the execution of the provisions thereof. (1994 Code, § 7-107)

## CHAPTER 3

### FIREWORK DISCHARGE

#### SECTION

7-301. Firework discharge.

**7-301. Firework discharge.** No person shall discharge any firecracker, torpedo, Roman candle, skyrocket, or other fireworks of any kind or nature whatsoever upon any street, sidewalk, or other public property of the City of Whitwell, Tennessee. (1994 Code, § 7-201)

## CHAPTER 4

### **INTERFERENCE WITH FIRE APPARATUS PROHIBITED**

#### **SECTION**

7-401. Interference with fire apparatus prohibited.

**7-401. Interference with fire apparatus prohibited.** (1) The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm, closer than five hundred feet (500').

(2) The driver of any vehicle shall not park the same within the block where fire apparatus has stopped in answer to a fire alarm, nor within five hundred feet (500') of a fire.

(3) The driver of any vehicle shall not park such vehicle upon any street leading to the location of a fire in such a manner as to block, hinder, or retard the approach of fire apparatus, and in no event shall any vehicle be parked upon any street without leaving a clear driving space upon such street or roadway of at least fifteen feet (15').

(4) Citations for the violation of this chapter may be issued by any police officer, the city manager, the chief of the fire department or by any captain of the fire department, and such citation shall have the same force and effect and be equally valid as though served by any regularly appointed police officer of this city. (1994 Code, § 7-301)

## CHAPTER 5

### FIRE SERVICE OUTSIDE CITY LIMITS

#### **SECTION**

7-501. Restrictions on fire service outside city limits.

**7-501. Restrictions on fire service outside city limits.** No personnel or equipment of the fire department shall be used for fighting any fire outside the city limits unless the fire is on city property or, in the opinion of the fire chief, is in such hazardous proximity to property owned or located within the city as to endanger the city property, or unless the board of commissioners has developed policies for providing emergency services outside of the city limits or entered into a contract or mutual aid agreement pursuant to the authority of:

(1) The Local Government Emergency Assistance Act of 1987, as amended, codified in *Tennessee Code Annotated*, §§ 58-2-601, *et seq.*<sup>1</sup>

<sup>1</sup>State law references

*Tennessee Code Annotated*, §§ 58-2-601, *et seq.*, as amended by Public Acts 1988, Ch. 499, authorizes any municipality or other local governmental entity to go outside of its boundaries in response to a request for emergency assistance by another local government. It does not create a duty to respond to or to stay at the scene of an emergency outside its jurisdiction.

This statute, as amended, does not require written agreements between the local governments, but authorizes them to develop policies and procedures for requesting and responding to requests for emergency assistance, including provisions for compensation for service rendered.

The statute specifies which municipal officers may request and respond to requests for emergency assistance and provides for the appointment by municipal governing bodies of additional municipal officers with the same authority.

The statute provides that the senior officer of the requesting party will be in command at the scene of the emergency.

The statute outlines the liabilities of the requesting and responding governments as follows: (1) Neither the responding party nor its employees shall be liable for any property damage or bodily injury at the actual scene of any emergency due to actions performed in responding to a request for emergency assistance; (2) The requesting party is not liable for damages to the equipment and personnel of the responding party in response to the request for emergency assistance; and (3) Neither the requesting party nor its employees is liable for

(continued...)

- (2) *Tennessee Code Annotated*, §§ 12-9-101, *et seq.*<sup>1</sup>; and
- (3) *Tennessee Code Annotated*, § 6-54-601.<sup>2</sup> (1994 Code, § 7-501)

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(...continued)

damages caused by the negligence of the personnel of the responding party while en route to or from the scene of the emergency.

<sup>1</sup>State law reference

*Tennessee Code Annotated*, §§ 12-9-101, *et seq.*, is the Interlocal Cooperation Act, which authorizes municipalities and other governments to enter into mutual aid agreements of various kinds.

<sup>2</sup>State law reference

*Tennessee Code Annotated*, § 6-54-601 authorizes municipalities: (1) To enter into mutual aid agreements with other municipalities, counties, privately incorporated fire departments, utility districts and metropolitan airport authorities which provide for firefighting service, and with industrial fire departments, to furnish one another with fire fighting assistance. (2) Enter into contracts with organizations of residents and property owners of unincorporated communities to provide such communities with firefighting assistance. (3) Provide fire protection outside their city limits to either citizens on an individual contractual basis, or to citizens in an area without individual contracts, whenever an agreement has first been entered into between the municipality providing the fire service and the county or counties in which the fire protection is to be provided. (Counties may compensate municipalities for the extension of fire services.)

**TITLE 8****ALCOHOLIC BEVERAGES<sup>1</sup>****CHAPTER**

1. INTOXICATING LIQUORS.
2. BEER.

**CHAPTER 1****INTOXICATING LIQUORS****SECTION**

8-101. Prohibited generally.

**8-101. Prohibited generally.** Except as authorized by applicable laws<sup>2</sup> and/or ordinances, it shall be unlawful for any person to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for, any intoxicating liquor within this city. "Intoxicating liquor" shall be defined to include whiskey, wine, "home brew," "moonshine," and all other intoxicating, spirituous, vinous, or malt liquors and beers. "Beer" shall be defined pursuant to *Tennessee Code Annotated*, § 57-5-101.

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<sup>1</sup>Municipal code references  
Minors in beer places, etc.: title 11, chapter 2.

<sup>2</sup>State law reference  
*Tennessee Code Annotated*, title 57.

## CHAPTER 2

### BEER<sup>1</sup>

#### **SECTION**

- 8-201. Beer board established.
- 8-202. Meetings of the beer board.
- 8-203. Record of beer board proceedings to be kept.
- 8-204. Requirements for beer board quorum and action.
- 8-205. Powers and duties of the beer board.
- 8-206. "Beer" defined.
- 8-207. Permit required for engaging in beer business.
- 8-208. Privilege tax.
- 8-209. Beer permits shall be restrictive.
- 8-210. Interference with public health, safety, and morals prohibited.
- 8-211. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-212. Prohibited conduct or activities by beer permit holders.
- 8-213. Suspension and revocation of beer permits.
- 8-214. Civil penalty in lieu of suspension.
- 8-215. License non-transferable.
- 8-216. New location.

**8-201. Beer board established.** There is hereby established a beer board to be composed of the board of commissioners. The mayor shall be the chairman of the beer board. (1994 Code, § 8-201)

**8-202. Meetings of the beer board.** All meetings of the beer board shall be open to the public. The board shall hold regular meetings in the city hall at such times as it shall prescribe. When there is business to come before the beer board, a special meeting may be called by the chairman, provided he gives a reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place. (1994 Code, § 8-202)

<sup>1</sup>Municipal code references

Minors in beer places, etc.: title 11, chapter 2.  
Tax provisions: title 5, chapter 4.

State 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).

**8-203. Record of beer board proceedings to be kept.** The recorder shall make a record of the proceedings of all meetings of the beer board. The record shall be a public record and shall contain at least the following: the date of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions, etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. (1994 Code, § 8-203)

**8-204. Requirements for beer board quorum and action.** The attendance of at least a majority of the members of the beer board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote. (1994 Code, § 8-204)

**8-205. Powers and duties of the beer board.** The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this city in accordance with the provisions of this chapter. (1994 Code, § 8-205)

**8-206. "Beer" defined.** The term "beer" as used in this chapter shall be the same definition appearing in *Tennessee Code Annotated*, § 57-5-101.

**8-207. Permit required for engaging in beer business.** It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to *Tennessee Code Annotated*, § 57-5-101(b), and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of Whitwell. Each applicant must be a person of good moral character and he must certify that he has read and is familiar with the provisions of this chapter. (1994 Code, § 8-207)

**8-208. Privilege tax.** There is hereby imposed on the business of selling, distributing, storing, or manufacturing beer a privilege tax of one hundred dollars (\$100.00). Any person, firm, corporation, joint stock company, syndicate, or association engaged in the sale, distribution, storage, or manufacture of beer shall remit the tax on January 1, 1994, and each successive January 1, to the City of Whitwell, Tennessee. 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 prorated basis for each month or portion thereof remaining until the next tax payment date. (1994 Code, § 8-208)

**8-209. Beer permits shall be restrictive.** All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions which may be written into his permit by the beer board. (1994 Code, § 8-209)

**8-210. Interference with public health, safety, and morals prohibited.** No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with hospitals, schools, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. No license or permit shall be granted which authorizes the sale, storage, or manufacture of such beer or beverages within one hundred seventy-five feet (175') of any school or church. (1994 Code, § 8-210)

**8-211. Issuance of permits to persons convicted of certain crimes prohibited.** No beer permit shall be issued to any person who has been convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years. (1994 Code, § 8-211)

**8-212. Prohibited conduct or activities by beer permit holders.** It shall be unlawful for any beer permit holder to:

- (1) Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years;
- (2) Make or allow any sale of beer after the hours of 12:00 midnight and before 8:00 A.M. Monday through Saturday, or Sundays before 12:00 noon and after 12:00 midnight;
- (3) Allow any loud, unusual, or obnoxious noises to emanate from his premises;
- (4) Make or allow any sale of beer to a person under twenty-one (21) years of age;
- (5) Allow any person under twenty-one (21) years of age to loiter in or about his place of business;
- (6) Allow drunk persons to loiter about his premises;
- (7) Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content higher than beer.
- (8) Allow dancing on his premises; or
- (9) Allow pool or billiard playing in the same room where beer is sold and/or consumed. (1994 Code, § 8-212, modified)

**8-213. Suspension and revocation of beer permits.** The beer board shall have the power to suspend or revoke any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. Complaints brought for the purpose of suspending or revoking such licenses shall be made in writing and filed with the chairman of said board, who shall thereupon give or cause to be given written notice, accompanied by a copy of such written complaint, commanding the person, persons, firm, corporation, or association to appear at a time and place designated in said notice before said board and show cause why such license should not be suspended or revoked, such notice to be served either by registered letter or by any police officer of the City of Whitwell, at least five (5) days prior to the date of the hearing when such person, persons, firm, corporation, or association is cited to appear. Upon the hearing, said board shall publicly hear and determine the nature and merits of the complaint, and for this purpose the chairman of said board is authorized to compel the attendance of witnesses by subpoena, and after such hearing said board may, for proper cause, suspend or revoke such license. (1994 Code, § 8-213)

**8-214. Civil penalty in lieu of suspension.** The beer board may, at the time it imposes a revocation or suspension, offer a permit holder the alternative of paying a civil penalty not to exceed one thousand five hundred dollars (\$1,500.00) for each offense of making or permitting to be made any sales to minors or, a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense. If a civil penalty is offered as an alternative to revocation or suspension, the 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, the revocation or suspension shall be deemed withdrawn. (1994 Code, § 8-214)

**8-215. License non-transferable.** The license specified hereunder, when issued, shall not be transferable to any other person, persons, firm, corporation, or association. (1994 Code, § 8-215)

**8-216. New location.** When any person shall move the location of the place of business where such beverages are sold, then in all cases he shall be required to obtain from the city a new license in the manner herein provided by application to said board therefor. (1994 Code, § 8-216)

## TITLE 9

### BUSINESS, PEDDLERS, SOLICITORS, ETC.<sup>1</sup>

#### **CHAPTER**

##### 1. PEDDLERS, SOLICITORS, ETC.

#### **CHAPTER 1**

##### PEDDLERS, SOLICITORS, ETC.<sup>2</sup>

#### **SECTION**

- 9-101. Definitions.
- 9-102. Exemptions.
- 9-103. Permit required.
- 9-104. Permit procedure.
- 9-105. Restrictions on peddlers, street barkers, and solicitors.
- 9-106. Restrictions on transient vendors.
- 9-107. Display of permit.
- 9-108. Suspension or revocation of permit.
- 9-109. Expiration and renewal of permit.
- 9-110. Roadblocks regulated.
- 9-111. Violations and penalty.

**9-101. Definitions.** Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:

(1) "Peddler" means any person, firm or corporation, either a resident or a nonresident of the city, who has no permanent regular place of business and who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

(2) "Solicitor" means any person, firm or corporation who goes from dwelling to dwelling, business to business, place to place, or from street to street, taking or attempting to take orders for any goods, wares, or merchandise,

<sup>1</sup>Municipal code references

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

Junkyards: see title 13.

Liquor and beer regulations: see title 8.

Zoning: see title 14.

<sup>2</sup>Municipal code references

Privilege taxes: see title 5.

Trespass by peddlers, etc.: § 11-801.

or personal property of any nature whatever for future delivery, except that the term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.

(3) "Solicitor for charitable or religious purposes" means any person, firm, corporation, or organization who or which solicits contributions from the public, either on the streets of the city or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who does not sell or offer to sell any single item at a cost to the purchaser in excess of ten dollars (\$10.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets one (1) of the following conditions:

(a) Has a current exemption certificate from the Internal Revenue Service issued under § 501(c)(3) of the Internal Revenue Service Code of 1954, as amended.

(b) Is a member of United Way, Community Chest, or similar "umbrella" organization for charitable or religious organizations.

(c) Has been in continued existence as a charitable or religious organization in Marion County for a period of two (2) years prior to the date of its application for registration under this chapter.

(4) "Solicitor for subscriptions" means any person who solicits subscriptions from the public, either on the streets of the city, or from door to door, business to business, place to place, or from street to street, and who offers for sale subscriptions to magazines or other materials protected by provisions of the Constitution of the United States.

(5) "Street barker" means any peddler who does business during recognized festival or parade days in the city and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade.

(6) "Transient vendor<sup>1</sup>" means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of

<sup>1</sup>State law reference

*Tennessee Code Annotated*, §§ 62-30-101, *et seq.* contains permit requirements for "transitory vendors."

The definition of "transient vendors" is taken from *Tennessee Code Annotated*, § 67-4-709(a)(19). Note also that *Tennessee Code Annotated*, § 67-4-709(a) prescribes that transient vendors shall pay a tax of fifty dollars (\$50.00) for each fourteen (14) day period in each county and/or municipality in which such vendors sell or offer to sell merchandise for which they are issued a business license, but that they are not liable for the gross receipts portion of the tax provided for in *Tennessee Code Annotated*, § 67-4-709(b).

selling or offering to sell the merchandise to the public. "Transient vendor" does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "merchandise" means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-public place including a hotel, rooming house, storeroom, building, or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months. (1994 Code, § 9-101)

**9-102. Exemptions.** The terms of this chapter shall not apply 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 persons selling agricultural products, who, in fact, themselves produced the products being sold. (1994 Code, § 9-102)

**9-103. Permit required.** No person, firm, or corporation shall operate a business as a peddler, transient vendor, solicitor, or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the city unless the same has obtained a permit from the city in accordance with the provisions of this chapter. (1994 Code, § 9-103)

**9-104. Permit procedure.** (1) Application form. A sworn application containing the following information shall be completed and filed with the city manager by each applicant for a permit as a peddler, transient vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:

- (a) The complete name and permanent address of the business or organization the applicant represents;
- (b) A brief description of the type of business and the goods to be sold;
- (c) The dates for which the applicant intends to do business or make solicitations;
- (d) The names and permanent addresses of each person who will make sales or solicitations within the city;
- (e) The make, model, complete description, and license tag number and state of issue, of each vehicle to be used to make sales or solicitation, whether or not such vehicle is owned individually by the person making sales or solicitations, by the business or organization itself, or rented or borrowed from another business or person; and

(f) Tennessee State sales tax number, if applicable.

(2) Permit fee. Each application for a permit as a peddler, transient vendor, solicitor or street barker shall submit with his application a non-refundable fee of twenty dollars (\$20.00). There shall be no fee for an application for a permit as a solicitor for charitable purposes or as a solicitor for subscriptions.

(3) Permit issued. Upon the completion of the application form and the payment of the permit fee, where required, the recorder shall issue a permit and provide a copy of the same to the applicant. Said permit shall be valid for a period of thirty (30) days from the issuance date. Upon expiration of the permit, said application shall submit a new application and non-refundable fee.

(4) Submission of application form to chief of police. Immediately after the applicant obtains a permit from the city recorder, the city recorder shall submit to the chief of police a copy of the application form and the permit. (1994 Code, § 9-104, as amended by Ord. #275, Aug. 2009)

**9-105. Restrictions on peddlers, street barkers, and solicitors.** No peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions shall:

(1) Be permitted to set up and operate a booth or stand on any street or sidewalk, or in any other public area within the city;

(2) Stand or sit in or near the entrance to any dwelling or place of business, or in any other place which may disrupt or impede pedestrian or vehicular traffic;

(3) Offer to sell goods or services or solicit in vehicular traffic lanes, or operate a "road block" of any kind;

(4) Call attention to his business or merchandise or to his solicitation efforts by crying out, by blowing a horn, by ringing a bell, or creating other noise, except that the street barker shall be allowed to cry out to call attention to his business or merchandise during recognized parade or festival days of the city; and

(5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located. (1994 Code, § 9-105)

**9-106. Restrictions on transient vendors.** A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares, or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, cancelled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented, or held forth. (1994 Code, § 9-106)

**9-107. Display of permit.** Each peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions is required to have in his possession a valid permit while making sales or solicitations, and shall be required to display the same to any police officer upon demand. (1994 Code, § 9-107)

**9-108. Suspension or revocation of permit.** (1) Suspension by the city manager. The permit issued to any person or organization under this chapter may be suspended by the city manager for any of the following causes:

- (a) Any false statement, material omission, or untrue or misleading information which is contained in or left out of the application; or
- (b) Any violation of this chapter.

(2) Suspension or revocation by the board of commissioners. The permit issued to any person or organization under this chapter may be suspended or revoked by the board of commissioners, after notice and hearing, for the same causes set out in subsection (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the city manager in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder 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. (1994 Code, § 9-108)

**9-109. Expiration and renewal of permit.** The permit of peddlers, solicitors, and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days.

**9-110. Roadblocks regulated.** (1) Roadblocks are restricted to such organizations that are duly filed with the Internal Revenue Service as subchapter 501(c)3 organizations. The departments of the City of Whitwell, Tennessee are allowed to roadblock inside the city limits. The local Lions Club is allowed to roadblock inside the city limits.

(2) The following terms shall apply in the interpretation and application of this section.

- (a) "Roadblock" shall mean the solicitation by any person of money or in the right-of-way of any street, road, highway, or any other

public way and place generally open to, and used by, the public for travel in or upon motor vehicles.

(b) "Street," "road," "highway," and "public way and place" shall include the paved or unpaved surface of any such street, road, highway or public place, the entire width of the public right-of-way extending laterally therefrom, dividers, medians, and abutting or adjoining sidewalks or other pedestrian pathways generally open to the public for pedestrian traffic.

(3) Any person violating this section shall be subject to punishment of a fifty dollar (\$50.00) fine. (1994 Code, § 9-111, as amended by Ord. #260, Aug. 2006 and Ord. #304, March 2013)

**9-111. Violations and penalty.** In addition to any other action the city may take against a permit holder in violation of this chapter, such violation shall be punishable according to the general penalty provision of this municipal code of ordinances.<sup>1</sup> (1994 Code, § 9-110)

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<sup>1</sup>§ 5, of the adopting ordinance.

**TITLE 10****ANIMAL CONTROL**<sup>1</sup>**CHAPTER**

1. IN GENERAL.
2. DOGS AND CATS.

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

- 10-101. Running at large prohibited.
- 10-102. Pen or enclosure to be kept clean.
- 10-103. Adequate food, water, and shelter, etc., to be provided.
- 10-104. Keeping in such manner as to become a nuisance prohibited.
- 10-105. Seizure and disposition of animals.

**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.

Any person, including its owner, knowingly or negligently permitting an animal to run at large may be prosecuted under this section even if the animal is picked up and disposed of under other provisions of this chapter, whether or not the disposition includes returning the animal to its owner. (1994 Code, § 10-101)

**10-102. 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. (1994 Code, § 10-102)

**10-103. 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. (1994 Code, § 10-103)

<sup>1</sup>Wherever this title mentions dogs it pertains to dog and cats

**10-104. 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 either noise, odor, contagious disease, or other reason. This provision shall not exclude commercial chicken houses that comply with all state and federal regulations. (1994 Code, § 10-104)

**10-105. 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 any police officer or other properly designated officer or official and confined in a pound provided or designated by the board of commissioners. 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 commissioners.

The pound keeper shall collect from each person claiming an impounded animal or fowl reasonable fees, in accordance with a schedule approved by the board of commissioners, to cover the costs of impoundment and maintenance. (1994 Code, § 10-106)

## CHAPTER 2

### DOGS AND CATS

#### SECTION

- 10-201. Rabies vaccination and registration required.
- 10-202. Dogs to wear tags.
- 10-203. Running at large prohibited.
- 10-204. Vicious dogs to be securely restrained.
- 10-205. Noisy dogs prohibited.
- 10-206. Confinement of dogs suspected of being rabid.
- 10-207. Seizure and disposition of dogs.
- 10-208. Destruction of vicious or infected dogs running at large.
- 10-209. Violations and penalty.

**10-201. Rabies vaccination and registration required.** It shall be unlawful for any person to own, keep, or harbor any dog or cat 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. (1994 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. (1994 Code, § 10-202)

**10-203. Running at large prohibited.**<sup>1</sup> 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.

Any person knowingly permitting a dog to run at large, including the owner of the dog, may be prosecuted under this section even if the dog is picked up and disposed of under the provisions of this chapter, whether or not the disposition includes returning the animal to its owner. (1994 Code, § 10-203)

**10-204. Vicious dogs to be securely restrained.** It shall be unlawful for any person to own or keep any dog known to be vicious or dangerous unless such dog is so confined and/or otherwise securely restrained as to provide reasonably for the protection of other animals and persons. (1994 Code, § 10-204)

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<sup>1</sup>State law reference

*Tennessee Code Annotated*, §§ 68-8-108 and 68-8-109.

**10-205. Noisy dogs prohibited.** No person shall own, keep, or harbor any dog which, by loud and frequent barking, whining, or howling, disturbs the peace and quiet of any neighborhood. (1994 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 chief of police or any other properly designated officer or official may cause such dog to be confined or isolated for such time as he deems reasonably necessary to determine if such dog is rabid. (1994 Code, § 10-206)

**10-207. Seizure and disposition of dogs.** Any dog found running at large may be seized by any police officer or other properly designated officer or official and placed in a pound provided or designated by the board of commissioners. If the 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 commissioners, or the dog will be sold or humanely destroyed. If the dog is not wearing a tag, it shall be sold or humanely destroyed unless legally claimed by the owner within five (5) 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. (1994 Code, § 10-207)

**10-208. Destruction of vicious or infected dogs running at large.** When, because of its viciousness or apparent infection with rabies, a dog found running at large cannot be safely impounded it may be summarily destroyed by any police officer or other properly designated officer.<sup>1</sup> (1994 Code, § 10-208)

**10-209. 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.

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<sup>1</sup>State law references

For a Tennessee Supreme Court case upholding the summary destruction of dogs pursuant to appropriate legislation, see *Darnell v. Shapard*, 156 Tenn. 544, 3 S.W.2d 661 (1927).

**TITLE 11****MUNICIPAL OFFENSES**<sup>1</sup>**CHAPTER**

1. ALCOHOL.
2. UNLAWFUL CONDUCT OF MINORS AND PARENTS.
3. OFFENSES AGAINST THE PEACE AND QUIET.
4. FIREARMS, WEAPONS, AND MISSILES.
5. TRESPASSING AND INTERFERENCE WITH TRAFFIC.
6. DAMAGE TO GOVERNMENT PROPERTY.

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

- 11-101. Drinking alcoholic beverages in public, etc.
- 11-102. Minors in beer places.
- 11-103. Violations and penalty.

**11-101. Drinking alcoholic beverages in public, etc.** It shall be unlawful for any person to drink, 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. (1994 Code, § 11-101)

<sup>1</sup>Municipal code references

Animal control: title 10.

Fireworks and explosives: title 7.

Streets and sidewalks: title 16.

Traffic offenses: title 15.

<sup>2</sup>Municipal code reference

Sale of alcoholic beverages, including beer: title 8.

**State law reference**

*Tennessee Code Annotated*, § 33-8-203 (Arrest for Public Intoxication, cities may not pass separate legislation); *Tennessee Code Annotated*, § 39-6-928 (Giving municipal courts jurisdiction to try public intoxication offenses).

**11-102. Minors in beer places.** No person under the age of twenty-one (21) shall loiter in or around or otherwise frequent any place where beer is sold at retail for on premises consumption. (1994 Code, § 11-102)

**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

### UNLAWFUL CONDUCT OF MINORS AND PARENTS

#### SECTION

- 11-201. Definitions.
- 11-202. Unlawful conduct of minors.
- 11-203. Unlawful conduct of parents.
- 11-204. Unlawful conduct of owners or operators or establishments.
- 11-205. Civil and criminal liability of parents.
- 11-206. Violations and penalty.

**11-201. Definitions.** The following definitions shall apply to the following terms as used in this section only.

(1) "Establishment" means any privately owned place of business carried on for profit or any place of amusement or entertainment to which the public is invited.

(2) "Minor" means any person under the age of eighteen (18) years.

(3) "Operator" means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment; and whenever used in any clause prescribing a penalty, the term "operator" as applied to associations or partnership, shall include the members or partners thereof, and as applied to corporations, and shall include the officers thereof.

(4) "Parent" means any natural parent of a minor, a guardian, or any adult person, twenty-one (21) years of age or over, responsible for the care and custody of a minor.

(5) "Public place" means any public street, highway, road, alley, park playground, public building, or vacant lot.

(6) "Remain" means to loiter, idle, wander, stroll, or play in or upon. (1994 Code, § 11-301)

**11-202. Unlawful conduct of minors.** (1) It shall be unlawful for any minor to remain in or upon any public place or any establishment between the hours of 10:00 P.M. and 6:00 A.M. of the following day, Central Standard Time, except on Fridays and Saturdays the hours shall be from 12:00 P.M. to 6:00 A.M.

(2) The provisions of this section shall not apply to any minor accompanied by a parent, or to a minor upon an errand or other legitimate business directed by such minor's parent, or to any minor who is engaged in gainful lawful employment during the curfew hours. (1994 Code, § 11-302)

**11-203. Unlawful conduct of parents.** (1) It shall be unlawful for any parent to knowingly permit any minor to remain in or upon any public place or any establishment between the hours of 10:00 P.M. and 6:00 A.M. of the

following day, Central Standard Time, except that on Fridays and Saturdays the hours shall be from 12:00 P.M. to 6:00 A.M.

(2) The provisions of this section shall not apply to any parent who accompanies a minor or to a parent who directs a minor upon an errand or other legitimate business or to any parent of a minor engaged in gainful employment during the curfew hours. (1994 Code, § 11-303)

**11-204. Unlawful conduct of owners or operators or establishments.** It shall be unlawful for any operator of an establishment or their agents or employees knowingly to permit any minor to remain upon the premises of his establishment between the hours of 10:00 P.M. and 6:00 A.M. of the following day, Central Standard Time, except that on Fridays and Saturdays the hours shall be 11:00 P.M. to 6:00 A.M. (1994 Code, § 11-304)

**11-205. Civil and criminal liability of parents.** If any minor shall wilfully destroy or damage any public property, or the property of any person within the corporate limits of this city, the parents of said minor as well as the minor himself shall be liable for all such damages incurred. (1994 Code, § 11-305)

**11-206. Violations and penalty.** (1) Any police officer who finds a minor violating the provisions of this chapter shall obtain information from such minor as to his name and address, age, and the name of his parent or parents. The minor shall thereupon be instructed to proceed to his home forthwith. The information obtained from the minor shall be forwarded to the juvenile court, which shall cause a written notice to be mailed to the parent or parents of the minor, advising of the violation of this chapter.

(2) In the event the minor fails or refuses to proceed to his home after being instructed to do so by a police officer, the police officer shall forthwith take the child to his home and ascertain whether the parents, or persons having legal custody and control of such a minor, wish to be held responsible for such minor's observance of the provisions of this chapter. If such parent refuses to be so responsible, the officer shall forthwith deliver the child to the juvenile court. (1994 Code, § 11-306)

## CHAPTER 3

### OFFENSES AGAINST THE PEACE AND QUIET

#### SECTION

11-301. Anti-noise regulations.

11-302. Violations and penalty.

**11-301. Anti-noise regulations.** (1) It is unlawful to create, emit, or cause to be emitted any excessive, loud, and disturbing noise.

(2) The following shall be prima facie evidence of excessive, loud, and disturbing noise:

(a) The use of any musical instrument, radio set, television set phonograph, Victrola, or other instrument, machine, or device for amplifying, producing, or reproducing sound, in such manner as to disturb the peace and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing of the persons who are in the room, chamber, or in the vicinity in which such instrument, machine, or device is operated and who are voluntary listeners thereto. The operation of any such instrument, machine, or device between the hours of 7:00 P.M. and 7:00 A.M. in such a manner as to be plainly audible at a distance of fifty feet (50') or more from the building or structure in which it is located shall be prima facie a violation of this section;

(b) Any noise created for the entertainment, enjoyment, or benefit of the creator or their guests shall be presumed to be excessive, loud, and disturbing if any of the following apply:

(i) The noise is clearly audible for a distance of fifty feet (50') or more from the property line from which the noise emanates;

(ii) The noise is clearly audible by a passenger of a motor vehicle, other than a vehicle from which the noise may come, on a public street or thoroughfare with the doors and windows of the vehicle closed; or

(iii) The noise occurs between the hours of 7:00 P.M. and 7:00 A.M. and can be heard more than thirty feet (30') beyond the property line from which the noise emanates.

(c) Noise created in vehicles, including a radio, tape, or disk player, or by a device or devices on the vehicle or from the vehicle, other than vehicle horns, shall be a violation of this section and presumed excessive, loud, and disturbing if the noise is audible at a distance of twenty-five feet (25') or more from the vehicle;

(d) Noise made to attract attention to an event or sale which is audible fifty feet (50') or more from the source or which exceeds the ambient background noise;

(e) Persistent barking of a dog or other animal sounds which are audible fifty feet (50') or more from the source or which exceeds the ambient background noise. Dog barking or any other animal sounds presumed to be unreasonable and disturbing if it is created between 7:00 P.M. and 7:00 A.M.;

(f) Exterior construction using hammers, power tools or motor driven equipment between the hours of 7:00 P.M. and 7:00 A.M.; and

(g) Lawnmowers, bush clearing equipment, blowers, and other equipment used for cleaning, maintenance, or industrial use shall be exempted from this section if the equipment meets the following provisions:

(i) The equipment is being operated and used for the purpose for which it was intended;

(ii) The equipment is being operated with the use of all sound dampening devices which meet or exceed original equipment;

(iii) The equipment is being used between the hours of 7:00 A.M. and 7:00 P.M.; and

(iv) The equipment is used for the limited time required to accomplish the particular work or job activity. (1994 Code, § 11-402, as amended by Ord. #318, July 2015, modified)

**11-302. Violations and penalty.** A violation of this chapter shall be punishable by a fine not to exceed fifty dollars (\$50.00). (Ord. #318, July 2015, modified)

## CHAPTER 4

### **FIREARMS, WEAPONS, AND MISSILES<sup>1</sup>**

#### **SECTION**

- 11-401. Air rifles, etc.
- 11-402. Discharge of firearms.
- 11-403. Violations and penalty.

**11-401. Air rifles, etc.** It shall be unlawful for any person in the city to discharge any air gun, air pistol, air rifle, "BB" gun, or sling shot capable of discharging a bullet or pellet, made of metal, plastic, or any other kind of material, whether propelled by spring, compressed air, expanding gas, explosive, or other force-producing means or method. (1994 Code, § 11-601)

**11-402. Discharge of firearms.** It shall be unlawful for any unauthorized person to discharge a firearm within the corporate limits, except on their own property. (1994 Code, § 11-603)

**11-403. 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.

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<sup>1</sup>Municipal code reference  
Prohibiting fireworks discharge: § 7-101.

## CHAPTER 5

### TRESPASSING AND INTERFERENCE WITH TRAFFIC

#### **SECTION**

- 11-501. Trespassing.
- 11-502. Interference with traffic.
- 11-503. Loitering/lounging and cruising in certain areas open to the public prohibited.
- 11-504. Violations and penalty.

**11-501. Trespassing.**<sup>1</sup> (1) On premises open to the public. (a) It shall be unlawful for any person to defy a lawful order, personally communicated to him by the owner or other authorized person, not to enter or remain upon the premises of another, including premises which are at the time open to the public.

(b) The owner of the premises, or his authorized agent, may lawfully order another not to enter or remain upon the premises if such person is committing, or commits, any act which interferes with, or tends to interfere with, the normal, orderly, peaceful, or efficient conduct of the activities of such premises.

(2) On premises closed or partially closed to public. It shall be unlawful for any person to knowingly enter or remain upon the premises of another which is not open to the public, notwithstanding that another part of the premises is at the time open to the public.

(3) Vacant buildings. It shall be unlawful for any person to enter or remain upon the premises of a vacated building after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.

(4) Lots and buildings in general. It shall be unlawful for any person to enter or remain on or in any lot or parcel of land or any building or other structure after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.

(5) Peddlers, etc. It shall also be unlawful and deemed to be a trespass for any peddler, canvasser, solicitor, transient merchant, or other person to fail to promptly leave the private premises of any person who requests or directs him to leave.<sup>2</sup> (1994 Code, § 11-701)

<sup>1</sup>State law reference

Subsections (1) through (4) of this section were taken substantially from *Tennessee Code Annotated*, §§ 39-3-1201, *et seq.*

<sup>2</sup>Municipal code reference

(continued...)

**11-502. 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 with the free passage of pedestrian or vehicular traffic thereon. (1994 Code, § 11-703)

**11-503. Loitering/lounging and cruising in certain areas open to the public prohibited.** (1) The owners and operators of shopping centers or any other business having public parking areas are hereby authorized to post signs on or about the parking areas and private roadways on their properties giving notice that cruising and/or loitering on the property is prohibited and specifying that such conduct is prohibited.

(2) The term "cruising" as used in this section is defined as the continual, repeated, and aimless operation of a motor vehicle, through, over, around, or within the parking areas and private roadways of any business or shopping center without parking the motor vehicle to enter the business or shopping center served by such parking areas and/or private roadway.

(3) Cruising, as herein above define, and loitering, as hereinafter definite are prohibited after the close of business each evening until dawn of the following morning, and provided further, that such conduct is prohibited during normal business hours when the conduct interferes with, impedes, or prevents bona fide customers from being able to enter and exit any business or shopping center or such conduct obstructs vehicular traffic. Furthermore, such conduct is also prohibited during those times set out in signs posed by the owners and operators of shopping centers as mentioned in subsection (1) above.

(4) The term "loitering" shall be defined as parking and congregating around a vehicle or vehicles in the aforesaid prohibited areas for the purpose of hanging out, partying, drinking, or socializing.

(5) Violation of the provisions of this section shall be deemed a trespass and, upon conviction, the violator(s) shall be fined not less than twenty-five dollars (\$25.00), nor more than fifty dollars (\$50.00) and court costs. The court may, in its discretion, impose, in addition to the aforesaid fine and costs, a sentence of not more than two (2) days of public or community service with said service to be performed on two (2) consecutive Saturdays or at such other times as the court may direct. (1994 Code, § 11-704)

**11-504. 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.

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(...continued)

Peddlers, solicitors, etc.: title 9, chapter 1.

## CHAPTER 6

### **DAMAGE TO GOVERNMENT PROPERTY**

#### **SECTION**

- 11-601. Damage to government property.  
11-602. Violations and penalty.

**11-601. Damage to government property.** (1) It shall be a misdemeanor for any person willfully to damage or destroy, or to cause injury to, any property, real or personal, owned by the State of Tennessee, Marion County, the City of Whitwell, or any other governmental agency.

(2) It shall also be a misdemeanor to do any act which might reasonably be expected to result in damage to property owned by the State of Tennessee, Marion County, the City of Whitwell, or any other governmental agency, whether such property be real or personal. (1994 Code, § 11-801)

**11-602. 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.

**TITLE 12****BUILDING, UTILITY, ETC. CODES<sup>1,2</sup>****CHAPTER**

1. BUILDING CODE.
2. PLUMBING CODE.
3. RESIDENTIAL CODE.
4. ENERGY CONSERVATION CODE.
5. MECHANICAL CODE.

**CHAPTER 1****BUILDING CODE****SECTION**

- 12-101. Building codes adopted.
- 12-102. Modifications.
- 12-103. Available in recorder's office.
- 12-104. Work commencing before permit issuance.
- 12-105. Violations and penalty.

**12-101. Building codes adopted.**<sup>3</sup> Pursuant to authority granted by the *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-504, and for the purpose of regulation the construction, alteration, repair, use, occupancy, location, maintenance, removal, and demolition of every building, structure, or any appurtenance connected or attached to any building or structure, the 2015 *International Building Code*, 2015 edition, and the *International Residential Code for One- and Two-Family Dwellings*, 2015 edition, with revisions, as prepared and adopted, by the International Code Council, is hereby adopted and incorporated by reference as part of this chapter, and is hereinafter referred to as the building codes. (Ord. #277, July 2010)

<sup>1</sup>Municipal code reference

Property maintenance regulations: title 13.

Zoning and land use control: title 14.

<sup>2</sup>State law reference

*Tennessee Code Annotated*, §§ 68-18-101, *et seq.*

<sup>3</sup>Copies of these codes are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

**12-102. Modifications.** (1) Definitions. Whenever the building code refers to the "chief appointing authority" or the "Chief Administrator," it shall be deemed to be a reference to the board of commissioners. When the "Building Official" or "Director of Public Works" is named, it shall, for the purposes of the building code, mean such person as the board of commissioners has appointed or designated to administer and enforce the provisions of the building code.

(2) Permit fees. The schedule of permit fees to be collected shall be as follows, based on the value of the new construction or addition.

<b>Total valuation</b>	<b>Fee</b>
\$1,000.00 and less	No fee, unless inspection required, in which case a \$15.00 fee for each inspection shall be charged
\$1,000.00 to \$50,000.00	\$15.00 for the first \$1,000.00, plus \$5.00 for each additional thousand or fraction thereof, to and including \$50,000.00
\$50,000.00 to \$100,000.00	\$260.00 for the first \$50,000.00, plus \$4.00 for each additional thousand or fraction thereof, to and including \$100,000.00
\$100,000 to \$500,000	\$460.00 for the first \$100,000.00, plus \$3.00 for each additional thousand or fraction thereof, to and including \$500,000.00
\$500,00.00 and up	\$1,660.00 for the first \$500,000.00, plus \$2.00 for each additional thousand or fraction thereof

(Ord. #277, July 2010)

**12-103. Available in recorder's office.** Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the adopted building codes have been place on file in the recorder's office and shall be kept there for the use and inspection of the public. (Ord. #277, July 2010)

**12-104. Work commencing before permit issuance.** Any person who commences any work on a building, structure, electrical, gas, mechanical, or plumbing system before obtaining the necessary permits shall be subject to a penalty of one hundred percent (100%) of the usual permit fee in addition to the required fees. (Ord. #277, July 2010)

**12-105. Violations and penalty.** Where work for which a permit is required by this code is started or proceeded prior to obtaining said permit, the

fees herein specified shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of this code in the execution of the work nor from any other penalties prescribed herein.  
(Ord. #277, July 2010)

## CHAPTER 2

### PLUMBING CODE<sup>1</sup>

#### SECTION

- 12-201. Plumbing code adopted.
- 12-202. Modifications.
- 12-203. Available in recorder's office.
- 12-204. Violations and penalty.

**12-201. Plumbing code adopted.** Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating plumbing installations, including alterations, repairs, equipment, appliances, fixtures, fittings, and the appurtenances thereto, within or without the city/town, when such plumbing is or is to be connected with the city/town water or sewerage system, the *International Plumbing Code*,<sup>2</sup> 2015 edition, and all subsequent amendments or additions to the said code, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim, and is hereinafter referred to as the plumbing code. (Ord. #331, Jan. 2017)

**12-202. Modifications.** The following sections are hereby revised to read as follows: Definitions. Whenever the words "Building Official" are used in the plumbing code, they shall refer to the person designated by the board of commissioners to enforce the provisions of the plumbing code.

**12-203. Available in recorder's office.** Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the plumbing code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

**12-204. Violations and penalty.** It shall be unlawful for any person to violate or fail to comply with any provision of the plumbing code as herein adopted by reference and modified. The violation of any section of this chapter

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<sup>1</sup>Municipal code references

Cross-connections: title 18.  
Street excavations: title 16.  
Wastewater treatment: title 18.  
Water and sewer system administration: title 18.

<sup>2</sup>Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

## CHAPTER 3

### RESIDENTIAL CODE

#### SECTION

- 12-301. Residential code adopted.
- 12-302. Modifications.
- 12-303. Available in recorder's office.
- 12-304. Violations and penalty.

**12-301. Residential code adopted.** Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of providing building, plumbing, mechanical and electrical provisions, the *International Residential Code*,<sup>1</sup> 2015 edition, and all subsequent amendments or additions to the said code, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim, and is hereinafter referred to as the residential code. (Ord. #331, Jan. 2017)

**12-302. Modifications.** The following sections are hereby revised to read as follows:

(1) **Definitions.** Whenever the words "Building Official" are used in the residential code, they shall refer to the person designated by the board of commissioners to enforce the provisions of the residential code.

(2) **Automatic sprinkler system standards.** Section R 313 pertaining to automatic sprinkler systems for townhouses and residential dwellings for single family and double family dwellings is hereby deleted.

**12-303. Available in recorder's office.** Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the residential code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

**12-304. Violations and penalty.** It shall be unlawful for any person to violate or fail to comply with any provision of the residential code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code.. Each day a violation is allowed to continue shall constitute a separate offense.

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<sup>1</sup>Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

## CHAPTER 4

### ENERGY CONSERVATION CODE<sup>1</sup>

#### **SECTION**

- 12-401. Energy code adopted.
- 12-402. Modifications.
- 12-403. Available in recorder's office.
- 12-404. Violations and penalty.

**12-401. Energy code adopted.** Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating the design of buildings for adequate thermal resistance and low air leakage and the design and selection of mechanical, electrical, water-heating and illumination systems and equipment which will enable the effective use of energy in new building construction, the *International Energy Conservation Code*,<sup>2</sup> 2015 edition, and all subsequent amendments or additions to said code, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and are hereinafter referred to as the energy code. (Ord. #331, Jan. 2017)

**12-402. Modifications.** The following sections are hereby revised to read as follows: "Building Official." Whenever in the energy code these words are used, they shall refer to the person designated by the board of commissioners shall have appointed or designated to administer and enforce the provisions of the energy code.

**12-403. Available in recorder's office.** Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the energy code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

**12-404. Violations and penalty.** It shall be unlawful for any person to violate or fail to comply with any provision of the energy code as herein adopted by reference and modified. The violation of any section of this chapter shall be

<sup>1</sup>Municipal 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: titles 18 and 19.

<sup>2</sup>Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

## CHAPTER 5

### MECHANICAL CODE<sup>1</sup>

#### **SECTION**

- 12-501. Mechanical code adopted.
- 12-502. Modifications.
- 12-503. Available in recorder's office.
- 12-504. Violations and penalty.

**12-501. Mechanical code adopted.** Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating the installation of mechanical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and/or appurtenances thereto, including ventilating, heating, cooling, air conditioning, and refrigeration systems, incinerators, and other energy-related systems, the *International Mechanical Code*,<sup>2</sup> 2015 edition, and all subsequent amendments or additions to the said code, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code as fully as if copied herein verbatim and is hereinafter referred to as the mechanical code. (Ord. #381, Jan. 2017)

**12-502. Modifications.** The following sections are hereby revised to read as follows: Definitions. Whenever the words "Building Official" are used in the mechanical code, they shall refer to the person designated by the board of commissioners to enforce the provisions of the mechanical code.

**12-503. Available in recorder's office.** Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the mechanical code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

**12-504. Violations and penalty.** It shall be unlawful for any person to violate or fail to comply with any provision of the mechanical code as herein adopted. The violation of any section of this chapter shall be punishable by a

<sup>1</sup>Municipal code references

Street excavations: title 16.

Wastewater treatment: title 18.

Water and sewer system administration: title 18.

<sup>2</sup>Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

## TITLE 13

### PROPERTY MAINTENANCE REGULATIONS<sup>1</sup>

#### **CHAPTER**

1. MISCELLANEOUS.
2. SLUM CLEARANCE.
3. JUNKYARDS.
4. ABANDONED AND DISCARDED VEHICLES.

#### **CHAPTER 1**

##### MISCELLANEOUS

#### **SECTION**

- 13-101. Smoke, soot, cinders, etc.
- 13-102. Stagnant water.
- 13-103. Weeds.
- 13-104. Overgrown and dirty lots.
- 13-105. Dead animals.
- 13-106. Health and sanitation nuisances.

**13-101. 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. (1994 Code, § 13-101)

**13-102. Stagnant water.** It shall be unlawful for any person knowingly to allow any pool of stagnant water to accumulate and stand on his property without treating it so as effectively to prevent the breeding of mosquitoes. (1994 Code, § 13-102)

**13-103. Weeds.** Every owner or tenant of property shall periodically cut the grass and other vegetation commonly recognized as weeds on his property, and it shall be unlawful for any person to fail to comply with an order by the city

<sup>1</sup>Municipal code references

Animal control: title 10.

Littering streets, etc.: § 16-107.

Wastewater treatment: title 18, chapter 2.

Zoning and land use control: title 14.

manager to cut such vegetation when it has reached a height of over one foot (1'). (1994 Code, § 13-103)

**13-104. Overgrown and dirty lots.**<sup>1</sup> (1) Prohibition. Pursuant to the authority granted to municipalities under *Tennessee Code Annotated*, § 6-54-113, it shall be unlawful for any owner of record of real property to create, maintain, or permit to be maintained on such property the growth of trees, vines, grass, underbrush, and/or the accumulations of debris, trash, litter, or garbage or any combination of the preceding elements so as to endanger the health, safety, or welfare of other citizens or to encourage the infestation of rats and other harmful animals.

(2) Limitation on application. The provisions of this section shall not apply to any parcel of property upon which an owner-occupied residence is located.

(3) Designation of public officer or department. The board of commissioners shall designate an appropriate department or person to enforce the provisions of this section.

(4) Notice to property owner. It shall be the duty of the department or person designated by the board of commissioners to enforce this section to serve notice upon the owner of record in violation of subsection (1) above, a notice in plain language to remedy the condition within ten (10) days (or twenty (20) days if the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), excluding Saturdays, Sundays, and legal holidays. The notice shall be sent by registered or certified United States mail, addressed to the last known address of the owner of record. The notice shall state that the owner of the property is entitled to a hearing, and shall, at the minimum, contain the following additional information:

(a) A brief statement that the owner is in violation of § 13-104 of the Whitwell Municipal Code, which has been enacted under the authority of *Tennessee Code Annotated*, § 6-54-113, and that the property of such owner may be cleaned-up at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;

(b) The person, office, address, and telephone number of the department or person giving the notice;

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<sup>1</sup>Municipal code reference

Section 13-103 applies to cases where the city wishes to prosecute the offender in city court. Section 13-104 can be used when the city seeks to clean up the lot at the owner's expense and place a lien against the property for the cost of the clean-up but not to prosecute the owner in city court.

(c) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the city; and

(d) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing.

(5) Clean-up at property owner's expense. If the property owner of record fails or refuses to remedy the condition within ten (10) days after receiving the notice (twenty (20) days if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), the department or person designated by the board of commissioners to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards, and the cost thereof shall be assessed against the owner of the property. Upon the filing of the notice with the office of the register of deeds in Marion County, the costs shall 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 cost shall be placed on the tax rolls of the municipality as a lien and shall be added to property tax bills to be collected 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.

(6) Appeal. The owner of record who is aggrieved by the determination and order of the public officer may appeal the determination and order to the board of commissioners. The appeal shall be filed with the city recorder within ten (10) days following the receipt of the notice issued pursuant to subsection (3) above. The failure to appeal within this time shall, without exception, constitute a waiver of the right to a hearing.

(7) Judicial review. Any person aggrieved by an order or act of board of commissioners under subsection (5) above may seek judicial review of the order or act. The time period established in subsection (4) above shall be stayed during the pendency of judicial review.

(8) Supplemental nature of this section. The provisions of this section are in addition and supplemental to, and not in substitution for, any other provision in the municipal charter, this municipal code of ordinances or other applicable law which permits the city to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property the growth of trees, vines, grass, weeds, underbrush, and/or the accumulation of the debris, trash, litter, or garbage or any combination of the preceding elements, under its charter, any other provisions of this municipal code of ordinances or any other applicable law. (1994 Code, § 13-104)

**13-105. 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 city manager and dispose of such animal in such manner as the city manager shall direct. (1994 Code, § 13-105)

**13-106. 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. (1994 Code, § 13-106)

## CHAPTER 2

### SLUM CLEARANCE<sup>1</sup>

#### **SECTION SECTION**

- 13-201. Findings of board.
- 13-202. Definitions.
- 13-203. "Public officer" designated; powers.
- 13-204. Initiation of proceedings; hearings.
- 13-205. Orders to owners of unfit structures.
- 13-206. When public officer may repair, etc.
- 13-207. When public officer may remove or demolish.
- 13-208. Lien for expenses; sale of salvage materials; other powers not limited.
- 13-209. Basis for a finding of unfitness.
- 13-210. Service of complaints or orders.
- 13-211. Enjoining enforcement of orders.
- 13-212. Additional powers of public officer.
- 13-213. Powers conferred are supplemental.
- 13-214. Structures unfit for human habitation deemed unlawful.

**13-201. Findings of board.** Pursuant to *Tennessee Code Annotated*, § 13-21-101, *et seq.*, the board of commissioners finds that there exists in the city 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 city.

**13-202. 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 commissioners charged with governing the city.

(3) "Municipality" shall mean the City of Whitwell, Tennessee, and the areas encompassed within existing city limits or as hereafter annexed.

(4) "Owner" shall mean the holder of title in fee simple and every mortgagee of record.

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<sup>1</sup>State 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 city or state relating to health, fire, building regulations, or other activities concerning structures in the city.

(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.

**13-203. Public officer" designated; powers.** There is hereby designated and appointed a "public officer," to be the city manager of the city, to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by the city manager.

**13-204. 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 city 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.

**13-205. 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.

**13-206. 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."

**13-207. 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.

**13-208. 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 Marion 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 City of Whitwell to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

**13-209. 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 City of Whitwell. 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.

**13-210. 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 city. 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 Marion County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law.

**13-211. 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.

**13-212. 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 city 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.

**13-213. Powers conferred are supplemental.** This chapter shall not be construed to abrogate or impair the powers of the city 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.

**13-214. 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 city 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 city.

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 3

### **JUNKYARDS**

#### **SECTION**

- 13-301. Definitions.
- 13-302. Junkyard screening.
- 13-303. Screening methods.
- 13-304. Requirements for effective screening.
- 13-305. Maintenance of screens.
- 13-306. Utilization of highway right-of-way.
- 13-307. Non-conforming junkyards.
- 13-308. Permits and fees.

**13-301. Definitions.** (1) "Junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, trucks, vehicles of all kinds, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(2) "Junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, used auto parts yards, yards providing temporary storage of automobile bodies or parts awaiting disposal as a normal part of the business operation when the business will continually have like materials located on the premises, garbage dumps, sanitary landfills, and recycling centers.

(3) "Person" means any individual, firm, agency, company, association, partnership, business trust, joint stock company, body politic, or corporation.

(4) "Recycling center" means an establishment, place of business, facility, or building which is maintained, operated, or used for the storing, keeping, buying, or selling of newspaper or used food or beverage containers or plastic containers for the purpose of converting such items into a usable product.

(5) "Screening" means the use of plantings, fencing, natural objects, and other appropriate means which screen any deposit of junk so that the junk is not visible from the highways and streets of the city. (1994 Code, § 13-301)

**13-302. Junkyard screening.** Every junkyard shall be screened or otherwise removed from view by its owner or operator in such a manner as to bring the junkyard into compliance with this chapter. (1994 Code, § 13-302)

**13-303. Screening methods.** The following methods and materials for screening are given for consideration only:

(1) Landscape planting. The planting of trees, shrubs, etc., of sufficient size and density to provide a year-round effective screen. Plants of the evergreen variety are recommended.

(2) Earth grading. The construction of earth mounds which are graded, shaped, and planted to a natural appearance.

(3) Architectural barriers. The utilization of:

(a) Panel fences made of metal, plastic, fiberglass, or plywood.

(b) Wood fences of vertical or horizontal boards using durable woods such as western cedar or redwood or others treated with a preservative.

(c) Walls of masonry, including plain or ornamented concrete block, brick, stone, or other suitable materials.

(4) Natural objects. Naturally occurring rock outcrops, woods, earth mounds, etc., may be utilized for screening or used in conjunction with fences, plantings, or other appropriate objects to form an effective screen. (1994 Code, § 13-303)

**13-304. Requirements for effective screening.** Screening may be accomplished using natural objects, earth mounds, landscape plantings, fences, or other appropriate materials used singly or in combination as approved by the city. The effect of the completed screening must be the concealment of the junkyard from view on a year-round basis.

(1) Screens which provide a "see-through" effect when viewed from a moving vehicle shall not be acceptable.

(2) Open entrances through which junk materials are visible from the main traveled way shall not be permitted except where entrance gates, capable of concealing the junk materials when closed, have been installed. Entrance gates must remain closed from sundown to sunrise.

(3) Screening shall be located on private property and not on any part of the highway right-of-way.

(4) At no time after the screen is established shall junk be stacked or placed high enough to be visible above the screen nor shall junk be placed outside of the screened area. (1994 Code, § 13-304)

**13-305. Maintenance of screens.** The owner or operator of the junkyard shall be responsible for maintaining the screen in good repair to ensure the continuous concealment of the junkyard. Damaged or dilapidated screens, including dead or diseased plantings, which permit a view of the junk within shall render the junkyard visible and shall be in violation of this code and shall be replaced as required by the city.

If not replaced within sixty (60) days, the city shall replace said screening and shall require payment upon demand. Failure to pay in full shall result in the fee plus interest to be assessed to the property and shall be combined with the subsequent taxation of the property by the city. (1994 Code, § 13-305)

**13-306. Utilization of highway right-of-way.** The utilization of highway right-of-way for operating or maintaining any portion of a junkyard is prohibited; this shall include temporary use for the storage of junk pending disposition. (1994 Code, § 13-306)

**13-307. Non-conforming junkyards.** Those junkyards within the city and lawfully in existence prior to the enactment of this code, which do not conform with the provisions of the code shall be considered as "non-conforming." Such junkyards may be subject to the following conditions, any violation of which shall terminate the non-conforming status.

- (1) The junkyard must continue to be lawfully maintained.
- (2) There must be existing property rights in the junk or junkyard.
- (3) Abandoned junkyards shall no longer be lawful.
- (4) The location of the junkyard may not be changed for any reason. If the location is changed, the junkyard shall be treated as a new establishment at a new location and shall conform to the laws of the city.
- (5) The junkyard may not be extended or enlarged. (1994 Code, § 13-307)

**13-308. Permits and fees.** It shall be unlawful for any junkyard located within the city to operate without a "junkyard control permit" issued by the city.

(1) Permits shall be valid for the fiscal year for which issued and shall be subject to renewal each year. The city's fiscal year begins on July 1 and ends on June 30 the year next following.

(2) Each application for an original or renewal permit shall be accompanied by a fee of fifty dollars (\$50.00), which is not subject to either proration or refund.

(3) All applications for an original or renewal permit shall be made on a form prescribed by the city.

(4) Permits shall be issued only to those junkyards that are in compliance with these rules.

(5) A permit is valid only while held by the permittee and for the location for which it is issued. (1994 Code, § 13-308)

## CHAPTER 4

### **ABANDONED AND DISCARDED VEHICLES**

#### **SECTION**

13-401. Abandoned and discarded vehicles.

**13-401. Abandoned and discarded vehicles.** (1) Definitions. The following definitions shall apply in the interpretation and enforcement of this code section.

(a) "Abandoned vehicle" shall mean any vehicle or part thereof which is left unattended on public or private property for more than thirty (30) days, or a vehicle that has remained illegally on public property for a period of more than forty-eight (48) hours, or a vehicle that has remained on private property without the consent of the owner or person in control of the property for more than forty-eight (48) hours.

(b) "Discarded vehicle" shall mean any vehicle or part thereof which for more than thirty (30) days is inoperative whether or not it has lawfully affixed thereto an unexpired license plate or plates and which is wrecked, dismantled, partially dismantled, or discarded.

(c) "Property" shall mean any property within the city which is not a street, highway or public right-of-way.

(d) "Vehicle" shall mean a machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners, or slides and transport persons or property or pull machinery, and shall include, without limitation, automobiles, trucks, trailers, motorcycles, tractors, buggies, and wagons.

(2) Abandoning prohibited. No person shall abandon any vehicle within the city, and no person shall leave any vehicle at any place within the city, for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned.

(3) Leaving non-operating junked vehicle on street prohibited. No person shall leave any partially dismantled, non-operating, wrecked, or junked vehicle on any street, alley, or highway within the city, or on any public right-of-way.

(4) Location or presence of discarded or abandoned vehicles within city deemed public nuisance; exceptions. The location or presence of any discarded or abandoned vehicle or discarded or abandoned vehicles on any lot, tract, parcel of land, or portion thereof, occupied or unoccupied, improved or unimproved, within the City of Whitwell shall be deemed a public nuisance and it shall be unlawful for any person or persons to cause or maintain such public nuisance by wrecking, dismantling, rendering inoperable, abandoning, or discarding his or their vehicle or vehicles on the property of another or to suffer, permit, or

allow the same to be placed, located, maintained, or exist upon his or their own real property; provided that this section shall not apply to:

(a) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;

(b) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer, licensed automobile graveyard, or other licensed business enterprise operated in a lawful place and manner when necessary to the operation of such business enterprise; or

(c) A vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city or other governmental authority.

(5) Abatement or removal order; contents; service. (a) Whenever such public nuisance exists in the city in violation hereof, the chief of the police department or any member of his department designated by him, who shall administer this chapter, shall give not less than ten (10) days' written notice to the owner of the real property and/or the occupant, if any, of the premises whereon such public nuisance exists to abate or remove the same, stating the nature of the public nuisance of private property and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said ten (10) day period by the aggrieved person, such notice to be either hand delivered or mailed, by certified mail, with a five (5) day return receipt requested, to the owner or the occupant of the private premises whereupon such public nuisance exists. If the notice is returned undelivered by the United States post office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(b) A public hearing prior to the removal of the vehicle or part thereof as a public nuisance shall be held before the governing body of the city, or other officials of the city as designated by the governing body, when such a hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, within ten (10) days after service of notice to abate the nuisance. During such hearing, evidence will be considered to determine whether a public nuisance exists in violation of this chapter and an order or resolution will be issued if a nuisance is found to exist providing for abatement of such nuisance by the city or the owner or occupant of the premises. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, and the correct identification number and license number of the vehicle, if available at the site.

(6) Removal with permission of owner or occupant. Within ten (10) days after receipt of notice from the chief of police, or any member of his department designated by him, to abate the nuisance, as herein provided, the owner or occupant of the premises may give his or her written permission to the chief of police, or any member of his department designated by him, for removal of a discarded or abandoned vehicle from the premises at the expense of the owner and/or occupant. The giving of such permission shall be considered compliance with the provisions of subsection (5) above.

(7) Removal without permission of owner or occupant. (a) If such public nuisance is not abated by any person in charge or control of any property within the city, whether as owner, tenant, occupant, lessee or otherwise, and a discarded vehicle remains upon public or private property following the ten (10) days' notice period specified within subsection (5) above, and if no hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, official action shall be taken by the city to abate such nuisance at the expense of the person in charge or control of the property, if any.

(b) Prior to entry upon private property for the purposes specified in this chapter, the chief of police, or any member of his department designated by him, shall apply to the Whitwell Municipal Court or any court of competent jurisdiction for any warrant or order necessary for the entry onto private property to examine vehicles or parts thereof, obtain information as to the identity of vehicles, and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this chapter. The Whitwell Municipal Court shall have the authority to issue all orders and warrants necessary to enforce this chapter.

(c) The chief of police, or any member of his department designated by him, may enter upon private property for the purposes specified in this chapter to examine vehicles or parts thereof, obtain information as to the identity of vehicles, and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this chapter. Any such discarded vehicle shall be impounded at the cost of the owner until lawfully claimed or disposed of in accordance with directions of the chief of police of the city.

(8) Application. Nothing in this chapter shall affect the power of the City of Whitwell to permit immediate removal of a vehicle left on public property which is abandoned and constitutes an obstruction to traffic.

(9) Collection of expense of abatement: lien. When any nuisance has been abated as provided in this chapter, the chief of police, or his duly authorized representative, shall certify the amount of the expense incurred in abating same to the city council who shall direct the city attorney to bring suit by attachment or otherwise to collect the same and the city shall have a lien on

the property to secure the amount expended by it in abating such nuisance which shall be superior to all other contractual liens.

(10) Violations and penalty. Any person violating any of the provisions of this section shall be punished by a fine of not more than fifty dollars (\$50.00) for each offense and each day of continuing violation shall constitute a separate offense. (1994 Code, § 13-401, modified)

**TITLE 14****ZONING AND LAND USE CONTROL<sup>1</sup>****CHAPTER**

1. MOBILE HOME REGULATIONS.
2. ZONING.
3. PLANNING COMMISSION.
4. FLOOD DAMAGE PREVENTION.

**CHAPTER 1****MOBILE HOME REGULATIONS****SECTION**

- 14-101. Definitions.
- 14-102. Regulations for single mobile homes including those in mobile home subdivisions.
- 14-103. Mobile home parks.
- 14-104. Building permit.
- 14-105. Required recreation areas.
- 14-106. Mobile home regulation committee.
- 14-107. Highest standard to prevail.
- 14-108. Violations and penalty.

**14-101. Definitions.** The following definitions shall apply in the interpretation and application of this chapter.

(1) "Buffer strip." A strip of land along a property line reserved for screening purposes from adjoining properties or public right-of-way and planted with evergreen trees and/or shrubs in such a manner as to provide such screening.

(2) "Lot." A piece, parcel or plot of land in one (1) ownership, occupied or to be occupied by one (1) principal building (or mobile home) and its accessory buildings and including the open spaces required herein.

(3) "Mobile home." A mobile home is a single-family dwelling designed for transportation, after fabrication, on streets and highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental

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<sup>1</sup>The Marion County Planning and Development Board regulates all zoning within the City of Whitwell.

unpacking and assembly operation, location on jacks or permanent foundation, connection to utilities and the like.

(4) "Mobile home park." A portion of parcel of land designed for or which is intended to be used to accommodate two (2) or more mobile homes.

(5) "Mobile home subdivisions." A mobile home subdivision is a subdivision designed and intended for residential use where residence is in mobile homes exclusively.

(6) "Subdivision." The division of a tract or parcel of land into two (2) or more lots. (1994 Code, § 14-101)

**14-102. Regulations for single mobile homes including those in mobile home subdivisions.** (1) A single mobile home may be placed on a lot provided that all applicable subdivision regulations, housing, building code provisions and all state and federal laws are compiled with, including minimum lot sizes as follows:

(a) Residential lots served by a public sewage system shall not be less than sixty feet (60') wide at the building setback line, nor less than six thousand (6,000) square feet in area.

(b) Residential lot not served by a public sewage system shall not be less than seventy-five feet (75') wide at the building line, nor less than fifteen thousand (15,000) square feet in area.

Greater area may be required for private sewage disposal if, in the opinion of the county health officer/department, there are factors of drainage, soil condition or other conditions to cause potential health problems.

On lots without a public water supply the minimum size shall be two (2) acres, and a width at the building setback line shall not be less than two hundred feet (200'), except than an exception may be granted where a single parcel is separated from a larger tract without the intention of further subdivisor.

**BUILDING SETBACK LINES:** The minimum depth of building setback lines from the right-of-way of minor streets shall not be less than thirty feet (30'), and in the case of corner lots, thirty feet (30') from the side street. On collector streets, the minimum setback shall be forty feet (40'). On arterial streets, the minimum setback line shall be fifty feet (50') (unless a greater distance is deemed to be necessary by the planning commission for the protection of the contemplated development on the property.)

In the case of electric transmission lines where easement widths are not definitely established there shall be a minimum building setback line from the center of the transmission line as follows:

<u>Voltage of Line</u>	<u>Minimum Building Setback</u>
46 KV	37-1/2 feet
69 KV	75 feet
161 KV+	100 feet

CORNER LOTS: Corner lots shall be sufficiently wider and larger to permit the additional side yard requirements of the above building setback requirements.

All other mobile homes occupied for living purposes shall be confined to mobile home parks and temporary occupancies as provided for in subsection (2) below.

(2) A temporary permit not exceeding six (6) months may be issued for occupancy of a mobile home on a lot with another dwelling or building for living purposes where the applicant can show that such occupancy is necessary to provide for the care of a sick or infirm person or the guarding of a construction site. A temporary permit can be renewed for periods not exceeding a total of one (1) year or until such need expires. (1994 Code, § 14-102)

**14-103. Mobile home parks.** (1) Applications for mobile home parks shall be reviewed by the city manager and approved by the city commission prior to submission to the Tennessee Commissioner of Public Health, or his duly authorized representative as required by *Tennessee Code Annotated*, §§ 68-24-101 to 68-24-120, and the "Trailer Court Regulations" of the Tennessee Department of Public Health.

(2) Application for review. An application for a mobile home park shall consist of a map drawn to a scale no smaller than one inch (1") to one hundred feet (100'), setting forth therein the geographical location, boundaries, drainage, buildings, and sanitation facilities such as location of water and sewer lines and the number, location, and size of all mobile homes spaces.

(3) No parcel of land containing less than three (3) acres and less than five (5) mobile home spaces (available at the time of first occupancy) shall be used for a mobile home park.

(4) There shall be a maximum of nine (9) mobile home spaces per acre.

(5) Each mobile home space shall have a minimum width of forty feet (40'), except where mobile homes wider than fourteen feet (14') are anticipated, in which case the lot shall be equal to the width of the mobile home plus thirty feet (30').

(6) Each mobile home space shall have a depth equal to the length of the mobile home plus thirty feet (30'). The minimum front yard setback shall be fifteen feet (15') from tow hitch and the minimum side yard setbacks shall be fifteen feet (15') as measured from the mobile home or any attachments thereto such as a garage or porch. No mobile home shall be located closer than thirty feet (30') to any public street or highway.

(7) A planted buffer strip, not less than twenty feet (20') in width shall be located along the property lines of the mobile home park, except across driveways and streets.

(8) A minimum of ten (10) spaces or twenty-five percent (25%), whichever is less, of the total number of mobile home spaces in the proposed

park shall be available for occupancy before any mobile home space may be occupied by a mobile home.

(9) There shall be only one (1) mobile home per mobile home space.

(10) Every mobile home space shall abut a driveway with unobstructed access to an open, approved public street.

(11) Fire hydrants shall be located within fifty feet (50') of any mobile home, serving building, or other structure in the park.

(12) The mobile home park shall be adequately lighted.

(13) Each mobile home park shall provide at least one (1) off street parking space for each mobile home space plus an additional car space for each four (4) mobile home units for guests' parking, 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.

(14) Roadways shall be a minimum of twenty-two feet (22') in width and shall be paved with a hard surface material which shall not be less than double bituminous surface.

(15) The storage, collection, and disposal of refuse shall be so managed as to create no health hazards, rodent harborage or insect breeding areas. Refuse collection stands shall be provided for all refuse containers. Such container stands shall be so designed as to prevent containers from being tipped, to minimize spillage and container deterioration and to facilitate cleaning around them.

(16) The mobile home park water distribution system shall be connected to the public water supply system, and each occupied mobile home space shall have a separate water meter unless written permission or variance is given by the city commission in an official meeting.

(17) All water piping, fixtures, and other equipment shall be constructed and maintained in accordance with state and local regulations and requirements and shall be of the type and location approved by the state health department.

(18) An adequate and safe sewage system shall be required for conveying and disposing of all sewage. Wherever feasible, connection shall be made to the public sewage system.

(19) The sewage system shall be designed and constructed in accordance to state and local laws and shall be approved by the county health officer. (1994 Code, § 14-103)

**14-104. Building permit.** Persons placing a mobile home on any lot shall obtain a building permit from the city managers at a cost of ten dollars (\$10.00). Approved septic tank must be installed before mobile home is attached to the city water system and new or relocated mobile homes shall have separate water meters. (1994 Code, § 14-104)

**14-105. Required recreation areas.** (1) In all mobile home parks, there shall be one (1) or more recreation areas which shall be easily accessible to all mobile home park residents.

(2) The size of such recreation areas shall be based upon a minimum of four hundred (400) square feet for each mobile home space. No outdoor recreation areas shall contain less than four thousand (4,000) square feet.

(3) Recreation areas shall be so located as to be free of traffic hazards and should, where the topography permits, be centrally located. (1994 Code, § 14-105)

**14-106. Mobile home regulation committee.** A committee shall be appointed by the Mayor of the City of Whitwell to regulate and enforce the provisions herein and grant any variances deemed by the committee to be necessary. This committee shall consist of one (1) member of the city commission, the city manager, and one (1) Marion County Health Department Inspector or his assistant. (1994 Code, § 14-106)

**14-107. Highest standard to prevail.** Whenever there is a discrepancy between minimum standards or dimensions noted herein and those contained in other official regulations, the highest standard shall apply. (1994 Code, § 14-107)

**14-108. Violations and penalty.** The violation of any part of this chapter is hereby declared to be a misdemeanor and upon conviction of any person for such violation, he or they are to be fined according to the general penalty provision of this code of ordinances. (1994 Code, § 14-108)

## CHAPTER 2

### ZONING

#### SECTION

14-201. Adoption.

**14-201. Adoption.** The zoning ordinance<sup>1</sup> of the city is hereby adopted by reference and incorporated herein as fully as if set out at length herein. (Ord. #311, May 2014)

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<sup>1</sup>The zoning ordinance for the City of Whitwell (and any amendments) is available in the office of the recorder.

## CHAPTER 3

### PLANNING COMMISSION

#### SECTION

- 14-301. Creation and membership.  
14-302. Organization, powers, duties, etc.

**14-301. 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 six (6) members; two (2) of these shall be the mayor and another member of the board of mayor and commissioners selected by the board of mayor and commissioners; the other four (4) 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 four (4) members appointed by the mayor shall be for five (5) years each. The five (5) members first appointed shall be appointed for terms of one (1), two (2), three (3), four (4), and five (5) 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 commissioners shall run concurrently their terms of office. Any vacancy in an appointive membership shall be filled for the unexpired term by the mayor, who shall also have the authority to remove any appointive member at his will and pleasure. (Ord. #292, May 2012)

**14-302. 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. (Ord. #292, May 2012)

## CHAPTER 4

### FLOOD DAMAGE PREVENTION

#### **SECTION**

- 14-401. Statutory authorization, findings of fact, and objectives.
- 14-402. Definitions.
- 14-403. General provisions.
- 14-404. Administration.
- 14-405. Provisions for flood hazard reduction.
- 14-406. Variance procedures.

**14-401. Statutory authorization, findings of fact, and objectives.**

(1) Statutory authorization. The General Assembly of the State of Tennessee has in Private Act 1961, chapter 36, delegated the responsibility to units of local government to adopt regulations designed to promote the public health, safety, and general welfare of its citizens. Therefore, the City of Whitwell, Tennessee Mayor and its Board of Commissioners does ordain the following.

(2) Findings of fact. (a) The City of Whitwell and its board of commissioners wish to maintain eligibility in the National Flood Insurance Program and in order to do so must meet the requirements of § 60.3 of the Federal Insurance Administration Regulations found at 44 CFR ch. 1 (10-1-04 edition).

(b) Areas of Whitwell are subject to periodic inundation which could result in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(c) Flood losses are caused by the cumulative effect of obstructions in floodplains, causing increases in flood heights and velocities; by uses in flood hazard areas which are vulnerable to floods; or construction which is inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

(3) Statement of purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas. This chapter is designed to:

(a) Restrict or prohibit uses which are vulnerable to flooding or erosion hazards, or which result in damaging increases in erosion, flood heights, or velocities;

(b) Require that uses vulnerable to floods, including community facilities, be protected against flood damage at the time of initial construction;

- (c) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation floodwaters;
  - (d) Control filling, grading, dredging, and other development which may increase flood damage or erosion; and
  - (e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.
- (4) Objectives. The objectives of this chapter are:
- (a) To protect human life, health, and property;
  - (b) To minimize expenditure of public funds for costly flood control projects;
  - (c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - (d) To minimize prolonged business interruptions;
  - (e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets and bridges located in floodable areas;
  - (f) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize blight in flood areas;
  - (g) To ensure that potential home buyers are notified that property is in a floodable area; and
  - (h) To maintain eligibility for participation in the National Flood Insurance Program. (Ord. #289, Jan. 2012)

**14-402. Definitions.** Unless specifically defined below, words or phrases used in this chapter shall be interpreted as to give them the meaning they have in common usage and to give this chapter its most reasonable application given its stated purpose and objectives.

- (1) "Accessory structure" shall represent a subordinate structure to the principal structure and, for the purpose of this section, shall conform to the following.
  - (a) Accessory structures shall not be used for human habitation.
  - (b) Accessory structures shall be designed to have low flood damage potential.
  - (c) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of flood waters.
  - (d) Accessory structures shall be firmly anchored to prevent flotation which may result in damage to other structures.
  - (e) Service facilities such as electrical and heating equipment shall be elevated or floodproofed.

(2) "Act" means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001 to 4128.

(3) "Addition (to an existing building)" means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by an independent perimeter load bearing wall shall be considered new construction (see "new construction").

(4) "Appeal" means a request for a review of the local enforcement officer's interpretation of any provision of this chapter or a request for a variance.

(5) "Area of shallow flooding" means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with one percent (1%) or greater annual chance of flooding to an average depth of one to three feet (1-3') where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate; and where velocity flow may be evident. (Such flooding is characterized by ponding or sheet flow.)

(6) "Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

(7) "Area of special flood hazard" is the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AH, or A99.

(8) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

(9) "Basement" means that portion of a building having its floor subgrade (below ground level) on all sides.

(10) "Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

(11) "Building" means any structure built for support, shelter, or enclosure for any occupancy or storage (see "structure").

(12) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, tilling, grading, paving, excavating, drilling operations, or permanent storage of equipment or materials.

(13) "Elevated building" means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of fill, solid foundation perimeter walls with openings sufficient to

facilitate the unimpeded movement of floodwater, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.

(14) "Emergency flood insurance program" or "emergency program" means the program as implemented on an emergency basis in accordance with § 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

(15) "Erosion" means the process of the gradual wearing away of land masses. This peril is not per se covered under the program.

(16) "Exception" means a waiver from the provisions of this chapter which relieves the applicant from the requirements of a rule, regulation, order, or other determination made or issued pursuant to this chapter.

(17) "Existing construction" means any structure for which the "start of construction" commenced before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP).

(18) "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, final site grading, or the pouring of concrete pads) is completed before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP).

(19) "Existing structures." See "existing construction."

(20) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction or facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(21) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland or tidal waters; and
- (b) The unusual and rapid accumulation or runoff of surface waters from any source.

(22) "Flood elevation determination" means a determination by the administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent (1%) or greater chance of occurrence in any given year.

(23) "Flood elevation study" means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) or flood-related erosion hazards.

(24) "Flood Hazard Boundary Map (FHB<sup>M</sup>)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of areas of special flood hazard have been designated as Zone A.

(25) "Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by the Federal Emergency Management Agency, delineating the areas of special flood hazard or the risk premium zones applicable to the community.

(26) "Flood insurance study" is the official report provided by the Federal Emergency Management Agency, evaluating flood hazards and containing flood profiles and water surface elevation of the base flood.

(27) "Floodplain" or "floodprone area" means any land area susceptible to being inundated by water from any source (see definition of "flood" or "flooding").

(28) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

(29) "Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

(30) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

(31) "Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

(32) "Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind driven currents, is likely to suffer flood-related erosion damage.

(33) "Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood related erosion damage, including, but not limited to, emergency preparedness

plans, flood-related erosion control works, and floodplain management regulations.

(34) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(35) "Floor" means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

(36) "Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

(37) "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

(38) "Highest adjacent grade" mean the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.

(39) "Historic structure" means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

(c) Individually listed on the Tennessee Inventory of Historic Places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

(i) By an approved state program as determined by the Secretary of the Interior; or

(ii) Directly by the Secretary of the Interior.

(40) "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

(41) "Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

(42) "Lowest floor" means the lowest floor of the lowest enclosed area, including a basement. An unfinished or flood resistant enclosure used solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

(43) "Manufactured home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" unless such transportable structures are placed on a site for one hundred eighty (180) consecutive days or longer.

(44) "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

(45) "Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the agency.

(46) "Mean sea level" means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For the purposes of this chapter, the term is synonymous with National Geodetic Vertical Datum (NGVD) or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

(47) "National Geodetic Vertical Datum (NGVD)" as corrected in 1923 is a vertical control used as a reference for establishing varying elevations within the floodplain.

(48) "New construction" means any structure for which the "start of construction" commenced after the effective date of this chapter or the effective date of the first floodplain management ordinance and includes any subsequent improvements to such structure.

(49) "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed after the effective date of this chapter or the effective date of the first floodplain

management ordinance and includes any subsequent improvements to such structure.

(50) "North American Vertical Datum (NAVD)" as corrected in 1988 is a vertical control used as a reference for establishing varying elevations within the floodplain.

(51) "One hundred year flood (100-year flood)." See "base flood."

(52) "Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

(53) "Recreational vehicle" means a vehicle which is:

(a) Built on a single chassis;

(b) Four hundred (400) square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

(54) "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(55) "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

(56) "Special hazard area" means an area having special flood, mudslide (i.e., mudflow), and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, or AH.

(57) "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; and includes the placement of a manufactured home on a foundation. (Permanent construction does not include initial land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure.) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other

structural part of a building, whether or not that alteration affects the external dimensions of the building.

(58) "State coordinating agency." The Tennessee Department of Economic and Community Development, Local Planning Assistance Office as designated by the Governor of the State of Tennessee at the request of the administrator to assist in the implementation of the National Flood Insurance Program for the state.

(59) "Structure." For purposes of this section, means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

(60) "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

(61) "Substantial repairs" means any repairs, reconstructions, rehabilitations, additions, alterations, or other improvements to a structure, taking place during a five (5) year period, in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. The market value of the structure should be:

(a) The appraised value of the structure prior to the start of the initial repair or improvement; or

(b) In the case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed.

For the purpose of this definition, "substantial improvement" to correct is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been pre-identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions and not solely triggered by an improvement or repair project; or

(b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(62) "Substantially improved existing manufactured home parks or subdivisions" is where the repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equals or exceeds fifty percent (50%) of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.

(63) "Variance" is a grant of relief from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

(64) "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

(65) "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas. (Ord. #289, Jan. 2012)

**14-403. General provisions.** (1) Application. This chapter shall apply to all areas within the incorporated area of Whitwell, Tennessee.

(2) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified on the Whitwell, Tennessee, Federal Management Agency, Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), Community Panel Numbers 0135D, along with all supporting technical data, are adopted by reference and declared to be a part of this chapter.

(3) Requirement for development permit. A development permit shall be required in conformity with this chapter prior to the commencement of any development activities.

(4) Compliance. No land, structure, or use shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this chapter and other applicable regulations.

(5) Abrogation and greater restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions; however, where this chapter conflicts or overlaps with another regulatory instrument, whichever imposes the more stringent restrictions shall prevail.

(6) Interpretation. In the interpretation and application of this chapter, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under Tennessee statutes.

(7) Warning and disclaimer of liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood

damages. This chapter shall not create liability on the part of the City of Whitwell, Tennessee or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(8) Penalties for violation. Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance shall constitute a misdemeanor punishable as other misdemeanors as provided by law. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Whitwell, Tennessee from taking such other lawful actions to prevent or remedy any violation. (Ord. #289, Jan. 2012, modified)

**14-404. Administration.** (1) Designation of ordinance administrator. The building inspector is hereby appointed as the administrator to implement the provisions of this chapter.

(2) Permit procedures. Application for a development permit shall be made to the administrator on forms furnished by the community prior to any development activities. The development permit may include, but is not limited to, the following: plans in duplicate drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities. Specifically, the following information is required.

(a) Application stage.

(i) Elevation in relation to mean sea level of the proposed lowest floor, including basement, of all buildings where BFEs are available, or to the highest adjacent grade when applicable under this chapter.

(ii) Elevation in relation to mean sea level to which any non-residential building will be floodproofed where BFEs are available, or to the highest adjacent grade when applicable under this chapter.

(iii) Design certificate from a registered professional engineer or architect that the proposed non-residential floodproofed building will meet the floodproofing criteria in this subsection (2).

(iv) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(b) Construction stage. Within unnumbered A zones, where flood elevation data are not available, the administrator shall record the elevation of the lowest floor on the development permit.

The elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade.

For all new construction and substantial improvements, the permit holder shall provide to the administrator an as-built certification of the regulatory floor elevation or floodproofing level upon the completion of the lowest floor or floodproofing. Within unnumbered A zones, where flood elevation data is not available, the elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade.

Any lowest floor certification made relative to mean sea level shall be prepared by, or under the direct supervision, of, a registered land surveyor and certified by same. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a professional engineer or architect and certified by same.

Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The administrator shall review the above-referenced certification data. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed to proceed. Failure to submit the certification or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

(3) Duties and responsibilities of the administrator. Duties of the administrator shall include, but not be limited to:

(a) Review of all development permits to assure that the permit requirements of this chapter have been satisfied, and that proposed building sites will be reasonably safe from flooding;

(b) Advise to permittee that additional, federal, or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit. This shall include § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

(c) Notification to adjacent communities and the Tennessee Department of Economic and Community Development, Local Planning Assistance Office, prior to any alteration or relocation of a watercourse, and submission of evidence of such notification to the Federal Emergency Management Agency;

(d) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to the Federal Emergency Management Agency to ensure accuracy of community flood maps through the letter of map revision process. Assure that the flood carrying capacity within an altered or relocated portion of any watercourse is maintained;

(e) Record the elevation, in relation to mean sea level or the highest adjacent grade, where applicable of the lowest floor including basement of all new or substantially improved buildings, in accordance with subsection (2) above;

(f) Record the actual elevation in relation to mean sea level or the highest adjacent grade, where applicable to which the new or substantially improved buildings have been floodproofed, in accordance with subsection (2) above;

(g) When floodproofing is utilized for a structure, the administrator shall obtain certification of design criteria from a registered professional engineer or architect, in accordance with subsection (2) above;

(h) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this chapter;

(i) When base flood elevation date or floodway data have not been provided by the Federal Emergency Management Agency, then the administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other sources, including data developed as a result of these regulations, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the community FIRM meet the requirements of this chapter.

Within unnumbered A zones, where base flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet (3') above the highest adjacent grade (lowest floor and highest adjacent grade being defined in § 14-402). All applicable data, including elevations or floodproofing certifications shall be recorded as set forth in subsection (2) above; and

(j) All records pertaining to the provisions of this chapter shall be maintained in the office of the administrator and shall be open for public inspection. Permits issued under the provisions of this chapter shall be maintained in a separate file or marked for expedited retrieval within combined files. (Ord. #289, Jan. 2012)

**14-405. Provisions for flood hazard reduction.** (1) General standards. In all floodprone areas, the following provisions are required:

(a) New construction and substantial improvements to existing buildings shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(b) Manufactured homes shall be elevated and anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to

ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(c) New construction and substantial improvements to existing buildings shall be constructed with materials and utility equipment resistant to flood damage.

(d) New construction or substantial improvements to existing buildings shall be constructed by methods and practices that minimize flood damage.

(e) All electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

(h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(i) Any alteration, repair, reconstruction, or improvements to a building that is in compliance with the provisions of this chapter, shall meet the requirements of "new construction" as contained in this chapter.

(j) Any alteration, repair, reconstruction, or improvements to a building that is not in compliance with the provision of this chapter, shall be undertaken only if said non-conformity is not further extended or replaced.

(2) Specific standards. These provisions shall apply to all areas of special flood hazard as provided herein:

(a) Residential construction. Where base flood elevation data is available, new construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than one foot (1') above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls and to ensure unimpeded movement of flood water shall be provided in accordance with the standards of this subsection (2).

Within unnumbered A zones, where base flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet (3') above the highest adjacent grade (lowest floor and highest adjacent grade being defined in

§ 14-402). All applicable data including elevations or flood proofing certifications shall be recorded as set forth in § 14-404(2).

(b) Non-residential construction. New construction or substantial improvement of any commercial, industrial, or non-residential building, when BFE data is available, shall have the lowest floor, including basement, elevated or floodproofed no lower than one foot (1') above the level of the base flood elevation.

Within unnumbered A zones, where base flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet (3') above the highest adjacent grade (lowest floor and highest adjacent grade being defined in § 14-402 of this chapter). All applicable data including elevations or flood proofing certifications shall be recorded as set forth in § 14-404(2).

Buildings located in all A zones may be floodproofed, in lieu of being elevated, provided that all areas of the building below the required elevation are water-tight, with walls substantially impermeable in the passage of water, and are built with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the administrator as set forth in § 14-404(2).

(c) Elevated building. All new construction or substantial improvements to existing buildings that include any fully enclosed areas formed by foundation and other exterior walls below the base flood elevation, or required height above the highest adjacent grade, shall be designed to preclude finished living space and designed to allow for the entry and exit of flood waters to automatically equalize hydrostatic flood forces on exterior walls.

(i) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(A) Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;

(B) The bottom of all openings shall be no higher than one foot (1') above the finish grade; and

(C) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(ii) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the

premises (standard exterior door) or entry to the elevated living area (stairway or elevator); and

(iii) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms in such a way as to impede the movement of flood waters and all such petitions shall comply with the provisions of subsection (2) of this section.

(d) Standards for manufactured homes and recreational vehicles.

(i) All manufactured homes placed, or substantially improved, on:

(A) Individual lots or parcels;

(B) In expansions to existing manufactured home parks or subdivisions; or

(C) In new or substantially improved manufactured home parks or subdivisions, must meet all the requirements of new construction, including elevations and anchoring.

(ii) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that either:

(A) When base flood elevations are available the lowest floor of the manufactured home is elevated on a permanent foundation no lower than one foot (1') above the level of the base flood elevation; or

(B) Absent base flood elevations the manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements) at least three feet (3') in height above the highest adjacent grade.

(iii) Any manufactured home, which has incurred "substantial damage" as the result of a flood or that has substantially improved, must meet the standards of subsection (2)(d) of this section.

(iv) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(v) All recreational vehicles placed on identified flood hazard sites must either:

(A) Be on the site for fewer than one hundred eighty (180) consecutive days; or

(B) Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions.)

(C) The recreational vehicle must meet all the requirements for new construction, including the anchoring and elevation requirements of this section above if on the site for longer than one hundred eighty (180) consecutive days.

(e) Standards for subdivisions. Subdivisions and other proposed new developments, including manufactured home parks, shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a floodprone area, any such proposals shall be reviewed to ensure that:

(i) All subdivision proposals shall be consistent with the need to minimize flood damage.

(ii) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.

(iii) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(iv) Base flood elevation data shall be provided for subdivision proposals and other proposed developments (including manufactured home parks and subdivisions) that are greater than fifty (50) lots and/or five (5) acres in area.

(3) Standards for areas of special flood hazard with established base flood elevations and with floodways designated. Located within the areas of special flood hazard established in § 14-403(2), are areas designated as floodways. A floodway may be an extremely hazardous area due to the velocity of floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights and velocities. Therefore, the following provisions shall apply:

(a) Encroachments are prohibited, including earthen fill material, new construction, substantial improvements or other developments within the regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the cumulative effect of the proposed encroachments or new development, when combined with all other existing and anticipated development, shall not result in any increase the water surface elevation of the base flood level, velocities or floodway widths during the occurrence of a base flood discharge at any point within the community. A registered professional engineer must provide supporting technical data and certification thereof.

(b) New construction or substantial improvements of buildings shall comply with all applicable flood hazard reduction provisions of § 14-405.

(4) Standards for areas of special flood hazard Zones AE with established base flood elevations but without floodways designated. Located within the areas of special flood hazard established in § 14-403(2), where streams exist with base flood data provided but where no floodways have been designated, (Zones AE) the following provisions apply:

(a) No encroachments, including fill material, new structures or substantial improvements shall be located within areas of special flood hazard, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(b) New construction or substantial improvements of buildings shall be elevated or floodproofed to elevations established in accordance with § 14-405(2).

(5) Standards for streams without established base flood elevations or floodways (A zones). Located within the areas of special flood hazard established in § 14-403, where streams exist, but no base flood data has been provided (A zones), or where a floodway has not been delineated, the following provisions shall apply:

(a) When base flood elevation data or floodway data have not been provided in accordance with § 14-403, then the administrator shall obtain, review, and reasonably utilize any scientific or historic base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of § 14-405. Only if data is not available from these sources, then the following provisions in subsections (b) and (c) shall apply.

(b) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty feet (20'), whichever is greater, measured from the top of the stream bank, unless certification by registered professional engineer is provided, demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(c) In special flood hazard areas without base flood elevation data, new construction or substantial improvements of existing shall have the lowest floor of the lowest enclosed area (including basement) elevated

no less than three feet (3') above the highest adjacent grade at the building site. Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with the standards of § 14-405(2), and "elevated buildings."

(6) Standards for areas of shallow flooding (AO and AH zones). Located within the areas of special flood hazard established in § 14-403(2), are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet (1'-3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

(a) All new construction and substantial improvements of residential and non-residential buildings shall have the lowest floor, including basement, elevated to at least one foot (1') above the flood depth number specified on the Flood Insurance Rate Map (FIRM), in feet, above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated, at least three feet (3') above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of § 14-405(2), and "elected buildings."

(b) All new construction, and substantial improvements of nonresidential buildings may be floodproofed in lieu of elevation. The structure together with attendant utility and sanitary facilities must be floodproofed and designed water-tight to be completely floodproofed to at least one foot (1') above the specified FIRM flood level, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If no depth number is specified, the lowest floor, including basement, shall be floodproofed to at least three feet (3') above the highest adjacent grade. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this chapter and shall provide such certification to the administrator as set forth above and as required in § 14-404(2).

(c) Adequate drainage paths shall be provided around slopes to guide floodwaters around and away from proposed structures.

(d) The administrator shall certify the elevation or the highest adjacent grade, where applicable, and the record shall become a permanent part of the permit file.

(7) Standards for areas protected by flood protection system (A-99 zones). Located within the areas of special flood hazard established in § 14-403 are areas of the one hundred (100) year floodplain protected by a flood protection system, but where base flood elevations and flood hazard factors have not been

determined. Within these areas (A-99 Zones) all provisions of §§ 14-404 and 14-405(1) shall apply.

(8) Standards for unmapped streams. Located within Whitwell, Tennessee are unmapped streams where areas of special flood hazard are neither indicated nor identified. Adjacent to such streams the following provisions shall apply:

(a) In areas adjacent to such unmapped streams, no encroachments including fill material or structures shall be located within an area of at least equal to twice the width of the stream, measured from the top of each stream bank, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the locality.

(b) When new elevation data is available, new construction or substantial improvements of buildings shall be elevated or flood proofed to elevations established in accordance with § 14-404. (Ord. #289, Jan. 2012)

#### **14-406. Variance procedures. (1) Board of floodplain review.**

(a) Creation and appointment. A board of floodplain review is hereby established to hear and decide appeals and requests for variances from the requirements of this chapter. The membership of the Whitwell Board of Commissioners shall serve as the board of floodplain review.

(b) Procedure. Meetings of the board of floodplain review shall be held at such times as the board shall determine. All meetings of the board of floodplain review shall be open to the public. The board of floodplain review shall adopt rules of procedure and shall keep records of applications and actions thereon, which shall be a public record. Compensation of the members of the board of floodplain review shall be set by the city council.

(c) Appeals; how taken. An appeal to the board of floodplain review may be taken by any person, firm, or corporation aggrieved or by any governmental officer, department, or bureau affected by any decision of the administrator based in whole or in part upon the provisions of this chapter. Such appeal shall be taken by filing with the board of floodplain review a notice of appeal, specifying the grounds thereof. In all cases where an appeal is made by a property owner or other interested party, a fee of fifty dollars (\$50.00) for the cost of publishing a notice of such hearings shall be paid by the appellant. The administrator shall transmit to the board of floodplain review all papers constituting the record upon which the appeal action was taken. The board of floodplain review shall fix a reasonable time for the hearing of the appeal, give public notice

thereof, as well as due notice to parties in interest and decide the same within a reasonable time. At the hearing, any person or party may appear and be heard in person or by agent or by attorney.

(d) Powers. The board of floodplain review shall have the following powers:

(i) Administrative review. To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, permit, decision, determination, or refusal made by the administrator or other administrative official in the carrying out or enforcement of any provisions of this chapter.

(ii) Variance procedures. In the case of a request for a variance, the following shall apply:

(A) The Whitwell Board of Commissioners shall hear and decide appeals and requests for variances from the requirements of this chapter.

(B) Variances may be issued for the repair or rehabilitation of historic structures (see definition) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.

(C) In passing upon such applications, the board of floodplain review shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

(1) The danger that materials may be swept onto other property to the injury of others;

(2) The danger to life and property due to flooding or erosion;

(3) The susceptibility of the proposed facility and its contents to flood damage;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity of the facility to a waterfront location, in the case of a functionally dependent facility;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(8) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(9) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(D) Upon consideration of the factors listed above, and the purposes of this chapter, the board of floodplain review may attach such conditions to the granting of variances as it deems necessary to effectuate the purposes of this chapter.

(E) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(2) Conditions for variances. (a) Variances shall be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard; and in the instance of a historical building, a determination that the variance is the minimum relief necessary so as not to destroy the historic character and design of the building.

(b) Variances shall only be issued upon: a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship; or a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(c) Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

(d) The administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

In case of conflict between this chapter or any part thereof, and the whole or part of any existing or future ordinance of Whitwell, Tennessee, the most restrictive shall in all cases apply. (Ord. #289, Jan. 2012)

**TITLE 15****MOTOR VEHICLES, TRAFFIC AND PARKING<sup>1</sup>****CHAPTER**

1. MISCELLANEOUS.
2. EMERGENCY VEHICLES.
3. SPEED LIMITS.
4. TURNING MOVEMENTS.
5. STOPPING AND YIELDING.
6. PARKING.
7. ENFORCEMENT.

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

- 15-101. Motor vehicle requirements.
- 15-102. Driving on streets closed for repairs, streets open to trucks.
- 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. Presumption with respect to traffic control signs, etc.
- 15-111. School safety patrols.
- 15-112. Driving through funerals or other processions.
- 15-113. Clinging to vehicles in motion.

<sup>1</sup>Municipal code reference

Excavations and obstructions in streets, etc.: title 16.

<sup>2</sup>State law references

Under *Tennessee Code Annotated*, § 55-10-307, 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, as prohibited by *Tennessee Code Annotated*, §§ 55-10-101, *et seq.*; driving while license is suspended or revoked, as prohibited by *Tennessee Code Annotated*, § 55-7-116; and drag racing, as prohibited by *Tennessee Code Annotated*, § 55-10-501.

- 15-114. Riding on outside of vehicles.
- 15-115. Backing vehicles.
- 15-116. Projections from the rear of vehicles.
- 15-117. Causing unnecessary noise.
- 15-118. Vehicles and operators to be licensed.
- 15-119. Passing.
- 15-120. Motorcycles, motor driven cycles, motorized bicycles, bicycles, etc.
- 15-121. Delivery of vehicle to unlicensed driver, etc.
- 15-122. Compliance with the financial responsibility law is required.
- 15-123. 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. (1994 Code, § 15-101)

**15-102. Driving on streets closed for repairs, streets open to trucks.** (1) 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.

(2) Streets open to trucks. (a) Definitions: The following terms, when used in this section, shall have the meaning hereinafter subscribed:

(i) City manager: The city manager of the City of Whitwell, or any employee or agent designated by him to carry out the duties of this chapter.

(ii) Truck: Every motor vehicle of the type generally described as "trucks" with a load capacity in excess of two (2) tons. This term shall include tractor-trailer rigs, vans, so called flat-beds, stake body trucks, but shall not include pick up trucks and farm vehicles. The above enumerations and exclusions shall not be deemed to be exclusive, but for the purposes of explanation only.

(b) City manager to designate truck route: The city manager shall have right and duty to designate such streets and highways through the City of Whitwell which may be utilized by trucks and truck traffic, and shall have the further power to designate specific truck routes for through truck traffic, through the city.

(c) Truck routes-markings: Routes designated by the city manager for through traffic shall be marked with appropriate signs bearing the legend "Truck Route" or such other appropriate legend as the city manager may designate. When so designated, truck traffic shall be required to follow the designated truck route.

(d) City manager's authority to prohibit truck traffic: The city manager is also invested with the authority to designate such streets within the city which are prohibited to all truck traffic, except for the purpose of delivery to a specific location on such streets. When so designated, all truck traffic shall be prohibited on such streets, except for purposes herein of delivery as herein above set forth. Such designation shall be by appropriate signs which shall bear the legend. "Trucks Prohibited," or such other appropriate legend as the city manager may designate. (1994 Code, § 15-102)

**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. (1994 Code, § 15-104)

**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; and
- (c) Upon a roadway designated and signposted by the city for one (1) 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. (1994 Code, § 15-105)

**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. (1994 Code, § 15-106)

**15-106. Yellow lines.** On streets with a yellow line placed to the right of any lane line or centerline, 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. (1994 Code, § 15-107)

**15-107. Miscellaneous traffic control signs, etc.**<sup>1</sup> 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 city unless otherwise directed by a police officer.

It shall be unlawful for any pedestrian or the operator of any vehicle willfully to violate or fail to comply with the reasonable directions of any police officer. (1994 Code, § 15-108)

**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*,<sup>2</sup> and shall be uniform as to type and location throughout the city.

**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 official traffic control sign, signal, marking, or device or any railroad sign or signal. (1994 Code, § 15-110)

**15-110. Presumption with respect to traffic control signs, etc.** When a traffic control sign, signal, marking, or device has been placed, the presumption shall be that it is official and that it has been lawfully placed by the proper city authority. (1994 Code, § 15-111)

**15-111. 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

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<sup>1</sup>Municipal code references

Stop signs, yield signs, flashing signals, pedestrian control signs, traffic control signals generally: §§ 15-505--15-509.

<sup>2</sup>For 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.*

shall at the time be wearing some insignia and/or using authorized flags for giving signals. (1994 Code, § 15-112)

**15-112. 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. (1994 Code, § 15-113)

**15-113. 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. (1994 Code, § 15-114)

**15-114. 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. (1994 Code, § 15-115)

**15-115. 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. (1994 Code, § 15-116)

**15-116. 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 inches (12") 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. (1994 Code, § 15-117)

**15-117. 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. (1994 Code, § 15-118)

**15-118. 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." (1994 Code, § 15-119, modified)

**15-119. 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. (1994 Code, § 15-120)

**15-120. 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, but excluding a tractor or motorized bicycle.

(b) "Motor-driven cycle." Every motorcycle, including every motor scooter, with a motor capacity that does not 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, motor cycle, motor driven cycle or motorized bicycle shall be subject to the provisions of all traffic ordinances, rules, and regulations of the city 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 (1) 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) Each driver of a motorcycle, motor driven cycle, or motorized bicycle and any passenger thereon shall be required to wear on his head a crash helmet of a type approved by the state's commissioner of safety.

(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, face shield 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. (1994 Code, § 15-121)

#### **15-121. 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 minor, 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) "Driver's license" shall mean a motor vehicle operator's license or chauffeur's license issued by the State of Tennessee.

(e) "Juvenile" as used in this chapter shall mean a person less than eighteen (18) years of age, and no exception shall be made for a juvenile or 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 operator's or chauffeur's 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 City of Whitwell unless such person has a valid motor vehicle operator's or chauffeur's 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 city in a reckless, careless, or unlawful manner, or in such a manner as to violate the ordinances of the city. (1994 Code, § 15-122)

**15-122. Compliance with the financial responsibility law is 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" means:

(a) Documentation, such as the declaration page of an insurance policy, an insurance binder, or an insurance card from an insurance company authorized to do business in Tennessee, stating that a policy of insurance meeting the requirements of the Tennessee Financial Responsibility Law of 1977, compiled in *Tennessee Code Annotated*, chapter 12, title 55, has been issued;

(b) A certificate, valid for one (1) year, issued by the commissioner of safety, stating that a cash deposit or bond in the amount required by the Tennessee Financial Responsibility Law of 1977, compiled

in *Tennessee Code Annotated*, chapter 12, title 55, has been paid or filed with the commissioner, or has qualified as a self-insurer under *Tennessee Code Annotated*, § 55-12-111; or

(c) The motor vehicle being operated at the time of the violation was owned by a carrier subject to the jurisdiction of the department of safety or the interstate commerce commission, or was owned by the United States, the State of Tennessee or any political subdivision thereof, and that such motor vehicle was being operated with the owner's consent.

(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 such 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 such 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 which is dismissed pursuant to this subsection shall be dismissed without costs to the defendant and no litigation tax shall be due or collected.

**15-123. Adoption of state traffic statutes.** By the authority granted under *Tennessee Code Annotated*, § 16-18-302, the city/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 city/town adopts *Tennessee Code Annotated*, §§ 55-8-181 to 55-8-193, §§ 55-9-601 to 55-9-606, § 55-12-139, § 55-21-108, and § 55-8-199 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. (1994 Code, § 15-201)

**15-202. Operation of authorized emergency vehicles.**<sup>1</sup> (1) The exemptions herein granted for an authorized emergency vehicle shall apply only when the driver of any such vehicle while in motion sounds an audible signal by bell, siren, or exhaust whistle and when the vehicle is equipped with at least one (1) lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet (500') to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(2) 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.

(3) The driver of an authorized emergency vehicle may park or stand, irrespective of the provisions of this title; proceed past a red or stop signal or stop sign, but only after slowing down to ascertain that the intersection is clear; exceed the maximum speed limit and disregard regulations governing direction of movement or turning in specified directions so long as he does not endanger life or property.

(4) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others. (1994 Code, § 15-202)

<sup>1</sup>Municipal code reference

Operation of other vehicle upon the approach of emergency vehicles:  
§ 15-501.

**15-203. Following emergency vehicles.** No driver of any vehicle 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. (1994 Code, § 15-203)

**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 fireman or police officer. (1994 Code, § 15-204)

## 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-five (35) miles per hour except where official signs have been posted indicating other speed limits, in which cases the posted speed limit shall apply. (1994 Code, § 15-301)

**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. (1994 Code, § 15-302)

**15-303. In school zones.** Pursuant to *Tennessee Code Annotated*, § 55-8-152, the city 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 commissioners 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, with the exception of State Highway 28 which shall be thirty (30) miles per hour, shall be *prima facie* guilty of reckless driving. (1994 Code, § 15-303, modified)

## 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.** No person operating a motor vehicle shall make any turning movement which might affect any pedestrian or the operation of any other vehicle without first ascertaining that such movement can be made in safety and signaling his intention in accordance with the requirements of the state law.<sup>1</sup> (1994 Code, § 15-401)

**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. (1994 Code, § 15-402)

**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 centerline thereof and by passing to the right of the intersection of the centerlines of the two (2) roadways. (1994 Code, § 15-403)

**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. (1994 Code, § 15-404)

**15-405. U-turns.** U-turns are prohibited. (1994 Code, § 15-405)

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<sup>1</sup>State law reference

See *Tennessee Code Annotated*, § 55-8-143.

## CHAPTER 5

### STOPPING AND YIELDING

#### **SECTION**

- 15-501. Upon approach of authorized emergency vehicles.
- 15-502. When emerging from alleys, etc.
- 15-503. To prevent obstructing an intersection.
- 15-504. At railroad crossings.
- 15-505. At "stop" signs.
- 15-506. At "yield" signs.
- 15-507. At traffic control signals generally.
- 15-508. At flashing traffic control signals.
- 15-509. At pedestrian control signals.
- 15-510. Stops to be signaled.

**15-501. Upon approach of authorized emergency vehicles.**<sup>1</sup> Upon the immediate approach of an authorized emergency vehicle making use of audible and/or visual signals meeting the requirements of the laws of this state, the driver of every other vehicle shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. (1994 Code, § 15-501)

**15-502. 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 any sidewalk or street. They shall not proceed to drive onto the sidewalk or street until they can safely do so without colliding or interfering with approaching pedestrians or vehicles. (1994 Code, § 15-502)

**15-503. 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. (1994 Code, § 15-503)

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<sup>1</sup>Municipal code reference

Special privileges of emergency vehicles: title 15, chapter 2.

**15-504. At railroad crossings.** Any driver of a vehicle approaching a railroad grade crossing shall stop within not less than fifteen feet (15') from the nearest rail of such railroad and shall not proceed further while any of the following conditions exist:

- (1) A clearly visible electrical or mechanical signal device gives warning of the approach of a railroad train;
- (2) A crossing gate is lowered or a human flagman signals the approach of a railroad train;
- (3) A railroad train is approaching within approximately one thousand five hundred feet (1,500') of the highway crossing and is emitting an audible signal indicating its approach; or
- (4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing. (1994 Code, § 15-504)

**15-505. At "stop" signs.** The driver of a vehicle facing a "stop" sign shall bring his vehicle to a complete stop immediately before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, then immediately before entering the intersection, and shall remain standing until he can proceed through the intersection in safety. (1994 Code, § 15-505)

**15-506. At "yield" signs.** The drivers of all vehicles shall yield the right-of-way to approaching vehicles before proceeding at all places where "yield" signs have been posted. (1994 Code, § 15-506)

**15-507 At traffic control signals generally.** Traffic control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one (1) at a time, or with arrows, shall show the following colors only and shall 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 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) Steady yellow alone, or "Caution":
  - (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 such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(3) Steady 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; provided, however, that generally a right turn on a red signal shall be permitted at all intersections within the city, provided that the prospective turning car comes to a full and complete stop before turning and that the turning car yields the right-of-way to pedestrians and cross traffic traveling in accordance with their traffic signal. However, said turn shall not endanger other traffic lawfully using said intersection. A right turn on red shall be permitted at all intersections except those clearly marked by a "No Turns On Red" sign, which may be erected by the city at intersections which the city decides require no right turns on red in the interest of traffic safety.

(b) Pedestrians facing such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(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) Pedestrians facing such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(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 a vehicle length short of the signal.  
(1994 Code, § 15-507)

**15-508. At flashing traffic control signals.** (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal placed or erected in the city, it shall require obedience by vehicular traffic as follows:

(a) "Flashing red (stop signal)." When a red lens is illuminated with intermittent flashes, 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 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. (1994 Code, § 15-508)

**15-509. At pedestrian control signals.** Wherever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" have been placed or erected by the city, such signals shall apply as follows:

(1) "Walk." Pedestrians facing such signal 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 his crossing on the walk signal shall proceed to the nearest sidewalk or safety zone while the wait signal is showing. (1994 Code, § 15-509)

**15-510. Stops to be signaled.** No person operating a motor vehicle shall stop such vehicle, whether in obedience to a traffic sign or signal or otherwise, without first signaling his intention in accordance with the requirements of the state law,<sup>1</sup> except in an emergency. (1994 Code, § 15-510)

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<sup>1</sup>State law reference  
*Tennessee Code Annotated, § 55-8-143.*

## 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.

**15-601. 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 city 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 (1) way streets where the city 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. (1994 Code, § 15-601)

**15-602. Angle parking.** On those streets which have been signed or marked by the city 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'). (1994 Code, § 15-602)

**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. (1994 Code, § 15-603)

**15-604. Where prohibited.** No person shall park a vehicle in violation of any sign placed or erected by the state or city, 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; or
- (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*, § 55-8-160(c). (1994 Code, § 15-604)

**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 city as a loading and unloading zone. (1994 Code, § 15-605)

## 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.

**15-701. Issuance of traffic citations.**<sup>1</sup> When a police officer halts a traffic violator other than for the purpose of giving a warning, and does not take such person into custody under arrest, 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 city 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. (1994 Code, § 15-701)

**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 officer upon the issuance of a traffic citation, regardless of the disposition of the charge for which the citation was originally issued. (1994 Code, § 15-702)

**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. (1994 Code, § 15-703, modified)

<sup>1</sup>Municipal code reference

Issuance of citations in lieu of arrest and ordinance summonses in non-traffic related offenses: title 6, chapter 1.

State law reference

*Tennessee Code Annotated, §§ 7-63-101, et seq.*

**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 issued 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. (1994 Code, § 15-704)

**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. (1994 Code, § 15-705)

**TITLE 16****STREETS AND SIDEWALKS, ETC<sup>1</sup>****CHAPTER**

1. MISCELLANEOUS.
2. EXCAVATIONS.

**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. Trees, vehicles etc., obstructing view of streets prohibited.
- 16-105. Projecting signs and awnings, etc., restricted.
- 16-106. Banners and signs across streets and alleys restricted.
- 16-107. Gates or doors opening over streets, alleys, or sidewalks prohibited.
- 16-108. Littering streets, alleys, or sidewalks prohibited.
- 16-109. Driveways, drainage ditches, fill-ins, etc., obstruction of drainage ditches.
- 16-110. Abutting occupants to keep sidewalks clean, etc.
- 16-111. Parades, etc., regulated.
- 16-112. Operation of trains at crossings regulated.
- 16-113. Animals and vehicles on sidewalks.
- 16-114. Fires in streets, etc.
- 16-115. Street maintenance.

**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. (1994 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 over any street or alley at a height of less than fourteen feet (14') or over any sidewalk at a height of less than eight feet (8'). (1994 Code, § 16-102)

<sup>1</sup>Municipal code reference

Related motor vehicle and traffic regulations: title 15.

**16-103. Trees, etc., obstructing view at intersections prohibited.**

It shall be unlawful 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. (1994 Code, § 16-103)

**16-104. Trees, vehicles etc., obstructing view of streets prohibited.** It shall be unlawful for any property owner or occupant to have or maintain or allow on his property any tree, shrub, sign, vehicle, or other obstruction which prevents persons entering public streets or alleys from private driveways from obtaining a clear view of traffic when entering the street. (1994 Code, § 16-104)

**16-105. 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.<sup>1</sup> (1994 Code, § 16-105)

**16-106. 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 or above any public street or alley except when expressly authorized by the board of commissioners after a finding that no hazard will be created by such banner or sign. (1994 Code, § 16-106)

**16-107. 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 law. (1994 Code, § 16-107)

**16-108. 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. (1994 Code, § 16-108)

**16-109. Driveways, drainage ditches, fill-ins, etc., obstruction of drainage ditches.** (1) It shall be unlawful for any person to permit or cause the obstruction of any drainage ditch in any public right-of-way.

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<sup>1</sup>Municipal code reference

Building code: title 12, chapter 1.

(2) Property owners making a way of ingress and egress to said property shall file with the city clerk, at city hall, a request and/or application for permission for such installation.

(3) Proper inspection of driveway shall be made by the city and said inspection and report shall determine if said driveway will effect in any way water drainage problem on city streets, and this report shall be on file at the city hall.

(4) If at the discretion of the city inspector, said driveway should have a tile installation for proper water drainage on the city's streets, then tile shall be installed at the expense of the city's streets, then tile shall be installed at the expense of the property owner; tile cost to the property owner and the city to make the proper installation; said driveway shall constitute a width of not less than twelve feet (12') of ten inch (10") tile for proper drainage.

(5) Lots to be filled in must pass the same requirements as drain tile. The fill-in shall not block any water drainage or cause a water problem to the city or a neighbor from such fill-in. (1994 Code, § 16-109)

**16-110. Abutting occupants to keep sidewalks clean, etc.** The occupants of property abutting on a sidewalk are required to keep the sidewalk clean. Also, immediately after a snow or sleet, such occupants are required to remove all accumulated snow and ice from the abutting sidewalk. (1994 Code, § 16-110)

**16-111. 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 city recorder. (1994 Code, § 16-111)

**16-112. Operation of trains at crossings regulated.** No person shall operate any railroad train across any street or alley without giving a warning of its approach as required by state law; nor shall he make such crossing at a speed in excess of twenty-five (25) miles per hour. It shall also be unlawful to stop a railroad train so as to block or obstruct any street or alley for a period of more than five (5) consecutive minutes. (1994 Code, § 16-112)

**16-113. 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. (1994 Code, § 16-113)

**16-114. 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. (1994 Code, § 16-114)

**16-115. Street maintenance.** (1) All maintained streets within the limits of the City of Whitwell shall have minimum width of twenty feet (20'), and pre-existing streets must be eight feet (8') to twenty feet (20') wide.

(2) All city streets within the city limits of the City of Whitwell that are to be maintained must have two (2) or more residents living on said street. (1994 Code, § 16-115)

## CHAPTER 2

### EXCAVATIONS<sup>1</sup>

#### **SECTION**

- 16-201. Permit required.
- 16-202. Applications.
- 16-203. Fee.
- 16-204. Deposit or bond.
- 16-205. Safety restrictions on excavations.
- 16-206. Restoration of streets, etc.
- 16-207. Insurance.
- 16-208. Time limits.
- 16-209. Supervision.

**16-201. Permit required.** It shall be unlawful for any person, firm, corporation, association, or others, including utility districts to make any excavation in any street, alley, or public place, or to tunnel under any street, alley, or public place 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 violate, or vary 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 and a permit cannot reasonably and practicably be obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the city manager is open for business, and the permit shall be retroactive to the date when the work was begun. (1994 Code, § 16-201)

**16-202. Applications.** Applications for such permits shall be made to the city manager, 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 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

<sup>1</sup>State 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).

approved by the city recorder within twenty-four (24) hours of its filing. (1994 Code, § 16-202)

**16-203. Fee.** The fee for such permits shall be twenty dollars (\$20.00). (1994 Code, § 16-203)

**16-204. Deposit or bond.** No such permit shall be issued unless and until the applicant therefor has deposited with the city manager a cash deposit. The deposit shall be in the sum of five hundred dollars (\$500.00) if no pavement is involved or one thousand dollars (\$1,000.00) 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 city manager may increase the amount of the deposit to an amount considered by him to be adequate to cover the cost. From this deposit shall be deducted the expense to the city of relaying the surface of the ground or pavement, and of making the refill if this is done by the city 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.

In lieu of a deposit, the applicant may deposit with the city recorder a surety bond in such form and amount as the city manager shall deem adequate to cover the costs to the city if the applicant fails to make proper restoration. (1994 Code, § 16-204)

**16-205. Safety restrictions on excavations.** Any person, firm, corporation, association, or others making any excavation or 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 excavation 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. (1994 Code, § 16-205)

**16-206. Restoration of streets, etc.** Any person, firm, corporation, association, or others making any excavation or tunnel in or under any street, alley, or public place in this city shall restore the street, alley, or public place to its original condition except for the surfacing, which shall be done by the city but shall be paid for promptly upon completion by such person, firm, corporation, association, or others for which the excavation or tunnel was made. In case of unreasonable delay in restoring the street, alley, or public place, the city manager shall give notice to the person, firm, corporation, association, or others that unless the excavation or tunnel is refilled properly within a specified reasonable period of time, the city will do the work and charge the expense of doing the same to such person, firm, corporation, association, or others. If

within the specified time the conditions of the above notice have not been complied with, the work shall be done by the city, an accurate account of the expense involved shall be kept, and the total cost shall be charged to the person, firm, corporation, association, or others who made the excavation or tunnel. (1994 Code, § 16-206)

**16-207. Insurance.** In addition to making the deposit or giving the bond hereinbefore required to insure that proper restoration is made, each person applying for an excavation 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 the insurance shall be prescribed by the city manager in accordance with the nature of the risk involved; provided, however, that the liability insurance for bodily injury shall not be less than three hundred thousand dollars (\$300,000.00) for each person and seven hundred thousand dollars (\$700,000.00) for each accident, and for property damages not less than one hundred thousand dollars (\$100,000.00) for each accident. (1994 Code, § 16-207, modified)

**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 city if the city restores such surface pavement. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the city manager. (1994 Code, § 16-208)

**16-209. Supervision.** The person designated by the city manager 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 city 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. (1994 Code, § 16-209)

## TITLE 17

### REFUSE AND TRASH DISPOSAL<sup>1</sup>

#### **CHAPTER**

##### 1. TRASH BURNING, DUMPING, DISPOSAL, ETC.

#### **CHAPTER 1**

##### TRASH BURNING, DUMPING, DISPOSAL, ETC.

#### **SECTION**

- 17-101. Trash accumulation.
- 17-102. Dumping.
- 17-103. Burning near buildings.
- 17-104. Unattended fires.
- 17-105. Conforming receptacles.
- 17-106. Unauthorized removal.

**17-101. Trash accumulation.** It shall be unlawful for any person to accumulate or permit to accumulate on any premises in the city any trash, garbage, or other waste, vegetable or animal matter, or refuse of any kind. (1994 Code, § 17-101)

**17-102. Dumping.** It shall be unlawful for any person to dump or place on any premises, right-of-way, or open ditch in the city limits any garbage, waste, or refuse or trash of any kind. (1994 Code, § 17-102)

**17-103. Burning near buildings.** It shall be unlawful for any person to burn or set fire to any trash, waste, or refuse of any kind within fifty feet (50') of any building or other structure or within five feet (5') of any property line. It shall be unlawful for any person to burn or set fire to any trash, waste, or refuse of any kind upon any property other than that owned by said person. (1994 Code, § 17-103)

**17-104. Unattended fires.** It shall be unlawful for any person burning trash, waste or refuse to leave said fire unattended without first ascertaining that the fire has completely burned itself out or has been completely extinguished. (1994 Code, § 17-104)

<sup>1</sup>Municipal code reference

Property maintenance regulations: title 13.

**17-105. Conforming receptacles.** All garbage, ashes, refuse, and trash placed upon or along the streets of the city to be removed by the collectors thereof shall be placed in receptacles. Receptacles for garbage shall be metallic, water-tight vessels of standard type, fitted with proper covers. Such receptacles shall be not less than ten inches (10") nor more than twenty inches (20") in diameter, and not less than eight inches (8"), nor more than twenty-six inches (26") in height. Receptacles for ash and refuse shall be metal ash cans not more than twenty-six inches (26") in height and twenty inches (20") in diameter. (1994 Code, § 17-105)

**17-106. Unauthorized removal.** It shall be unlawful for any unauthorized person in the city to remove, destroy, or mutilate any garbage or refuse receptacle not his own. It shall be unlawful for any unauthorized person in any manner to interfere with or remove any part of the garbage, ashes, refuse, waste paper, rags, scrap iron, scrap glass, scrap copper, or other property places on the sidewalks or on or along the streets of the city for removal by collectors thereof. (1994 Code, § 17-106)

**TITLE 18**

**WATER AND SEWERS**

[RESERVED FOR FUTURE USE]

**TITLE 19**

**ELECTRICITY AND GAS**

[RESERVED FOR FUTURE USE]

**TITLE 20**

**MISCELLANEOUS**

[RESERVED FOR FUTURE USE]

ORDINANCE NO. 34

**AN ORDINANCE ADOPTING AND ENACTING A CODIFICATION  
AND REVISION OF THE ORDINANCES OF THE CITY OF WHITWELL,  
TENNESSEE.**

WHEREAS some of the ordinances of the City of Whitwell are obsolete, and

WHEREAS some of the other ordinances of the city are inconsistent with each other or are otherwise inadequate, and

WHEREAS the Board of Commissioners of the City of Whitwell, 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 "Whitwell Municipal Code," now, therefore:

**BE IT ORDAINED BY THE CITY OF WHITWELL, AS FOLLOWS:<sup>1</sup>**

**Section 1. Ordinances codified.** The ordinances of the City of Whitwell, 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 "Whitwell 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 city or authorizing the issuance of any bonds or other evidence of said city'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 city; any ordinance establishing a social security system or

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<sup>1</sup>Charter reference

Tennessee Code Annotated, § 6-20-214.

providing 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 city; any ordinance dedicating, naming, establishing, locating, relocating, opening, 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 city.

**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.<sup>1</sup>

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<sup>1</sup>State law reference

For authority to allow deferred payment of fines, or payment by  
(continued...)

**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 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 commissioners, 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 city 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.

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(...continued)

installments, see Tennessee Code Annotated, § 40-24-101 et seq.

**Section 10. Date of effect.** This ordinance shall take effect no sooner than fifteen (15) days after first passage thereof, provided that it is read two (2) different days in open session before its adoption, and not less than one week elapses between first and second readings, the welfare of the city 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 3/8, 2018.

Passed 2nd reading 4/12, 2018

Passed 3rd reading 5/17, 2018

Linda M. Hooper  
Mayor

Jina Green  
Recorder