THE GALLAWAY MUNICIPAL CODE

Prepared by the



July 2019

# **CITY OF GALLAWAY, TENNESSEE**

# MAYOR

Jamie Mayo

# VICE MAYOR

Bobby Whittmore

# **COMMISSIONER**

Dominic Berretta

# MANAGER

Angela Leifer

# **RECORDER**

Diane Carpenter

#### PREFACE

The Gallaway Municipal Code contains the codification and revision of the ordinances of the City of Gallaway, 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

**6-20-214.** <u>Style of ordinances</u>. All ordinances shall begin, "Be it ordained by the city of (here insert name) as follows:." [Acts 1921, ch. 173, art. 5, § 1; Shan. Supp., § 1997a149; Code 1932, § 3546; T.C.A. (orig. ed.), § 6-2025.]

**6-20-215.** Ordinance procedure. (a) (1) Except as provided in subdivision (a)(2), every ordinance shall be read two (2) different days in open session before its adoption, and not less than one (1) week shall elapse between first and second readings, and any ordinance not so read shall be null and void. Any city incorporated under chapters 18-22 of this title may establish by ordinance a procedure to read only the caption of an ordinance, instead of the entire ordinance, on both readings. Copies of such ordinances shall be available during regular business hours at the office of the city recorder and during sessions in which the ordinance has its second reading.

(2) Notwithstanding subdivision (a)(1), the board of commissioners governing any city incorporated under chapters 18-22 of this title may adopt ordinances pursuant to a consent calendar if the board unanimously passes an ordinance approving the consent calendar; provided, the ordinance approving the consent calendar shall require that:

(A) Each ordinance on the consent calendar be considered on two (2) different days in open session before its adoption and that not less than one (1) week shall elapse between first and second consideration;

(B) Copies of each ordinance adopted pursuant to the consent calendar be available during regular business hours at the office of the city recorder and during sessions in which the ordinance has its second reading;

(C) If any board member objects to an ordinance on the consent calendar or any amendment is adopted to an ordinance on the consent calendar, then the ordinance shall be removed from the consent calendar and may be adopted pursuant to subdivision (a)(1); and

(D) Copies of the consent calendar shall be published along with the agenda prior to any meeting at which the consent calendar will be considered.

(3) A city that has established a consent calendar pursuant to subdivision (a)(2) may eliminate the consent calendar by passage of an ordinance in the same manner required to create the consent calendar.

(b) An ordinance shall not take effect until fifteen (15) days after the first passage thereof, except in case of an emergency ordinance. An emergency

ordinance may become effective upon the day of its final passage; provided, that it shall contain the statement that an emergency exists and shall specify the distinct facts and reasons constituting such an emergency.

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

(d) 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; T.C.A. (orig. ed.), § 6-2026; Acts 1976, ch. 420, § 1; Acts 1989, ch. 175, § 9; Acts 1995, ch. 13, § 10; Acts 1996, ch. 652, § 4; Acts 2015, ch. 115, § 1.]

### TITLE 1

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

#### **CHAPTER**

- 1. BOARD OF COMMISSIONERS.
- 2. CITY MANAGER.
- 3. RECORDER.
- 4. CODE OF ETHICS.

# **CHAPTER 1**

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

<sup>1</sup>Charter reference

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

Municipal code references

Building, plumbing, electrical, and gas inspectors: title 12. Fire department: title 7. Utilities: titles 18 and 19. Water and sewers: title 18. Zoning: title 14.

<sup>2</sup>Charter reference

For detailed provisions of the charter related to the election and to general and specific powers and duties of the board of commissioners, see *Tennessee Code Annotated*, title 6, chapter 20. (There is an index at the beginning of chapter 20 which provides a detailed breakdown of the provisions in the charter.) In addition, see the following provisions in the charter that outline some of the powers and duties of the board of commissioners:

Appointment and removal of city judge: § 6-21-501.
Appointment and removal of city manager: § 6-21-101.
Compensation of city attorney: § 6-21-202.
Creation and combination of departments: § 6-21-302.
Removal of mayor and commissioners: § 6-20-220.
Subordinate officers and employees: § 6-21-102.
Taxation
Change tax due dates: § 6-22-113.

Power to levy taxes: § 6-22-108.

1-1

(continued...)

# SECTION

- 1-101. Time and place of regular meetings.
- 1-102. Order of business.
- 1-103. General rules of order.
- 1-104. Municipal elections.
- 1-105. Ordinance procedures.
- 1-106. Citizens' input.

1-101. <u>Time and place of regular meetings</u>. The board of commissioners shall hold a regular meeting at 7:00 P.M. local time on the second Thursday of each month at the city hall. (Ord. #44-2017, June 2017)

**1-102.** <u>Order of business</u>. (1) At each regular meeting of the board of commissioners, the following order of business shall be observed unless waived by a majority vote of the members present:

- (a) Call to order by the mayor;
- (b) Roll call;
- (c) Pledge of allegiance;
- (d) Mayor's welcome;
- (e) Approval of agenda;
- (f) Approval of minutes from previous meeting;
- (g) Citizens' input;
- (h) Reports:
  - (i) Fire;
  - (ii) Police;
  - (iii) Utilities;
  - (iv) Planning commission; and
  - (v) City manager.
- (i) Old business;
- (j) New business;
- (k) Council reports;
- (l) Any other business; and
- (m) Adjournment.

(2) At each regular/workshop meeting of the board of commissioners, the following order of business shall be observed unless waived by a majority vote of the members present:

- (a) Call to order;
- (b) Roll call;
- (c) Approval of agenda;
- (d) Approval of minutes from previous meeting;

<sup>(...</sup>continued)

Power to sue to collect taxes: § 6-22-115.

- (e) Citizens' input;
- (f) Reports:
  - (i) Financial; and
  - (ii) City manager.
- (g) Old business;
- (h) New business;
- (i) Council reports;
- (j) Any other business; and
- (k) Adjournment. (Ord. #20-2014, Nov. 2014)

**1-103.** <u>General rules of order</u>. 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 governing body 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. (2003 Code, § 1-103)

**1-104.** <u>Municipal elections</u>. (1) Pursuant to the authority granted by *Tennessee Code Annotated*, § 6-20-102(c)(1), subsequent regular municipal elections are hereby fixed as the date of the regular November election as defined in *Tennessee Code Annotated*, § 2-1-104.

(2) Pursuant to the authority granted by *Tennessee Code Annotated*, § 6-20-102(c)(2)(A), the terms of all three (3) incumbent commissioners shall be extended to coincide with the November general election of 2010. (2003 Code, § 1-104)

**1-105.** <u>Ordinance procedures</u>. (1) Only the caption of an ordinance, instead of the entire ordinance, shall be read on both readings.

(2) Copies of such ordinances shall be available during regular business hours at the office of the city recorder and during sessions in which the ordinance has a second reading.

(3) The ordinance comprising this section shall take effect fifteen (15) days from and after its first passage, or upon final passage, whichever is later, the public welfare requiring it. Nor shall the ordinance comprising this chapter take effect until it is published. (2003 Code, § 1-105)

**1-106.** <u>Citizens' input</u>. (1) A citizen shall give notice to the city manager no less than five (5) business days before the regular meeting of intent to participate.

(2) Any citizen shall be given up to three (3) minutes to address the board of commissioners on any issue. Citizens wishing to address the city commission shall wait to be recognized by the mayor to do so and state their name and place of residence before providing input.

(2) The agenda of each regular city commission meeting and regular/workshop meeting shall include the following statement concerning citizens' input: "Any citizen shall be given up to three minutes to address the

board on any issue. When the mayor asks, please raise your hand if you wish to speak, state your name, and whether you are or not a resident of Gallaway." (Ord. #20-2014, Nov. 2014, modified)

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

# SECTION

1-201. Generally supervises municipality's affairs.

**1-201.** <u>Generally supervises municipality's affairs</u>. The city manager shall have general supervision of all municipal affairs and may require such reports from the officers and employees as he may reasonably deem necessary to carry out his responsibilities. (2003 Code, § 1-201)

<sup>&</sup>lt;sup>1</sup>Charter reference

For charter provisions outlining the appointment and removal of the city manager, see *Tennessee Code Annotated*, title 6, chapter 21, part 1, particularly § 6-21-101.

### <u>RECORDER<sup>1</sup></u>

#### SECTION

- 1-301. To keep minutes, etc.
- 1-302. To perform general administrative duties, etc.
- 1-303. To be bonded.
- 1-304. Recorder to obtain certification.

**1-301.** <u>To keep minutes, etc</u>. The recorder shall keep the minutes of all meetings of the governing body and shall preserve the original copy of all ordinances in a separate ordinance book. (2003 Code, § 1-302)

**1-302.** <u>To perform general administrative duties, etc</u>. The recorder shall perform all administrative duties for the governing body and for the municipality which are not expressly assigned by the charter or this code to another corporate officer. He shall also have custody of, and be responsible for, maintaining all corporate bonds, records, and papers in such fireproof vault or safe as the municipality shall provide. (2003 Code, § 1-303)

**1-303.** <u>To be bonded</u>. The recorder shall be bonded in the sum of ten thousand dollars (\$10,000.00), with surety acceptable to the governing body, before assuming the duties of his office. (2003 Code, § 1-301)

**1-304.** <u>Recorder to obtain certification</u>. The City of Gallaway adopts by reference as if it were fully set out herein, *Tennessee Code Annotated*, § 6-54-120, which provides for certification of the recorder. (2003 Code, § 1-304, modified)

<sup>&</sup>lt;sup>1</sup>Charter references

For charter provisions outlining the duties and powers of the recorder, see *Tennessee Code Annotated*, title 6, chapter 21, part 4, and title 6, chapter 22. Where the recorder also serves as the treasurer, see *Tennessee Code Annotated*, title 6, chapter 22, particularly § 6-22-119.

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

#### SECTION

- 1-401. Applicability.
- 1-402. Definition of "personal interest."
- 1-403. Disclosure of personal interest by official with vote.
- 1-404. Disclosure of personal interest in non-voting matters.
- 1-405. Acceptance of gratuities, etc.
- 1-406. Use of information.
- 1-407. Use of municipal time, facilities, etc.
- 1-408. Use of position or authority.
- 1-409. Outside employment.
- 1-410. Ethics complaints.
- 1-411. Violations and penalty.

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

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

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

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

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

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

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

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

1-401. <u>Applicability</u>. This chapter is the code of ethics for personnel of the municipality. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the municipality. The words "municipal" and "municipality" include these separate entities. (2003 Code,  $\S$  1-401)

**1-402.** <u>Definition of "personal interest</u>." (1) For purposes of §§ 1-403 and 1-404, "personal interest" means:

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

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

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

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

(3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter. (2003 Code, § 1-402)

1-403. <u>Disclosure of personal interest by official with vote</u>. An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's vote on the measure. In addition, the official may recuse himself<sup>1</sup> from voting on the measure. (2003 Code, § 1-403)

1-404. <u>Disclosure of personal interest in non-voting matters</u>. An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the recorder. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or

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

policy, recuse himself from the exercise of discretion in the matter. (2003 Code,  $\S$  1-404)

**1-405.** <u>Acceptance of gratuities, etc</u>. An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the municipality:

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

(2) That might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing municipal business. (2003 Code, § 1-405))

**1-406.** <u>Use of information</u>. (1) An official or employee may not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law.

(2) An official or employee may not use or disclose information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity. (2003 Code,  $\S$  1-406)

**1-407.** <u>Use of municipal time, facilities, etc</u>. (1) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself.

(2) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality. (2003 Code, § 1-407)

**1-408.** <u>Use of position or authority</u>. (1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.

(2) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. (2003 Code, 1-408)

**1-409.** <u>**Outside employment**</u>. An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy. (2003 Code, § 1-409)) **1-410.** <u>Ethics complaints</u>. (1) The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.

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

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

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

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

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation or a civil service policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics. (2003 Code,  $\S$  1-410)

1-411. <u>Violations and penalty</u>. An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law, and in addition is subject to censure by the governing body. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action. (2003 Code, § 1-411)

#### TITLE 2

#### **BOARDS AND COMMISSIONS, ETC.**

#### CHAPTER

## 1. PARKS AND RECREATION ADVISORY BOARD.

## CHAPTER 1

#### PARKS AND RECREATION ADVISORY BOARD

### SECTION

- 2-101. Creation.
- 2-102. Membership.
- 2-103. Officers, meetings, quorum, and bylaws.
- 2-104. Authority--powers and duties.
- 2-105. Initiation of policy recommendations.

**2-101.** <u>**Creation**</u>. There is hereby created the Gallaway Recreation Advisory Board, hereinafter referred to as "the board," to serve in an advisory capacity to the board of commissioners, in matters enumerated in this chapter. (2003 Code, § 2-101)

**2-102.** <u>Membership</u>. (1) <u>Criteria</u>. The selection of board members will be made from individuals who have an interest in park, recreational, social and cultural activities, and in the various park and recreational facilities, as may be evidenced by their training, experience, and/or actions. Membership of the board should include, if possible, both casual and organized users of parks and recreation facilities and programs. Representatives of the board should be selected from areas as evenly dispersed geographically as possible.

(2) <u>Composition</u>. The board will consist of five to seven (5 to 7) people and preferably would include both male and female members and a youth representative who may be less than eighteen (18) years of age. In addition to the five (5) board members, one (1) member of the board of commissioners will serve for a one (1) year period and act as a non-voting liaison to the board of commissioners.

(3) <u>Terms</u>. A full term of office for each board member will be four (4) years. Terms of office shall begin on January 1 of the year in which the appointment is made and expire December 31 of the fourth year thereafter. The initial appointments to the board will be made in such a way that no more than two (2) terms will expire in the same year and such terms shall be staggered to achieve this result.

No person may serve on the board more than two (2) consecutive four (4) year terms. The board of commissioners' representative may serve successive one (1) year periods.

The term of office for members appointed to fill expired terms will be a maximum term not to exceed four (4) years. It is intended that no more than two (2) terms will expire in the same year and such terms shall be staggered to achieve this result.

(4) <u>Appointment</u>. A member of the board and the board of commissioners' representative will be appointed by the mayor, subject to confirmation by the majority vote of the board of commissioners. Board members will be selected without regard to political affiliations and will serve without compensation, except for reimbursement of actual expenditures duly authorized by the board of commissioners. Appointments to fill an unexpired term will be for the remainder of that term, after which the board of commissioners may consider a full term.

(5) <u>Removal</u>. Members of the board may be removed by the mayor, with concurrence of the board of commissioners, for neglect of duty, conflict of interest, malfeasance in office, or other just cause, or for unexcused absence from more than three (3) consecutive regular meetings. The decision of the board of commissioners will be final and there will be no appeal therefrom. Board members who are unable to attend regular meetings are expected to tender their resignation.

(6) <u>Vacancies</u>. Vacancies created by causes other than an expiration of term shall be filled for the remainder of the term in the same manner as otherwise provided in this section.  $(2003 \text{ Code}, \S 1-102)$ 

**2-103.** <u>Officers, meetings, quorum, and bylaws</u>. (1) <u>Officers</u>. The board will, during the first board meeting in January, annually select from its members a chairperson to serve for a one (1) year period, or until a successor is elected. The chairperson will preside at all meetings, preserve order and decorum, enforce the rules and regulations of the board, sign all letters and documents as authorized by the board and as prescribed by law, and will otherwise perform the duties devolving upon a presiding officer. The board will also select a vice-chairperson. The board will select a secretary who will assume charge of all records of the board and who will keep accurate and complete minutes of all meetings thereof. The secretary need not be a member of the board.

(2) <u>Meetings</u>. The board will determine a regular meeting schedule (time, place, and frequency) as necessary, but not less than once each month, unless the chairperson determines no meeting is necessary. Special board meetings may be held as often as deemed necessary by the board. All meetings will be open to the public. Accurate minutes will be kept of all meetings and shall be made available to the public. A copy thereof will be transmitted to the board of commissioners. (3) <u>Quorum</u>. Fifty percent (50%) of the members of the board will constitute a quorum for the transaction of business.

(4) <u>Bylaws</u>. The board will adopt bylaws for the conduct of its business, a copy of which will be kept on file in the city recorder's office. (2003 Code, § 2-103)

**2-104.** <u>Authority--powers and duties</u>. (1) The board will have only such powers and authority as may be granted to it by the board of commissioners. The board shall have no final authority over the adoption of policy nor the administration of the parks and recreation department.

(2) The board will act at all times in an advisory capacity to the board of commissioners and will have no direct power. It will interpret community programs, facilities and needs, survey public opinion, prepare studies and reports as requested by the board of commissioners, and make recommendations on subjects as may be requested from time to time by the board of commissioners.

(3) The board will serve as a liaison between citizens, the parks and recreation department, and the board of commissioners. The board is subject to rules and regulations in the performance of their duties and responsibilities as prescribed by city ordinance. (2003 Code, § 2-104)

**2-105.** <u>Initiation of policy recommendations</u>. (1) The board of commissioners will be the initiator of requests to study city policy regarding parks and recreation facilities and programs.

(2) Requests of the board to study and/or make recommendations on administrative policy will be initiated by the board of commissioners.

(3) The board may from time to time initiate study and recommendations by first submitting the topics to the board of commissioners. When approval of the board of commissioners is received, the board will commence its work on the approved topics. (2003 Code, § 2-105)

#### TITLE 3

### MUNICIPAL COURT<sup>1</sup>

#### CHAPTER

#### 1. CITY JUDGE.

2. COURT ADMINISTRATION.

3. SUMMONSES AND SUBPOENAS.

### CHAPTER 1

#### CITY JUDGE<sup>2</sup>

### SECTION

3-101. City judge.

**3-101.** <u>City judge</u>. The city court shall be presided over by a city judge appointed by the board of commissioners. The city judge must be licensed to practice law in the State of Tennessee. (2003 Code, § 3-101, modified)

<sup>1</sup>Charter references

City court operations: Appeals from judgment: § 6-21-508. Appearance bonds: § 6-21-505. Arrest warrants: § 6-21-504. Docket maintenance: § 6-21-503. Fines and costs: Amounts: §§ 6-21-502, 6-21-507. Collection: § 6-21-507. Disposition: § 6-21-506. City judge: Appointment and term: § 6-21-501. Jurisdiction: § 6-21-501. Qualifications: § 6-21-501.

<sup>2</sup>Charter reference

City judge: § 6-21-501 and related Priv. Acts 1974, ch. 275 (page C-59).

For provisions of the charter governing the city judge and city court operations, see *Tennessee Code Annotated*, title 6, chapter 21, part 5. For specific charter provisions in part 5 related to the following subjects, see the sections indicated:

## **COURT ADMINISTRATION**

#### SECTION

- 3-201. Maintenance of docket.
- 3-202. Imposition of penalties and costs.
- 3-203. Disturbance of proceedings.
- 3-204. Trial and disposition of cases.
- 3-205. Failure to appear.
- 3-206. Violations and penalty.

**3-201.** <u>Maintenance of docket</u>. The city clerk shall keep a complete docket of all matters coming before him in his judicial capacity. The docket shall include for each defendant such information as his name; warrant and/or summons numbers; alleged offense; disposition; fines and costs imposed and whether collected; and all other information that may be relevant. (2003 Code, § 3-201, modified)

**3-202.** <u>Imposition of penalties and costs</u>. All penalties and costs shall be imposed and recorded by the city judge on the city court docket in open court.

In all cases heard or determined by him, the municipal judge shall tax an amount of one hundred thirty dollars (\$130.00) for court costs. (2003 Code, § 3-202, as amended by Ord. #47-2017, Nov. 2017)

**3-203.** <u>Disturbance of proceedings</u>. 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. (2003 Code, § 3-203)

**3-204.** <u>Trial and disposition of cases</u>. Every person charged with violating a municipal ordinance shall be entitled to an immediate trial and disposition of his case, provided the city court is in session or the city judge is reasonably available. However, the provisions of this section shall not apply when the alleged offender, by reason of drunkenness or other incapacity, is not in a proper condition or is not able to appear before the court. (2003 Code, § 3-204)

**3-205.** <u>Failure to appear</u>. Any person who fails to appear in city court to answer a summons or citation for the violation of any ordinance or provision of this code shall be guilty of a civil offense and upon conviction shall pay a penalty of not less than one dollar (\$1.00) nor more than fifty dollars (\$50.00) for

each offense. Each occurrence shall constitute a separate offense. (2003 Code, § 3-206)

**3-206.** <u>Violations and penalty</u>. A bond schedule<sup>1</sup> list of penalties against city ordinance violations may be found in the recorder's office.

This does not negate the officer's power of discretion whereby a warning or mandatory court required.

<u>Juvenile tickets (under eighteen (18) must appear with parent)</u>. All juveniles living outside Fayette County may pay fines and not have to appear.

Any charge not appearing on the on list is fifty dollars (\$50.00).

(2003 Code, § 3-205, modified)

<sup>&</sup>lt;sup>1</sup>The bond schedule list of penalties, and any amendments, may be found in the recorder's office.

## SUMMONSES AND SUBPOENAS

#### SECTION

3-301. Issuance of summonses.

3-302. Issuance of subpoenas.

3-303. Officials designated authority to issue citations and summons.

**3-301.** <u>Issuance of summonses</u>. When a complaint of an alleged ordinance violation is made to the city judge, the judge may, in his discretion, issue a summons ordering the alleged offender to personally 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 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. (2003 Code, § 3-302, modified)

**3-302.** <u>Issuance of subpoenas</u>. The city judge may subpoena as witnesses all persons whose testimony he believes will be relevant and material to matters coming before his court, and it shall be unlawful for any person lawfully served with such a subpoena to fail or neglect to comply therewith. (2003 Code, § 3-303)

**3-303.** <u>Officials designated authority to issue citations and</u> <u>summonses</u>. (1) The fire marshal in the fire department and the code enforcement officer as special police officers have the authority to issue citations.

(2) The fire marshal in the fire department shall have the authority to issue citations for violations of the fire code and the code enforcement officer shall have the authority to issue citations for violations of the building, utility, and residential codes.

(3) The citation shall contain the name and address of the person being cited and such other information necessary to identify and give the person cited notice of the charges against him, and state a specific date and place for the offender to appear in court and answer the charges against him. The citation shall also contain an agreement to appear, which shall be signed by the offender.

(4) It shall be unlawful for any person to violate his agreement to appear in court, regardless of the disposition of the charge for which the citation was issued.

(5) Pursuant to *Tennessee Code Annotated*, §§ 7-63-201, *et seq.*, which authorizes the board of mayor and commissioners to designate certain city enforcement officers the authority to issue ordinance summonses in the areas

of sanitation, litter control, and animal control, the board designates the code enforcement officer to issue ordinance summonses in those areas.

(6) These enforcement officers may not arrest violators or issue citations in lieu of arrest, but upon witnessing a violation of any ordinance, law, or regulation in the areas of sanitation, litter control, or animal control, may issue an ordinance summons and give the summons to the offender.

(7) The ordinance summons shall contain the name and address of the person being summoned and such other information necessary to identify and give the person summons notice of the charge against him, and state a specific date and place for the offender to appear and answer the charges against him. The ordinance summons shall also contain an agreement to appear, which shall be signed by the offender. If the offender refuses to sign the agreement to appear, the enforcement officer in whose presence the offense occurred may:

(a) Have a summons issued by the clerk of the city court; or

(b) May seek the assistance of a police officer to witness the violation. The police officer who witnesses the violation may issue a citation for the violation.

(8) It shall be unlawful for any person to violate his agreement to appear in court, regardless of the disposition of the charge for which the ordinance summons was issued.

(9) All ordinances, resolutions, or parts of ordinances and resolutions in conflict herewith are to the extent of such conflict hereby repealed.

(10) This section shall take effect after final passage and publication, the public welfare requiring it. (2003 Code, § 3-304, modified)

#### TITLE 4

### MUNICIPAL PERSONNEL

#### CHAPTER

1. PERSONNEL REGULATIONS.

2. TRAVEL REIMBURSEMENT REGULATIONS.

# **CHAPTER 1**

# PERSONNEL REGULATIONS

# SECTION

- 4-101. Purpose.
- 4-102. Administration.
- 4-103. Personnel rules and regulations.
- 4-104. Records.
- 4-205. Right to contract for special services.

**4-101. Purpose**. The purpose of this chapter is to establish a system of personnel administration in the City of Gallaway that is based on merit and fitness. The system shall provide a means to select, develop, and maintain an effective municipal work force through impartially applying personnel policies and procedures free of personal and political considerations and regardless of race, color, gender, age, creed, national origin, or disability. (2003 Code, § 4-201)

**4-102.** <u>Administration</u>. The personnel system shall be administered by the city recorder, who shall have the following duties and responsibilities:

(1) Exercise leadership in developing an effective personnel administration system subject to provisions in this chapter, other ordinances, the city charter, and federal and state laws relating to personnel administration;

(2) Recommend to the board of commissioners policies and procedures for recruiting, appointing, and disciplining all employees of the municipality subject to those policies as set forth in this chapter, the city charter, and the municipal code;

(3) Fix and establish the number of employees in the various city departments and offices and determine the duties, authority, responsibility, and compensation in accordance with the policies as set forth in the city charter and code, and subject to the approval of the board of commissioners and budget limitations;

(4) Foster and develop programs for improving employee effectiveness, including training, safety, and health;

(5) Maintain records of all employees, subject to the provisions of this chapter of the city code, which shall include each employee's class, title, pay rates, and other relevant data;

(6) Make periodic reports to the board of commissioners regarding administering the personnel system;

(7) Recommend to the board of commissioners a position classification plan and install and maintain such a plan upon approval by the board of commissioners;

(8) Prepare and recommend to the board of commissioners a pay plan for all municipal government employees;

(9) Develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the employment needs of the municipal government;

(10) Be responsible for certification of payrolls; and

(11) Perform such other duties and exercise such other authority in personnel administration as may be prescribed by law.  $(2003 \text{ Code}, \S 4-202)$ 

**4-103.** <u>Personnel rules and regulations</u>.<sup>1</sup> The city recorder shall develop rules and regulations necessary for effectively administering the personnel system. The rules and regulations shall become effective after approval by the board of commissioners. Amendments to the rules and regulations may be recommended for adoption by the city recorder. Such amendments or revisions of the rules shall become effective after approval by the board of commissioners. Nothing in the personnel rules and regulations document shall be deemed to give employees any more property rights in their job than they already possess. The city reserves the right to alter or change any or all of these rules without prior notice to employees. (2003 Code, § 4-203)

**4-104.** <u>**Records**</u>. The city recorder shall maintain adequate records of the employment record of every employee as specified herein. (2003 Code,  $\S$  4-204)

4-105. <u>Right to contract for special services</u>. The board of commissioners may direct the city recorder to contract with any competent agency for performing such technical services in connection with the establishment of the personnel system or with its operation as may be deemed necessary. (2003 Code, § 4-205)

<sup>&</sup>lt;sup>1</sup>The personnel manual for the City of Gallaway (and amending resolutions) may be found in the recorder's office.

## TRAVEL REIMBURSEMENT REGULATIONS

### SECTION

- 4-201. Enforcement.
- 4-202. Travel policy.
- 4-203. Travel reimbursement rate schedule.
- 4-204. Administrative procedures.

**4-201.** <u>Enforcement</u>. The Chief Administrative Officer (CAO) of the city or his designee shall be responsible for the enforcement of these travel regulations. (2003 Code, § 4-401)

4-202. <u>Travel policy</u>. (1) In the interpretation and application of this chapter, the term "traveler" or "authorized travel" 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 CAO. Under certain conditions, entertainment expenses may be eligible for reimbursement.

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

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

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

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

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

(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 CAO may make exceptions for unusual circumstances.

Expenses considered excessive won't 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 aren't ordinarily considered eligible expenses for reimbursement. (2003 Code, § 4-402)

**4-203.** <u>**Travel reimbursement rate schedule**</u>. Authorized travelers shall be reimbursed according to the federal travel regulation rates. The city's travel reimbursement rates will automatically change when the federal 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. (2003 Code, § 4-403)

**4-204.** <u>Administrative procedures</u>. 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, in June 1993. A copy of the administrative procedures is on file in the office of the city recorder. (2003 Code, § 4-404)

### TITLE 5

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

#### **CHAPTER**

- 1. MISCELLANEOUS.
- 2. REAL PROPERTY TAXES.
- 3. WHOLESALE BEER TAX.
- 4. PURCHASING.

# **CHAPTER 1**

### **MISCELLANEOUS**

## SECTION

- 5-101. Official depositories for city funds.
- 5-102. Fiscal year of the city.
- 5-103. Bad check fee.
- 5-104. Failure/refusal to pay utility charges.
- 5-105. Collection agency to collect unpaid fines.
- 5-106. Acceptance of credit/debit cards for payments.
- 5-107. Debt policy.

5-101. Official depositories for city funds.<sup>2</sup> The following institutionsare hereby designated as the official depositories of City of Gallaway funds:Financial InstitutionAddressBank of Fayette County3155 Highway 64 - Eads, TN 38028Somerville Bank and Trust3335 Highway 64 - Somerville, TN 38068Bank of Mason327 Highway 70 W - Mason, TN 38049(2003 Code, § 5-101, as amended by Ord. #172/2011, Jan. 2012)

**5-102.** Fiscal year of the city. The fiscal year for the City of Gallaway shall begin on July 1 and shall end on June 30.<sup>3</sup> (2003 Code, § 5-102)

<sup>1</sup>Charter reference

Finance and taxation: title 6, chapter 22.

<sup>2</sup>Charter reference

*Tennessee Code Annotated*, § 6-22-120 prescribes depositories for city funds.

<sup>3</sup>Charter reference

Tennessee Code Annotated, § 6-22-121 provides that the fiscal year of (continued...)

**5-103.** <u>Bad check fee.</u> (1) <u>Fee for passing bad cheek to the city</u>. Any person who passes any check or draft for payment of taxes, licenses, fees, or any other sums due the city, which is subsequently returned for insufficient funds or because there is no account or the account has been closed, or because such check, draft, or order was returned because of a stop payment order placed in bad faith on the check, draft, or order, shall pay to the City of Gallaway a bad check fee, in addition to the amount of such check or draft and any subsequent late fees or penalties.

(2) <u>Calculation of bad check fee</u>. Pursuant to *Tennessee Code Annotated*, § 9-1-109, persons passing worthless checks with a value under two thousand dollars (\$2,000.00) to the City of Gallaway shall be subject to a bad check fee equal to the lesser of twenty dollars (\$20.00) or the face value of the check. Persons passing worthless checks having a value in excess of two thousand dollars (\$2,000.00) to the City of Gallaway shall be subject to a bad check fee equal to one percent (1%) of the face value of the check.

(3) <u>Notification</u>. Pursuant to *Tennessee Code Annotated*, § 9-1-109, the City of Gallaway shall provide written notice to all persons owing a bad check fee to the city.

(4) <u>Other remedies</u>. Nothing in this section shall prohibit the City of Gallaway from pursuing other remedies permitted for the passing of worthless checks as specified in *Tennessee Code Annotated*, § 39-14-121 and any amendments thereto. (Ord. #13-2014, April 2014)

**5-104.** <u>Failure/refusal to pay utility charges</u>. (1) It shall be unlawful, and a civil offense, for any person, firm, or corporation, association, or any other person or organization, who receives city water, sewer, and/or gas utility services to fail or refuse to pay for such services.

(2) The city shall have the following remedies in the event of the failure or refusal on the part of any person, firm, corporation, or any other person or organization who receives city water, sewer, and/or gas utility services to pay for such service:

(a) Hire a collection agency, pursuant to the city's bidding and purchasing procedures, to collect charges which are more than sixty (60) days overdue; and

(b) Collect the amount owed by such customer as a civil debt.

(3) The city shall have the right to use the above remedies prescribed for the failure or refusal to pay utility bills collectively or selectively, and in any and all combinations. In addition, the use of any or all of the above remedies by the city shall not foreclose its right to use any other remedy that might now or in the future be authorized under state law. (Ord. #162/2011, July 2014)

the city shall begin on July 1 unless otherwise provided by ordinance.

<sup>(...</sup>continued)

**5-105.** <u>Collection agency to collect unpaid fines</u>. (1) The City of Gallaway is hereby authorized to solicit and use the services of a collection agency to collect unpaid fines.

(2) The contract with such collection agency shall be in writing and conform to all provisions set forth in *Tennessee Code Annotated*, § 40-24-105(d).

(3) The contract with such collection agency may also include the collection of unpaid parking fines as provided in *Tennessee Code Annotated*, § 6-54-513, after notices required by law are mailed to registered vehicle owners. (Ord. #163/2011, July 2014)

**5-106.** <u>Acceptance of credit/debit cards for payments</u>. (1) The processing fee to be collected from the person using the credit or debit card shall be in an amount that is equal to the amount paid the third party processor for processing the payment. However, the processing fee shall not be set in an amount that exceeds five percent (5%) of the amount of the payment collected by credit card or debit card.

(2) In the event that the credit or debit card company issuing the card does not honor payment of the charge, the city shall collect the same fee that it normally charges for returned checks; provided, this service charge shall not apply nor be collected if an electronic device is used to conduct the transaction, the card and card holder are present, and the city officer learns of the declination of the credit card or debit card at the time the transaction is processed.

(3) The officer collecting funds through payment by a credit card or debit card shall state on any notice to the person owing the tax, fine, fee, licenses, permits, court costs, services, or other money either the percentage of the processing fee for use of a credit card or debit card or the actual fee imposed for the use of a credit card or debit card.

(4) A pre-implementation statement or plan shall be filed as required by law with the comptroller's office thirty (30) days prior to implementing the above processing fees. The city shall also provide to the comptroller of the treasury a post-implementation review of the system between twelve (12) and eighteen (18) months after the date a pre-implementation statement has been filed with the comptroller. (Ord. #166/2011, Oct. 2011)

**5-107.** <u>Debt policy</u>. (1) <u>The purpose of this debt policy</u>. To establish a set of parameters by which debt obligations will be undertaken by the City of Gallaway, 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 meeting 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 direction 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) <u>Definition of debt</u>. 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 type; whether from an outside source such as a bank or from another internal fund.

(3) <u>Approval of debt</u>. 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 board of commissioners 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 board of commissioners; however, details on the lease agreement will be forwarded to the comptroller's office on the specified form within forty-five (45) days.

(4) <u>Transparency</u>. The city shall comply with legal requirements for notice and for public meetings related to debt issuance. All notices shall be posted in the customary and required posting locations, including as required local newspapers, bulletin boards, and websites. All costs (including principal, interest, issuance, continuing, and one (1) time) shall be clearly presented and disclosed to the citizens, board of commissioners, and other stakeholders in a timely manner. The terms and life of each debt issue shall be clearly presented and disclosed to the citizens/members, board of commissioners, and other stakeholders in a timely manner. A debt service schedule outlining the rate of retirement for the principal amount shall be clearly presented and disclosed to the citizens, board of commissioner, and other stakeholders in a timely manner.

(5) <u>Role of debt</u>. 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 operational borrowing; however, the city will minimize the use of short-term cash flow borrowings by maintaining adequate working capital and close budget management.

In accordance with generally accepted accounting principles and state law:

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

Types and limits of debt. The city will seek to limit total (6)outstanding debt obligations to ten (10) times annual operating revenue, excluding overlapping debt, enterprise debt, and revenue debt. The limitation on total outstanding debt must be reviewed prior to the issuance of any new debt. The city's total outstanding debt obligation will be monitored and reported to the board of commissioners by the city manager. The city manager shall monitor the maturities and terms and conditions of all obligations to ensure compliance. The city manager shall also report to the board of commissioners any matter that adversely affects the credit or financial integrity of the city. The city has authorized in the past and is authorized to issue general obligation bonds, revenue bonds, TIFs, loans, notes, and other debt allowed by law. The city will seek to structure debt with level or declining debt service payments over the life of each individual bond issue or loan. As a rule, the city will not backload, use "wrap-around" techniques, balloon payments, or other exotic formats to pursue the financing of projects." When refunding opportunities, natural disasters, 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 use is justified and in the best interest of the town. The city may use capital leases to finance short-term projects. 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 board of commissioners 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, such as a source of repayment for a revenue bond for a water or sewer system.

(7) <u>Use of variable rate debt</u>. 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. 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:

(a) 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.

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

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

(e) 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) <u>Use of derivatives</u>. The city chooses not to use derivative or other exotic financial structures in the management of the city's debt portfolio. Prior to any reversal of this provision:

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

(b) The board of commissioners 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) <u>Costs of debt</u>. 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 board of commissioners in accordance with the notice requirements stated above. In cases of variable interest or non-specified costs, detailed explanation of the assumptions shall be provided along with the complete estimate of total costs anticipated to be incurred as part of the debt issue. 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) <u>Refinancing outstanding-debt</u>. 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. The chief financial officer will consider the following issues when analyzing possible refunding opportunities:

(a) 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.

(b) 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 expectations, achieve cost savings, mitigate irregular debt sendee 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.

(c) Term 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 financed facility and the concept of inter-generational equity should guide this decision.

(d) 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 town from its own account.

(e) 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) <u>Professional services</u>. 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 a debt transaction. Note: 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 to the city. The city does not need an engagement letter with counsel not representing the city, such as underwriters' counsel.

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

(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 may resign as financial advisor only in advance of negotiations in order to underwrite an issue for which they are or have been providing advisory services.

(c) 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 board of commissioners (or its designated official).

(12) <u>Conflicts</u>. 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 professionals 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, counterparty, and remarketing agent); as well as conduit issuers, sponsoring organizations, and program administrators. This disclosure shall include that information reasonably sufficient to allow the city to appreciate the significance of the relationships. Professionals who become involved in the debt transaction as a result of a bid submitted in a widely and publicly advertised competitive sale conducted using an industry standard, electronic bidding platform are not subject to this disclosure. No disclosure is required that would violate any rule or regulation of professional conduct.

(13) <u>Review of policy</u>. This policy shall be reviewed at least annually by the board of commissioners 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) <u>Compliance</u>. The mayor is responsible for ensuring compliance with this policy. (Ord. #171/2011, Dec. 2011)

# **REAL PROPERTY TAXES**<sup>1</sup>

#### SECTION

5-201. When due and payable.5-202. When delinquent--penalty and interest.

**5-201.** <u>When due and payable</u>.<sup>2</sup> Taxes levied by the municipality against real property shall become due and payable annually on the first day of October of the year for which levied. (2003 Code, § 5-201)

**5-202.** <u>When delinquent–penalty and interest</u>.<sup>3</sup> The City of Gallaway collects current taxes, once a tax notice becomes delinquent; the information is turned over to Fayette County for further collection efforts. All real property

<sup>1</sup>State law references

*Tennessee Code Annotated*, §§ 67-1-701, 67-1-702 and 67-1-801, read together, permit a municipality to collect its own property taxes if its charter authorizes it to do so, or to turn over the collection of its property taxes to the county trustee. Apparently, under those same provisions, if a municipality collects its own property taxes, tax due and delinquency dates are as prescribed by the charter; if the county trustee collects them, the tax due date is the first Monday in October, and the delinquency date is the following March 1.

*Tennessee Code Annotated*, § 67-5-2010(b) provides that if the county trustee collects the municipality's property taxes, a penalty of one-half of one percent (0.5%) and interest of one percent (1%) shall be added on the first day of March, following the tax due date and on the first day each succeeding month.

<sup>2</sup>Charter references

*Tennessee Code Annotated*, § 6-22-110 sets the due date of November 1 of the year for which the taxes are assessed, but *Tennessee Code Annotated*, § 6-22-113 provides that a different tax due date may be set by ordinance (by unanimous vote of the board of commissioners.)

<sup>3</sup>Charter reference

*Tennessee Code Annotated*, § 6-22-112 sets the tax delinquency of December 1 of the year for which the taxes are assessed, but *Tennessee Code Annotated*, § 6-22-113 provides that a different delinquent date may be set by ordinance (by unanimous vote of the board of commissioners).

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 state law for delinquent county real property taxes.<sup>1</sup> (2003 Code, § 5-202, modified)

State law reference

- (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.

<sup>&</sup>lt;sup>1</sup>Charter reference

Tennessee Code Annotated, § 6-22-114 directs the finance director to turn over the collection of delinquent property taxes to the county trustee.

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

# WHOLESALE BEER TAX

# SECTION

5-301. To be collected.

**5-301.** <u>To be collected</u>. The recorder is hereby directed to take appropriate action to assure payment to the municipality of the wholesale beer tax levied by the "Wholesale Beer Tax Act," as set out in *Tennessee Code Annotated*, title 57, chapter  $6^{1}$  (2003 Code, § 5-301)

<sup>&</sup>lt;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.

# **PURCHASING**

### SECTION

- 5-401. Purchasing agent.
- 5-402. Certification of availability of funds to meet contract obligations.
- 5-403. Purchases not exceeding \$10,000.00.
- 5-404. Purchases more than \$10,000.00.
- 5-405. Purchases amounting to \$10,000.00 or more, which do not require public advertising and sealed bids or proposals.
- 5-406. Noncompetitive contracts.
- 5-407. Miscellaneous provisions.
- 5-408. Use of city credit card and petty cash fund.
- 5-409. Rules and regulations.

**5-401.** <u>Purchasing agent</u>. The city manager shall act as purchasing agent for the city, with power, except as set out in these procedures, to purchase materials, supplies, equipment, and services; secure leases and lease-purchases; and dispose of and transfer surplus property for the proper conduct of the city's business. All contracts, leases, and lease-purchase agreements extended beyond the end of any fiscal year must have prior approval of the governing body. The city manager may enter into binding contracts on behalf of the city, without specific board approval, only in routine matters and matters having insubstantial long-term consequences. "Routine matters and matters having insubstantial long-term consequences" mean any contract for which expenditures during the fiscal year will be less than ten thousand dollars (10,000.00) (*Tennessee Code Annotated*, §§ 6-18-101, *et seq.*). The city manager may delegate the duty to purchase to any subordinate appointed by him. (Ord. #170/2011, Dec. 2011)

5-402. <u>Certification of availability of funds to meet contract</u> <u>obligations</u>. No contract, agreement, or other obligation involving the expenditure of funds shall be entered into, nor shall any ordinance, resolution, or order of the expenditure of funds be passed by the board of commissioners or be authorized by any officer of the city, unless the finance director shall first certify to the board or the city manager, as the case may be, that the funds required for such contract, agreement, obligation, or expenditure, is in the treasury or safely assured to be forthcoming and available in time to comply with, or meet such contract, agreement, obligation, or expenditures, and no contract, agreement, or other obligation involving the expenditure of money payable from the proceeds of bonds of the city, shall be entered into until the issuance and sale of such bonds have been duly authorized by the board of commissioners. (Ord. #170/2011, Dec. 2011)

**5-403.** Purchases not exceeding **\$10,000.00**. The city manager is authorized to make purchases whose estimated costs do not exceed ten thousand dollars (\$10,000.00) without formal sealed bids and written specifications: commonly used items of material, supplies, equipment, and services used in the ordinary course of maintaining and repairing the city's real or personal property; building or maintaining stocks of city material, supplies, and equipment used in the ordinary course of city operations; and minor constructions, repair, or maintenance services. However, a record of all such purchases shall be maintained describing the material, supplies, equipment, or service purchased, the person or business from whom it was purchased, the date it was purchased, the purchase cost, and any other information from which the general public can easily determine the full details of the purchase. Each purchase shall be supported by invoices and/or receipts and any other appropriate documentation. Additional requirements for purchases not exceeding ten thousand dollars (\$10,000.00):

(1) Purchases less than one thousand dollars (\$1,000.00). Purchases, leases, or lease-purchases of one thousand dollars (\$1,000.00) or less in any fiscal year shall not require any public advertisement or competitive bidding.

(2) Purchases more than one thousand dollars (\$1,000.00) but less than five thousand dollars (\$5,000.00). Purchases, leases, and lease purchases of more than one thousand dollars (\$1,000.00) and less than five thousand dollars (\$5,000.00) singly or in the aggregate during any fiscal year and, except as otherwise provided herein, shall require three (3) competitive bids or quotations, either verbal or written, whenever possible prior to each purchase. Awards shall be made to the lowest and most responsible bidder.

(3) Purchases more than five thousand dollars (\$5,000.00) but less than ten thousand dollars (\$10,000.00). Purchases, leases, and lease purchases of more than five thousand dollars (\$5,000.00) and less than ten thousand dollars (\$10,000.00) singly or in the aggregate during any fiscal year and, except as otherwise provided herein, shall require three (3) competitive bids or quotations in writing prior to purchase. Awards shall be made to the lowest and most responsible bidder. (Ord. #170/2011, Dec. 2011)

**5-404.** Purchases more than \$10,000.00. A description of all projects or purchases, except as herein provided, which require the expenditure of city funds of ten thousand dollars (\$10,000.00) or more shall be prepared by the city recorder and submitted to the governing body for authorization to call for bids or proposals. After the determination that adequate funds are budgeted and available for a purchase, the governing body may authorize the city recorder to advertise for bids or proposals and to accept only sealed bids that shall be opened by the board of commissioners. The award of purchases, leases, or lease-purchases of ten thousand dollars (\$10,000.00) or more shall be made by the governing body to the lowest and best responsible bidder. The transaction shall be evidenced by written contract. (Ord. #170/2011, Dec. 2011)

5-405. <u>Purchases amounting to \$10,000.00 or more, which do not</u> <u>require public advertising and sealed bids or proposals</u>. Purchases amounting to ten thousand dollars (\$10,000.00) or more, which do not require public advertising and sealed bids or proposals, may be allowed only under the following circumstances and, except as otherwise provided herein, when such purchases are approved by the governing body.

(1) Sole source of supply or proprietary products as determined after complete search by the purchasing agent, with governing body approval.

(2) Emergency expenditures with subsequent approval of the governing body.

(3) Purchases from instrumentalities created by two or more cooperating governments.

(4) Purchases from non-profit corporations whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.

(5) Purchases, leases, or lease-purchases of real property.

(6) Purchases, leases, or lease-purchases, from any federal, state, or local governmental unit or agency, of second-hand articles or equipment or other materials, supplies, commodities, and equipment.

(7) Purchases through other units of governments as authorized by *Tennessee Code Annotated*, §§ 6-56-301, *et seq.* 

(8) Purchases directed through or in conjunction with the state Department of General Services.

(9) Purchases from Tennessee state industries.

(10) Professional service contracts as provided in *Tennessee Code Annotated*, §§ 29-20-407 and 12-4-106.

(11) Tort liability insurance as provided in *Tennessee Code Annotated*, §§ 12-4-407 and 29-20-407.

(12) Purchases of perishable commodities.

(13) Natural gas for resale. (Ord. #170/2011, Dec. 2011)

**5-406.** <u>Noncompetitive contracts</u>. The board of commissioners, upon written recommendation of the city manager and by unanimous resolution of those present at the meeting, may authorize noncompetitive contracts where it is clearly to the advantage of the municipality not to contract with competitive bidding. (Ord. #170/2011, Dec. 2011)

**5-407.** <u>Miscellaneous provisions</u>. (1) The city manager may reject all bids and assign public improvements or any other municipal work to a municipal department.

(2) Contracts, applications for title, tax exemption certificates, agreements, and contracts for utilities shall not be signed by a city employee unless authorized in writing by the purchasing agent or by action of the board of commissioners.

(3) Electronic bidding and invitations to bid (*Tennessee Code Annotated*, § 12-3-704). Notwithstanding any provision of law, rule, or regulation to the contrary, local governments may satisfy any requirement for mailing by distributing invitations to bid electronically. In addition, local governments may receive bids electronically.

(4) Legal recognition of electronic records, electronic signatures, and electronic contracts (*Tennessee Code Annotated*, § 47-10-107). A record or signature may not be denied legal effect or enforceability solely because it is in electronic form. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. If a law requires a record to be in writing, an electronic record satisfies the law. If a law requires a signature, an electronic signature satisfies the law.

(5) Performance and bid bonds may be determined by the purchasing agent or the board of commissioners.

(6) Professional service contracts (*Tennessee Code Annotated*, §§ 12-4-106 and 62-2-107). Only contracts for services performed within the professional's field of expertise are to be considered professional service contracts. A contract is required to be awarded on the basis of recognized competence and integrity, rather than competitive bids. A written contract specifying the service, cost, and expenses covered under the contract is required. Note: architect or engineer: plans, specifications, and estimates for any public works project exceeding twenty-five thousand dollars (\$25,000.00) must be prepared by a registered architect or engineer as required by *Tennessee Code Annotated*, § 62-2-107.

(7) Emergency purchases are to be made only when normal functions and operations of the city would be hampered by purchasing in the regular manner, or where property, equipment, or life are endangered through unexpected circumstances, and materials, services, etc., are needed immediately.

(8) <u>Sealed bids or proposals</u>. Sealed bids are required on purchases of ten thousand dollars (\$10,000.00) or more. Bids must be advertised in a local newspaper of general circulation not less than five (5) days before bid opening date.

(9) A summary of bids form should be used to record all bids. The form should be included in the information presented to the governing body for consideration of award of the bid. All bids should be opened in public at a specified time. Late bids should not be accepted or opened.

(10) <u>Rejection of bids</u>. The purchasing agent shall have the authority to reject any and all bids, parts of all bids, or all bids for any one 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 any taxes, licenses, fees, or other monies of whatever nature that may be due the city by said vendor or contractor.

(11) <u>Conflicts of interest</u>. No purchase shall be made from, nor any contract for purchase of services made with, any person, firm, or corporation in which any officer or employee of the city is financially interested except when such person, firm, or corporation is the sole source for such goods or services within a reasonable marketable distance of the city, and then in such instance, all purchases shall be subject to prior approval by the governing body. No officer or employee of the city shall accept directly or indirectly any fee, rebate, money, or other thing of value from any person, firm, or corporation employed by or doing business with the city, except on behalf of and for the use of the city, or in accordance with the exception herein above set forth.

(12) The purchasing agent, or designee, shall be responsible for following these procedures and the Municipal Purchasing Law of 1983, as amended, including keeping and filing required records and reports, as if they were set out herein and made a part hereof. (Ord. #170/2011, Dec. 2011)

**5-408.** <u>Use of city credit card and petty cash fund</u>. Purchases made by credit card must comply with the city's policy governing the use of credit cards. To buy items that cost less than one hundred dollars (\$100.00) from businesses that do not issue invoices or have charge accounts, purchases may be made by withdrawals from the petty cash fund. Prior to any withdrawal from the petty cash fund, such a fund must be set up by the financial officer. The financial officer is solely responsible for any withdrawals from this account. Any receipts or requests for monies from this fund must contain the expense code and be signed by the person receiving the cash for payment. Credit cards and the petty cash fund should be used only if other purchasing methods are not easily obtainable. (Ord. #170/2011, Dec. 2011)

**5-409.** <u>**Rules and regulations.**</u> Purchasing rules and regulations shall be developed by the purchasing agent, approved by the city manager, and adopted by the governing body. The purchasing procedures attached hereto, and made a part hereof, are hereby adopted. (Ord. #170/2011, Dec. 2011)

### **TITLE 6**

#### LAW ENFORCEMENT

#### CHAPTER

1. POLICE AND ARREST.

# CHAPTER 1

## POLICE AND ARREST<sup>1</sup>

# SECTION

- 6-101. Police officers subject to chief's orders.
- 6-102. Police officers to preserve law and order, etc.
- 6-103. Police officers to wear uniforms and be armed.
- 6-104. Police department records.

**6-101.** <u>Police officers subject to chief's orders</u>. All police officers shall obey and comply with such orders and administrative rules and regulations as the police chief may officially issue. (2003 Code, § 6-101)

**6-102.** <u>Police officers to preserve law and order, etc</u>. Police officers shall preserve law and order within the municipality. They shall patrol the municipality and shall assist the city court during the trial of cases. Police officers shall also promptly serve any legal process issued by the city court. (2003 Code, § 6-102)

**6-103.** <u>Police officers to wear uniforms and be armed</u>. All police officers shall wear such uniform and badge as the governing body shall authorize and shall carry a service pistol at all times while on duty unless otherwise expressly directed by the chief for a special assignment. (2003 Code, § 6-103)

**6-104.** <u>Police department records</u>. The police department shall keep a comprehensive and detailed daily record in permanent form, showing:

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

(2) All arrests made by police officers; and

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Traffic citations, etc.: title 15, chapter 7.

(3) All police investigations made, funerals convoyed, fire calls answered, and other miscellaneous activities of the police department. (2003 Code, § 6-106)

# TITLE 7

# FIRE PROTECTION AND FIREWORKS<sup>1</sup>

### CHAPTER

- 1. FIRE CODE.
- 2. FIRE DEPARTMENT.
- 3. FIRE SERVICE OUTSIDE CITY LIMITS.
- 4. FIRE HYDRANTS.
- 5. REGULATING OPEN-AIR FIRES.

# **CHAPTER 1**

#### FIRE CODE<sup>2</sup>

### SECTION

- 7-101. Fire code adopted.
- 7-102. Enforcement.
- 7-103. Definition of "municipality."
- 7-104. Gasoline trucks.
- 7-105. Variances.
- 7-106. Fees for inspections and permits.
- 7-107. Violations and penalty.

**7-101.** <u>Fire code adopted</u>. 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>3</sup> 2012 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.

<sup>3</sup>Copies of this code (and any amendments) are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Building, utility, and residential codes: title 12.

<sup>&</sup>lt;sup>2</sup>Municipal code reference

Building, utility, and residential codes: title 12.

**7-102.** <u>Enforcement</u>. 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.

**7-103.** <u>Modifications</u>. The fire code herein adopted is modified by: (1)

(2	2)			
`	,			

**7-104.** <u>Gasoline trucks</u>. 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.

7-105. <u>Variances</u>. 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.

**7-106.** <u>Available in recorder's office</u>. 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.

**7-107.** <u>Violations and penalty</u>. 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.

# 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.
- 7-207. Chief to be assistant to state officer.

**7-201.** Establishment, equipment, and membership. There is hereby established a fire department to be supported and equipped from appropriations by the governing body. All apparatus, equipment, and supplies shall be purchased by or through the municipality. The fire department shall be composed of a chief appointed by the city manager and such number of physically fit subordinate officers and firemen as the chief shall appoint. (2003 Code, § 7-201, as amended by Ord. #27-2015, July 2015)

Fire chief

Appointment: § 6-21-701. Duties: § 6-21-702. Emergency: § 6-21-703. Fire marshal: § 6-21-704 Firemen Appointment: § 6-21-701. Emergency powers: § 6-21-703.

Municipal code reference

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

<sup>&</sup>lt;sup>1</sup>Charter references

For detailed charter provisions governing the operation of the fire department, see *Tennessee Code Annotated*, title 6, chapter 21, part 7. For specific provisions in part 7 related to the following subjects, see the sections indicated.

7-202. <u>Objectives</u>. The 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. (2003 Code, § 7-202)

**7-203.** <u>Organization, rules, and regulations</u>. The chief of the fire department, shall set up the organization of the department, make definite assignments to individuals, and shall formulate and enforce such rules and regulations as shall be necessary for the orderly and efficient operation of the fire department. (2003 Code, § 7-203)

**7-204.** <u>Records and reports</u>. The chief of the fire department shall keep adequate records of all fires, inspections, apparatus, equipment, personnel, and work of the department. He shall submit a written report on such matters to the city manager once each month, and at the end of the year a detailed annual report shall be made. (2003 Code, § 7-204)

**7-205.** <u>Tenure and compensation of members</u>. The chief shall hold office so long as his conduct and efficiency are satisfactory to the governing body. However, so that adequate discipline may be maintained, the chief shall have the authority to suspend or discharge any other member of the fire department when he deems such action to be necessary for the good of the department. The chief may be suspended up to thirty (30) days by the city manager but may be dismissed only by the governing body.

All personnel of the fire department shall receive such compensation for their services as the governing body may from time to time prescribe. (2003 Code, § 7-205)

**7-206.** <u>Chief responsible for training</u>. The chief of the fire department, shall be fully responsible for the training of the firemen and the minimum training shall consist of having the personnel take the fire apparatus out for practice operations not less than once a month. (2003 Code, § 7-206)

**7-207.** <u>Chief to be assistant to state officer</u>. Pursuant to requirements of *Tennessee Code Annotated*, § 68-102-108, the chief of the fire department is designated as an assistant to the state commissioner of insurance and banking and is subject to all the duties and obligations imposed by *Tennessee Code Annotated*, title 68, chapter 102, and shall be subject to the directions of the fire prevention commissioner in the execution of the provisions thereof. (2003 Code, § 7-207)

# FIRE SERVICE OUTSIDE CITY LIMITS

# SECTION

7-301. Equipment to be used only within corporate limits generally.

**7-301.** Equipment to be used only within corporate limits generally. No equipment of the fire department shall be used for fighting any fire outside the corporate limits unless the fire is on city owned property or, in such hazardous proximity to property owned by or located within the city as to endanger the city property or unless expressly authorized in writing by the municipal governing body. (2003 Code, § 7-301)

# FIRE HYDRANTS

# SECTION

7-401. Color scheme for fire hydrants.

**7-401.** <u>Color scheme for fire hydrants</u>. The capacity indicating color scheme that the city shall have for fire hydrants which are on the city's system shall be as follows:

Color	<u>Class</u>	<u>Flow at 20 psig residential</u>
Green	А	1,000 gpm or more
Orange	В	500 to 1,000 gpm
Red (2003 Code, § 7-401)	С	Less than 500 gpm

# **REGULATING OPEN-AIR FIRES**

### SECTION

7-501. Open-air fires regulated.

**7-501.** <u>**Open-air fires regulated**</u>. (1) It shall be unlawful for any person, firm, or corporation to start, or cause to be started, any open-air fire within the corporate limits of the City of Gallaway without having first obtained a burn permit from the Gallaway City Hall. The Gallaway City Fire Department of Gallaway City Hall shall be solely responsible for administering said permits.

(2) There shall be a fee for said permit. The Gallaway Fire Department or Gallaway City Hall, after consulting with the city fire chief, shall only issue the permit to burn after confirming that weather conditions are suitable for burning.

(a) The permit fee for burning leaves shall be two dollars (\$2.00). Homeowners burning only leaves and limbs produced on the property of the homeowner must always obtain a permit, but there will be no fee.

(b) Fee for other permits shall be ten dollars (\$10.00).

(3) Persons setting fires shall be responsible for staying with the fire until it is out and for supplying a water hose or adequate equipment to control the fire, if needed. All fires must be completely out by dusk. Persons setting fires must comply with all Tennessee State and Fayette County laws.

(4) The following items are strictly prohibited from burning: household garbage, shingles, tires, any petroleum products, any CPVC (chlorinated polyvinyl chloride) products, PVC (polyvinyl chloride) products, or polymerization of vinyl chloride monomer products).

(5) Burning of trees, brush, etc. for the purpose of clearing land in preparation for construction of a single family dwelling may be permitted at the discretion of the fire chief. Burning of materials in a commercial or industrial may be permitted solely at the discretion of the city fire chief or person of authority delegated by the city fire chief.

(6) Any person, firm, or corporation who is caught burning without said permit, will be issued a warning citation on the first offense. All second offense violators shall be issued a citation to appear in city court. Any person starting a fire after being denied a permit to burn will be issued a citation on the first offense. Any violation of this section is a misdemeanor punishable upon conviction thereof, by a fine of fifty dollars (\$50.00) plus court cost for each violation. Each day shall be considered a separate violation. Constant offenders shall be fined according to the situation of the violation. (2003 Code, § 7-501)

### **TITLE 8**

# <u>ALCOHOLIC BEVERAGES<sup>1</sup></u>

#### CHAPTER

1. INTOXICATING LIQUORS.

2. BEER.

# **CHAPTER 1**

# **INTOXICATING LIQUORS**

# SECTION

8-101. Prohibited generally.

**8-101.** <u>Prohibited generally</u>. 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.

<sup>1</sup>Municipal code reference Drinking beer, etc. on streets: § 11-201. Driving under the influence: § 15-104. Minors in beer places: § 11-202.

State law reference *Tennessee Code Annotated*, title 57.

<sup>2</sup>State law reference *Tennessee Code Annotated*, § 39-17-701, *et seq.* 

# <u>BEER</u><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. Beer permits shall be restrictive.
- 8-209. Interference with public health, safety, and morals prohibited.
- 8-210. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-211. Prohibited conduct or activities by beer permit holders.
- 8-212. Revocation of beer permits.
- 8-213. Privilege tax.
- 8-214. Civil penalty in lieu of revocation or suspension.

8-201. <u>Beer board established</u>. There is hereby established a beer board to be composed of all the members of the governing body. A chairman shall be elected annually by the board from among its members. All members of the beer board shall serve without additional compensation. (2003 Code,  $\S$  8-201)

**8-202.** <u>Meetings of the beer board</u>. 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. (2003 Code, § 8-202)

- Drinking beer on streets: § 11-201.
- Minors in beer places: § 11-202.
- Tax provisions: title 5.

State law reference

<sup>&</sup>lt;sup>1</sup>Municipal code references

Business regulations: title 9.

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.** <u>Record of beer board proceedings to be kept</u>. 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. (2003 Code, § 8-203)

**8-204.** <u>Requirements for beer board quorum and action</u>. 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. (2003 Code, § 8-204)

**8-205.** <u>Powers and duties of the beer board</u>. 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 municipality in accordance with the provisions of this chapter. (2003 Code, § 8-205)

**8-206.** <u>"Beer" defined</u>. 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*, § 57-5-104(a), and shall be accompanied by a non-refundable application fee of two hundred fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of Gallaway. Each applicant must be a person of good moral character and certify that he has read and is familiar with the provisions of this chapter. (2003 Code, § 8-207)

8-208. <u>Beer permits shall be restrictive</u>. 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. Beer permits for the retail sale of beer may be further restricted by the beer board so as to authorize sales only for off-premises consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by 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. (2003 Code, § 8-208)

8-209. 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 schools, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. In no event will a permit be issued authorizing the storage, sale, or manufacture of beer at places within one thousand feet (1,000') of any school, church, or other such place of public gathering, measured in a straight line between the nearest point on the property line upon which sits the building from which the beer will be sold, stored, or distributed, and the nearest point on the property line of the hospital, school, church, or other place of public gathering. (2003 Code, § 8-209)

**8-210.** <u>Issuance of permits to persons convicted of certain crimes</u> **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. (2003 Code, § 8-210)

**8-211.** <u>Prohibited conduct or activities by beer permit holders</u>. 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) Employ any minor under eighteen (18) years of age in the sale, storage, distribution, or manufacture of beer;

(3) Make or allow any sale of beer between the hours of 2:00 A.M. and 6:00 A.M. Monday through Friday; 12:00 midnight Saturday and 6:00 A.M. Monday. Provided it shall be lawful to sell beer in sealed containers for off the premises consumption on Sunday from 12:00 P.M. until 6:00 P.M.;

(4) Make or allow any sale of beer to a minor under twenty-one (21) years of age;

(5) Allow any minor under eighteen (18) years of age to loiter in or about his place of business;

(6) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person;

(7) Allow drunk or disreputable persons to loiter about his premises;

(8) Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content higher than beer.

(9) Allow gambling on his premises;

(10) Allow pool or billiard playing in the same room where beer is sold and/or consumed; and/or

(11) Fail to provide and maintain separate sanitary toilet facilities for men and women. (2003 Code, § 8-211, modified)

8-212. <u>Revocation of beer permits</u>. The beer board shall have the power to revoke or suspend 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. However, no beer permit shall be revoked or suspended until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation or suspension proceedings may be initiated by the police chief or by any member of the beer board.

Pursuant to *Tennessee Code Annotated*, § 57-5-608, the beer board shall not revoke or suspend the permit of a "responsible vendor" qualified under the requirements of *Tennessee Code Annotated*, § 57-5-606 for a clerk's illegal sale of beer to a minor if the clerk is properly certified and has attended annual meetings since the clerk's original certification, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. If the responsible vendor's certification has been revoked, the vendor shall be punished by the beer board as if the vendor were not certified as a responsible vendor. "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premises consumption. Under *Tennessee Code Annotated*, § 57-5-608, the alcoholic beverage commission shall revoke a vendor's status as a responsible vendor upon notification by the beer board that the board has made a final determination that the vendor has sold beer to a minor for the second time in a consecutive twelve (12) month period. The revocation shall be for three (3) years.

8-213. <u>Privilege tax</u>. There is hereby imposed on the business of selling, distributing, storing, or manufacturing beer an annual 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 Gallaway, 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. (2003 Code, § 8-213)

**8-214.** <u>Civil penalty in lieu of revocation or suspension</u>. (1) <u>Definition</u>. "Responsible vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006," *Tennessee Code Annotated*, § 57-5-601, *et seq*.

(2) <u>Penalty, revocation or suspension</u>.<sup>1</sup> The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that is not a responsible vendor the alternative of paying a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) 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.

The beer board may impose on a responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense of making or permitting to be made any sales to minors or 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.

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

### **TITLE 9**

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

#### CHAPTER

- 1. MISCELLANEOUS.
- 2. PEDDLERS, ETC.
- 3. TAXICABS.
- 4. SEXUALLY ORIENTED BUSINESSES.
- 5. BUSINESS LICENSE.

# **CHAPTER 1**

#### **MISCELLANEOUS**

### SECTION

9-101. "Going out of business" sales.

**9-101.** <u>"Going out of business" sales</u>. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days, he shall prima facie be deemed to have violated this section. (2003 Code, § 9-101)

Building, plumbing, wiring, and residential regulations: title 12. Junkyards: title 13.

<sup>&</sup>lt;sup>1</sup>Municipal code references

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Privilege taxes: title 5.

Zoning: title 14.

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

# SECTION

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

**9-201.** <u>Permit required</u>. It shall be unlawful for any peddler, canvasser or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (2003 Code, § 9-201)

**9-202.** <u>Exemptions</u>. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic, or philanthropic organizations. (2003 Code, § 9-202)

**9-203.** <u>Application for permit</u>. Applicants for a permit under this chapter must file with the city recorder a sworn written application containing the following:

(1) Name and physical description of applicant.

(2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.

(3) A brief description of the nature of the business and the goods to be sold.

<sup>&</sup>lt;sup>1</sup>Municipal code references

Privilege taxes: title 5.

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

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

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

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

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

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

(10) At the time of filing the application, a fee of five dollars (\$5.00) shall be paid to the municipality to cover the cost of investigating the facts stated therein. (2003 Code, § 9-203)

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

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

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory, the city recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The city recorder shall keep a permanent record of all permits issued. (2003 Code, § 9-204)

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

police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (2003 Code,  $\S$  9-205)

**9-206.** <u>Bond</u>. Every permittee shall file with the city recorder a surety bond running to the municipality in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of this municipality and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the municipality that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the municipality doing business with said permittee that the property purchased will be delivered according to the representations of their permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (2003 Code, § 9-206)

**9-207.** Loud noises and speaking devices. No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell, or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks, or other public places of the municipality or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which such permittee proposes to sell. (2003 Code, § 9-207)

**9-208.** <u>Use of streets</u>. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of such streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (2003 Code,  $\S$  9-208)

**9-209.** <u>Exhibition of permit</u>. Permittees are required to exhibit their permits at the request of any police officer or citizen. (2003 Code, § 9-209)

**9-210.** <u>Police officers to enforce</u>. It shall be the duty of all police officers to see that the provisions of this chapter are enforced. (2003 Code,  $\S$  9-210)

**9-211.** <u>**Revocation or suspension of permit**</u>. (1) Permits issued under the provisions of this chapter may be revoked by the governing body after notice and hearing, for any of the following causes:

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

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

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

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

(3) When reasonably necessary in the public interest, the city manager may suspend a permit pending the revocation hearing. (2003 Code, § 9-211)

**9-212.** <u>**Reapplication**</u>. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (2003 Code,  $\S$  9-212)

**9-213.** <u>Expiration and renewal of permit</u>. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (2003 Code, § 9-213)</u>

# TAXICABS<sup>1</sup>

# SECTION

- 9-301. Taxicab franchise and privilege license required.
- 9-302. Requirements as to application and hearing.
- 9-303. Liability insurance required.
- 9-304. Revocation or suspension of franchise.
- 9-305. Mechanical condition of vehicles.
- 9-306. Cleanliness of vehicles.
- 9-307. Inspection of vehicles.
- 9-308. License and permit required for drivers.
- 9-309. Qualifications for driver's permit.
- 9-310. Revocation or suspension of driver's permit.
- 9-311. Drivers not to solicit business.
- 9-312. Parking restricted.
- 9-313. Drivers to use direct routes.
- 9-314. Taxicabs not to be used for illegal purposes.
- 9-315. Miscellaneous prohibited conduct by drivers.
- 9-316. Transportation of more than one passenger at the same time.
- 9-317. Fares.

**9-301.** <u>Taxicab franchise and privilege license required</u>. It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the municipality and has a currently effective privilege license. (2003 Code, § 9-401)

**9-302.** <u>Requirements as to application and hearing</u>. No person shall be eligible to apply for a taxicab franchise if he has a bad character or has been convicted of a felony within the last ten (10) years. Applications for taxicab franchises shall be made under oath and in writing to the chief of police. The application shall state the name and address of the applicant, the name and address of the proposed place of business, the number of cabs the applicant desires to operate, the makes and models of said cabs, and such other pertinent information as the chief of police may require. The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good character and reputation of the applicant. Within ten (10) days after receipt of an application, the chief of police shall make a thorough investigation of the applicant; determine if there is a public need for additional taxicab

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Privilege taxes: title 5.

service; present the application to the governing body; and make a recommendation to either grant or refuse a franchise to the applicant. The governing body shall thereupon hold a public hearing at which time witnesses for and against the granting of the franchise shall be heard. In deciding whether or not to grant the franchise the governing body shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional franchise. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (2003 Code, § 9-402)

**9-303.** <u>Liability insurance required</u>. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy for each vehicle authorized in the amount of one hundred thirty thousand dollars (\$130,000.00) for bodily injury or death to any one (1) person, three hundred fifty thousand dollars (\$350,000.00) for bodily injury or death to more than one (1) person which are sustained in the same accident, and fifty thousand dollars (\$50,000.00) for property damage resulting from any one (1) accident. The insurance policy required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the municipality. (2003 Code, § 9-403)</u>

**9-304.** <u>Revocation or suspension of franchise</u>. The governing body, after a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (2003 Code, § 9-404)

**9-305.** <u>Mechanical condition of vehicles</u>. It shall be unlawful for any person to operate any taxicab in the municipality unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear vision mirror, all of which shall conform to the requirements of state motor vehicle law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (2003 Code, § 9-405)

**9-306.** <u>Cleanliness of vehicles</u>. All taxicabs operated in the municipality shall, at all times, be kept in a reasonably clean and sanitary

condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (2003 Code,  $\S$  9-406)

**9-307.** <u>Inspection of vehicles</u>. All taxicabs shall be inspected at least semiannually by the chief of police to ensure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (2003 Code, § 9-407)

**9-308.** <u>License and permit required for drivers</u>. No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the chief of police. (2003 Code, § 9-408)

**9-309.** <u>Qualifications for driver's permit</u>. No person shall be issued a taxicab driver's permit unless he complies with the following to the satisfaction of the chief of police:

(1) Makes written application to the chief of police.

(2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.

(3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble, or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.

(4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.

(5) Produces affidavits of good character from two (2) reputable citizens of the municipality who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.

(6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent minor traffic offenses.

(7) Is familiar with the state and local traffic laws. (2003 Code,  $\S$  9-409)

**9-310.** <u>Revocation or suspension of driver's permit</u>. The governing body, after a public hearing, may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-309. (2003 Code, § 9-410)

**9-311.** <u>Drivers not to solicit business</u>. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the municipality for the purpose of obtaining patronage for their cabs. (2003 Code, § 9-411)

**9-312.** <u>Parking restricted</u>. It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the municipality for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging passengers if such stops are made in such manner as not to unreasonably interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (2003 Code, § 9-412)

**9-313.** <u>Drivers to use direct routes</u>. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (2003 Code, § 9-413)

**9-314.** <u>Taxicabs not to be used for illegal purposes</u>. No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (2003 Code, § 9-414)

**9-315.** <u>Miscellaneous prohibited conduct by drivers</u>. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise disturb the peace, quiet, and tranquility of the municipality in any way. (2003 Code, § 9-415)</u>

**9-316.** <u>Transportation of more than one passenger at the same</u> <u>time</u>. No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (2003 Code, § 9-416)

**9-317.** <u>Fares</u>. A flat rate of two dollars (\$2.00) shall be the charge for transporting one (1) passenger from any one (1) place to any other place within the corporate limits. If more than one (1) passenger is carried on the same trip there may be an additional charge not to exceed one dollar (\$1.00) for each such additional passenger. If the place of origin or the destination is outside the corporate limits the fare shall be the flat rate plus twelve cents (\$0.12) for each mile or fraction thereof the taxicab is required to travel outside the corporate limits. No extra charge shall be made for baggage or parcels. (2003 Code,  $\S$  9-417)

## SEXUALLY ORIENTED BUSINESSES

#### SECTION

- 9-401. Purpose and findings.
- 9-402. Definitions.
- 9-403. Classification.
- 9-404. License required.
- 9-405. Issuance of license.
- 9-406. Fees.
- 9-407. Inspection.
- 9-408. Expiration of license.
- 9-409. Suspension.
- 9-410. Revocation.
- 9-411. Judicial review.
- 9-412. No transfer of license.
- 9-413. Location restrictions.
- 9-414. Non-conforming uses; amortization.
- 9-415. Additional regulations for adult motels.
- 9-416. Additional regulations for escort agencies.
- 9-417. Additional regulations for nude model studios.
- 9-418. Additional regulations concerning public nudity.
- 9-419. Regulations pertaining to exhibition of sexually explicit films and videos.
- 9-420. Exterior portions of sexually oriented businesses.
- 9-421. Signage.
- 9-422. Sale, use, or consumption of alcoholic beverages prohibited.
- 9-423. Persons younger than eighteen (18) prohibited from entry; attendant required.
- 9-424. Massages or baths administered by person of opposite sex.
- 9-425. Hours of operation.
- 9-426. Exemptions.
- 9-427. Notices.
- 9-428. Injunction.

**9-401.** Purpose and findings. (1) Purpose. It is the purpose of this chapter to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented

materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials.

(2)Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the city commission and on findings incorporated in the case of City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986; Young v. American Mini Theaters, 426 U.S. 50 (1976); and Barnes v. Glen Theater, Inc., 501 U.S. 560 (1991); Arcara v. Cloud Books, Inc., 478 U.S. 697 (1986); California v. LaRue, 409 U.S. 109 (1972); Lacobucci v. City of Newport, Ky, 479 U.S. 92 (1986); United States v. O'Brien, 391 U.S. 367 (1968); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6<sup>th</sup> Cir.1997); Key, Inc. v. Kitsan County, 793 F2d 1053 (9th Cir.1986); Hang On, Inc. v. City of Arlington, 65 F3d 1248 (5th Cir.1995); and South Florida Free Beaches, Inc. v. City of Miami, 734 F.2d 608 (11th Cir.1984); as well as studies conducted in other cities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarlllo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986); the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota; and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the city commission finds that:

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

(b) Crime statistics show that all types of crimes, especially sex-related crimes occur with more frequency in neighborhoods where sexually oriented business are located. See, e.g., studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

(c) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. See, e.g., *California v. LaRue*, 409 U.S. 109, 111 (1972); See also Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(d) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 376-77. (e) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. See, e.g., *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); see also Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

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

(g) For the period 1985 through 1995, the total number of reported cases of AIDS in the United States caused by the Human Immunodeficiency Virus (HIV) was five hundred twenty-three thousand fifty six (523,056). See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(h) As of February, 1999, there have been eight thousand two hundred three (8,203) reported cases of AIDS in the State of Tennessee.

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

(j) The total number of cases of early (less than one (1) year) syphilis in the United States reported during the ten (10) year period 1985 to 1995 was three hundred sixty-seven thousand seven hundred ninety-six (367,796). See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(k) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of one million two hundred fifty thousand five hundred eighty-one (1,250,581) cases reported during the period 1993-1995. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

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

(m) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g. Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(n) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy,

and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(o) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(p) Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity. See, e.g., *Barnes v. Glen Theater*, 501 U.S. 560, 583 (1991).

(q) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. See, e.g., *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1056 (9<sup>th</sup> Cir.1986).

(r) The findings noted in subsections (a) through (z) herein raise substantial governmental concerns.

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

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

(u) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.

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

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

(x) The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this chapter.

(y) The barring of such individuals from operation or employment in sexually oriented businesses for a period of five (5) years for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(z) The general welfare, health, morals, and safety of the citizens of this city will be promoted by the enactment of this chapter.  $(2003 \text{ Code}, \S 9-701)$ 

**9-402.** <u>Definitions</u>. (1) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

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

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities." A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

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

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

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

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

(d) Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

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

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

(b) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or

(c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

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

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

(7) "Director" means the city manager or such persons as he may designate to perform the duties of the director under this chapter.

(8) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

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

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

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

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

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

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

(d) The relocation of any sexually oriented business; or

(e) A sexually oriented business or premises on which the sexually oriented business is located.

(12) "Licenced day-care center" means a facility licensed by the State of Tennessee, whether situated within the city or not, that provides care, training, education, custody, treatment, or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage, or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

(13) "Licensee" means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

(14) "Nude model studio" means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

(15) "Nudity" or a "state of nudity" means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

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

(17) "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to § 9-704 of this chapter; (18) "Semi-nude" or "semi-nudity" means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

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

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

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

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

(21) "Specified anatomical areas" means: (a) The human male genitals in a discernibly turgid state, even if fully and opaquely covered;

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

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

(a) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries.

(b) For which: (i) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

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

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

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

(23) "Specified sexual activities" means and includes any of the following:

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

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

(c) Masturbation, actual or simulated; or

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

(24) "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on May 1, 1999.

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

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

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

(c) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (2003 Code, § 9-702)

**9-403.** <u>Classification</u>. Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult theaters;
- (7) Escort agencies;
- (8) Nude model studios; and
- (9) Sexual encounter centers. (2003 Code, § 9-703)

**9-404.** <u>License required</u>. (1) It shall be unlawful: (a) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the city manager pursuant to this chapter;

(b) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the city manager pursuant to this chapter;

(c) For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the city manager pursuant to this chapter.

(d) It shall be a defense to subsections (b) and (c) of this section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises. Violation of any provision within this subsection shall constitute a misdemeanor.

(2) An application for a sexually oriented business license must be made on a form provided by the city. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6"). Prior to issuance of a license, the premises must be inspected by the health department, fire department, building department, or zoning department.

(3) An application for a sexually oriented business employee license must be made on a form provided by the city.

(4) All applicants for a license must be qualified according to the provisions of this chapter. The application may request, and the applicant shall provide such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established under this chapter. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

(5) If a person who wishes to own operate a sexually oriented business is an individual, he must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a business license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a ten percent (10%) or greater interest in the cooperation must sign the application for a business as applicant.

(6) Applications for a business license, whether original or renewal, must be made to the city manager by the intended operator of the enterprise. Applications must submitted to the office of the city manager or the city manager's designee be during regular working hours. Application forms shall be supplied the city manager. The following information shall be provided on the application form:

(a) The name, street address (and mailing address if different) of the applicant(s);

(b) A recent photograph of the applicant(s);

(c) The applicant driver's license number, Social security number, and/or his state or federally issued tax identification number;

(d) The name under which the establishment is to be operated and a general description of the services to be provided if the applicant intends to operate the sexually oriented business under a name other than that of the applicant he or she must state:

(i) The sexually oriented business's fictitious name; and

(ii) Submit the required registration documents;

(e) Whether the applicant, or a person residing with the applicant, has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in § 9-702(22), and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;

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

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

(h) The single classification of license, as found in § 9-703, for which the applicant is filing;

(i) The telephone number of the establishment;

(j) The address and legal description of the tract of land on which the establishment is to be located;

(k) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a

sexually oriented business at the location for which the business license is sought;

(1) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair, or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same; and

(m) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in § 9-719 hereunder.

(7) Each application for a business license shall be accompanied by the following:

(a) Payment of the application fee in full;

(b) If the establishment is a (State of Tennessee) corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(c) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(d) If the establishment is a limited partnership formed under the laws of the State of Tennessee, a certified copy of the certificate of limited partnership, together with all amendments thereto;

(e) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;

(f) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;

(g) If the persons identified as the fee owner(s) of the tract of land in item (f) is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business;

(h) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand feet (1,000') of the property to be certified; the property lines of any established religious institution/synagogue, school, public park or recreation area, or family-oriented entertainment business within one thousand five hundred feet (1,500') of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted; and

(i) Any of items (b) through (h) above shall not be required for a renewal application if the applicant states that the documents previously furnished to the director with the original application or previous renewals thereof remain correct and current.

(8) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the director by the person to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the director. Applications must be submitted to the office of the director or the director's designee during regular working hours. Each applicant shall be required to give the following information on the application form:

(a) The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;

(b) Age, and date and place of birth;

(c) Height, weight, hair color, and eye color;

(d) Present residence address and telephone number;

(e) Present business address and telephone number;

(f) Date, issuing state, and number of photo driver's license, or other state issued identification card information;

(g) Social security number; and

(h) Proof that the individual is at least eighteen (18) years old.(9) Attached to the application form for a license shall be the following:

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

(b) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(c) A statement whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in § 9-702(22) and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each.

(10) Every application for a license shall contain a statement under oath that:

(a) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and

(b) The applicant has read the provisions of this chapter.

(11) A separate application and business license shall be required for each sexually oriented business classification as set forth in § 9-703.

(12) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license. (2003 Code, § 9-704)

**9-405.** <u>Issuance of license</u>. (1) Upon the filing of an application for a sexually oriented business employee license, the city manager shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city department for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the city manager shall issue an employee license, unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

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

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

(c) The applicant has been convicted of a "specified criminal activity" as defined in § 9-702(22) of this chapter;

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

(e) The applicant has had a sexually oriented business employee license revoked by the city within two (2) years of the date of the current application.

If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in subsection (1) of this section.

(2) A license issued pursuant to subsection (1) of this section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license on his or her person at all times while engaged in employment or performing services on the sexually oriented business premises so that said license may be available for inspection upon lawful request.

(3) A license issued pursuant to subsection (1) of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the director that the applicant has not been convicted of any "specified criminal activity" as defined in this chapter, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 9-706. Non-renewal of a license shall be subject to appeal as set forth in subsection (9) of this section.

(4) If application is made for a sexually oriented business license, the director shall approve or deny issuance of the license within forty-five (45) days of receipt of the completed application. The director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

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

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

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

(d) An applicant or a person with whom the applicant is residing is overdue in payment to the city in taxes, fees, fines, or penalties assessed against or imposed upon him in relation to any business;

(e) An applicant or a person with whom the applicant is residing has been convicted of a "specified criminal activity" as defined in § 9-702(22);

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

(g) The license fee required under this chapter has not been paid; and/or

(h) An applicant of the proposed establishment is in violation of or is not in compliance with one (1) or more of the provisions of this chapter.

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

(6) The health department, fire department, building department, and zoning department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the director. The certification shall be promptly presented to the director.

(7) A sexually oriented business license shall issue for only one (1) classification, as set forth in § 9-703.

(8) In the event that the director determines that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing of the reasons for the denial within forty five (45) days of the receipt of the completed application by the director, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this chapter.

(9)An applicant may appeal the decision of the director regarding a denial to the city commission by filing a written notice of appeal with the city secretary within fifteen (15) days after service of notice upon the applicant of the director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The director may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the city commission. After reviewing such memoranda, as well as the director's written decision, if any, and exhibits submitted to the director, the city commission shall vote either to uphold or overrule the director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the city secretary receives the notice of appeal. However, all parties shall be required to comply with the director's decision during the pendency of the appeal. Judicial review of a denial by the director and city commission may be made pursuant to § 9-711 of this chapter.

(10) A license issued pursuant to subsection (4) above shall be subject to annual renewal upon the written application of the applicant and a finding by the director that the applicant has not been convicted of any "specified criminal activity" as defined in this chapter, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within forty-five (45) days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 9-706. (2003 Code, § 9-705)

**9-406.** <u>Fees</u>. The annual fee for a sexually oriented business license, whether new or renewal, is five hundred dollars (\$500.00). The annual fee for a sexually oriented business employee license, whether new or renewal, is fifty dollars (\$50.00). These fees are to be used to pay for the cost of the administration and enforcement of this chapter. (2003 Code, § 9-706)

**9-407.** <u>Inspection</u>. (1) An applicant or licensee shall permit representatives of the police department, sheriff's department, health department, fire department, building department, or other city or state departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is open for business.

(2) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to promptly permit such lawful inspection of the premises. (2003 Code, § 9-707)

**9-408.** <u>Expiration of license</u>. (1) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in § 9-706. Application for renewal should be made at least forty-five (45) days before the expiration date. When application is made less than forty-five (45) days before the expiration date, the expiration of the license will not be affected.

(2) When the director denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. (2003 Code,  $\S$  9-708)

**9-409.** <u>Suspension</u>. The director shall suspend a license for a period not to exceed thirty (30) days if he determines that licensee or an employee of licensee has:

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

(2) Operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;

(3) Refused to allow prompt inspection of the sexually oriented business premises as authorized by this chapter; or

(4) With knowledge, permitted gambling by any person on the sexually oriented business premises. (2003 Code, § 9-709)

**9-410.** <u>**Revocation**</u>. (1) The director shall revoke a license if a cause of suspension in § 9-709 occurs and the license has been suspended within the proceeding twelve (12) months.

(2) The director shall revoke a license if he determines that:

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

(b) A licensee, or a person with whom the licensee is residing, was convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;

(c) A licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;

(d) A licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;

(e) A licensee has, with knowledge, permitted prostitution on the premises;

(f) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;

(g) A licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises:

(h) A licensee is delinquent in payment to the city or state for any taxes or fees;

(i) A licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter the establishment;

(j) A licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a nonlicensee of the establishment; or

(k) A licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.

(3) When the city manager revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective. (2003 Code, § 9-710))

**9-411.** <u>Judicial review</u>. After denial of an initial or renewal application by the city manager or city commission, or suspension or revocation of a license by the city manager, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court. (2003 Code,  $\S$  9-711)

**9-412.** <u>No transfer of license</u>. A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. (2003 Code, § 9-712)

**9-413.** <u>Location restrictions</u>. Sexually oriented businesses shall be permitted in any commercial district provided that:

(1) The sexually oriented business may not be operated within:

(a) One thousand two hundred feet (1,200') of a church, synagogue, or regular place of religious worship;

(b) One thousand two hundred feet (1,200') of a public or private elementary or secondary school;

(c) One thousand two hundred feet (1,200') of a boundary of any residential district;

(d) One thousand two hundred feet (1,200') of a public park;

(e) One thousand two hundred feet (1,200') of a licensed day-care center;

(f) One thousand two hundred feet (1,200') of an entertainment business that is oriented primarily towards children or family entertainment; or

(g) One thousand two hundred feet (1,200') of another sexually oriented business.

(2) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business that is classified in accordance with § 9-703.

(3) For the purpose of this chapter, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the near boundary of an affected public park, residential district, or residential lot, or licensed daycare center, or child or family entertainment business.

(4) For purposes of subsection (3) above, the distance between any two (2) sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located. (2003 Code, § 9-713)

**9-414.** <u>Non-conforming uses: amortization</u>. (1) Any business lawfully operating on the effective date of the ordinance comprising this chapter that is in violation of the locational or structural configuration requirements of this chapter shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two (2) years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one thousand feet (1,000') of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operated at a

particular location is the conforming use and the later-established business(es) is non-conforming.

(2) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, residential district, or child or family entertainment business within one thousand five hundred feet (1,500') of the sexually oriented business. This provision applies only to the renewal of a valid business license, and does not apply when an application for a business license is submitted after a business license has expired or has been revoked. (2003 Code, § 9-714)

**9-415.** <u>Additional regulations for adult motels</u>. (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this chapter.

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

(3) For purposes of subsection (2) above, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(4) Violation of subsection (2) above shall constitute a misdemeanor. (2003 Code, § 9-715)

**9-416.** <u>Additional regulations for escort agencies</u>. (1) An escort agency shall not employ any person under the age of eighteen (18) years.

(2) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.

(3) Violation of this section shall constitute a misdemeanor. (2003 Code, § 9-716)

**9-417.** <u>Additional regulations for nude model studios</u>. (1) A nude model studio shall not employ any person under the age of eighteen (18) years.

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

(3) A person commits a misdemeanor if the person appears in a state of nudity, or with knowledge, allows another to appear in a state of nudity in an

area of a nude model studio premises which can be viewed from the public right of way.

(4) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.  $(2003 \text{ Code}, \S 9-717)$ 

**9-418.** <u>Additional regulations concerning public nudity</u>. The language contained in this subsection presumes the absence of a state statute or local ordinance that prohibits public nudity. If a statute or ordinance prohibiting public nudity is in existence prior to the adoption of a sexually oriented business ordinance, or if a statute or ordinance prohibiting public nudity is enacted simultaneously with a sexually oriented business ordinance (the AFA Law Center can provide a model public nudity ordinance), this section must be modified to reflect such prohibition of nudity. The following language is a sample of the type of language that may be adopted when a general prohibition of public nudity is in effect:</u>

(1) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a state of nudity in a sexually oriented business, or depicts specified sexual activities in a sexually oriented business.

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

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

(4) It shall be a misdemeanor for an employee, while semi-nude, to touch a patron or the clothing of a patron, or for a patron to touch a semi-nude employee or the clothing of a semi-nude employee, while said employee is on the premises of the sexually oriented business. (2003 Code, § 9-718)

9-419. <u>Regulations pertaining to exhibition of sexually explicit</u> <u>films and videos</u>. (1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

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

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

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

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

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

(f) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (e) above remains unobstructed at all times. No doors, walls, partitions, curtains, merchandise, display racks, or other object(s) shall obstruct from view of the manager's station any portion of the premises to which patrons have access. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection (1)(a) above.

(g) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle as measured at the floor level.

(h) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(i) No viewing room or booth may be occupied by more than one (1) person at anytime.

(j) No opening of any kind shall exist between viewing rooms or booths.

(k) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no more than one (1) person at a time occupies a viewing booths or rooms, and to ensure that no person attempts to make an opening of any kind between the viewing booths or rooms.

(l) The operator of the sexually oriented business shall, each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

(m) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

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

(2) A person having a duty under subsections (1)(a) through (n) above commits a misdemeanor if he, with knowledge, fails to fulfill that duty. (2003 Code, § 9-719)

**9-420.** Exterior portions of sexually oriented businesses. (1) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(2) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this chapter.

(3) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color

other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(a) The establishment is a part of a commercial multi-unit center; and

(b) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(4) Nothing in this chapter shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

(5) A violation of any provision of this section shall constitute a misdemeanor. (2003 Code, § 9-720)

**9-421.** <u>Signage</u>. (1) Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(2) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

- (a) Not contain any flashing lights;
- (b) Be a flat plane, rectangular in shape;
- (c) Not exceed seventy-five (75) square feet in area; and
- (d) Not exceed ten feet (10') in height or ten feet (10') in length.

(3) Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the enterprise.

(4) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print type, size, and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(5) Secondary signs shall have only one (1) display surface. Such display surface shall:

- (a) Be a flat plane, rectangular in shape;
- (b) Not exceed twenty (20) square feet in area;

(c) Not exceed five feet (5') in height and four feet (4') in width; and

(d) Be affixed or attached to any wall or door of the enterprise.
(6) The provisions of item (a) of subsection (2) and subsection (3) and
(4) shall also apply to secondary signs.

(7) Violation of any provision of this section shall constitute a misdemeanor. (2003 Code, § 9-721)

**9-422.** <u>Sale, use, or consumption of alcoholic beverages</u> <u>prohibited</u>. (1) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

(2) Any violation of this section shall constitute a misdemean or. (2003 Code, § 9-722)

9-423. <u>Persons younger than eighteen (18) prohibited from entry:</u> <u>attendant required</u>. (1) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

(2) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

(a) A valid operator's, commercial operator's, or chauffeur's driver's license; or

(b) A valid personal identification certificate issued by the State of Tennessee reflecting that such person is eighteen (18) years of age or older.

(3) Violation of this section shall constitute a misdemean or. (2003 Code, § 9-723)

**9-424.** <u>Massages or baths administered by person of opposite sex</u>. It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this section shall constitute a misdemeanor. (2003 Code, § 9-724)

**9-425.** <u>Hours of operation</u>. No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 A.M. and 8:00 A.M. on weekdays and Saturdays, and 1:00 A.M. and 12:00 P.M. on Sundays. (2003 Code, § 9-725)

**9-426.** <u>Exemptions</u>. It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:

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

(2) By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior

college, or university supported entirely or partly by taxation. (2003 Code, § 9-726)

**9-427.** <u>Notices</u>. (1) Any notice required or permitted to be given by the director or any other city office, division, department, or other agency under this chapter to any applicant, operator, or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the director or his designee shall cause it to be posted at the principal entrance to the establishment.

(2) Any notice required or permitted to be given to the director by any person under this chapter shall not be deemed given until and unless it is received in the office of the director.

(3) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the director in writing of any change of residence or mailing address. (2003 Code, § 9-727)

**9-428.** <u>Injunction</u>. A person who operates or causes to be operated a sexually oriented business without a valid business license, or in violation of § 9-413 of this chapter, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation. (2003 Code, § 9-728)

#### **CHAPTER 5**

## **BUSINESS LICENSE**

#### SECTION

- 9-501. License required.
- 9-502. Application.
- 9-503. Term.
- 9-504. Fee.
- 9-505. Display.
- 9-506. Cease and desist.
- 9-507. Violations and penalty.

**9-501.** <u>License required.</u> It shall be unlawful for any person, firm, corporation, company, or association having a principal place of business within the corporate limits ("company") to engage in any business/occupation, calling, profession, or trade ("business") without first obtaining a license in compliance with this chapter's provisions. (Ord. #175/2012, March 2012)

**9-502.** <u>Application</u>. License applicants must file with the city recorder a written application containing the following:

(1) The company's name and business or physical address;

(2) The name and home address of the person submitting the application;

(3) If the company is an individual or a partnership, then the Social Security number of each proprietor;

(4) If the company is a corporation, limited liability company, or any other artificial entity, then, its employer identification number;

(5) A brief description of the business activities; and

(6) The company's sales tax registration number. (Ord. #175/2012, March 2012)

**9-503.** <u>Term</u>. The license's term shall be one year, which shall correspond with the city's fiscal year of July 1 through June 30 and must be renewed no later than June 30 of the year for which the license was issued. (Ord. #175/2012, March 2012)

**9-504.** <u>Fee.</u> Upon filing the application, or renewal thereof, a non-reimbursable fee of fifteen dollars (\$15.00) shall be paid to the city. (Ord. #175/2012, March 2012)

**9-505. Display.** The license must be displayed in a conspicuous location in the place of business listed in the application. (Ord. #175/2012, March 2012)

**9-506.** <u>Cease and desist</u>. Any company violating any provision of this chapter shall, upon receiving a cease and desist notice from the city, cease all business operations until full compliance with this chapter is accomplished. (Ord. #175/2012, March 2012)

**9-507.** <u>Violations and penalty</u>. Any company violating any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be fined up to fifty dollars (\$50.00) for each offense. Each day a violation continues shall constitute a separate offense. (Ord. #175/2012, March 2012)

#### 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. Keeping near a residence or business restricted.
- 10-103. Pen or enclosure to be kept clean.
- 10-104. Adequate food, water, and shelter, etc., to be provided.
- 10-105. Keeping in such manner as to become a nuisance prohibited.
- 10-106. Seizure and disposition of animals.
- 10-107. Inspections of premises.
- 10-108. Violations and penalty.

**10-101.** <u>Running at large prohibited</u>. It shall be unlawful for any person owning or being in charge of any cows, swine, sheep, horses, mules or goats, or any chickens, ducks, geese, turkeys, or other domestic fowl, cattle, or livestock, to knowingly or negligently permit any of them to run at large in any street, alley, or unenclosed lot within the corporate limits. (2003 Code, § 10-101)

**10-102.** <u>Keeping near a residence or business restricted</u>. No person shall keep any animal or fowl enumerated in the preceding section within one thousand feet (1,000') of any residence, place of business, or public street, without a permit from the health officer. The health officer shall issue a permit only when in his sound judgment the keeping of such an animal in a yard or building under the circumstances as set forth in the application for the permit will not injuriously affect the public health. (2003 Code, § 10-102)

**10-103.** <u>Pen or enclosure to be kept clean</u>. 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. (2003 Code, § 10-103)

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

**10-104.** <u>Adequate food, water, and shelter, etc., to be provided</u>. 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 safe condition, and wholesomeness for food if so intended.

All feed shall be stored and kept in a rat-proof and fly-tight building, box, or receptacle. (2003 Code, § 10-104)

**10-105.** <u>Keeping in such manner as to become a nuisance</u> <u>prohibited</u>. 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. (2003 Code, § 10-105)

**10-106.** Seizure and disposition of animals. Any animal or fowl found running at large or otherwise being kept in violation of this chapter may be seized by the health officer or by any police officer and confined in a pound provided or designated by the governing body. 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 governing body.

The pound keeper shall be entitled to collect from each person claiming an impounded animal or fowl a reasonable fee to cover the costs of impoundment and maintenance. (2003 Code, § 10-107)

**10-107.** <u>Inspections of premises</u>. For the purpose of making inspections to ensure compliance with the provisions of this title, the health officer, or his authorized representative, shall be authorized to enter, at any reasonable time, any premises where he has reasonable cause to believe an animal or fowl is being kept in violation of this chapter. (2003 Code, § 10-108)

**10-108.** <u>Violations and penalty</u>. Any violation of any section of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day the violation shall continue shall constitute a separate offense.

## **CHAPTER 2**

# DOGS 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.
- 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.** <u>Rabies vaccination and registration required</u>. 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 68-8-113) or other applicable law.

**10-202.** <u>**Dogs to wear tags**</u>. 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.

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

# **10-204.** <u>Vicious dogs</u>.<sup>2</sup> (1) <u>Definition of terms</u>:

(a) "Owner" means any person, firm, corporation, organization or department possessing or harboring or having the care or custody of a dog, or the parents or guardian of a child claiming ownership.

<sup>2</sup>See cases stating the state's authority to regulate vicious dogs: *State of Tennessee v. Denver Hartly*, 15 TAM 23-2 (Tenn. S. Ct. 1990), and *Darnell v. Shappard*, 3 S.W.2d 661 (1928).

<sup>&</sup>lt;sup>1</sup>State law reference *Tennessee Code Annotated*, § 68-8-107.

(b) "Vicious dog" means:

(i) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals; or

(ii) Any dog which because of its size, physical nature, or vicious propensity is capable of inflicting serious physical harm or death to humans and which would constitute a danger to human life or property if it were not kept in the manner required by this ordinance; or

(iii) Any dog which, without provocation, attacks or bites, or has attacked or bitten, a human being or domestic animal; or

(iv) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting;

(v) Any pit bull terrier, which shall be defined as any American Pit Bull Terrier or Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog, or any mixed breed of dog which contains as an element of its breeding the breed of American Pit Bull Terrier or Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of American Pit Bull Terrier or Staffordshire Bull Terrier or Staffordshire Bull Terrier or American Staffordshire Bull Terrier terrier.

(c) A vicious dog is "unconfined" if the dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the dog. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition.

(2) <u>Confinement</u>. The owner of a vicious dog shall not suffer or permit the dog to go unconfined.

(3) <u>Leash and muzzle</u>. The owner of a vicious dog shall not suffer or permit the dog to go beyond the premises of the owner unless the dog is securely muzzled and restrained by a chain or leash, and under the physical restraint of a person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

(4) <u>Signs</u>. The owner of a vicious dog shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a vicious dog on the premises. A similar sign is required to be posted on the pen or kennel of the animal. (5) <u>Dog fighting</u>. No person, firm, corporation, organization or department shall possess or harbor or maintain care or custody of any dog for the purpose of dog fighting, or train, torment, badger, bait or use any dog for the purpose of causing or encouraging the dog to attack human beings or domestic animals.

(6) <u>Insurance</u>. Owners of vicious dogs must within thirty (30) days of the effective date of this section provide proof to the city/town clerk of public liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00), insuring the owner for any personal injuries inflicted by his or her vicious dog.

(7) <u>Penalties</u>. Whoever violates any provision of this section shall be guilty of a gross misdemeanor and may be punished by a fine of not less than ten dollars (\$10.00) and not more than fifty dollars (\$50.00). The conviction of any owner of three (3) or more offenses under this chapter for any dog during one (1) calendar year shall require a confiscation and forfeiture of that animal based on the danger and incorrigibility of owner and animal. Failure to abide by a lawful order of forfeiture is punishable by contempt.

**10-205.** <u>Noisy dogs prohibited</u>. 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.

**10-206.** <u>Confinement of dogs suspected of being rabid</u>. 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.

**10-207.** <u>Seizure and disposition of dogs</u>. 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 or found to be implanted with a microchip, 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 two (2) days. No dog shall be released in any event from the pound unless or until such dog has been vaccinated and has a tag evidencing such vaccination placed on its collar.

Any new owner adopting a dog that has not been spayed or neutered must pay a twenty-five dollar (\$25.00) deposit before a dog may be released, as required by the Tennessee Spay/Neuter Law.<sup>1</sup>

**10-208.** <u>Destruction of vicious or infected dogs running at large</u>. 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 policeman or other properly designated officer.<sup>2</sup>

**10-209.** <u>Violations and penalty</u>. 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.

Before an agency may release an animal which has not been spayed or neutered it must collect a twenty-five dollar (\$25.00) deposit from the new owner to ensure compliance with the law. If the new owner does not comply with the law, the deposit is forfeited and the agency may file a petition in court to force the new owner to either comply with the law or return the animal.

An agency may not spay or neuter a dog or cat that is returned to its <u>original</u> owner within seven (7) days of its being taken into custody by the agency.

<sup>2</sup>State law reference

Tennessee Code Annotated, § 44-17-301, et seq.

<sup>&</sup>lt;sup>1</sup>State law reference

Tennessee Code Annotated, § 44-17-501, et seq., "The Tennessee Spay/Neuter Law," prohibits persons from adopting a dog or cat from an agency (pound, animal shelter, etc.) operated by a municipality unless the dog or cat was already spayed or neutered, was spayed or neutered while in the custody of the agency, or the new owner signs a written agreement to have the animal spayed or neutered within thirty (30) days of the adoption if the animal is sexually mature, or within thirty (30) days after the animal reaches six (6) months of age if it is not sexually mature.

## TITLE 11

## MUNICIPAL OFFENSES<sup>1</sup>

## CHAPTER

#### 1. ALCOHOL.

2. OFFENSES AGAINST THE PEACE AND QUIET.

3. TRESPASSING AND INTERFERENCE WITH TRAFFIC.

## **CHAPTER 1**

### <u>ALCOHOL<sup>2</sup></u>

#### SECTION

11-101. Drinking beer, etc., on streets, etc.

11-102. Minors in beer places.

**11-101.** <u>Drinking beer, etc., on streets, etc</u>. It shall be unlawful for any person to drink or consume, or have an open can or bottle of beer in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground, or other public place unless the place has a beer permit and license for on-premises consumption. (2003 Code, § 11-101)

**11-102.** <u>Minors in beer places</u>. No minor under eighteen (18) years of age shall loiter in or around, work in, or otherwise frequent any place where beer is sold at retail for consumption on the premises. (2003 Code, § 11-102)

<sup>1</sup>Municipal code references Animals and fowls: title 10. Fireworks and explosives: title 7. Residential and utilities: title 12. Streets and sidewalks (non-traffic): title 16. Traffic offenses: title 15.

<sup>2</sup>Municipal code reference Sale of alcoholic beverages, including beer: title 8.

State law reference

See Tennessee Code Annotated, § 33-8-203 (Arrest for Public Intoxication, cities may not pass separate legislation).

#### **CHAPTER 2**

## **OFFENSES AGAINST THE PEACE AND QUIET**

#### SECTION

11-201. Disturbing the peace. 11-202. Anti-noise regulations.

**11-201.** <u>**Disturbing the peace**</u>. No person shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, or obstreperous conduct, and no person shall knowingly permit such conduct upon any premises owned or possessed by him or under his control. (2003 Code, § 11-301)

**11-202.** <u>Anti-noise regulations</u>. Subject to the provisions of this section, the creating of any unreasonably loud, disturbing, and unnecessary noise is prohibited. Noise of such character, intensity, or duration as to be detrimental to the life or health of any individual, or in disturbance of the public peace and welfare, is prohibited.

(1) <u>Miscellaneous prohibited noises enumerated</u>. The following acts, among others, are declared to be loud, disturbing, and unnecessary noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:

(a) Radios, phonographs, etc. The playing of any radio, phonograph, or any musical instrument or sound device, including, but not limited to, loudspeakers or other devices for reproduction or amplification of sound, either independently of or in connection with motion pictures, radio, or television, in such manner or with such volume, particularly during the hours between 11:00 P.M. and 7:00 A.M., as to annoy or disturb the quiet, comfort, or repose of persons in any office or hospital, or in any dwelling, hotel, or other type of residence, or of any person in the vicinity.

(b) Yelling, shouting, hooting, etc. Yelling, shouting, hooting, whistling, or singing on the public streets, particularly between the hours of 11:00 P.M. and 7:00 A.M., or at any time or place so as to annoy or disturb the quiet, comfort, or repose of any person in any hospital, nursing home, dwelling, hotel, or other type of residence, or of any person in the vicinity.

(c) Pets. The keeping of any animal, bird, or fowl which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.

(d) Use of vehicle. The use of any automobile, motorcycle, streetcar, or vehicle so out of repair, so loaded, or in such manner as to cause loud and unnecessary grating, grinding, rattling, or other noise.

(e) Blowing whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper municipal authorities.

(f) Exhaust discharge. To discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, or boat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

Building operations. The erection (including excavation), (g)demolition, alteration, or repair of any building in any residential area or section or the construction or repair of streets and highways in any residential area or section, other than between the hours of 7:00 A.M. and 6:00 P.M. on week days, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building inspector granted for a period while the emergency continues not to exceed thirty (30) days. If the building inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration, or repair of any building or the excavation of streets and highways between the hours of 6:00 P.M. and 7:00 A.M., and if he shall further determine that loss or inconvenience would result to any party in interest through delay, he may grant permission for such work to be done between the hours of 6:00 P.M. and 7:00 A.M. upon application being made at the time the permit for the work is awarded or during the process of the work.

(h) Noises near schools, hospitals, churches, etc. The creation of any excessive noise on any street adjacent to any nursing home, hospital, or adjacent to any school, institution of learning, church, or court while the same is in session.

(i) Loading and unloading operations. The creation of any loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates, and other containers.

(j) Noises to attract attention. The use of any drum, loudspeaker, or other instrument or device emitting noise for the purpose of attracting attention to any performance, show, or sale, or display of merchandise.

(2) <u>Exceptions</u>. None of the terms or prohibitions thereof shall apply to or be enforced against:

(a) Municipal vehicles. Any vehicle of the municipality while engaged upon necessary public business;

(b) Repair of streets, etc. Excavations or repairs of bridges, streets, or highways at night, by or on behalf of the municipality, the county, or the state, when the public welfare and convenience renders it impracticable to perform such work during the day; or (c) Noncommercial, commercial and nonprofit use of loudspeakers or amplifiers. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character and in the course of advertising functions sponsored by nonprofit organizations. However, no such use shall be made until a permit therefor is secured from the recorder. Hours for the use of an amplifier or public address system will be designated in the permit so issued and the use of such systems shall be restricted to the hours so designated in the permit. (2003 Code,  $\S$  11-302, modified)

#### **CHAPTER 3**

# TRESPASSING AND INTERFERENCE WITH TRAFFIC

#### SECTION

11-301. Trespassing.

11-302. Trespassing on trains.

11-303. Interference with traffic.

**11-301.** <u>**Trespassing**</u>. The owner or person in charge of any lot or parcel of land or any building or other structure within the corporate limits may post the same against trespassers. It shall be unlawful for any person to go upon any such posted lot or parcel of land or into any such posted building or other structure without the consent of the owner or person in charge.

It shall also be unlawful and deemed to be a trespass for any peddler, canvasser, solicitor, transient merchant, or other person to fail to promptly leave the private premises of any person who requests or directs him to leave. (2003 Code, § 11-601)

**11-302.** <u>**Trespassing on trains</u></u>. It shall be unlawful for any person to climb, jump, step, stand upon, or cling to, or in any other way attach himself to any locomotive engine or railroad car unless he works for the railroad corporation and is acting the scope of his employment or unless he is a lawful passenger or is otherwise lawfully entitled to be on such vehicle. (2003 Code, § 11-602)</u>** 

**11-303.** <u>Interference with traffic</u>. 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. (2003 Code,  $\S$  11-604)

## **TITLE 12**

## **BUILDING, UTILITY, ETC. CODES**

#### CHAPTER

- 1. BUILDING CODE.
- 2. PLUMBING CODE.
- 3. ELECTRICAL CODE.
- 4. FUEL GAS CODE.
- 5. RESIDENTIAL CODE.
- 6. SWIMMING POOL AND SPA CODE.
- 7. MECHANICAL CODE.
- 8. EXISTING BUILDING CODE.
- 9. ENERGY CONSERVATION CODE.
- 10. PROPERTY MAINTENANCE CODE.

## **CHAPTER 1**

## **<u>BUILDING CODE</u><sup>1</sup>**

### SECTION

- 12-101. Building code adopted.
- 12-102. Modifications.
- 12-103. Available in recorder's office.
- 12-104. Violations and penalty.

**12-101.** <u>Building code adopted</u>. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating the construction, alteration, repair, use, occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenance connected or attached to any building or structure, the *International Building Code (IBC)*,<sup>2</sup> 2012 edition, as prepared by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the building code. (2003 Code, § 12-101, as amended by Ord. #32-2015, Nov. 2015)

Utilities and services: titles 18 and 19.

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

<sup>&</sup>lt;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.

**12-102.** <u>Modifications</u>. (1) <u>Definitions</u>. Whenever in any code, reference is made to the duties of a certain official named therein, the designated official of the City of Gallaway who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of the codes.

(2) <u>Permit fees</u>. All fees for inspections and permits under the above codes shall be those fees as adopted by the board of commissioners by resolution and said fees for inspections and permits may be changed by resolution of the board of commissioners. (2003 Code, § 12-102)

**12-103.** <u>Available in recorder's office</u>. Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the building code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public. (2003 Code, § 12-103)

**12-104.** <u>Violations and penalty</u>. It shall be unlawful for any person to violate or fail to comply with any provision of the building code as herein adopted by reference and modified. The violation of any section of this chapter shall be punished by a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continue shall constitute a separate offense. (2003 Code, § 12-104)

# 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.** <u>Plumbing code adopted</u>. 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, when such plumbing is or is to be connected with the city water or sewerage system, the *International Plumbing Code (IPC)*,<sup>2</sup> 2012 edition, as prepared by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the plumbing code. (2003 Code, § 12-201, as amended by Ord. #32-2015, Nov. 2015)

**12-202.** <u>Modifications</u>. (1) <u>Definitions</u>. Whenever in any code, reference is made to the duties of a certain official named therein, that the designated official of the City of Gallaway who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of the codes.

(2) <u>Permit fees</u>. All fees for inspections and permits under the above codes shall be those fees as adopted by the board of commissioners by resolution and said fees for inspections and permits may be changed by resolution of the board of commissioners. (2003 Code, § 12-202)

**12-203.** <u>Available in recorder's office</u>. 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. (2003 Code, § 12-203)

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

<sup>&</sup>lt;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.

**12-204.** <u>Violations and penalty</u>. It shall be unlawful for any person to violate or fail to comply with any provisions of the codes as herein adopted by reference and modified. The violation of any section of this chapter shall be punished by a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continue shall constitute a separate offense. (2003 Code, § 12-204)

# ELECTRICAL CODE<sup>1</sup>

#### SECTION

- 12-301. Electrical code adopted.
- 12-302. Available in recorder's office.
- 12-303. Permit required for doing electrical work.
- 12-304. Enforcement.
- 12-305. Violations and penalty.

**12-301.** <u>Electrical code adopted</u>. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of providing practical minimum standards for the safeguarding of persons and of buildings and their contents from hazards arising from the use of electricity for light, heat, power, radio, signaling, or for other purposes, the *National Electrical Code*,<sup>2</sup> 2017 edition, as prepared by the National Fire Protection Association, is hereby adopted and incorporated by reference as a part of this code and is hereinafter referred to as the electrical code.

**12-302.** <u>Available in recorder's office</u>. Pursuant to the requirements of *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the electrical code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

12-303. <u>Permit required for doing electrical work</u>. No electrical work shall be done within this town until a permit therefor has been issued by the town. The term "electrical work" shall not be deemed to include minor repairs that do not involve the installation of new wire, conduits, machinery, apparatus, or other electrical devices generally requiring the services of an electrician.

**12-304.** Enforcement. The electrical inspector shall be such person as the mayor shall appoint or designate. It shall be his duty to enforce compliance with this chapter and the electrical code as herein adopted by reference. He is authorized and directed to make such inspections of electrical equipment and wiring, etc., as are necessary to insure compliance with the applicable regulations, and may enter any premises or building at any reasonable time for

<sup>2</sup>Copies of this code are available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101.

<sup>&</sup>lt;sup>1</sup>Municipal code references

Fire protection, fireworks, and explosives: title 7.

the purpose of discharging his duties. He is authorized to refuse or discontinue electrical service to any person or place not complying with this chapter and/or the electrical code.

**12-305.** <u>Violations and penalty</u>. It shall be unlawful for any person to do or authorize any electrical work or to use any electricity in such manner or under such circumstances as not to comply with this chapter and/or the requirements and standards prescribed by the electrical code. 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.

# FUEL GAS CODE<sup>1</sup>

# SECTION

- 12-401. Title and definitions.
- 12-402. Fuel gas code adopted.
- 12-403. Use of existing piping and appliances.
- 12-404. Bond and license.
- 12-405. Gas inspector and assistants.
- 12-406. Powers and duties of inspector.
- 12-407. Permits.
- 12-408. Inspections.
- 12-409. Certificates.
- 12-410. Fees.
- 12-411. Nonliability.
- 12-412. Modifications.
- 12-413. Available in recorder's office.
- 12-414. Violations and penalty.

**12-401.** <u>**Title and definitions**</u>. This chapter and the code herein adopted by reference shall be known as the fuel gas code of the municipality and may be cited as such. The following definitions are provided for the purpose of interpretation and administration of the fuel gas code.

(1) "Inspector" means the person appointed as inspector, and shall include each assistant inspector, if any, from time to time acting as such under this chapter by appointment of the city manager.

(2) "Person" means any individual, partnership, firm, corporation, or any other organized group of individuals.

(3) "Gas company" means any person distributing gas within the corporate limits or authorized and proposing to so engage.

(4) "Certificate of approval" means a document or tag issued and/or attached by the inspector to the inspected material, piping, or appliance installation, filled out, together with date, address of the premises, and signed by the inspector.

(5) "Certain appliances" means conversion burners, floor furnaces, central heating plants, vented wall furnaces, water heaters, and boilers. (2003 Code, § 12-401, as amended by Ord. #32-2015, Nov. 2015)

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Gas system administration: title 19, chapter 2.

**12-402.** <u>Fuel gas code adopted</u>. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of governing the safe installation of consumers' gas pipe lines and gas appliances for fuel gases, the *International Fuel Gas Code (IFGC)*,<sup>1</sup> 2012 edition, published by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the fuel gas code. (2003 Code, § 12-402, as amended by Ord. #32-2015, Nov. 2015)

**12-403.** <u>Use of existing piping and appliances</u>. Notwithstanding any provision in the fuel gas code to the contrary, consumer's piping installed prior to the adoption of the fuel gas code or piping installed to supply other than natural gas may be converted to natural gas if the inspector finds, upon inspection and proper tests, that such piping will render reasonably satisfactory gas service to the consumer and will not in any way endanger life or property; otherwise, such piping shall be altered or replaced, in whole or in part, to conform with the requirements of the fuel gas code. (2003 Code, § 12-403, as amended by Ord. #32-2015, Nov. 2015)

**12-404.** <u>Bond and license</u>. (1) No person shall engage in or work at the installation, extension, or alteration of consumer's gas piping or certain gas appliances, until such person shall have secured a license as hereinafter provided, and shall have executed and delivered to the city recorder a good and sufficient bond in the penal sum of ten thousand dollars (\$10,000.00), with corporate surety, conditioned for the faithful performance of all such work, entered upon or contracted for, in strict accordance and compliance with the provisions of the fuel gas code. The bond herein required shall expire on the first day of January next following its approval by the city recorder, and thereafter on the first day of January of each year a new bond, in form and substance as herein required, shall be given by such person to cover all such work as shall be done during such year.

(2) Upon approval of said bond, the person desiring to do such work shall secure from the city recorder a nontransferable license which shall run until the first day of January next succeeding its issuance, unless sooner revoked. The person obtaining a license shall pay any applicable license fees to the city recorder.

(3) Nothing herein contained shall be construed as prohibiting an individual from installing or repairing his own appliances or installing, extending, replacing, altering, or repairing consumer's piping on his own premises, or as requiring a license or a bond from an individual doing such work on his own premises; provided, however, all such work must be done in

<sup>&</sup>lt;sup>1</sup>Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

conformity with all other provisions of the fuel gas code, including those relating to permits, inspections, and fees. (2003 Code, § 12-404, as amended by Ord. #32-2015, Nov. 2015)

**12-405.** <u>Gas inspector and assistants</u>. To provide for the administration and enforcement of the fuel gas code, the office of gas inspector is hereby created. The inspector, and such assistants as may be necessary in the proper performance of the duties of the office, shall be appointed by the city manager. (2003 Code, § 12-405)

**12-406.** <u>Powers and duties of inspector</u>. (1) The inspector is authorized and directed to enforce all of the provisions of the fuel gas code. Upon presentation of proper credentials, he may enter any building or premises at reasonable times for the purpose of making inspections or preventing violations of the fuel gas code.

(2) The inspector is authorized to disconnect any gas piping or fixture or appliance for which a certificate of approval is required but has not been issued with respect to same, or which, upon inspection, shall be found defective or in such condition as to endanger life or property. In all cases where such a disconnection is made, a notice shall be attached to the piping fixture, or appliance disconnected by the inspector, which notice shall state that the same has been disconnected by the inspector, together with the reason or reasons therefor, and it shall be unlawful for any person to remove said notice or reconnect said gas piping or fixture or appliance without authorization by the inspector and such gas piping or fixture or appliance shall not be put in service or used until the inspector has attached his certificate of approval in lieu of his prior disconnection notice.

(3) It shall be the duty of the inspector to confer from time to time with representatives of the local health department, the local fire department, and the gas company, and otherwise obtain from proper sources all helpful information and advice, presenting same to the appropriate officials from time to time for their consideration. (2003 Code, § 12-406, as amended by Ord. #32-2015, Nov. 2015)

**12-407.** <u>**Permits</u></u>. (1) No person shall install a gas conversion burner, floor furnace, central heating plant, vented wall furnace, water heater, boiler, consumer's gas piping, or convert existing piping to utilize natural gas without first obtaining a permit to do such work from the city recorder; however, permits will not be required for setting or connecting other gas appliances, or for the repair of leaks in house piping.</u>** 

(2) When only temporary use of gas is desired, the recorder may issue a permit for such use, for a period of not to exceed sixty (60) days, provided the consumer's gas piping to be used is given a test equal to that required for a final piping inspection. (3) Except when work in a public street or other public way is involved, the gas company shall not be required to obtain permits to set meters, or to extend, relocate, remove, or repair its service lines, mains, or other facilities, or for work having to do with its own gas system. (2003 Code, § 12-407)

**12-408.** <u>Inspections</u>. (1) A rough piping inspection shall be made after all new piping authorized by the permit has been installed, and before any such piping has been covered or concealed or any fixtures or gas appliances have been attached thereto.

(2) A final piping inspection shall be made after all piping authorized by the permit has been installed and after all portions thereof which are to be concealed by plastering or otherwise have been so concealed, and before any fixtures or gas appliances have been attached thereto. This inspection shall include a pressure test, at which time the piping shall stand an air pressure equal to not less than the pressure of a column of mercury six inches (6") in height, and the piping shall hold this air pressure for a period of at least ten (10) minutes without any perceptible drop. A mercury column gauge shall be used for the test. All tools, apparatus, labor, and assistance necessary for the test shall be furnished by the installer of such piping. (2003 Code, § 12-408)

**12-409.** <u>Certificates</u>. The inspector shall issue a certificate of approval at the completion of the work for which a permit for consumer piping has been issued if after inspection it is found that such work complies with the provisions of the fuel gas code. A duplicate of each certificate issued covering consumer's gas piping shall be delivered to the gas company and used as its authority to render gas service. (2003 Code, § 12-409, as amended by Ord. #32-2015, Nov. 2015)

**12-410.** <u>Fees</u>. All fees for inspections and permits under the fuel gas code shall be those fees as adopted by the Board of Commissioners of the City of Gallaway by resolution and said fees for inspections and permits may be changed by resolution of the board of commissioners and, the board shall have the power to adopt any subsequent additions of the fuel gas code by resolution. (2003 Code, § 12-410, as amended by Ord. #32-2015, Nov. 2015)

**12-411.** <u>Nonliability</u>. This chapter shall not be construed as imposing upon the municipality any liability or responsibility for damages to any person injured by any defect in any gas piping or appliance mentioned herein, or by installation thereof, nor shall the municipality, or any official or employee thereof, be held as assuming any such liability or responsibility by reason of the inspection authorized hereunder or the certificate of approval issued by the inspection. (2003 Code, § 12-412)

**12-412.** <u>Modifications</u>. (1) <u>Definitions</u>. Whenever in any code, reference is made to the duties of a certain official named therein, that the designated official of the City of Gallaway who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of the codes.

(2) <u>Permit fees</u>. All fees for inspections and permits under the above codes shall be those fees as adopted by the board of commissioners by resolution and said fees for inspections and permits may be changed by resolution of the board of commissioners. (2003 Code, § 12-413)

**12-413.** <u>Available in recorder's office</u>.<sup>1</sup> One (1) copy of the fuel gas code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public. (2003 Code, § 12-414)

**12-414.** <u>Violations and penalty</u>. It shall be unlawful for any person to violate of fail to comply with any provisions of the codes as herein adopted by reference and modified. The violation of any section of this chapter shall be punished by a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continue shall constitute a separate offense. (2003 Code, § 12-411)

<sup>&</sup>lt;sup>1</sup>State law reference

Tennessee Code Annotated, § 6-54-502.

#### **RESIDENTIAL CODE**

#### SECTION

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

**12-501.** <u>Residential code adopted</u>. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of securing the public safety, health, and general welfare through structural strength, stability, sanitation, adequate light, and ventilation in dwellings, apartment houses, rooming houses and buildings, structures, or premises used as such, the *International Residential Code (IRC)*,<sup>1</sup> 2012 edition, as prepared by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the residential code.

Sections R313.1 and R313.2 of the 2012 *International Residential Code*, requiring the placement of fire suppression systems ("sprinklers") in one-family and two-family dwellings and townhouses that have a two (2) hour fire wall between units are hereby repealed in their entirety. (2003 Code, § 12-501, as amended by Ord. #32-2015, Nov. 2015 and Ord. #34-2016, Jan. 2016)

**12-502.** <u>Modifications</u>. (1) <u>Definitions</u>. Whenever in any code, reference is made to the duties of a certain official named therein, that the designated official of the City of Gallaway who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of the codes.

(2) <u>Permit fees</u>. All fees for inspections and permits under the above codes shall be those fees as adopted by the board of commissioners by resolution and said fees for inspections and permits, may be changed by resolution of the board of commissioners. (2003 Code, § 12-502)

**12-503.** <u>Available in recorder's office</u>. 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. (2003 Code, § 12-503, as amended by Ord. #32-2015, Nov. 2015)

<sup>&</sup>lt;sup>1</sup>Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

**12-504.** <u>Violations and penalty</u>. It shall be unlawful for any person to violate or fail to comply with any provisions of the residential code as herein adopted by reference and modified. The violation of any section of this chapter shall be punished by a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continue shall constitute a separate offense. (2003 Code, § 12-504, as amended by Ord. #32-2015, Nov. 2015)

# SWIMMING POOL AND SPA CODE<sup>1</sup>

### SECTION

- 12-601. Swimming pool and spa code adopted.
- 12-602. Modifications.
- 12-603. Fees.
- 12-604. Available in recorder's office.
- 12-605. Violations and penalty.

**12-601.** <u>Swimming pool and spa code adopted</u>. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of regulating and governing the design, construction, alteration, movement, renovation, replacement, repair and maintenance of swimming pools, spas, hot tubs, aquatic facilities and related equipment, the *International Swimming Pool and Spa Code*,<sup>2</sup> 2012 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as part of this code and is hereinafter referred to as the swimming pool and spa code</u>.

**12-602.** <u>Modifications</u>. (1) <u>Definitions</u>. Whenever in the swimming pool and spa code reference is made to the duties of a certain official named therein, the designated official of the City of Gallaway who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of the codes.

(2) <u>Permit fees</u>. All fees for inspections and permits under the above code shall be those fees as adopted by the board of commissioners by resolution and said fees for inspections and permits, may be changed by resolution of the board of commissioners. (2003 Code, § 12-702)

**12-603.** <u>Fees</u>. All fees for inspections and permits under the swimming pool code shall be those fees as adopted by the Board of Commissioners of the City of Gallaway by resolution and said fees for inspections and permits may be changed by resolution of the board of commissioners, and the board shall have

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

<sup>&</sup>lt;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.

the power to adopt any subsequent additions of the swimming pool code by resolution. (2003 Code, § 12-703)

**12-604.** <u>Available in recorder's office</u>. One (1) copy of the swimming pool and spa code has been placed on file in the recorder's officer and shall be kept there for the use and inspection of the public. (2003 Code, § 12-704)

**12-605.** <u>Violations and penalty</u>. It shall be unlawful for any person to violate or fail to comply with any provisions of the swimming pool and spa code as herein adopted. The violation of any section of this chapter shall be punished by a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continued shall constitute a separate offense. (2003 Code, § 12-705)

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

#### SECTION

- 12-701. Mechanical code adopted.
- 12-702. Modifications.
- 12-703. Fees.
- 12-704. Available in recorder's office.
- 12-705. Violations and penalty.

**12-701.** <u>Mechanical code adopted</u>. 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> 2012 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code and is hereinafter referred to as the mechanical code. (2003 Code, § 12-901, as amended by Ord. #32-2015, Nov. 2015)

**12-702.** <u>Modifications</u>. (1) <u>Definitions</u>. Whenever in any code, reference is made to the duties of a certain official named therein, that the designated official of the City of Gallaway who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of the codes.

(2) <u>Permit fees</u>. All fees for inspections and permits under the above codes shall be those fees as adopted by the board of commissioners by resolution and said fees for inspections and permits, may be changed by resolution of the board of commissioners. (2003 Code, § 12-902)

**12-703.** <u>Fees</u>. All fees for inspections and permits under the mechanical code shall be those fees as adopted by the Board of Commissioners of the City of Gallaway by resolution and said fees for inspections and permits may be changed by resolution of the board of commissioners, and the board shall have

- 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) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

<sup>&</sup>lt;sup>1</sup>Municipal code references

the power to adopt any subsequent additions of the mechanical code by resolution. (2003 Code, § 12-903)

**12-704.** <u>Available in recorder's office</u>. One (1) copy of the mechanical code has been placed on file in the recorder's officer and shall be kept there for the use and inspection of the public. (2003 Code, § 12-904)

**12-705.** <u>Violations and penalty</u> It shall be unlawful for any person to violate or fail to comply with any provisions of the codes as herein adopted by reference and modified. The violation of any section of this chapter shall be punished by a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continued shall constitute a separate offense. (2003 Code, § 12-905)

# EXISTING BUILDING CODE<sup>1</sup>

#### SECTION

- 12-801. Existing building code adopted.
- 12-802. Modifications.
- 12-803. Fees.
- 12-804. Available in recorder's office.
- 12-805. Violations and penalty.

**12-801.** Existing building code. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for the purpose of providing a concise set of regulations and procedures to effect safety in occupancy, the *International Existing Building Code*,<sup>2</sup> 2012 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 existing building code.

**12-802.** <u>Modifications</u>. When reference is made to the duties of a certain official named in the existing building code, that designated official of the City of Gallaway, Tennessee, who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of the existing building code are concerned. (2003 Code, § 12-1002)

12-803. <u>Fees</u>. All fees for inspections and permits under the existing buildings code shall be those fees as adopted by the Board of Commissioners of the City of Gallaway by resolution and said fees for inspections and permits may be changed by resolution of the board of commissioners and, the board shall have the power to adopt any subsequent additions of the existing building code by resolution. (2003 Code, § 12-1003)

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

<sup>&</sup>lt;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.

**12-804.** <u>Available in recorder's office</u>. One (1) copy of the existing building code has been placed on file in the recorder's officer and shall be kept there for the use and inspection of the public.

**12-1004.** <u>Violations and penalty</u>. It shall be unlawful for any person to violate or fail to comply with any provisions of the existing building code as herein adopted by reference and modified. The violation of any section of this chapter shall be punished by a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continued shall constitute a separate offense.

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

#### SECTION

- 12-901. Energy conservation code adopted.
- 12-902. Modifications.
- 12-903. Available in recorder's office.
- 12-904. Violations and penalty.

**12-901.** Energy conservation 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> 2012 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.

**12-902.** <u>Modifications</u>. (1) <u>Definitions</u>. Whenever in any code, reference is made to the duties of a certain official named therein, that the designated official of the City of Gallaway who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of the codes.

(2) <u>Permit fees</u>. All fees for inspections and permits under the above codes shall be those fees as adopted by the board of commissioners by ordinance, and said fees for inspections and permits may be changed by ordinance of the board of commissioners. (2003 Code, § 12-1202, as amended by Ord. #32-2015, Nov. 2015)

**12-903.** <u>Available in recorder's office</u>. Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the energy

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

<sup>&</sup>lt;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.

conservation code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public. (2003 Code, § 12-1203)

**12-904.** <u>Violations and penalty</u>. It shall be unlawful for any person to violate or fail to comply with any provisions of the energy conservation code as herein adopted by reference and modified. The violation of any section of this chapter shall be punished by a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continued shall constitute a separate offense. (2003 Code, § 12-1204)

# **PROPERTY MAINTENANCE CODE**

#### SECTION

- 12-1001. Property maintenance code adopted.
- 12-1002. Modifications.
- 12-1003. Available in recorder's office.
- 12-1004. Violations and penalty.

**12-1001. Property maintenance code adopted**. Pursuant to authority granted by *Tennessee Code Annotated*, §§ 6-54-501 to 6-54-506, and for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said *International Property Maintenance Code*,<sup>1</sup> 2012 edition, and all subsequent amendments or additions to the said code, as prepared and adopted by the International Code as fully as if copied herein verbatim, and is hereinafter referred to as the property maintenance code.

**12-1002.** <u>Modifications</u>. <u>Definitions</u>. Whenever in the property maintenance code, reference is made to the duties of a certain official named therein, that the designated official of the City of Gallaway who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of the codes.

**12-1003.** <u>Available in recorder's office</u>. Pursuant to the requirements of the *Tennessee Code Annotated*, § 6-54-502, one (1) copy of the property maintenance code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.

**12-1004.** <u>Violations and penalty</u>. It shall be unlawful for any person to violate or fail to comply with any provisions of the property maintenance code as herein adopted by reference and modified. The violation of any section of this

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

chapter shall be punished by a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continued shall constitute a separate offense.

### **TITLE 13**

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

#### **CHAPTER**

- 1. MISCELLANEOUS.
- 2. JUNKYARDS.
- 3. JUNKED MOTOR VEHICLES.
- 4. SLUM CLEARANCE.

# **CHAPTER 1**

### **MISCELLANEOUS**

### SECTION

- 13-101. Health officer.
- 13-102. Smoke, soot, cinders, etc.
- 13-103. Stagnant water.
- 13-104. Weeds.
- 13-105. Dead animals.
- 13-106. Health and sanitation nuisances.
- 13-107. House trailers.
- 13-108. Unhealthy and unsanitary conditions found on real property.

13-101. <u>Health officer</u>. The "health officer" shall be such municipal, county, or state officer as the governing body shall appoint or designate to administer and enforce health and sanitation regulations within the municipality. (2003 Code, § 13-101)

**13-102.** <u>Smoke, soot, cinders, etc</u>. 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. (2003 Code, § 13-102)

**13-103.** <u>Stagnant water</u>. It shall be unlawful for any person to knowingly allow any pool of stagnant water to accumulate and stand on his property without treating it so as to effectively prevent the breeding of mosquitoes. (2003 Code, § 13-103)

<sup>&</sup>lt;sup>1</sup>Municipal code references

Animal control: title 10.

Littering streets, etc.: § 16-107.

**13-104.** <u>Weeds</u>. 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 recorder or chief of police to cut such vegetation when it has reached a height of over one foot (1'). (2003 Code, § 13-104)

**13-105.** <u>**Dead animals**</u>. Any person owning or having possession of any dead animal not intended for use as food shall promptly bury the same or notify the health officer and dispose of such animal in such manner as the health officer shall direct. (2003 Code, § 13-105)

13-106. <u>Health and sanitation nuisances</u>. 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. (2003 Code, § 13-106)

**13-107.** <u>House trailers</u>. It shall be unlawful for any person to park, locate, or occupy any house trailer or portable building unless it complies with all plumbing, electrical, sanitary, and building provisions applicable to stationary structures and the proposed location conforms to the zoning provisions of the municipality and unless a permit therefor shall have been first duly issued by the building official, as provided for in the building code. (2003 Code, § 13-107)

**13-108.** <u>Unhealthy and unsanitary conditions found on real</u> **property**. (1) City code enforcement employees are authorized to inspect real property in Gallaway and render a determination the owner thereof maintains, or permits to be maintained, on the property, unhealthy and/or unsanitary conditions, upon finding:

(a) The growth of trees, vines, grass and/or underbrush or the accumulation of debris, trash, litter and/or garbage, and/or any combination thereof on the property; and/or

(b) Endangers the health, safety, and/or welfare of other citizens and/or encourages rat or other harmful animal infestations.

(2) The code enforcement employee finding unhealthy and/or unsanitary conditions shall then determine:

(a) A cost estimate for remedying the found conditions, to the city's satisfaction, and in conformity with the standards of cost in the Gallaway community; and

(b) The identity and last known address of the property owner.

(3) The code enforcement employee finding unhealthy and/or unsanitary conditions shall prepare a written notice and forward same, by U.S. mail and by registered mail, return receipt requested, to the property owner of record, at his last known address, which notice shall state:

(a) A brief description of the unhealthy and/or unsanitary conditions found;

(b) The code enforcement employee's identity, office address and office telephone number;

(c) A reference to *Tennessee Code Annotated*, § 6-54-113;

(d) The cost estimate determined pursuant to subsection (2) above;

(e) The property owner has ten (10) days to answer and fifteen (15) additional days to remedy the found conditions to the city's satisfaction;

(f) The property owner may request a hearing on the finding and determination unhealthy and/or unsatisfactory conditions exist on the property, which request shall be made, in writing, within ten (10) days of receipt of the notice;

(g) The address to which the property owner may return a copy of the notice requesting a hearing;

(h) Failure to timely request a hearing constitutes a waiver of the right to a hearing; and

(i) Failure to timely remedy the unhealthy and/or unsanitary conditions to the city's satisfaction shall cause the city to remedy the conditions, record a lien against the property for the total cost so incurred and pursue collection of the total cost incurred either through an action for debt or tax collection or both.

(4) The city shall conduct a hearing, presided over by the board of commissioners, as soon as practicable after receipt of notice from the property owner that a hearing is requested. Notice of the hearing date, time, and location shall be forwarded to the property owner by U.S. mail and registered mail, returned receipt requested. The hearing date shall not be less than five (5) business days from the notice of the hearing date, time, and location is mailed.

(5) The city may make any rules and regulations necessary for the administration and enforcement of this section.

(6) Any person aggrieved by an order or act of the board of commissioners acting pursuant to this section may seek judicial review of the order or act. All time periods set forth in this section shall be stayed during the pendency of the hearing or judicial review.

(7) If the property owner fails to timely remedy the unhealthy and/or unsanitary conditions on the property to the city's satisfaction, and no stay is in effect, then the city shall immediately cause the unhealthy and/or unsanitary conditions to be remedied at a cost in conformity with reasonable standards. The cost the city incurs shall be a lien on the property upon filing a notice of lien with Fayette County Register's Office. The city may collect costs in a personal action for debt against the property owner. The city may also have the cost collected by the city tax collector or the county trustee at the same time and in the same manner as property taxes are collected; and, if the property owner fails to pay, then collected as delinquent property taxes are collected.

(8) If the property determined to have unhealthy and/or unsanitary conditions thereon is owner-occupied residential property, than the city may not have recorded with the Fayette County Register's Office a lien for costs to remedy until the total cost incurred equals or exceeds five hundred dollars (\$500.00). (Ord. #168/2011, Nov. 2011)

# JUNKYARDS

# SECTION

- 13-201. Definitions.
- 13-202. Junkyard screening.
- 13-203. Screening methods.
- 13-204. Requirements for effective screening.
- 13-205. Maintenance of screens.
- 13-206. Utilization of highway right-of-way.
- 13-207. Non-conforming junkyards.
- 13-208. Permits and fees.
- 13-209. Violations and penalty.

**13-201.** <u>Definitions</u>. (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. (2003 Code, § 13-201)

**13-202.** <u>Junkyard screening</u>. 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. (2003 Code, § 13-202)

**13-203.** <u>Screening methods</u>. The following methods and materials for screening are given for consideration only:

(1) <u>Landscape planting</u>. 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) <u>Earth grading</u>. The construction of earth mounds which are graded, shaped, and planted to a natural appearance.

(3) <u>Architectural barriers</u>. 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; and/or

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

(4) <u>Natural objects</u>. 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. (2003 Code, § 13-203)

**13-204.** <u>**Requirements for effective screening**</u>. 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. (2003 Code, § 13-204)

13-205. <u>Maintenance of screens</u>. 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. (2003 Code, § 13-205)

**13-206.** <u>Utilization of highway right-of-way</u>. 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. (2003 Code, § 13-206)

13-207. <u>Non-conforming junkyards</u>. 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. (2003 Code, § 13-207)

**13-208.** <u>Permits and fees</u>. 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. (2003 Code, § 13-208)

**13-209.** <u>Violations and penalty</u>. Violations of this chapter shall subject the offender to a penalty of up to fifty dollars (\$50.00). Each day a violation is allowed to continue shall constitute a separate offense. (2003 Code, § 13-209)

### JUNKED MOTOR VEHICLES

#### SECTION

13-301. Definitions.

13-302. Violations a civil offense.

13-303. Exceptions.

13-304. Enforcement.

13-305. Violations and penalty.

13-301. <u>Definitions</u>. For the purpose of the interpretation and application of this chapter, the following words and phrases shall have the indicated meanings:

(1) "Person" shall mean any natural person, or any firm, partnership, association, corporation, or other organization of any kind and description.

(2) "Private property" shall include all property that is not public property, regardless of how the property is zoned or used.

(3) "Traveled portion of any public street or highway" shall mean the width of the street from curb to curb, or where there are no curbs, the entire width of the paved portion of the street, or where the street is unpaved, the entire width of the street in which vehicles ordinarily use for travel.

(4) (a) "Vehicle" shall mean any machine propelled by power other than human power, designed to travel along the ground by the use of wheels, treads, self-laying tracks, runners, slides or skids, including but not limited to automobiles, trucks, motorcycles, motor scooters, go-carts, campers, tractors, trailers, tractor-trailers, buggies, wagons, and earthmoving equipments, and any part of the same.

(b) "Junk vehicle" shall mean a vehicle of any age that is damaged or defective in any one (1) or combination of any of the following ways that either makes the vehicle immediately inoperable, or would prohibit the vehicle from being operated in a reasonable safe manner upon the public streets and highways under its own power if self-propelled, or while being towed or pushed, if not self-propelled.

(i) Flat tires, missing tires, missing wheels, or missing or partially or totally disassembled tires and wheels;

(ii) Missing or partially or totally disassembled essential part or parts of the vehicle's drive train, including, but not limited to, engine, transmission, transaxle, drive shaft, differential, or axle;

(iii) Extensive exterior body damage or missing or partially or totally disassembled essential body parts, including, but not limited to, fenders, doors, engine hood, bumper or bumpers, windshield, or windows; (iv) Missing or partially or totally disassembled essential interior parts, including, but not limited to, driver's seat, steering wheels, instrument panel, clutch, brake, or gear shift lever;

(v) Missing or partially or totally disassembled parts essential to the starting or running of the vehicle under its own power, including, but not limited to, starter, generator or alternator, battery, distributor, gas tank, carburetor or fuel injection system, spark plugs, or radiator;

(vi) Interior is a container for metal, glass, paper, rags or other cloth, wood, auto parts, machinery, waste, or discarded materials in such quantity, quality, and arrangement that a driver cannot be properly seated in the vehicle;

(vii) Lying on the ground (upside down, on its side, or at other extreme angle), sitting on block or suspended in the air by any other method; and/or

(viii) General environment in which the vehicle sits, including, but not limited to vegetation that has grown up around, in, or through the vehicle, the collection of pools of water in the vehicle, and the accumulation of other garbage or debris around the vehicle. (2003 Code, § 13-301)

**13-302.** <u>Violations a civil offense</u>. It shall be unlawful and a civil offense for any person:

(1) To park and/or in any other manner place and leave unattended on the traveled portion of any public street or highway a junk vehicle for any period of time, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle;

(2) To park or in any other manner place and leave unattended on the untraveled portion of any street or highway, or upon any other public property, a junk vehicle for more than forty-eight (48) continuous hours, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle; or

(3) To park, store, keep, or maintain on private property a junk vehicle for more than thirty (30) days. (2003 Code, § 13-302)

**13-303.** <u>Exceptions</u>. (1) It shall be permissible for a person to park, store, keep, and maintain a junked vehicle on private property under the following conditions:

(a) The junk vehicle is completely enclosed within a building where neither the vehicle nor any part of it is visible from the street or from any other abutting property. However, this exception shall not exempt the owner or person in possession of the property from any zoning, building, housing, property maintenance, and other regulations governing the building in which such vehicle is enclosed. (b) The junk vehicle is parked or stored on property lawfully zoned for business engaged in wrecking, junking or repairing vehicles. However, this exception shall not exempt the owner or operator of any such business from any other zoning, building, fencing, property maintenance, and other regulations governing business engaged in wrecking, junking, or repairing vehicles.

(2) No person shall park, store, keep, and maintain on private property a junk vehicle for any period of time if it poses an immediate threat to the health and safety of citizens of the city. (2003 Code, § 13-303)

**13-304.** Enforcement. Pursuant to *Tennessee Code Annotated*, § 7-63-101, the building inspector is authorized to issue ordinance summons for violations of this chapter on private property. The building inspector shall upon the complaint of any citizen, or acting on his own initiative, investigate complaints of junked vehicles on private property. If after such investigation the building inspector finds a junked vehicle on private property, he shall issue an ordinance summons. The ordinance summons shall be served upon the owner or owners of the property, or upon the person or persons apparently in lawful possession and shall give notice to the same to appear, answer the charges against him or them. If the offender refuses to sign the agreement to appear, the code enforcement staff may:

- (1) Request the city judge to issue a summons; or
- (2) Request a police officer to witness the violation.

The police officer who witnesses the violation may issue the offender a citation in lieu of arrest as authorized by *Tennessee Code Annotated*, §§ 7-63-101, *et seq.*, or if the offender refuses to sign the citation, may arrest the offender for failure to sign the citation in lieu of arrest. (2003 Code, § 13-304)

**13-305.** <u>Violations and penalty</u>. Any person violating this chapter shall be subject to a civil penalty of fifty dollars (\$50.00) plus court costs for each separate violation of this chapter. Each day the violation of this chapter continues shall constitute a separate violation. (2003 Code, § 13-305)

# SLUM CLEARANCE

### SECTION

- 13-401. Findings of board.
- 13-402. Definitions.
- 13-403. "Public officer" designated; powers.
- 13-404. Initiation of proceedings; hearings.
- 13-405. Orders to owners of unfit structures.
- 13-406. When public officer may repair, etc.
- 13-407. When public officer may remove or demolish.
- 13-408. Lien for expenses; sale of salvage materials; other powers not limited.
- 13-409. Basis for a finding of unfitness.
- 13-410. Service of complaints or orders.
- 13-411. Enjoining enforcement of orders.
- 13-412. Additional powers of public officer.
- 13-413. Powers conferred are supplemental.
- 13-414. Structures unfit for human habitation deemed unlawful.

**13-401.** <u>Findings of board</u>. 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.

**13-402.** <u>**Definitions**</u>. (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 Gallaway, 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.

(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.

**13-403.** <u>"Public officer" designated; powers</u>. There is hereby designated and appointed a "public officer," to be the code enforcement officer of the city, to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by this person.

13-404. <u>Initiation of proceedings; hearings</u>. 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.

**13-405.** 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.

**13-406.** <u>When public officer may repair, etc</u>. 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."

13-407. <u>When public officer may remove or demolish</u>. 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.

13-408. 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 Fayette 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 Gallaway to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

13-409. <u>Basis for a finding of unfitness</u>. 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 Gallaway. 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.

13-410. <u>Service of complaints or orders</u>. 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 Fayette County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law.

13-411. <u>Enjoining enforcement of orders</u>. 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.

**13-412.** <u>Additional powers of public officer</u>. 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.

13-413. <u>Powers conferred are supplemental</u>. 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.

13-414. <u>Structures unfit for human habitation deemed unlawful</u>. 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.

### **TITLE 14**

#### ZONING AND LAND USE CONTROL

#### **CHAPTER**

1. MUNICIPAL PLANNING COMMISSION.

2. PROVISIONS GOVERNING FLOOD HAZARD DISTRICTS.

3. ZONING ORDINANCE.

### **CHAPTER 1**

#### MUNICIPAL PLANNING COMMISSION

### SECTION

14-101. Creation and membership.

14-101. Creation and membership. Pursuant to the provisions of Tennessee Code Annotated. § 13-4-101 there is hereby created a municipal planning commission, hereinafter referred to as the planning commission. The planning commission shall consist of five (5) members; two (2) of these shall be the mayor and another member of the board of commissioners selected by the board of commissioners; the other three (3) members shall be appointed by the mayor. All members of the planning commission shall serve as such without compensation. Except for the initial appointments, the terms of the three (3) members appointed by the mayor shall be for three (3) years each. The three (3) members first appointed shall be appointed for terms of one (1), two (2), and three (3) years respectively so that the term of one (1) member expires each year. The terms of the mayor and the member selected by the board of commissioners shall run concurrently with 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 or her will and pleasure. (Ord. # 55-2019, June 2019)

### **CHAPTER 2**

# PROVISIONS GOVERNING FLOOD HAZARD DISTRICTS

### SECTION

- 14-201. Definitions.
- 14-202. General provisions.
- 14-203. Administration.
- 14-204. Provisions for flood hazard reduction.
- 14-205. Variance procedures.

14-201. <u>Definitions</u>. 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.

(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 floodwaters.

(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 independent perimeter load-bearing walls is new construction.

(4) "Appeal" means a request for a review of the building official'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 where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(6) "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 ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, or A99.

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

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

(9) "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.

(10) "Building" for purposes of this section, means any structure built for the support, shelter, or enclosure for any occupancy or storage. (See "structure").

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

(12) "Elevated building" means a non-basement building:

(a) Built to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers); and

(b) And adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood.

In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

(13) "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.

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

(15) "Existing construction" any structure for which the "start of construction" commenced before the effective date of this chapter.

(16) "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, and either final site grading or the pouring of concrete pads) is completed before the effective date of this chapter.

(17) "Existing structures." See "Existing construction."

(18) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of 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).

(19) "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;

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(20) "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.

(21) "Flood hazard boundary map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the flood related erosion areas having special hazards have been designated as Zone A, M, and/or E.

(22) "Flood insurance rate map (FIRM)" means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

(23) "Flood insurance study" is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles as well as the flood boundary map and the water surface elevation of the base flood.

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

(25) "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.

(26) "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.

(27) "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 an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding. (28) "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.

(29) "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 flood plain management regulations.

(30) "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 one foot.

(31) "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.

(32) "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.

(33) "Functionally dependent facility" means a facility 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.

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

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

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

(b) Certified or preliminary 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 a state inventory of history places in 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 in 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 in states without approved programs.

(36) "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.

(37) "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.

(38) "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable 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 subsection 60.3.

(39) "Manufactured home" means a structure, transportable in one 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."

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

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

(42) "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 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.

(43) "National Geodetic Vertical Datum (NGVD)" as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

(44) "New construction" any structure for which the "start of construction" commenced on or after the effective date of this chapter. The term also includes any subsequent improvements to such structure.

(45) "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 on or after the effective date of this chapter.

(46) "100-year flood" see "Base flood."

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

(48) "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 projections;

(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.

(49) "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.

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

(51) "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.

"Start of construction" includes substantial improvement, and (52)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; or the placement of a manufactured home on a foundation. Permanent construction does not include 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.

(53) "State coordinating agency" (Tennessee Department of Economic and Community Development, Local Planning Assistance Office) means the

agency of the state government, or other office designated by the governor of the state or by state statute at the request of the administrator to assist in the implementation of the national flood insurance program in that state.

(54) "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.

(55) "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.

(56) "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. 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 identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

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

(57) "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.

(58) "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. (2003 Code, § 14-201)

**14-202.** <u>**General provisions**</u>. (1) <u>Application</u>. This chapter shall apply to all areas within the incorporated area of Gallaway, Tennessee.

(2) <u>Basis for establishing the areas of special flood hazard</u>. The areas of special flood hazard identified on the Gallaway, Tennessee, Federal Emergency Management Agency, Flood Insurance Rate Maps, Community - Panel Numbers 470048-0005A; Effective date: July 5, 1982 and any subsequent amendments or revisions, are adopted by reference and declared to be a part of this chapter.

(3) <u>Requirement for development permit</u>. A development permit shall be required in conformity with this chapter prior to the commencement of any development activity.

(4) <u>Compliance</u>. No 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) <u>Abrogation and greater restrictions</u>. This chapter is not intended to repeal, abrogate, or impair any existing easement, covenant, or deed restriction. However, where this chapter conflicts or overlaps with another, whichever imposes the more stringent restrictions shall prevail.

(6) <u>Interpretation</u>. 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 state statutes.

(7) <u>Warning and disclaimer of liability</u>. 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 flood hazard areas 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 Gallaway, 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) <u>Penalties for violation</u>. 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 or special exceptions, 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 Gallaway, Tennessee from taking such other lawful actions to prevent or remedy any violation. (2003 Code, § 14-202)

**14-203.** <u>Administration</u>. (1) <u>Designation of city manager</u>. The city manager is hereby appointed to administer and implement the provisions of this chapter.

(2) <u>Permit procedures</u>. Application for a development permit shall be made to the city manager on forms furnished by him prior to any development activity. The development permit may include, but is not limited to the following: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities. Specifically, the following information is required:

> (a) <u>Application stage</u>. (i) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings.\*

> (ii) Elevation in relation to mean sea level to which any non-residential building will be floodproofed, where base flood elevation data is available.\*

> (iii) Certificate from a registered professional engineer or architect that the non-residential floodproofed building will meet the floodproofing criteria in subsection (b) below, where base flood elevation data is available.\*

> (iv) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. \*(see subsection (b) below)

(b) <u>Construction stage</u>. Within unnumbered A zones, where flood elevation data are not available, the mayor 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 and the highest adjacent grade. USGS Quadrangle maps may be utilized when no more detailed reference exists to establish reference elevations.

Within all flood zones where base flood elevation data are utilized, the city manager shall require that upon placement of the lowest floor, or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the city manager a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by, or under the direct supervision of, a registered land surveyor, professional engineer, or architect and certified by same. When floodproofing is utilized for a particular 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 city manager shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

(3) <u>Duties and responsibilities of the city manager</u>. Duties of the city manager shall include, but not be limited to:

(a) Review of all development permits to assure that the 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 Office, prior to any alteration or relocation of a watercourse, and submission of evidence of such notification to the Federal Emergency Management Agency;

(d) Record the actual elevation (in relation to mean sea level or highest adjacent grade, whichever is applicable) of the lowest floor (including basement) of all new or substantially improved buildings, in accordance with subsection (2)(b) above;

(e) Record the actual elevation (in relation to mean sea level or highest adjacent grade, whichever is applicable) to which the new or substantially improved buildings have been floodproofed, in accordance with subsection (2)(b) above;

(f) When floodproofing is utilized, the city manager shall obtain certification from a registered professional engineer or architect, in accordance with subsection (2)(b) above;

(g) 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 city manager shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in  $\S$  14-205;

(h) When base flood elevation data or floodway data have not been provided by the Federal Emergency Management Agency then the city manager shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, 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 FHBM or FIRM meet the requirements of this chapter;

(i) All records pertaining to the provisions of this chapter shall be maintained in the office of the city manager 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; and (j) Assure that the flood carrying capacity within an altered or relocated portion of any water course is maintained. (2003 Code,  $\S$  14-203)

**14-204.** <u>Provisions for flood hazard reduction</u>. (1) <u>General</u> <u>standards</u>. In all flood prone areas the following provisions are required:

(a) New construction and substantial improvements 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 shall be constructed with materials and utility equipment resistant to flood damage;

(d) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(e) 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 which is in compliance with the provisions of this chapter, shall meet the requirements of "new construction" as contained in this chapter; and

(j) Any alteration, repair, reconstruction, or improvements to a building which is not in compliance with the provision of this chapter, shall meet the requirements of "new construction" as contained in this chapter and provided said non-conformity is not extended.

(2) <u>Specific standards</u>. These provisions shall apply to all areas of special flood hazard as provided herein:

In all areas of special flood hazard where base flood elevation data have been provided, including A zones, A1-30 zones, AE zones, AH zones, AO zones and A99 zones, as set forth in § 14-202(2), the following provisions are required:

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(a) Residential construction. 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 the unimpeded movements of flood waters shall be provided in accordance with standards of subsection (c) below.

(b) Non-residential construction. New construction or substantial improvement of any commercial, industrial, or nonresidential building shall have the lowest floor, including basement, elevated no lower than one foot (1') above the level of the base flood elevation. 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 watertight with walls substantially impermeable to 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 standards of this subsection are satisfied. Such certification shall be provided to the mayor as set forth in § 14-203(2)(b).

(c) Elevated building. New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation, 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 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 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 floodwaters and all such petitions shall comply with the provisions of this subsection(2).

(d) Standards for manufactured homes and recreational vehicles. (i) All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions of existing manufactured home parks or subdivisions, or in substantially improved manufactured home parks or subdivisions, must meet all the requirements of new construction, including elevation and anchoring.

(ii) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:

(A) The lowest floor of the manufactured home is elevated no lower than one foot (1') above the level of the base flood elevation on a permanent foundation;

(B) The manufactured home must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement; and

(C) In or outside of an existing or new manufactured home park or subdivision, or in an expansion of an existing manufactured home park or subdivision, on which a manufactured home has incurred "substantial damage" as the result of a flood, any manufactured home placed or substantially improved must meet the standards of § 14-204(2)(d)(ii)(A) and (B) above.

(iii) All recreational vehicles placed on sites must either:

(A) Be on the site for fewer than one hundred eighty (180) consecutive days;

(B) Be fully licensed and ready for highway use; or

(C) The recreational vehicle must meet all the requirements for new construction, including anchoring and elevation requirements of § 14-204(2)(d)(i) or (ii)(A) and (B) above.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached structures.

In all areas of special flood hazard where base flood elevation data or floodway data have not been provided, the provisions of § 14-203(3)(h) shall be utilized for all requirements relative to the base flood elevation or floodways.

(3) <u>Standards for areas of special flood hazard zones A1-30 and AE</u> with established base flood elevation but without floodways designated. Located within the areas of special flood hazard established in § 14-202(2), where streams exist with base flood data provided but where no floodways have been provided, (zones A1-30 and 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 (1) foot 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 § 14-204(2).

(4) <u>Standards for areas of shallow flooding (AO and AH zones)</u>. Located within the areas of special flood hazard established in § 14-202(2), are areas designated as shallow flood 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 buildings shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated, at least two (2) feet above the highest adjacent grade.

(b) All new construction and substantial improvements of nonresidential buildings shall:

(i) Have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement shall be elevated at least two feet (2') above the highest adjacent grade; or

(ii) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(c) Adequate drainage paths shall be provided around slopes to guide floodwaters around and away from proposed structures.

(5) <u>Standards for areas of protected by flood protection system (A-99</u> <u>zones)</u>. Located within the areas of special flood hazard established in § 14-202(2), are areas of the one hundred (100) year flood protected by a flood protection system which is under construction but where base flood elevations and flood hazard factors have not been determined. With these areas (A-99 zones) the following provisions apply:

(a) All provisions of § 14-203 and § 14-204(1) and (7) shall apply.

(6) <u>Standards for unmapped streams</u>. Located within Gallaway, Tennessee are unmapped streams where areas of special flood hazard are neither indicated nor base flood data or floodways have been provided. 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 along each side of the stream, 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 at any point within the locality.

(b) When flood elevation data is available, new construction or substantial improvements of buildings shall be elevated or floodproofed to elevations established in accordance with § 14-203(2)(b).

(7) <u>Standards for subdivision proposals</u>. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, 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 flood-prone area, any such proposals shall be reviewed to ensure that:

(a) All subdivision proposals shall be consistent with the need to minimize flood damage.

(b) 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.

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(d) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) which is greater than fifty (50) lots and/or five (5) acres. (2003 Code, § 14-204)

14-205. <u>Variance procedures</u>. (1) <u>Board of floodplain review</u>.

(a) Creation and appointment. A board of floodplain review is hereby established which shall consist of (three) members appointed by the chief executive officer. The term of membership shall be four (4) years except that the initial individual appointments to the board of floodplain review shall be terms of one (1), two (2), and three (3) years respectively. Vacancies shall be filled for any unexpired term by the chief executive officer.

(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 commission.

(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 mayor 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

dollars for the cost of publishing notice of such hearings shall be paid by the appellant. The mayor 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 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 which shall not be more than \_\_\_\_\_ days from the date of the hearing. 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 mayor or other administrative official in the carrying out or enforcement of any provisions of this chapter.

(ii) Variance procedures. (A) The Gallaway Board of Zoning Appeals 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.

(i) 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 Variances shall only be issued upon:

(B)

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship; and

(3) 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 mayor shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request. (2003 Code, § 14-205)

# **CHAPTER 3**

# **ZONING ORDINANCE**

# SECTION

14-301. Land use to be governed by zoning ordinance.

**14-301.** <u>Land use to be governed by zoning ordinance</u>. Land use within the City of Gallaway shall be governed by Ord. #109-2006, titled "Zoning Ordinance, Gallaway, Tennessee," and any amendments thereto.<sup>1</sup> (2003 Code, § 14-301)

<sup>&</sup>lt;sup>1</sup>Ordinance #109-2006, and any amendments thereto, are published as separate documents and are of record in the office of the city recorder.

### **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.
- 8. OFF ROAD VEHICLES.

# **CHAPTER 1**

### MISCELLANEOUS<sup>2</sup>

## SECTION

- 15-101. Motor vehicle requirements.
- 15-102. Driving on streets closed for repairs, etc.
- 15-103. One-way streets.
- 15-104. Unlaned streets.
- 15-105. Laned streets.
- 15-106. Yellow lines.
- 15-107. Miscellaneous traffic-control signs, etc.
- 15-108. General requirements for traffic-control signs, etc.
- 15-109. Unauthorized traffic-control signs, etc.
- 15-110. Presumption with respect to traffic-control signs, etc.
- 15-111. School safety patrols.
- 15-112. Driving through funerals or other processions.

<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.

- 15-113. Clinging to vehicles in motion.
- 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. Damaging pavements.
- 15-121. Bicycle riders, etc.
- 15-122. Heavy trucks, etc.
- 15-123. Compliance with financial responsibility law required.
- 15-124. Driver education course established.
- 15-125. Impounded/seized vehicles.

**15-101.** <u>Motor vehicle requirements</u>. 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. (2003 Code, § 15-101)

**15-102.** <u>Driving on streets closed for repairs, etc</u>. 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. (2003 Code, § 15-102)

**15-103.** <u>**One-way streets**</u>. 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. (2003 Code, § 15-104)

**15-104.** <u>Unlaned streets</u>. (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 municipality for one-way traffic.

(2) All vehicles proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven as close as practicable to the right hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn. (2003 Code, § 15-105)

**15-105.** <u>Laned streets</u>. 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. (2003 Code, § 15-106)

**15-106.** <u>Yellow lines</u>. On streets with a yellow line placed to the right of any lane line or center line, such yellow line shall designate a no-passing zone, and no operator shall drive his vehicle or any part thereof across or to the left of such yellow line except when necessary to make a lawful left turn from such street. (2003 Code, § 15-107)

**15-107.** <u>Miscellaneous traffic-control signs, etc</u>.<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 municipality unless otherwise directed by a police officer.

It shall be unlawful for any pedestrian or the operator of any vehicle to willfully violate or fail to comply with the reasonable directions of any police officer. (2003 Code, § 15-108)

15-108. <u>General requirements for traffic control signs, etc</u>. 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.** <u>Unauthorized traffic-control signs, etc</u>. 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

<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*.

<sup>&</sup>lt;sup>1</sup>Municipal code references

Stop signs, yield signs, flashing signals, pedestrian control signs, traffic control signals generally: §§ 15-505 to 15-509.

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.

**15-110.** <u>Presumption with respect to traffic-control signs, etc</u>. 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 authority. (2003 Code, § 15-111)

15-111. <u>School safety patrols</u>. All motorists and pedestrians shall obey the directions or signals of school safety patrols when such patrols are assigned under the authority of the chief of police and are acting in accordance with instructions; provided, that such persons giving any order, signal, or direction shall at the time be wearing some insignia and/or using authorized flags for giving signals. (2003 Code, § 15-112)

**15-112.** <u>Driving through funerals or other processions</u>. 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. (2003 Code, § 15-113)

**15-113.** <u>Clinging to vehicles in motion</u>. 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. (2003 Code, § 15-114)

**15-114.** <u>**Riding on outside of vehicles**</u>. 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. (2003 Code, § 15-115)

15-115. <u>Backing vehicles</u>. 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. (2003 Code, § 15-116)

**15-116.** <u>Projections from the rear of vehicles</u>. 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. (2003 Code,  $\S$  15-117)

**15-117.** <u>Causing unnecessary noise</u>. 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. (2003 Code, § 15-118)

**15-118.** <u>Vehicles and operators to be licensed</u>. It shall be unlawful for any person to operate a motor vehicle in violation of the "Tennessee Motor Vehicle Title and Registration Law" or the "Uniform Classified and Commercial Driver License Act of 1988."

15-119. <u>Passing</u>. 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. (2003 Code,  $\S$  15-120)

**15-120.** <u>Damaging pavements</u>. No person shall operate upon any street of the municipality any vehicle, motor propelled or otherwise, which by reason of its weight or the character of its wheels or track is likely to damage the surface or foundation of the street. (2003 Code, § 15-121)

**15-121.** <u>Bicycle riders, etc</u>. Every person riding or operating a bicycle, motorcycle, or motor scooter 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, or motor scooters.

No person operating or riding a bicycle, motorcycle, or motor scooter 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.

No bicycle, motorcycle, or motor scooter shall be used to carry more persons at one time than the number for which it is designed and equipped.

No person operating a bicycle, motorcycle, or motor scooter shall carry any package, bundle, or article which prevents the rider from keeping both hands upon the handlebar.

No person under the age of sixteen (16) years shall operate any motorcycle, motorbike, or motor scooter while any other person is a passenger upon said motor vehicle.

No person shall operate or ride upon any motorcycle, motorbike, or motor scooter unless such person is equipped with and wearing on the head a safety helmet with a secured chin strap and suspension lining, which said helmet shall conform to the type and design manufactured for the use of the operators and riders of such motor vehicles. (2003 Code, § 15-122)

15-122. <u>Heavy trucks, etc</u>. (1) <u>Definition of vehicle</u>. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon street, road, highway, or public thoroughfares, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(2) <u>Heavy truck traffic prohibited on certain streets</u>. (a) For the purpose of this section, a heavy truck is defined to be any vehicle whose gross vehicle weight exceeds thirty-five thousand (35,000) pounds.

(b) All heavy trucks will be prohibited from the following streets: Old Brownsville Road and Senator Street to Layton Road from Old Brownsville Road.

(c) The following categories are exempt from the prohibition of this section:

(i) The operation of heavy trucks upon any street where necessary to the conduct of business at a destination point within the city, provided streets designated as truck routes are used until reaching the intersection nearest the destination point.

(ii) The operation of heavy trucks owned or operated by the city, any contractor or materialman, while under contract to the city while engaged in the repair, maintenance, or construction of streets, street improvements, or street utilities within the city. (iii) The operation of school buses and buses used to transport persons to an from a place of worship, which run a designated route.

(iv) The operation of emergency vehicles upon any street in the city.

(3) <u>Signs posted</u>. Signs shall be posted on the entrances to each of the streets listed in subsection (2)(b) above indicating either by words or by appropriate symbols that heavy trucks are prohibited from traveling upon said streets.

(4) <u>Penalty</u>. Any violation of this section shall be punishable by fine not to exceed fifty dollars (\$50.00). (2003 Code, § 15-123)

# 15-123. Compliance with financial responsibility law required.

(1) This section shall apply to every vehicle subject to the state registration and certificate of title provisions.

(2) At the time the driver of a motor vehicle is charged with any moving violation under *Tennessee Code Annotated*, title 55, chapters 8 and 10, parts 1-5, chapter 50; any provision in this title of this municipal code; or at the time of an accident for which notice is required under *Tennessee Code Annotated*, § 55-10-106, the officer shall request evidence of financial responsibility as required by this section. In case of an accident for which notice is required under *Tennessee Code Annotated*, § 55-10-106, the officer shall request such evidence from all drivers involved in the accident, without regard to apparent or actual fault. For the purposes of this section, "financial responsibility" 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.

**15-124.** <u>Driver education course established</u>. (1) The police department, under the supervision of the city judge, is hereby authorized and directed to operate and conduct a driver education or improvement course.

(2) A reasonable fee between fifty dollars (\$50.00) and seventy dollars (\$70.00) shall be assessed for the driver education course to each person who attends, however, no one shall be refused admittance for inability to pay. (2003 Code, § 15-125)

**15-125.** <u>**Impounded/seized vehicles.**</u> (1) Police department employees are authorized to seize, and take custody of, any motor vehicle:

(a) The driver of which is arrested for violating § 55-10-401(driving while under the influence, of any intoxicant) and/or § 55-50-504(driving while privilege is canceled, suspended, or revoked), pursuant to § 55-10-403(k) and § 55-50-504(h), respectively; or

(b) That is abandoned, immobile, or unattended, pursuant to §55-16-103.

(2) The police department is authorized to employ its own personnel, equipment, and facilities, or hire persons, equipment, and facilities, for the purpose of removing, preserving, and storing any motor vehicles seized pursuant to subsection (1) above.

(3) The police department employee seizing the motor vehicle shall give the person found in possession thereof, if known, a receipt titled a "notice of seizure" containing the following information:

- (a) The general description of the motor vehicle;
- (b) The date of seizure and the date notice of seizure was given;
- (c) The motor vehicle identification number;
- (d) The grounds for seizure;

(e) The procedure by which recovery of the seized motor vehicle may be sought, including applicable time periods for recovery; and

(f) The consequence if recovery is not timely sought.

(4) The police department shall, as soon as practicable, verify ownership and all lien holders of record for the seized motor vehicle through the Tennessee Information and Enforcement System and/or the Department of Revenue, Title and Registration Division. Within three (3) business days of receiving verification of ownership, the police department shall send a notice, by registered mail, return receipt requested, to the owner and all lien holders of record, which said notice shall state:

(a) The motor vehicle has been taken into custody;

(b) The motor vehicle's year, make, model, and vehicle identification number;

(c) The location where the motor vehicle is being stored;

(d) If the motor vehicle was seized pursuant to § 55-10-403(k) or § 55-50-504 (h), then the owner may file a claim, or the lien holder may file proof of security, within thirty (30) days after notice that a forfeiture warrant was issued, pursuant to § 40-33-206;

(e) If the motor vehicle was seized pursuant to § 55-16-104, then the owner, and/or lien holders of record, have ten (10) days from the notice date to recover the vehicle, conditioned upon payment of all towing, preservation, administrative and storage charges, resulting from placing the motor vehicle in custody; and

(f) If the owner and/or lien holders fail to timely exercise their rights to recover the vehicle, then such failure shall be deemed a waiver by the owner and all lien holders of all right, title, and interest in the motor vehicle and a consent to the sale of the motor vehicle at public auction.

(5) If there is no response to the notice given pursuant to subsection (4) above, then the police department shall publish the subsection (4) notice one (1) time in one (1) newspaper of general circulation in Fayette County, which notice shall state if the owner and/or lien holders fail to timely exercise their right to recover the motor vehicle, then such failure shall be deemed a waiver by the owner and all lien holders of all right, title and interest in the motor vehicle and a consent to the sale of the motor vehicle at public auction.

(6) The storage cost for an impounded vehicle shall be twenty-five dollars (\$25.00) each day, with any part of any day counting as a full day.

(7) The administrative costs for an impounded vehicle include, but are not limited to, all time to research ownership and record lien holder information, search fees, notice preparation, publication costs, recovery processing, and copying charges.

(8) Any person seeking to recover an impounded vehicle shall present, during Gallaway's City Hall business hours, satisfactory evidence of ownership,

a security interest in the motor vehicle or a right to possession, and shall pay all charges for towing, preservation, administration, and storage, in certified funds.

(9) The police department may sell any impounded vehicle not properly recovered by its owner and/or any lien holder of record at a public auction. (Ord. #167/2011, Oct. 2011)

## **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.** <u>Authorized emergency vehicles defined</u>. 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. (2003 Code, § 15-201)

**15-202.** <u>Operation of authorized emergency vehicles</u>.<sup>1</sup> (1) The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, subject to the conditions herein stated.

(2) The driver of an authorized emergency vehicle may 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.

(3) 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.

(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. (2003 Code,  $\S$  15-202)

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Operation of other vehicle upon the approach of emergency vehicles: § 15-501.

**15-203.** <u>Following emergency vehicles</u>. 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. (2003 Code, § 15-203)

**15-204.** <u>Running over fire hoses, etc</u>. 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. (2003 Code, § 15-204)

#### **CHAPTER 3**

#### SPEED LIMITS

### SECTION

- 15-301. In general.
- 15-302. At intersections.
- 15-303. In school zones and near playgrounds.
- 15-304. In congested areas.
- 15-305. Speed limits inside housing authority.
- 15-306. Speed limit on Center Point Road inside city limits.

**15-301.** <u>In general</u>. It shall be unlawful for any person to operate or drive a motor vehicle upon any highway or street at a rate of speed in excess of thirty (30) miles per hour except where official signs have been posted indicating other speed limits, in which cases the posted speed limit shall apply. (2003 Code, § 15-301)

15-302. <u>At intersections</u>. 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. (2003 Code, § 15-302)

**15-303.** In school zones and near playgrounds. 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, shall be prima facie guilty of reckless driving.

**15-304.** <u>In congested areas</u>. It shall be unlawful for any person to operate or drive a motor vehicle through any congested area at a rate of speed

in excess of any posted speed limit when such speed limit has been posted by authority of the municipality. (2003 Code, § 15-304)

**15-305.** <u>Speed limits inside housing authority</u>. (1) There is established a maximum speed limit of fifteen (15) miles per hour within the boundaries of the Gallaway Housing Authority for the following streets: Senator, Jackson and Murrell Streets, and Battle Cove.

(2) A fine of up to fifty dollars (\$50.00) shall be imposed for each violation of this section. (Ord. #173/2012, Feb. 2012)

# 15-306. Speed limit on Center Point Road inside city limits.

(1) The speed limit on certain sections of Center Point Road, within the city limits of Gallaway shall be forty (40) miles per hour.

(2) The Gallaway Police Department is directed to erect a total of four (4) signs. Two (2) signs that read "CAUTION HIDDEN DRIVEWAYS" and two (2) signs that read "SPEED LIMIT 40 MILES PER HOUR." One of each sign will be placed just over the railroad tracks as Center Point Road begins, and one (1) of each sign will be placed at the east city limit boundary. (2003 Code, § 16-115)

### **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.** <u>Generally</u>. 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> (2003 Code, § 15-401)

**15-402.** <u>**Right turns</u>**. 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. (2003 Code, § 15-402)</u>

**15-403.** <u>Left turns on two-way roadways</u>. 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 centerline of the two (2) roadways. (2003 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, as nearly as practicable, in the left hand lane lawfully available to traffic moving in such direction upon the roadway being entered. (2003 Code, § 15-404)

15-405. <u>U-turns</u>. U-turns are prohibited. (2003 Code, § 15-405)

<sup>&</sup>lt;sup>1</sup>State law reference

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.** <u>Upon approach of authorized emergency vehicles</u>.<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, or of a police vehicle properly and lawfully making use of an audible signal only, 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. (2003 Code, § 15-501)

**15-502.** <u>When emerging from alleys, etc</u>. 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. (2003 Code, § 15-502)

**15-503.** <u>To prevent obstructing an intersection</u>. 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. (2003 Code, § 15-503)

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Special privileges of emergency vehicles: title 15, chapter 2.

**15-504.** <u>At railroad crossings</u>. 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 (1,500') of the highway crossing and is emitting an audible signal indicating its approach.

(4) An approaching railroad train is plainly visible and is in hazardous proximity at the crossing. (2003 Code, § 15-504)

**15-505.** <u>At "stop" signs</u>. 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. (2003 Code, § 15-505)

**15-506.** <u>At "yield" signs</u>. 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. (2003 Code, § 15-506)

**15-507.** <u>At traffic-control signals generally</u>. 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) <u>Green alone, or "Go"</u>:

(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) <u>Steady yellow alone, or "Caution"</u>:

(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) <u>Steady red alone, or "Stop"</u>:

(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.

(b) Pedestrians facing such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(4) <u>Steady red with green arrow</u>:

(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. (2003 Code, § 15-507)

**15-508.** <u>At flashing traffic-control signals</u>. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal placed or erected in the municipality 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 title. (2003 Code, § 15-508)

**15-509.** <u>At pedestrian control signals</u>. Wherever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" have been placed or erected by the municipality, 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. (2003 Code, § 15-509)

15-510. <u>Stops to be signaled</u>. 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. (2003 Code, § 15-510)

<sup>&</sup>lt;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.** <u>Generally</u>. 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 municipality shall be so parked that its right wheels are approximately parallel to and within eighteen inches (18") of the right edge or curb of the street. On one-way streets where the municipality 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. (2003 Code, § 15-601)

**15-602.** <u>Angle parking</u>. On those streets which have been signed or marked by the municipality 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'). (2003 Code, § 15-602)

**15-603.** <u>Occupancy of more than one space</u>. 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. (2003 Code, § 15-603)

**15-604.** <u>Where prohibited</u>. No person shall park a vehicle in violation of any sign placed or erected by the municipality, nor:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;
- (3) Within an intersection or within fifteen feet (15') thereof;
- (4) Within fifteen feet (15') of a fire hydrant;
- (5) Within a pedestrian crosswalk;
- (6) Within fifty feet (50') of a railroad crossing;

(7) 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 the entrance;

(8) Alongside or opposite any street excavation or obstruction when other traffic would be obstructed;

(9) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(10) Upon any bridge; or

(11) Alongside any curb painted yellow or red by the municipality. (2003 Code, § 15-604)

**15-605.** <u>Loading and unloading zones</u>. 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 municipality as a loading and unloading zone. (2003 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.

**15-701.** <u>Issuance of traffic citations</u>.<sup>1</sup> When a police officer halts a traffic violator other than for the purpose of giving a warning, he shall take the name, address, and operator's license number of said person, the license number of the motor vehicle involved, and such other pertinent information as may be necessary, and shall issue to him a written traffic citation containing a notice to answer to the charge against him in the 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. (2003 Code, § 15-701, modified)

**15-702.** <u>Failure to obey citation</u>. 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. (2003 Code, § 15-702)

15-703. <u>Illegal parking</u>. 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 ten (10) days during the hours and at a place specified in the citation.

If the offense is a parking meter parking violation the offender may, within ten (10) days, have the charge against him disposed of by paying to the city recorder a fine of one dollar (\$1.00) provided he waives his right to a judicial hearing. If he appears and waives his right to a judicial hearing after ten (10) days but before a warrant for his arrest is issued his fine shall be three dollars

<sup>&</sup>lt;sup>1</sup>State law reference

Tennessee Code Annotated, §§ 7-63-101, et seq.

(\$3.00). For other parking violations the offender may similarly waive his right to a judicial hearing and have the charges disposed of out of court but the fines shall be three dollars (\$3.00) within ten (10) days and five dollars (\$5.00) thereafter. (2003 Code, § 15-703)

**15-704.** <u>Impoundment of vehicles</u>. Members of the police department are hereby authorized, when reasonably necessary to prevent obstruction of traffic, to remove from the streets and impound any vehicle whose operator is arrested or any vehicle which is illegally parked, abandoned, or otherwise parked so as to constitute an obstruction or hazard to normal traffic. Any vehicle left parked on any street or alley for more than seventy-two (72) consecutive hours without permission from the chief of police shall be presumed to have been abandoned if the owner cannot be located after a reasonable investigation. Such an impounded vehicle shall be stored until the owner claims it, gives satisfactory evidence of ownership, and pays all applicable fines and costs. The administrative towing fee for impounding a vehicle shall be two hundred fifty dollars (\$250.00) and the storage cost of twenty-five dollars (\$25.00) per day shall also be charged. (2003 Code, § 15-704, modified)

### **CHAPTER 8**

## **OFF ROAD VEHICLES**

# SECTION

15-801. Definition of off road vehicles.15-802. Off road vehicles prohibited on public streets, etc.

**15-801.** <u>Definition of off road vehicles</u>. An off road vehicle shall be defined as a motorcycle, all terrain vehicle, or other vehicle not complying with all state laws relating to the operation of motor vehicles on streets and highways. This includes three-wheelers, four-wheelers, go carts, and dirt bikes that are not equipped for street use. (2003 Code, § 15-801)

**15-802.** <u>Off road vehicles prohibited on public streets, etc.</u> Operation of off road vehicles shall be prohibited on any and all public streets, rights-of-way, and thoroughfares within the City of Gallaway, Tennessee. (2003 Code, § 15-802)

## **TITLE 16**

# STREETS AND SIDEWALKS, ETC<sup>1</sup>

### **CHAPTER**

1. MISCELLANEOUS.

2. EXCAVATIONS AND CUTS.

# **CHAPTER 1**

# **MISCELLANEOUS**

### SECTION

- 16-101. Obstructing streets, alleys, or sidewalks prohibited.
- 16-102. Trees projecting over streets, etc., regulated.
- 16-103. Trees, etc., obstructing view at intersections prohibited.
- 16-104. Projecting signs and awnings, etc., restricted.
- 16-105. Banners and signs across streets and alleys restricted.
- 16-106. Gates or doors opening over streets, alleys, or sidewalks prohibited.
- 16-107. Littering streets, alleys, or sidewalks prohibited.
- 16-108. Obstruction of drainage ditches.
- 16-109. Abutting occupants to keep sidewalks clean, etc.
- 16-110. Parades regulated.
- 16-111. Operation of trains at crossings regulated.
- 16-112. Animals and vehicles on sidewalks.
- 16-113. Fires in streets, etc.
- 16-114. Basketball goals prohibited on public streets.

**16-101.** <u>**Obstructing streets, alleys, or sidewalks prohibited**</u>. 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. (2003 Code, § 16-101)

**16-102.** <u>**Trees projecting over streets, etc., regulated**</u>. It shall be unlawful for any property owner or occupant to allow any limbs of trees on his property to project out over any street, alley, or sidewalk at a height of less than fourteen feet (14'). (2003 Code, § 16-102)

**16-103.** <u>**Trees, etc., obstructing view at intersections prohibited**</u>. It shall be unlawful for any property owner or occupant to have or maintain on

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Related motor vehicle and traffic regulations: title 15.

his property any tree, hedge, bill board, or other obstruction which prevents persons driving vehicles on public streets or alleys from obtaining a clear view of traffic when approaching an intersection. (2003 Code, § 16-103)

**16-104.** <u>Projecting signs and awnings, etc., restricted</u>. 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> (2003 Code, § 16-104)

**16-105.** <u>Banners and signs across streets and alleys restricted</u>. It shall be unlawful for any person to place or have placed any banner or sign across any public street or alley except when expressly authorized by the governing body. (2003 Code, § 16-105)

**16-106.** <u>Gates or doors opening over streets, alleys, or sidewalks</u> <u>prohibited</u>. It shall be unlawful for any person owning or occupying property to allow any gate or door to swing open upon or over any street, alley, or sidewalk except when required by statute. (2003 Code, § 16-106)

**16-107.** <u>Littering streets, alleys, or sidewalks prohibited</u>. 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. (2003 Code, § 16-107)

**16-108.** <u>Obstruction of drainage ditches</u>. It shall be unlawful for any person to permit or cause the obstruction of any drainage ditch in any public right-of-way. (2003 Code, § 16-108)

**16-109.** <u>Abutting occupants to keep sidewalks clean, etc</u>. 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 or ice from the abutting sidewalk. (2003 Code, § 16-109)

**16-110.** <u>**Parades regulated**</u>. It shall be unlawful for any club, organization, or similar group to hold any meeting, parade, demonstration, or exhibition on the public streets without some responsible representative first securing a permit from the recorder. No permit shall be issued by the recorder

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Building code: title 12, chapter 1.

unless such activity will not unreasonably interfere with traffic and unless such representative shall agree to see to the immediate cleaning up of all litter which shall be left on the streets as a result of the activity. Furthermore, it shall be unlawful for any person obtaining such a permit to fail to carry out his agreement to clean up the resulting litter. (2003 Code, § 16-110)

**16-111.** <u>**Operation of trains at crossings regulated**</u>. No person shall operate any railroad train across any street or alley without giving a warning of its approach as required by state law. 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. (2003 Code, § 16-111)

**16-112.** <u>Animals and vehicles on sidewalks</u>. 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 a manner as to unreasonably interfere with or inconvenience pedestrians using the sidewalk. It shall also be unlawful for any person to knowingly allow any minor under his control to violate this section. (2003 Code, § 16-112)

**16-113.** <u>Fires in streets, etc</u>. It shall be unlawful for any person to set or contribute to any fire in any public street, alley, or sidewalk. (2003 Code, § 16-113)

**16-114.** <u>Basketball goals prohibited on public streets</u>. (1) No portable or fixed basketball goal shall be placed, erected, or maintained on or alongside the right-of-way of any public street within the municipal limits of the City of Gallaway so as to allow a person or persons to play within the street. The placement of any basketball goal within a public right-of-way or the presence of persons within a public street playing basketball on such a goal shall be a violation of this section.

(2) Any violation of this section shall be punishable by a fine of fifty dollars (\$50.00). (2003 Code, § 16-114)

### **CHAPTER 2**

# EXCAVATIONS AND CUTS<sup>1</sup>

### SECTION

- 16-201. Permit required.
- 16-202. Applications.
- 16-203. Fee.
- 16-204. Deposit or bond.
- 16-205. Manner of excavating--barricades and lights--temporary sidewalks.
- 16-206. Restoration of streets, etc.
- 16-207. Insurance.
- 16-208. Time limits.
- 16-209. Supervision.
- 16-210. Driveway curb cuts.

**16-201.** <u>Permit required</u>. It shall be unlawful for any person, firm, corporation, association, or others, to make any excavation in any street, alley, or public place, or to tunnel under any street, alley, or public place 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 recorder is open for business, and said permit shall be retroactive to the date when the work was begun. (2003 Code, § 16-201)

**16-202.** <u>Applications</u>. Applications for such permits shall be made to the recorder, or such person as he may designate to receive such applications, and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the person, firm, corporation, association, or others doing the actual excavating, the name of the person, firm, corporation, association, or others for whom the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating

<sup>&</sup>lt;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).

to the work to be done. Such application shall be rejected or approved by the recorder within twenty-four (24) hours of its filing. (2003 Code, § 16-202)

**16-203.** <u>Fee</u>. The fee for such permits shall be twenty dollars (\$20.00). (2003 Code, § 16-203)

16-204. <u>Deposit or bond</u>. No such permit shall be issued unless and until the applicant therefor has deposited with the recorder 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 recorder 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 municipality of relaying the surface of the ground or pavement, and of making the refill if this is done by the municipality 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 recorder a surety bond in such form and amount as the recorder shall deem adequate to cover the costs to the municipality if the applicant fails to make proper restoration. (2003 Code, § 16-204)

16-205. <u>Manner of excavating--barricades and lights--temporary</u> <u>sidewalks</u>. 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. (2003 Code, § 16-205)

16-206. <u>Restoration of streets, etc</u>. Any person, firm, corporation, association, or others making any excavation or tunnel in or under any street, alley, or public place in this municipality shall restore said street, alley, or public place to its original condition except for the surfacing, which shall be done by the municipality, but shall be paid for by such person, firm, corporation, association, or others promptly upon the completion of the work for which the excavation or tunnel was made. In case of unreasonable delay in restoring the street, alley, or public place, the recorder 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 municipality 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 municipality, 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. (2003 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 recorder 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 not less than 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. (2003 Code, § 16-207, modified)

16-208. <u>Time limits</u>. 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 municipality if the municipality 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 recorder. (2003 Code, § 16-208)

**16-209.** <u>Supervision</u>. The recorder 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 municipality 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. (2003 Code, § 16-209)

16-210. <u>Driveway curb cuts</u>. No one shall cut, build, or maintain a driveway across a curb or sidewalk without first obtaining a permit from the recorder. Such a permit will not be issued when the contemplated driveway is to be so located or constructed as to create an unreasonable hazard to pedestrian and/or vehicular traffic. No driveway shall exceed thirty-five feet (35') in width at its outer or street edge, and when two (2) or more adjoining driveways are provided for the same property, a safety island of not less than ten feet (10') in

width at its outer or street edge shall be provided. Driveway aprons shall not extend out into the street.  $(2003 \text{ Code}, \S 16-210)$ 

### **TITLE 17**

### <u>REFUSE AND TRASH DISPOSAL<sup>1</sup></u>

#### **CHAPTER**

1. REFUSE.

# CHAPTER 1

## <u>REFUSE</u>

## SECTION

17-101. Refuse defined.

- 17-102. Premises to be kept clean.
- 17-103. Storage.
- 17-104. Location of containers.
- 17-105. Disturbing containers.
- 17-106. Collection.
- 17-107. Collection vehicles.
- 17-108. Disposal.

**17-101.** <u>Refuse defined</u>. Refuse shall mean and include garbage, rubbish, leaves, brush, and refuse as those terms are generally defined except that dead animals and fowls, body wastes, hot ashes, rocks, concrete, bricks, and similar materials are expressly excluded therefrom and shall not be stored therewith. (2003 Code, § 17-101)

**17-102.** <u>Premises to be kept clean</u>. All persons within the municipality are required to keep their premises in a clean and sanitary condition, free from accumulations of refuse except when stored as provided in this chapter. (2003 Code, § 17-102)

17-103. <u>Storage</u>. Each owner, occupant, or other responsible person using or occupying any building or other premises within this municipality where refuse accumulates or is likely to accumulate, shall provide and keep covered an adequate number of refuse containers. The refuse containers shall be strong, durable, and rodent and insect proof. They shall each have a capacity of not less than twenty (20) nor more than thirty-two (32) gallons, except that this maximum capacity shall not apply to larger containers which the municipality handles mechanically. Furthermore, except for containers which the municipality handles mechanically, the combined weight of any refuse

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Property maintenance regulations: title 13.

container and its contents shall not exceed seventy-five (75) pounds. No refuse shall be placed in a refuse container until such refuse has been drained of all free liquids. Tree trimmings, hedge clippings, and similar materials shall be cut to a length not to exceed four feet (4') and shall be securely tied in individual bundles weighing not more than seventy-five (75) pounds each and being not more than two feet (2') thick before being deposited for collection. (2003 Code,  $\S$  17-104)

17-104. Location of containers. Where alleys are used by the municipal refuse collectors, containers shall be placed on or within six feet (6') of the alley line in such a position as not to intrude upon the traveled portion of the alley. Where streets are used by the municipal refuse collectors, containers shall be placed adjacent to and back of the curb, or adjacent to and back of the ditch or street line if there is no curb, at such times as shall be scheduled by the municipality for the collection of refuse therefrom. As soon as practicable after such containers have been emptied they shall be removed by the owner to within, or to the rear of, his premises and away from the street line until the next scheduled time for collection. (2003 Code, § 17-104)

**17-105.** <u>Disturbing containers</u>. No unauthorized person shall uncover, rifle, pilfer, dig into, turn over, or in any other manner disturb or use any refuse container belonging to another. This section shall not be construed to prohibit the use of public refuse containers for their intended purpose. (2003 Code, § 17-105)

**17-106.** <u>Collection</u>. All refuse accumulated within the corporate limits shall be collected, conveyed, and disposed of under the supervision of such officer as the governing body shall designate. Collections shall be made regularly in accordance with an announced schedule. (2003 Code, § 17-106)

**17-107.** <u>Collection vehicles</u>. The collection of refuse shall be by means of vehicles with beds constructed of impervious materials which are easily cleanable and so constructed that there will be no leakage of liquids draining from the refuse onto the streets and alleys. Furthermore, all refuse collection vehicles shall utilize closed beds or such coverings as will effectively prevent the scattering of refuse over the streets or alleys. (2003 Code, § 17-107)

**17-108.** <u>**Disposal**</u>. The disposal of refuse in any quantity by any person in any place, public or private, other than at the site or sites designated for refuse disposal by the governing body is expressly prohibited. (2003 Code, § 17-108)

# **TITLE 18**

# WATER AND SEWERS<sup>1</sup>

# CHAPTER

- 1. WATER AND SEWER SYSTEM ADMINISTRATION.
- 2. GENERAL WASTEWATER REGULATIONS.
- 3. INDUSTRIAL/COMMERCIAL WASTEWATER REGULATIONS.
- 4. CROSS-CONNECTIONS, AUXILIARY INTAKES, ETC.
- 5. DROUGHT MANAGEMENT.

# **CHAPTER 1**

## WATER AND SEWER SYSTEM ADMINISTRATION

### SECTION

18-101. Application and scope.

- 18-102. Definitions.
- 18-103. Application and contract for service.
- 18-104. Service charges for temporary service.
- 18-105. Connection charges.
- 18-106. Water and sewer main extensions.
- 18-107. Water and sewer main extension variances.
- 18-108. Meters.
- 18-109. Meter tests.
- 18-110. Multiple services through a single meter.
- 18-111. Customer billing and payment policy.
- 18-112. Termination or refusal of service.
- 18-113. Termination of service by customer.
- 18-114. Access to customers' premises.
- 18-115. Inspections.
- 18-116. Customer's responsibility for system's property.
- 18-117. Customer's responsibility for violations.
- 18-118. Supply and resale of water.
- 18-119. Unauthorized use of or interference with water supply.
- 18-120. Limited use of unmetered private fire line.
- 18-121. Damages to property due to water pressure.
- 18-122. Liability for cutoff failures.
- 18-123. Restricted use of water.

<sup>1</sup>Municipal code references

Building, utility and residential codes: title 12. Cross-connections, etc.: title 18, chapter 4. Refuse disposal: title 17. 18-124. Interruption of service.18-125. Schedule of rates.

**18-101.** <u>Application and scope</u>. The provisions of this chapter are a part of all contracts for receiving water and sewer service from the city and shall apply whether the service is based upon contract, agreement, signed application, or otherwise.

**18-102.** <u>Definitions</u>. (1) "Customer" means any person, firm, or corporation who receives water and/or sewer service from the city under either an express or implied contract.

(2) "Dwelling" means any single residential unit or house occupied for residential purposes. Each separate apartment unit, duplex unit or other multiple dwelling unit shall be considered a separate dwelling.

(3) "Premise" means any structure or group of structures operated as a single business or enterprise, provided, however, the term "premise" shall not include more than one (1) dwelling.

(4) "Service line" shall consist of the pipe line extending from any water or sewer main of the city to private property. Where a meter and meter box are located on private property, the service line shall be construed to include the pipe line extending from the city's's water main to and including the meter and meter box.

18-103. <u>Application and contract for service</u>. Each prospective customer desiring water and/or sewer service will be required to sign a standard form contract and pay a nonrefundable customer processing fee of \_\_\_\_\_\_(\$\_\_\_\_) [service deposit of \_\_\_\_\_\_ (\$\_\_\_\_\_)] before service is supplied. [The service deposit shall be refundable if and only if the city cannot supply service in accordance with the terms of this chapter.] If, for any reason, a customer, after signing a contract for service, does not take such service by reason of not occupying the premises or otherwise, he shall reimburse the city for the expense incurred by reason of its endeavor to furnish such service.

The receipt of a prospective customer's application for service shall not obligate the city to render the service applied for. [If the service applied for cannot be supplied in accordance with the provisions of this chapter, the liability of the city to the applicant shall be limited to the return of any service deposit made by such applicant.]

**18-104.** <u>Service charges for temporary service</u>. Customers requiring temporary service shall pay all costs for connection and disconnection incidental to the supplying and removing of service in addition to the regular charge for water and/or sewer service.

**18-105.** <u>Connection charges</u>. Service lines will be laid by the city from its mains to the property line at the expense of the applicant for service. The location of such lines will be determined by the city.

Before a new water or sewer service line will be laid by the city, the applicant shall pay a nonrefundable connection charge of \_\_\_\_\_(\$\_\_\_\_).

When a service line is completed, the city shall be responsible for the maintenance and upkeep of such service line from the main to and including the meter and meter box, and such portion of the service line shall belong to the city. The remaining portion of the service line beyond the meter box (or property line, in the case of sewers) shall belong to and be the responsibility of the customer.

18-106. <u>Water and sewer main extensions</u>.<sup>1</sup> Persons desiring water and/or sewer main extensions must pay all of the cost of making such extensions.

All such extensions shall be installed either by city forces or by other forces working directly under the supervision of the city in accordance with plans and specifications prepared by an engineer registered with the State of Tennessee.

Upon completion of such extensions and their approval by the city, such water and/or sewer mains shall become the property of the city. The persons paying the cost of constructing such mains shall execute any written instruments requested by the city to provide evidence of the city's's title to such mains. In consideration of such mains being transferred to it, the city shall incorporate said mains as an integral part of the municipal water and sewer systems and shall furnish water and sewer service therefrom in accordance with these rules and regulations, subject always to such limitations as may exist because of the size and elevation of the mains.

**18-107.** <u>Water and sewer main extension variances</u>. Whenever the board of commissioners is of the opinion that it is to the best interest of the city and its inhabitants to construct a water and/or sewer main extension without requiring strict compliance with the preceding section, such extension may be constructed upon such terms and conditions as shall be approved by the board of commissioners.

The authority to make water and/or sewer main extensions under the preceding section is permissive only and nothing contained therein shall be construed as requiring the city to make such extensions or to furnish service to any person or persons.

**18-108.** <u>Meters</u>. All meters shall be installed, tested, repaired, and removed only by the city.

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Construction of building sewers: title 18, chapter 2.

No one shall do anything which will in any way interfere with or prevent the operation of a meter. No one shall tamper with or work on a water meter without the written permission of the city. No one shall install any pipe or other device which will cause water to pass through or around a meter without the passage of such water being registered fully by the meter.

**18-109.** <u>Meter tests</u>. The city will, at its own expense, make routine tests of meters when it considers such tests desirable.

In testing meters, the water passing through a meter will be weighed or measured at various rates of discharge and under varying pressures. To be considered accurate, the meter registration shall check with the weighed or measured amounts of water within the percentage shown in the following table:

<u>Meter Size</u>	<u>Percentage</u>
5/8", 3/4", 1", 2"	2%
3"	3%
4"	4%
6"	5%

The city will also make tests or inspections of its meters at the request of the customer. However, if a test requested by a customer shows a meter to be accurate within the limits stated above, the customer shall pay a meter testing charge in the amount stated in the following table:

<u>Meter Size</u>	<u>Test Charge</u>
5/8", 3/4", 1"	\$12.00
1-1/2", 2"	15.00
3"	18.00
4"	22.00
6" and over	30.00

If such test shows a meter not to be accurate within such limits, the cost of such meter test shall be borne by the city.

**18-110.** <u>Multiple services through a single meter</u>. No customer shall supply water service to more than one dwelling, premise, duplex unit, apartment or other multiple dwelling unit from a single service line and meter without first obtaining the written permission of the city.

Where the city allows more than one (1) dwelling, premise, duplex unit, apartment or other multiple dwelling unit to be served through a single service line and meter, the amount of water used by all the dwellings, premises, duplex units, apartments or other multiple dwelling units served through a single service line and meter shall be allocated to each separate dwelling, premise, duplex unit, apartment or other multiple dwelling unit served. The water charge of each such dwelling, premise, duplex unit, apartment or other multiple dwelling unit thus served shall be computed just as if each such dwelling, premise, duplex unit, apartment or other multiple dwelling unit had received through a separately metered service the amount of water so allocated to it, such computation to be made at the city's's applicable water rates schedule, including the provisions as to minimum bills. The separate charges for each dwelling, premise, duplex unit, apartment or other multiple dwelling unit served through a single service line meter shall then be added together, and the sum thereof shall be billed to the customer in whose name the service is supplied.

18-111. <u>Customer billing and payment policy</u>. Water and sewer bills shall be rendered monthly and shall designate a standard net payment period for all members of not less than \_\_\_\_\_ (\_) days after the date of the bill. Failure to receive a bill will not release a customer from payment obligation. There is established for all members a late payment charge not to exceed

(\_\_\_\_\_\_%) for any portion of the bill paid after the net payment period. Payment must be received in the water and sewer department no later than 4:30 P.M. on the due date. If the due date falls on Saturday, Sunday, or a holiday, net payment will be accepted if paid on the next business day no later than 4:30 P.M.

If a meter fails to register properly, or if a meter is removed to be tested or repaired, or if water is received other than through a meter, the city reserves the right to render an estimated bill based on the best information available.

**18-112.** <u>**Termination or refusal of service.**</u> (1) <u>Basis of termination</u> <u>or refusal</u>. The city shall have the right to discontinue water and sewer service or to refuse to connect service for a violation of, or a failure to comply with, any of the following:

(a) These rules and regulations, including the nonpayment of bills.

(b) The customer's application for service.

(c) The customer's contract for service.

The right to discontinue service shall apply to all water and sewer services received through collective single connections or services, even though more than one (1) customer or tenant is furnished services therefrom, and even though the delinquency or violation is limited to only one (1) such customer or tenant.

(2) <u>Termination of service</u>. Reasonable written notice shall be given to the customer before termination of water service according to the following terms and conditions:

(a) Written notice of termination (cut-off) shall be given to the customer at least five (5) days prior to the scheduled date of termination. The cut-off notice shall specify the reason for the cut-off, and

(i) The amount due, including other charges.

(ii) The last date to avoid service termination.

(iii) Notification of the customer's right to a hearing prior to service termination, and, in the case of nonpayment of bills, of the availability of special counseling for emergency and hardship cases.

(b) In the case of termination for nonpayment of bills, the employee carrying out the termination procedure will attempt before disconnecting service to contact the customer at the premises in a final effort to collect payment and avoid termination. If the customer is not at home, service may be left connected for one (1) additional day and a further notice left at a location conspicuous to the customer.

(c) Hearings for service termination, including for nonpayment of bills, will be held by appointment at the company office between the hours of 8:00 A.M. and 4:30 P.M. on any business day, or by special request and appointment a hearing may be scheduled outside those hours.

(d) Termination will not be made on any preceding day when the water and sewer department is scheduled to be closed.

(e) If a customer does not request a hearing, or, in the case of nonpayment of a bill, does not makes payment of the bill, or does not otherwise correct the problem that resulted in the notice of termination in a manner satisfactory to the water and sewer department, the same shall proceed on schedule with service termination.

(f) Service termination for any reason shall be reconnected only after the payment of all charges due or satisfactory arrangements for payment have been made, or the correction of the problem that resulted in the termination of service in a manner satisfactory to the water and sewer department, plus the payment of a reconnection charge of \_\_\_\_\_\_(\$\_\_\_\_) if the reconnection is made during regular business hours, or \_\_\_\_\_\_(\$\_\_\_\_) if the reconnection is made after regular business hours.

18-113. <u>Termination of service by customer</u>. Customers who have fulfilled their contract terms and wish to discontinue service must give at least three (3) days written notice to that effect unless the contract specifies otherwise. Notice to discontinue service prior to the expiration of a contract term will not relieve the customer from any minimum or guaranteed payment under such contract or applicable rate schedule.

When service is being furnished to an occupant of premises under a contract not in the occupant's name, the city reserves the right to impose the following conditions on the right of the customer to discontinue service under such a contract:

(1) Written notice of the customer's desire for such service to be discontinued may be required; and the city shall have the right to continue such service for a period of not to exceed ten (10) days after receipt of such written notice, during which time the customer shall be responsible for all charges for

such service. If the city should continue service after such ten (10) day period subsequent to the receipt of the customer's written notice to discontinue service, the customer shall not be responsible for charges for any service furnished after the expiration of the ten (10) day period.

(2) During the ten (10) day period, the occupant of premises to which service has been ordered discontinued by a customer other than such occupant, may be allowed by the city to enter into a contract for service in the occupant's own name upon the occupant's complying with these rules and regulations with respect to a new application for service.

18-114. <u>Access to customers' premises</u>. The city's's identified representatives and employees shall be granted access to all customers' premises at all reasonable times for the purpose of reading meters, for testing, inspecting, repairing, removing, and replacing all equipment belonging to the city, and for inspecting customers' plumbing and premises generally in order to secure compliance with these rules and regulations.

18-115. <u>Inspections</u>. The city shall have the right, but shall not be obligated, to inspect any installation or plumbing system before water and/or sewer service is furnished or at any later time. The city reserves the right to refuse service or to discontinue service to any premises not in compliance with any special contract, these rules and regulations, or other requirements of the city.

Any failure to inspect or reject a customer's installation or plumbing system shall not render the city liable or responsible for any loss or damage which might have been avoided had such inspection or rejection been made.

18-116. <u>Customer's responsibility for system's property</u>. Except as herein elsewhere expressly provided, all meters, service connections, and other equipment furnished by or for the city shall be and remain the property of the city. Each customer shall provide space for and exercise proper care to protect the property of the city on his premises. In the event of loss or damage to such property arising from the neglect of a customer to care for it properly, the cost of necessary repairs or replacements shall be paid by the customer.

18-117. <u>Customer's responsibility for violations</u>. Where the city furnishes water and/or sewer service to a customer, such customer shall be responsible for all violations of these rules and regulations which occur on the premises so served. Personal participation by the customer in any such violations shall not be necessary to impose such personal responsibility on him.

18-118. <u>Supply and resale of water</u>. All water shall be supplied within the city exclusively by the city, and no customer shall, directly or indirectly, sell, sublet, assign, or otherwise dispose of the water or any part thereof except with written permission from the city.

18-119. <u>Unauthorized use of or interference with water supply</u>. No person shall turn on or turn off any of the city's's stop cocks, valves, hydrants, spigots, or fire plugs without permission or authority from the city.

**18-120.** <u>Limited use of unmetered private fire line</u>. Where a private fire line is not metered, no water shall be used from such line or from any fire hydrant thereon, except to fight fire or except when being inspected in the presence of an authorized agent of the city.

All private fire hydrants shall be sealed by the city, and shall be inspected at regular intervals to see that they are in proper condition and that no water is being used therefrom in violation of these rules and regulations. When the seal is broken on account of fire, or for any other reason, the customer taking such service shall immediately give the city a written notice of such occurrence.

**18-121.** <u>Damages to property due to water pressure</u>. The city shall not be liable to any customer for damages caused to his plumbing or property by high pressure, low pressure, or fluctuations in pressure in the city's's water mains.

**18-122.** <u>Liability for cutoff failures</u>. The city's's liability shall be limited to the forfeiture of the right to charge a customer for water that is not used but is received from a service line under any of the following circumstances:

(1) After receipt of at least ten (10) days' written notice to cut off water service, the city has failed to cut off such service.

(2) The city has attempted to cut off a service but such service has not been completely cut off.

(3) The city has completely cut off a service but subsequently the cutoff develops a leak or is turned on again so that water enters the customer's pipes from the city's's main.

Except to the extent stated above, the city shall not be liable for any loss or damage resulting from cutoff failures. If a customer wishes to avoid possible damage for cutoff failures, the customer shall rely exclusively on privately owned cutoffs and not on the city's's cutoff. Also, the customer (and not the city) shall be responsible for seeing that his plumbing is properly drained and is kept properly drained, after his water service has been cut off.

**18-123.** <u>Restricted use of water</u>. In times of emergencies or in times of water shortage, the city reserves the right to restrict the purposes for which water may be used by a customer and the amount of water which a customer may use.

**18-124. Interruption of service**. The city will endeavor to furnish continuous water and sewer service, but does not guarantee to the customer any

fixed pressure or continuous service. The city shall not be liable for any damages for any interruption of service whatsoever.

In connection with the operation, maintenance, repair, and extension of the municipal water and sewer systems, the water supply may be shut off without notice when necessary or desirable, and each customer must be prepared for such emergencies. The city shall not be liable for any damages from such interruption of service or for damages from the resumption of service without notice after any such interruption.

**18-125.** <u>Schedule of rates</u>.<sup>1</sup> All water and sewer service shall be furnished under such rate schedules as the city may from time to time adopt by appropriate ordinance.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup>Administrative ordinances are of record in the office of the recorder.

<sup>&</sup>lt;sup>2</sup>State law reference *Tennessee Code Annotated*, § 7-35-414(b).

# **CHAPTER 2**

# **GENERAL WASTEWATER REGULATIONS**

# SECTION

18-201. Purpose and policy.

18-202. Administrative

18-203. Definitions.

18-204. Proper waste disposal required.

18-205. Private domestic wastewater disposal.

18-206. Connection to public sewers.

18-207. Septic tank effluent pump or grinder pump wastewater systems.

18-208. Regulation of holding tank waste disposal or trucked in waste.

18-209. Discharge regulations.

18-210. Enforcement and abatement.

18-201. <u>Purpose and policy</u>. This chapter sets forth uniform requirements for users of the City of Gallaway, Tennessee, wastewater treatment system and enables the city to comply with the Federal Clean Water Act and the state Water Quality Control Act and rules adopted pursuant to these acts. The objectives of this chapter are:

(1) To protect public health,

(2) To prevent the introduction of pollutants into the municipal wastewater treatment facility, which will interfere with the system operation;

(3) To prevent the introduction of pollutants into the wastewater treatment facility that will pass through the facility, inadequately treated, into the receiving waters, or otherwise be incompatible with the treatment facility;

(4) To protect facility personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

(5) To promote reuse and recycling of industrial wastewater and sludge from the facility;

(6) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the facility; and

(7) To enable the city to comply with its National Pollution Discharge Elimination System (NPDES) permit conditions, sludge and biosolid use and disposal requirement, and any other Federal or State industrial pretreatment rules to which the facility is subject.

In meeting these objectives, this chapter provides that all persons in the service area of the City of Gallaway must have adequate wastewater treatment either in the form of a connection to the municipal wastewater treatment system or, where the system is not available, an appropriate private disposal system.

This chapter shall apply to all users inside or outside the city who are, by implied contract or written agreement with the city, dischargers of applicable wastewater to the wastewater treatment facility. Chapter 2 provides for the

issuance of permits to system users, for monitoring, compliance, and enforcement activities; establishes administrative review procedures for industrial users or other users whose discharge can interfere with or cause violations to occur at the wastewater treatment facility. Chapter 2 details permitting requirements including the setting of fees for the full and equitable distribution of costs resulting from the operation, maintenance, and capital recovery of the wastewater treatment system and from other activities required by the enforcement and administrative program established herein.

**18-202.** <u>Administrative</u>. Except as otherwise provided herein, the local administrative officer of the city shall administer, implement, and enforce the provisions of this chapter.

18-203. <u>Definitions</u>. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:

(1) "Administrator." The administrator or the United States Environmental Protection Agency.

(2) "Act or the Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended and found in 33 U.S.C. § 1251, *et seq.* 

(3) "Approval authority." The Tennessee Department of Environment and Conservation, Division of Water Pollution Control.

(4) "Authorized or duly authorized representative" of industrial user:(a) If the user is a corporation:

(i) The president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any person who performs similar policy or decision-making functions for the corporation; or

The manager of one or more manufacturing, (ii) production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can insure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

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(c) If the user is a federal, state, or local governmental agency: a director or highest official appointed or designated to oversee the operation and performance of the activities of the governmental facility, or their designee.

(d) The individual described in paragraphs (a)-(c), above, may designate a duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

(5) "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in § 18-209. BMPs also include treatment requirement, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

(6) "Biochemical Oxygen Demand (BOD)." The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure for five (5) days at twenty degrees Celsius (20°C) expressed in terms of weight and concentration (milligrams per liter (mg/l)).

(7) "Building sewer." A sewer conveying wastewater from the premises of a user to the publicly owned sewer collection system.

(8) "Categorical standards." The National Categorical Pretreatment Standards as found in 40 CFR chapter I, subchapter N, parts 405-471.

(9) "City." The Board of Commissioners, City of Gallaway, Tennessee.

(10) "Commissioner." The commissioner of environment and conservation or the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner.

(11) "Compatible pollutant." Shall mean BOD, suspended solids, pH, fecal coliform bacteria, and such additional pollutants as are now or may in the future be specified and controlled in the city's's NPDES permit for its wastewater treatment works where sewer works have been designed and used to reduce or remove such pollutants.

(12) "Composite sample." A sample composed of two (2) or more discrete samples. The aggregate sample will reflect the average water quality covering the compositing or sample period.

(13) "Control authority." The term "control authority" shall refer to the "approval authority," defined herein above; or the local hearing authority if the city has an approved pretreatment program under the provisions of 40 CFR 403.11.

(14) "Cooling water." The water discharge from any use such as air conditioning, cooling, or refrigeration, or to which the only pollutant added is heat.

(15) "Customer." Any individual, partnership, corporation, association, or group who receives sewer service from the city under either an express or implied contract requiring payment to the city for such service.

(16) "Daily maximum." The arithmetic average of all effluent samples for a pollutant (except pH) collected during a calendar day. The daily maximum for pH is the highest value tested during a twenty-four (24) hour calendar day.

(17) "Daily maximum limit." The maximum allowable discharge limit of a pollutant during a calendar day. Where the limit is expressed in units of mass, the limit is the maximum amount of total mass of the pollutant that can be discharged during the calendar day. Where the limit is expressed in concentration, it is the arithmetic average of all concentration measurements taken during the calendar day.

(18) "Direct discharge." The discharge of treated or untreated wastewater directly to the waters of the State of Tennessee.

(19) "Domestic wastewater." Wastewater that is generated by a single family, apartment or other dwelling unit or dwelling unit equivalent or commercial establishment containing sanitary facilities for the disposal of wastewater and used for residential or commercial purposes only.

(20) "Environmental Protection Agency, or EPA." The U.S. Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of the said agency.

(21) "Garbage." Solid wastes generated from any domestic, commercial or industrial source.

(22)"Grab sample." A sample which is taken from a waste stream on a one time basis with no regard to the flow in the waste stream and is collected over a period of time not to exceed fifteen (15) minutes. Grab sampling procedure: Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one (1) detention period. The detention period is to be based on a twenty-four (24) hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results.

(23) "Grease interceptor." An interceptor whose rated flow is fifty (50) g.p.m. (gallons per minute) or less and is generally located inside the building.

(24) "Grease trap." An interceptor whose rated flow is fifty (50) g.p.m. or more and is located outside the building.

(25) "Holding tank waste." Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

(26) "Incompatible pollutant." Any pollutant which is not a "compatible pollutant" as defined in this section.

(27) "Indirect discharge." The introduction of pollutants into the WWF from any non-domestic source.

(28) "Industrial user." A source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to section 402, of the Act (33 U.S.C. §1342).

(29) "Industrial wastes." Any liquid, solid, or gaseous substance, or combination thereof, or form of energy including heat, resulting from any process of industry, manufacture, trade, food processing or preparation, or business or from the development of any natural resource.

(30) "Instantaneous limit." The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

(31) "Interceptor." A device designed and installed to separate and retain for removal, by automatic or manual means, deleterious, hazardous or undesirable matter from normal wastes, while permitting normal sewage or waste to discharge into the drainage system by gravity.

(32) "Interference." A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the WWF, its treatment processes or operations, or its sludge processes, use or disposal, or exceeds the design capacity of the treatment works or collection system.

(33) "Local administrative officer." The chief administrative officer of the local hearing authority.

(34) "Local hearing authority." The commissioners or such person or persons appointed by the board to administer and enforce the provisions of this chapter and conduct hearings pursuant to section 205.

(35) "National categorical pretreatment standard" Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act (33 U.S.C. § 1347) which applies to a specific category of industrial users.

(36) "NAICS, North American Industrial Classification System." A system of industrial classification jointly agreed upon by Canada, Mexico and the United States. It replaces the Standard Industrial Classification (SIC) system.

(37) "New source." (a) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Clean Water Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

(i) The building structure, facility or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of parts (a)(ii) or (a)(iii) of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

(c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous onsite construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including cleaning, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph

(38) "NPDES (National Pollution Discharge Elimination System)." The program for issuing, conditioning, and denying permits for the discharge of pollutants from point sources into navigable waters, the contiguous zone, and the oceans pursuant to section 402 of the Clean Water Act as amended.

(39) "Pass-through." A discharge which exits the Wastewater Facility (WWF) into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the WWF's NPDES permit including an increase in the magnitude or duration of a violation.

(40) "Person." Any individual, partnership, co partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine and the singular shall include the plural where indicated by the context.

(41) "pH." The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

(42) "Pollution." The man made or man induced alteration of the chemical, physical, biological, and radiological integrity of water.

(43) "Pollutant." Any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical waste, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, turbidity, color, BOD, COD, toxicity, or odor discharge into water).

(44) "Pretreatment or treatment." The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical, biological processes, or process changes or other means, except through dilution as prohibited by 40 CFR section 403.6(d).

(45) "Pretreatment coordinator." The person designated by the local administrative officer or his authorized representative to supervise the operation of the pretreatment program.

(46) "Pretreatment requirements." Any substantive or procedural requirement related to pretreatment other than a national pretreatment standard imposed on an industrial user.

(47) "Pretreatment standards or standards." A prohibited discharge standard, categorical pretreatment standard and local limit.

(48) "Publicly Owned Treatment Works (POTW)." A treatment works as defined by section 212 of the Act, (33 U.S.C. § 1292) which is owned in this instance by the municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. See WWF, Wastewater Facility, found in definition number (63), below.

(49) "Shall" is mandatory; "may" is permissive.

(50) "Significant industrial user." The term significant industrial user means:

(a) All industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; or

(b) Any other industrial user that: discharges an average of twenty five thousand (25,000) gallons per day or more of process wastewater to the WWF (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the control authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the WWF's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(51) "Significant noncompliance." Per 1200-4-14-.08(6)(b)8.

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken for each parameter taken during a six (6) month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limit.

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH). TRC calculations for pH are not required.

(c) Any other violation of a pretreatment standard or requirement (daily maximum or longer-term average, instantaneous limit, or narrative standard) that the WWF determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of WWF personnel or the general public).

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the WWF's exercise of its emergency authority under \$18-205(1)(b)(i)(D), emergency order, to halt or prevent such a discharge.

(e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.

(f) Failure to provide, within forty-five (45) days after their due date, required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.

(g) Failure to accurately report noncompliance.

(h) Any other violation or group of violations, which may include a violation of best management practices, which the WWF determines will adversely affect the operation or implementation of the local pretreatment program.

(i) Continuously monitored pH violations that exceed limits for a time period greater than fifty (50) minutes or exceed limits by more than 0.5 s.u. more than eight times in four hours. (52) "Slug." Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass-through, or in any other way violate the WWF's regulations, local limits, or permit conditions.

(53) "Standard Industrial Classification (SIC)." A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.

(54) "State." The State of Tennessee.

(55) "Storm sewer or storm drain." A pipe or conduit which carries storm and surface waters and drainage, but excludes sewage and industrial wastes. It may, however, carry cooling waters and unpolluted waters, upon approval of the superintendent.

(56) "Stormwater." Any flow occurring during or following any form of natural precipitation and resulting therefrom.

(57) "Superintendent." The local administrative officer or person designated by him to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this chapter, or his duly authorized representative.

(58) "Surcharge." An additional fee assessed to a user who discharges compatible pollutants at concentrations above the established surcharge limits. Surcharge limits are the level at which the permit holder will be billed higher rates to offset the cost of treating wastewater which exceeds the surcharge limits. Exceeding a surcharge limit but not a monthly average or daily maximum limit will not result in enforcement action.

(59) "Suspended solids." The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids and that is removable by laboratory filtering.

(60) "Toxic pollutant." Any pollutant or combination of pollutants listed as toxic in regulations published by the Administrator of the Environmental Protection Agency under the provision of CWA 307(a) or other Acts.

(61) "Twenty-four (24) hour flow proportional composite sample." A sample consisting of several sample portions collected during a twenty-four (24) hour period in which the portions of a sample are proportioned to the flow and combined to form a representative sample.

(62) "User." The owner, tenant or occupant of any lot or parcel of land connected to a sanitary sewer, or for which a sanitary sewer line is available if a municipality levies a sewer charge on the basis of such availability, *Tennessee Code Annotated*, § 68-221-201.

(63) "Wastewater." The liquid and water carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, whether treated or untreated, which is contributed into or permitted to enter the WWF.

(64) "Wastewater facility" Any or all of the following: the collection/transmission system, treatment plant, and the reuse or disposal system, which is owned by any person. This definition includes any devices and

systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial waste of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a WWF treatment plant. The term also means the municipality as defined in section 502(4) of the Federal Clean Water Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. WWF was formally known as a POTW, or Publicly Owned Treatment Works.

(65) "Waters of the state." All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and other bodies of accumulation of water, surface or underground, natural or artificial, public or private, that are contained within, flow through, or border upon the state or any portion thereof.

(66) "1200-4-14." Chapter 1200-4-14 of the Rules and Regulations of the State of Tennessee, Pretreatment Requirements.

**18-204.** <u>**Proper waste disposal required.**</u> (1) It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the service area of the city, any human or animal excrement, garbage, or other objectionable waste.

(2) It shall be unlawful to discharge to any waters of the state within the service area of the city any sewage or other polluted waters, except where suitable treatment has been provided in accordance with provisions of this ordinance or city or state regulations.

(3) Except as herein provided, it shall be unlawful to construct or maintain any privy, privy vault, cesspool, or other facility intended or used for the disposal of sewage.

(4) Except as provided in (6) below, the owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the service area in which there is now located or may in the future be located a public sanitary sewer, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper private or public sewer in accordance with the provisions of this chapter. Where public sewer is available property owners shall within sixty (60) days after date of official notice to do so, connect to the public sewer. Service is considered "available" when a public sewer main is located in an easement, right-of-way, road or public access way which abuts the property.

(5) Discharging into the sanitary sewer without permission of the city is strictly prohibited and is deemed "theft of service."

(6) Where a public sanitary sewer is not available under the provisions of (4) above, the building sewer shall be connected to a private sewage disposal system complying with the provisions of § 18-205.

(7) The owner of a manufacturing facility may discharge wastewater to the waters of the state provided that he obtains an NPDES permit and meets all requirements of the Federal Clean Water Act, the NPDES permit, and any other applicable local, state, or federal statutes and regulations. (8) Users have a duty to comply with the provisions of this ordinance in order for the city to fulfill the stated policy and purpose. Significant Industrial users must comply with the provisions of this ordinance and applicable state and federal rules according to the nature of the industrial discharge.

## 18-205. Private domestic wastewater disposal. (1) Availability.

(a) Where a public sanitary sewer is not available under the provisions of § 18-204(4), the building sewer shall be connected, until the public sewer is available, to a private wastewater disposal system complying with the provisions of the applicable local and state regulations.

(b) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city. When it becomes necessary to clean septic tanks, the sludge may be disposed of only according to applicable federal and state regulations.

(c) Where a public sewer becomes available, the building sewer shall be connected to said sewer within sixty (60) days after date of official notice from the city to do so.

(2) <u>Requirements</u>. (a) The type, capacity, location and layout of a private sewerage disposal system shall comply with all local or state regulations. Before commencement of construction of a private sewerage disposal system, the owner shall first obtain a written approval from the county health department. The application for such approval shall be made on a form furnished by the county health department which the applicant shall supplement with any plans or specifications that the department has requested.

(b) Approval for a private sewerage disposal system shall not become effective until the installation is completed to the satisfaction of the local and state authorities, who shall be allowed to inspect the work at any stage of construction.

(c) The type, capacity, location, and layout of a private sewage disposal system shall comply with all recommendations of the Tennessee Department of Environment and Conservation, and the county health department. No septic tank or cesspool shall be permitted to discharge to waters of Tennessee.

(d) No statement contained in this chapter shall be construed to interfere with any additional or future requirements that may be imposed by the city and the county health department.

## 18-206. <u>Connection to public sewers</u>. (1) <u>Application for service</u>.

(a) There shall be two (2) classifications of service:

(i) Residential; and

(ii) Service to commercial, industrial and other nonresidential establishments.

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In either case, the owner or his agent shall make application for connection on a special form furnished by the city. Applicants for service to commercial and industrial establishments shall be required to furnish information about all waste producing activities. wastewater characteristics and constituents. The application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the superintendent. Details regarding commercial and industrial permits include but are not limited to those required by this ordinance. Service connection fees for establishing new sewer service are paid to the city. Industrial user discharge permit fees may also apply. The receipt by the city of a prospective customer's application for connection shall not obligate the city to render the connection. If the service applied for cannot be supplied in accordance with this chapter and the city's's rules and regulations and general practice, or state and federal requirement, the connection charge will be refunded in full, and there shall be no liability of the city to the applicant for such service.

(b) Users shall notify the city of any proposed new introduction of wastewater constituents or any proposed change in the volume or character of the wastewater being discharged to the system a minimum of sixty (60) days prior to the change. The city may deny or limit this new introduction or change based upon the information submitted in the notification.

(2) <u>Prohibited connections</u>. No person shall make connections of roof downspouts, sump pumps, basement wall seepage or floor seepage, exterior foundation drains, area way drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. Any such connections which already exist on the effective date of this ordinance shall be completely and permanently disconnected within sixty (60) days of the effective day of this ordinance. The owners of any building sewer having such connections, leaks or defects shall bear all of the costs incidental to removal of such sources. Pipes, sumps and pumps for such sources of ground water shall be separate from the sanitary sewer.

(3) <u>Physical connection to public sewer</u>. (a) No person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof. The city shall make all connections to the public sewer upon the property owner first submitting a connection application to the city.

The connection application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the superintendent. A service connection fee shall be paid to the city at the time the application is filed.

The applicant is responsible for excavation and installation of the building sewer which is located on private property. The city will inspect

the installation prior to backfilling and make the connection to the public sewer.

(b) All costs and expenses incident to the installation, connection, and inspection of the building sewer shall be borne by the owner including all service and connection fees. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(c) A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. Where property is subdivided and buildings use a common building sewer are now located on separate properties, the building sewers must be separated within sixty (60) days.

(d) Old building sewers may be used in connection with new buildings only when they are found, on examination and tested by the superintendent to meet all requirements of this chapter. All others may be sealed to the specifications of the superintendent.

(e) Building sewers shall conform to the following requirements:

(i) The minimum size of a building sewer shall be as follows: Conventional sewer system four inches (4").

(ii) The minimum depth of a building sewer shall be eighteen inches (18").

(iii) Building sewers shall be laid on the following grades: four inch (4") sewers - one-eighth inch (1/8") per foot.

Larger building sewers shall be laid on a grade that will produce a velocity when flowing full of at least two feet (2') feet per second.

(iv) Building sewers shall be installed in uniform alignment at uniform slopes.

(v) Building sewers shall be constructed only of polyvinyl chloride pipe Schedule 40 or better. Joints shall be solvent welded or compression gaskets designed for the type of pipe used. No other joints shall be acceptable.

(vi) Cleanouts shall be provided to allow cleaning in the direction of flow. A cleanout shall be located five feet (5') outside of the building, as it crosses the property line and one at each change of direction of the building sewer which is greater than forty-five degrees ( $45^{\circ}$ ) degrees. Additional cleanouts shall be placed not more than seventy-five feet (75') apart in horizontal building sewers of six inch (6") nominal diameter and not more than one hundred feet (100') apart for larger pipes. Cleanouts shall be extended to or above the finished grade level directly above the

place where the cleanout is installed and protected from damage. A "Y" (wye) and 1/8 bend shall be used for the cleanout base. Cleanouts shall not be smaller than four inches (4"). Blockages on the property owner's side of the property line cleanout are the responsibility of the property owner.

(vii) Connections of building sewers to the public sewer system shall be made only by the city and shall be made at the appropriate existing wyes or tee branch using compression type couplings or collar type rubber joint with stainless steel bands. Where existing wye or tee branches are not available, connections of building services shall be made by either removing a length of pipe and replacing it with a wye or tee fitting using flexible neoprene adapters with stainless steel bands of a type approved by the superintendent. Bedding must support pipe to prevent damage or sagging. All such connections shall be made gastight and watertight.

(viii) In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved pump system according to § 18-207 and discharged to the building sewer at the expense of the owner.

(ix) The methods to be used in excavating, placing of pipe, jointing, testing, backfilling the trench, or other activities in the construction of a building sewer which have not been described above shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city or to the procedures set forth in appropriate specifications by the ASTM. Any deviation from the prescribed procedures and materials must be approved by the superintendent before installation.

(x) An installed building sewer shall be gastight and watertight.

(f) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

(g) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, basement drains, sump pumps, or other sources of surface runoff or groundwater to a building directly or indirectly to a public sanitary sewer.

(h) Inspection of connections.

(i) The sewer connection and all building sewers from the building to the public sewer main line shall be inspected before the underground portion is covered, by the superintendent or his authorized representative. (ii) The applicant for discharge shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the superintendent or his representative.

(4) <u>Maintenance of building sewers</u>. (a) Each individual property owner shall be entirely responsible for the construction, maintenance, repair or replacement of the building sewer as deemed necessary by the superintendent to meet specifications of the city. Owners failing to maintain or repair building sewers or who allow stormwater or ground water to enter the sanitary sewer may face enforcement action by the superintendent up to and including discontinuation of water and sewer service.

(b) The city may inspect the facilities of any user to ascertain whether the purpose of this chapter is being met and all requirements are being complied with.

(c) The point of division between the building sewer and the city owned sewer tap or service connection shall be at the property line, right-of-way line, property line sewer cleanout, or such point in this general area as identified by the superintendent. The city owned tap or service line connection cannot extend onto private property except that minimal distance to the edge of right-of-ways, easements, or that distance necessary to cross other city utility lines and provide a location unencumbered by other underground city utilities where the user can make a connection to the building sewer without risk of damage to those other city utilities.

Sewer extensions. All expansion or extension of the (5)public sewer constructed by property owners or developers must follow policies and procedures developed by the city. In the absence of policies and procedures the expansion or extension of the public sewer must be approved in writing by the superintendent or manager of the wastewater collection system. All plans and construction must follow the latest edition of Tennessee Design Criteria for Sewerage Works, located at http://www.state.tn.us/environment/wpc/publications/. Contractors must provide the superintendent or manager with as-built drawing and documentation that all mandrel, pressure and vacuum tests as specified in design criteria were acceptable prior to use of the lines. Contractor's one (1) year warranty period begins with occupancy or first permanent use of the lines. Contractors are responsible for all maintenance and repairs during the warranty period and final inspections as specified by the superintendent or manager. The superintendent or manager must give written approval to the contractor to acknowledge transfer of ownership to the city. Failure to construct or repair lines to acceptable standards could result in denial or discontinuation of sewer service.

18-207. Septic tank effluent pump or grinder pump wastewater systems. When connection of building sewers to the public sewer by gravity flow lines is impossible due to elevation differences or other encumbrances, Septic Tank Effluent Pump (STEP) or Grinder Pump (GP) systems may be installed subject to the regulations of the city.

(1)Equipment requirements. (a) Septic tanks shall be of water tight construction and must be approved by the city.

Pumps must be approved by the city and shall be (b)maintained by the city.

Installation requirements. Location of tanks, pumps, and effluent (2)lines shall be subject to the approval of the city. Installation shall follow design criteria for STEP and GP systems as provided by the superintendent.

Costs. STEP and GP equipment for new construction shall be (3)purchased and installed at the developer's, homeowner's, or business owner's expense according to the specification of the city and connection will be made to the city sewer only after inspection and approval of the city.

(4)Ownership and easements. Homeowners or developers shall provide the city with ownership of the equipment and an easement for access to perform necessary maintenance or repair. Access by the city to the STEP and GP system must be guaranteed to operate, maintain, repair, restore service, and remove sludge. Access manholes, ports, and electrical disconnects must not be locked, obstructed or blocked by landscaping or construction.

Use of STEP and GP systems. (a) Home or business owners shall (5)follow the STEP and GP users guide provided by the superintendent.

Home or business owners shall provide an electrical (b)connection that meets specifications and shall provide electrical power.

Home or business owners shall be responsible for (c) maintenance of drain lines from the building to the STEP and GP tank. (d)

Prohibited uses of the STEP and GP system.

Connection of roof guttering, sump pumps or surface (i) drains.

(ii) Disposal of toxic household substances.

- Use of garbage grinders or disposers. (iii)
- (iv) Discharge of pet hair, lint, or home vacuum water.
- (v)Discharge of fats, grease, and oil.

Tank cleaning. Solids removal from the septic tank shall be the (6)responsibility of the city. However, pumping required more frequently than once every five years shall be billed to the homeowner.

Additional charges. The city shall be responsible for maintenance (7)of the STEP and GP equipment. Repeat service calls for similar problems shall be billed to the homeowner or business at a rate of no more than the actual cost of the service call including but not limited to transportation, labor, materials, excavation, subcontractors, engineering fees, cleanup expenses, and other expenses related to the service call. In addition if the city receives regulatory fines related to equipment failure and sewage overflows all such fines will be passed on to the user.

**18-208.** <u>Regulation of holding tank waste disposal or trucked in</u> <u>waste</u>. (1) No person, firm, association or corporation shall haul in or truck in to the WWF any type of domestic, commercial or industrial waste unless such person, firm, association, or corporation obtains a written approval from the city to perform such acts or services.

Any person, firm, association, or corporation desiring a permit to perform such services shall file an application on the prescribed form. Upon any such application, said permit shall be issued by the superintendent when the conditions of this chapter have been met and providing the superintendent is satisfied the applicant has adequate and proper equipment to perform the services contemplated in a safe and competent manner.

(2) <u>Fees</u>. For each permit issued under the provisions of this chapter the applicant shall agree in writing by the provisions of this section and pay an annual service charge to the city to be set as specified in § 18-207 of this ordinance. Any such permit granted shall be for a specified period of time, and shall continue in full force and effect from the time issued until the expiration date, unless sooner revoked, and shall be nontransferable. The number of the permit granted hereunder shall be plainly painted in three inch (3") permanent letters on each side of each motor vehicle used in the conduct of the business permitted hereunder.

(3) <u>Designated disposal locations</u>. The superintendent shall designate approved locations for the emptying and cleansing of all equipment used in the performance of the services rendered under the permit herein provided for, and it shall be a violation hereof for any person, firm, association or corporation to empty or clean such equipment at any place other than a place so designated. The superintendent may refuse to accept any truckload of waste at his discretion where it appears that the waste could interfere with the operation of the WWF.

(4) <u>Revocation of permit</u>. Failure to comply with all the provisions of the permit or this chapter shall be sufficient cause for the revocation of such permit by the superintendent. The possession within the service area by any person of any motor vehicle equipped with a body type and accessories of a nature and design capable of serving a septic tank of wastewater or excreta disposal system cleaning unit shall be prima facie evidence that such person is engaged in the business of cleaning, draining, or flushing septic tanks or other wastewater or excreta disposal systems within the service area of the City of Gallaway.

(5) <u>Trucked in waste</u>. This part includes waste from trucks, railcars, barges, etc., or temporally pumped waste, all of which are prohibited without a permit issued by the superintendent. This approval may require testing, flow monitoring and record keeping.

18-209. Discharge regulations. (1) General discharge prohibitions. No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will pass through or interfere with the operation and performance of the WWF. These general prohibitions apply to all such users of a WWF whether or not the user is subject to national categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements. Violations of these general and specific prohibitions or the provisions of this section or other pretreatment standard may result in the issuance of an industrial pretreatment permit, surcharges, discontinuance of water and/or sewer service and other fines and provisions of §§ 18-210 and 18-205. A user may not contribute the following substances to any WWF:

(a) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the WWF or to the operation of the WWF. Prohibited flammable materials including, but not limited to, wastestreams with a closed cup flash point of less than one hundred forty degrees Fahrenheit (140° F) or sixty degrees Celsius (60° C) using the test methods specified in 40 CFR 261.21. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromate, carbides, hydrides and sulfides and other flammable substances.

(b) Any wastewater having a pH less than 5.5 or higher than 9.5 or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the WWF.

(c) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities including, but not limited to: grease, garbage with particles greater than one half inch (1/2") in any dimension, waste from animal slaughter, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, mud, or glass grinding or polishing wastes.

(d) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which will cause interference to the WWF.

(e) Any wastewater having a temperature which will inhibit biological activity in the WWF treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into the WWF which exceeds forty degrees Celsius (40°) C (one hundred four degrees Fahrenheit (104° F)) unless approved by the State of Tennessee.

(f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the WWF in a quantity that may cause acute worker health and safety problems.

(h) Any wastewater containing any toxic pollutants, chemical elements, or compounds in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans, including wastewater plant and collection system operators, or animals, create a toxic effect in the receiving waters of the WWF, or to exceed the limitation set forth in a categorical pretreatment standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to section 307(a) of the Act.

(i) Any trucked or hauled pollutants except at discharge points designated by the WWF.

(j) Any substance which may cause the WWF's effluent or any other product of the WWF such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the WWF cause the WWF to be in non compliance with sludge use or disposal criteria, 40 CFR 503, guidelines, or regulations developed under section 405 of the Act; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.

(k) Any substances which will cause the WWF to violate its NPDES permit or the receiving water quality standards.

(l) Any wastewater causing discoloration of the wastewater treatment plant effluent to the extent that the receiving stream water quality requirements would be violated, such as, but not limited to, dye wastes and vegetable tanning solutions.

(m) Any waters or wastes causing an unusual volume of flow or concentration of waste constituting "slug" as defined herein.

(n) Any waters containing any radioactive wastes or isotopes of such halflife or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.

(o) Any wastewater which causes a hazard to human life or creates a public nuisance.

(p) Any waters or wastes containing animal or vegetable fats, wax, grease, or oil, whether emulsified or not, which cause accumulations of solidified fat in pipes, lift stations and pumping equipment, or interfere at the treatment plant.

(q) Detergents, surfactants, surface-acting agents or other substances which may cause excessive foaming at the WWF or pass through of foam.

(r) Wastewater causing, alone or in conjunction with other sources, the WWF to fail toxicity tests.

(s) Any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the superintendent and the Tennessee Department of Environment and Conservation. Industrial cooling water or unpolluted process waters may be discharged on approval of the superintendent and the Tennessee Department of Environment and Conservation, to a storm sewer or natural outlet.

(2) <u>Local limits</u>. In addition to the general and specific prohibitions listed in this section, users permitted according to chapter 2 may be subject to numeric and best management practices as additional restrictions to their wastewater discharge in order to protect the WWF from interference or protect the receiving waters from pass through contamination.

(3) <u>Restrictions on wastewater strength</u>. No person or user shall discharge wastewater which exceeds the set of standards provided in Table A Plant Protection Criteria, unless specifically allowed by their discharge permit according to chapter 2 of this ordinance. Dilution of any wastewater discharge for the purpose of satisfying these requirements shall be considered in violation of this chapter.

Parameter	Maximum Concentration (mg/l)
Arsenic	
Benzene	
Cadmium	
Carbon Tetrachloride	
<b>Chloroform</b>	
Chromium (total)	
Copper	
Cyanide	
Ethybenzene	
Lead	

# Table A Plant Protection Criteria

Parameter	Maximum Concentration (mg/l)
Mercury	
Methylene chloride	
Molybdenum	
Naphthalene	
Nickel	
Phenol	
Selenium	
Silver	
Tetrachloroethylene	
Toluene	
Total Phthalate	
Trichloroethylene	
1,1,1-Trichloroethane	
1,2 Transdichloroethylene	
Zinc	

Table A Plant Protection Criteria

(4) <u>Fats, oils and grease traps and interceptors</u>. (a) Fat, Oil, and Grease (FOG), waste food, and sand interceptors. FOG, waste food and sand interceptors shall be installed when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing fats, oils, and grease, any flammable wastes, ground food waste, sand, soil, and solids, or other harmful ingredients in excessive amount which impact the wastewater collection system. Such interceptors shall not be required for single family residences, but may be required on multiple family residences. All interceptors shall be of a type and capacity approved by the superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection.

(b) Fat, oil, grease, and food waste. (i) New construction and renovation. Upon construction or renovation, all restaurants, cafeterias, hotels, motels, hospitals, nursing homes, schools, grocery stores, prisons, jails, churches, camps, caterers, manufacturing plants and any other sewer users who discharge applicable waste shall submit a FOG and food waste control plan that will effectively control the discharge of FOG and food waste.

(ii) Existing structures. All existing restaurants, cafeterias, hotels, motels, hospitals, nursing homes, schools, grocery stores, prisons, jails, churches, camps, caterers, manufacturing plants and any other sewer users who discharge applicable waste shall be required to submit a plan for control of FOG and food waste, if and when the superintendent determines that FOG and food waste are causing excessive loading, plugging, damage or potential problems to structures or equipment in the public sewer system.

(iii) Implementation of plan. After approval of the FOG plan by the superintendent the sewer user must:

(A) Implement the plan within a reasonable amount of time;

(B) Service and maintain the equipment in order to prevent impact upon the sewer collection system and treatment facility. If in the opinion of the superintendent the user continues to impact the collection system and treatment plant, additional pretreatment may be required, including a requirement to meet numeric limits and have surcharges applied.

(c) Sand, soil, and oil interceptors. All car washes, truck washes, garages, service stations and other sources of sand, soil, and oil shall install effective sand, soil, and oil interceptors. These interceptors shall be sized to effectively remove sand, soil, and oil at the expected flow rates. The interceptors shall be cleaned on a regular basis to prevent impact upon the wastewater collection and treatment system. Owners whose interceptors are deemed to be ineffective by the superintendent may be asked to change the cleaning frequency or to increase the size of the interceptors. Owners or operators of washing facilities will prevent the inflow of rainwater into the sanitary sewers.

(d) Laundries. Commercial laundries shall be equipped with an interceptor with a wire basket or similar device, removable for cleaning, that prevents passage into the sewer system of solids one half inch (1/2") or larger in size such as strings, rags, buttons, or other solids detrimental to the system.

(e) Control equipment. The equipment of facilities installed to control FOG, food waste, sand and soil, must be designed in accordance with the Tennessee Department of Environment and Conservation engineering standards or applicable city guidelines. Underground equipment shall be tightly sealed to prevent inflow of rainwater and easily accessible to allow regular maintenance. Control equipment shall be maintained by the owner or operator of the facility so as to prevent a stoppage of the public sewer, and the accumulation of FOG in the lines, pump stations and treatment plant. If the city is required to clean out the public sewer lines as a result of a stoppage resulting from poorly maintained control equipment, the property owner shall be required to refund the labor, equipment, materials and overhead costs to the city. Nothing in this subsection shall be construed to prohibit or restrict any other remedy the city has under this chapter, or state or federal law. The city retains the right to inspect and approve installation of control equipment.

(f) Solvents prohibited. The use of degreasing or line cleaning products containing petroleum based solvents is prohibited. The use of other products for the purpose of keeping FOG dissolved or suspended until it has traveled into the collection system of the city is prohibited.

(g) The superintendent may use industrial was tewater discharge permits under § 18-202 to regulate the discharge of fat, oil and grease.

18-210. Enforcement and abatement. Violators of these wastewater regulations may be cited to city court, general sessions court, chancery court, or other court of competent jurisdiction face fines, have sewer service terminated or the city may seek further remedies as needed to protect the collection system, treatment plant, receiving stream and public health including the issuance of discharge permits according to chapter 2. Repeated or continuous violation of this ordinance is declared to be a public nuisance and may result in legal action against the property owner and/or occupant and the service line disconnected from sewer main. Upon notice by the superintendent that a violation has or is occurring, the user shall immediately take steps to stop or correct the violation. The city may take any or all the following remedies:

(1) Cite the user to city or general sessions court, where each day of violation shall constitute a separate offense.

(2) In an emergency situation where the superintendent has determined that immediate action is needed to protect the public health, safety or welfare, a public water supply or the facilities of the sewerage system, the superintendent may discontinue water service or disconnect sewer service.

(3) File a lawsuit in chancery court or any other court of competent jurisdiction seeking damages against the user, including if applicable legal costs, and further seeking an injunction prohibiting further violations by user.

(4) Seek further remedies as needed to protect the public health, safety or welfare, the public water supply or the facilities of the sewerage system.

#### **CHAPTER 3**

### **INDUSTRIAL/COMMERCIAL WASTEWATER REGULATIONS**

#### SECTION

- 18-301. Industrial pretreatment.
- 18-302. Discharge permits.
- 18-303. Industrial user additional requirements.
- 18-304. Reporting requirements.
- 18-305. Enforcement response plan.
- 18-306. Enforcement response guide table.
- 18-307. Fees and billing.
- 18-308. Validity.

**18-301.** <u>Industrial pretreatment</u>. In order to comply with Federal Industrial Pretreatment Rules 40 CFR 403 and Tennessee Pretreatment Rules 1200-4-14 and to fulfill the purpose and policy of this ordinance the following regulations are adopted.

(1) <u>User discharge restrictions</u>. All system users must follow the General and Specific discharge regulations specified in § 18-309 of this ordinance.

(2) Users wishing to discharge pollutants at higher concentrations than Table A Plant Protection Criteria of § 18-309, or those dischargers who are classified as Significant Industrial Users will be required to meet the requirements of this chapter. Users who discharge waste which falls under the criteria specified in this chapter and who fail to or refuse to follow the provisions shall face termination of service and/or enforcement action specified in § 18-305.

(3) <u>Discharge regulation</u>. Discharges to the sewer system shall be regulated through use of a permitting system. The permitting system may include any or all of the following activities: completion of survey/application forms, issuance of permits, oversight of users monitoring and permit compliance, use of compliance schedules, inspections of industrial processes, wastewater processing, and chemical storage, public notice of permit system changes and public notice of users found in significant noncompliance.

(4) Discharge permits shall limit concentrations of discharge pollutants to those levels that are established as local limits, Table B or other applicable state and federal pretreatment rules which may be in effect or take effect after the passage of this chapter.

Pollutant	Monthly Average* Concentration (mg/l)	Maximum Daily Concentration (mg/l)
Arsenic		
Benzene		
Cadmium		
Carbon Tetrachloride		
Chloroform		
Chromium (total)		
Copper		
Cyanide		
Ethybenzene		
Lead		
Mercury		
Methylene chloride		
Molybdenum		
Naphthalene		
Nickel		
Phenol		
<mark>Selenium</mark>		
Silver		
Tetrachloroethylene		
Toluene		
Total Phthalate		
<b>Trichloroethylene</b>		
1,1,1-Trichoroethane		
1,2 Transdichloroethylene		

### Table B - Local Limits

Pollutant	Monthly Average* Concentration (mg/l)	Maximum Daily Concentration (mg/l)
Zinc		

\*Based on twenty-four (24) hour flow proportional composite samples unless specified otherwise.

(5) <u>Surcharge threshold and maximum concentrations</u>. Dischargers of high strength waste may be subject to surcharges based on the following surcharge thresholds. Maximum concentrations may also be established for some users.

Parameter	Surcharge Threshold	Maximum Concentration
Total Kjeldahl Nitrogen (TKN)		
Oil and grease		
MBAS		
BOD		
COD		
Suspended solids		

## Table C-Surcharge and Maximum Limits

(6) <u>Protection of treatment plant influent</u>. The pretreatment coordinator shall monitor the treatment works influent for each parameter in Table A Plant Protection Criteria. Industrial users shall be subject to reporting and monitoring requirements regarding these parameters as set forth in this chapter. In the event that the influent at the WWF reaches or exceeds the levels established by Table A or subsequent criteria calculated as a result of changes in pass through limits issued by the Tennessee Department of Environment and Conservation, the pretreatment coordinator shall initiate technical studies to determine the cause of the influent violation and shall recommend to the city the necessary remedial measures, including, but not limited to, recommending the establishment of new or revised local limits, best management practices, or other criteria used to protect the WWF. The pretreatment coordinator shall also

recommend changes to any of these criteria in the event that: the WWF effluent standards are changed, there are changes in any applicable law or regulation affecting same, or changes are needed for more effective operation of the WWF.

(7) <u>User inventory</u>. The superintendent will maintain an up-to-date inventory of users whose waste does or may fall into the requirements of this chapter, and will notify the users of their status.

(8) <u>Right to establish more restrictive criteria</u>. No statement in this chapter is intended or may be construed to prohibit the pretreatment coordinator from establishing specific wastewater discharge criteria which are more restrictive when wastes are determined to be harmful or destructive to the facilities of the WWF or to create a public nuisance, or to cause the discharge of the WWF to violate effluent or stream quality standards, or to interfere with the use or handling of sludge, or to pass through the WWF resulting in a violation of the NPDES permit, or to exceed industrial pretreatment standards for discharge to municipal wastewater treatment systems as imposed or as may be imposed by the Tennessee Department of Environment and Conservation and/or the United States Environmental Protection Agency.

(9) <u>Combined wastestream formula</u>. When wastewater subject to categorical pretreatment standards is mixed with wastewater not regulated by the same standard, the permitting authority may impose an alternate limit using the combined wastestream formula.

18-302. <u>Discharge permits</u>. (1) <u>Application for discharge of commercial</u> or industrial wastewater. All users or prospective users which generate commercial or industrial wastewater shall make application to the superintendent for connection to the municipal wastewater treatment system. It may be determined through the application that a user needs a discharge permit according to the provisions of federal and state laws and regulations. Applications shall be required from all new dischargers as well as for any existing discharger desiring additional service or where there is a planned change in the industrial or wastewater treatment process. Connection to the city sewer or changes in the industrial process or wastewater treatment process shall not be made until the application is received and approved by the superintendent, the building sewer is installed in accordance with § 18-306 of this ordinance and an inspection has been performed by the superintendent or his representative.

The receipt by the city of a prospective customer's application for connection shall not obligate the city to render the connection. If the service applied for cannot be supplied in accordance with this chapter and the city's's rules and regulations and general practice, the connection charge will be refunded in full, and there shall be no liability of the city to the applicant for such service.

(2) <u>Industrial wastewater discharge permits</u>. (a) General requirements. All industrial users proposing to connect to or to contribute to the WWF shall apply for service and apply for a discharge

permit before connecting to or contributing to the WWF. All existing industrial users connected to or contributing to the WWF may be required to apply for a permit within one hundred eighty (180) days after the effective date of this chapter.

(b) Applications. Applications for wastewater discharge permits shall be required as follows:

(i) Users required by the superintendent to obtain a wastewater discharge permit shall complete and file with the pretreatment coordinator, an application on a prescribed form accompanied by the appropriate fee.

The application shall be in the prescribed form of the (ii) city and shall include, but not be limited to the following information: name, address, and SIC/NAICS number of applicant; wastewater volume; wastewater constituents and characteristic, including but not limited to those mentioned in §§ 18-309 and 18-301 discharge variations daily, monthly, seasonal and thirty (30) minute peaks; a description of all chemicals handled on the premises, each product produced by type, amount, process or processes and rate of production, type and amount of raw materials, number and type of employees, hours of operation, site plans, floor plans, mechanical and plumbing plans and details showing all sewers and appurtenances by size, location and elevation; a description of existing and proposed pretreatment and/or equalization facilities and any other information deemed necessary by the pretreatment coordinator.

(iii) Any user who elects or is required to construct new or additional facilities for pretreatment shall as part of the application for wastewater discharge permit submit plans, specifications and other pertinent information relative to the proposed construction to the pretreatment coordinator for approval. A wastewater discharge permit shall not be issued until such plans and specifications are approved. Approval of such plans and specifications shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this chapter.

(iv) If additional pretreatment and/or operations and maintenance will be required to meet the pretreatment standards, the application shall include the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. For the purpose of this paragraph, "pretreatment standard," shall include either a national pretreatment standard or a pretreatment standard imposed by this chapter. (v) The city will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the city may issue a wastewater discharge permit subject to terms and conditions provided herein.

(vi) The receipt by the city of a prospective customer's application for wastewater discharge permit shall not obligate the city to render the wastewater collection and treatment service. If the service applied for cannot be supplied in accordance with this chapter or the city's's rules and regulations and general practice, the application shall be rejected and there shall be no liability of the city to the applicant of such service.

(vii) The pretreatment coordinator will act only on applications containing all the information required in this section. Persons who have filed incomplete applications will be notified by the pretreatment coordinator that the application is deficient and the nature of such deficiency and will be given thirty (30) days to correct the deficiency. If the deficiency is not corrected within thirty (30) days or within such extended period as allowed by the local administrative officer, the local administrative officer shall deny the application and notify the applicant in writing of such action.

(viii) Applications shall be signed by the duly authorized representative.

(c) Permit conditions. Wastewater discharge permits shall be expressly subject to all provisions of this chapter and all other applicable regulations, user charges and fees established by the city.

(i) Permits shall contain the following:

- (A) Statement of duration;
- (B) Provisions of transfer;

(C) Effluent limits, including best management practices, based on applicable pretreatment standards in this chapter, state rules, categorical pretreatment standards, local, state, and federal laws.

(D) Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law;

(E) Statement of applicable civil and criminal penalties for violations of pretreatment standards and the requirements of any applicable compliance schedule. Such schedules shall not extend the compliance date beyond the applicable federal deadlines; (F) Requirements to control slug discharges, if determined by the WWF to be necessary;

(G) Requirement to notify the WWF immediately if changes in the users processes affect the potential for a slug discharge.

(ii) Additionally, permits may contain the following:

(A) The unit charge or schedule of user charges and fees for the wastewater to be discharged to a community sewer;

(B) Requirements for installation and maintenance of inspection and sampling facilities;

(C) Compliance schedules;

(D) Requirements for submission of technical reports or discharge reports;

(E) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the city, and affording city access thereto;

(F) Requirements for notification of the city sixty (60) days prior to implementing any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system, and of any changes in industrial processes that would affect wastewater quality or quantity;

(G) Prohibition of bypassing pretreatment or pretreatment equipment;

(H) Effluent mass loading restrictions;

(I) Other conditions as deemed appropriate by the city to ensure compliance with this chapter.

(d) Permit modification. The terms and conditions of the permit may be subject to modification by the pretreatment coordinator during the term of the permit as limitations or requirements are modified or other just cause exists. The user shall be informed of any proposed changes in this permit at least sixty (60) days prior to the effective date of change. Except in the case where federal deadlines are shorter, in which case the federal rule must be followed. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(e) Permit duration. Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The user shall apply for permit renewal a minimum of one hundred eighty (180) days prior to the expiration of the user's existing permit.

(f) Permit transfer. Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation without the prior written approval of the local administrative officer. Any succeeding owner or user shall also comply with the terms and conditions of the existing permit. The permit holder must provide the new owner with a copy of the current permit.

(g)Revocation of permit. Any permit issued under the provisions of this chapter is subject to be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

Violation of any terms or conditions of the wastewater (i) discharge permit or other applicable federal, state, or local law or regulation.

(ii) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.

(iii) A change in:

(A) Any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

> Strength, volume, or timing of discharges; **(B)**

(C) Addition or change in process lines generating wastewater.

Intentional failure of a user to accurately report the (iv) discharge constituents and characteristics or to report significant changes in plant operations or wastewater characteristics.

Confidential information. All information and data on a user (3)obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspection shall be available to the public or any governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the pretreatment coordinator that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets of the users.

When requested by the person furnishing the report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available to governmental agencies for use; related to this chapter or the city's's or user's NPDES permit. Provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

Information accepted by the pretreatment coordinator as confidential shall not be transmitted to any governmental agency or to the general public by the pretreatment coordinator until and unless prior and adequate notification is given to the user.

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**18-303.** <u>Industrial user additional requirements</u>. (1) <u>Monitoring facilities</u>. The installation of a monitoring facility shall be required for all industrial users. A monitoring facility shall be a manhole or other suitable facility approved by the pretreatment coordinator.

When in the judgment of the pretreatment coordinator, there is a significant difference in wastewater constituents and characteristics produced by different operations of a single user the pretreatment coordinator may require that separate monitoring facilities be installed for each separate source of discharge.

Monitoring facilities that are required to be installed shall be constructed and maintained at the user's expense. The purpose of the facility is to enable inspection, sampling and flow measurement of wastewater produced by a user. If sampling or metering equipment is also required by the pretreatment coordinator, it shall be provided and installed at the user's expense.

The monitoring facility will normally be required to be located on the user's premises outside of the building. The pretreatment coordinator may, however, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street right-of-way with the approval of the public agency having jurisdiction of that right-of-way and located so that it will not be obstructed by landscaping or parked vehicles. There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expenses of the user.

(2) <u>Sample methods</u>. All samples collected and analyzed pursuant to this regulation shall be conducted using protocols (including appropriate preservation) specified in the current edition of 40 CFR 136 and appropriate EPA guidance. Multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows: For cyanide, total phenol, and sulfide the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

(3) <u>Representative sampling and housekeeping</u>. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measuring facilities shall be properly operated, kept clean, and in good working order at all times. The failure of the user to keep its monitoring facilities in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(4) <u>Proper operation and maintenance</u>. The user shall at all times properly operate and maintain the equipment and facilities associated with spill control, wastewater collection, treatment, sampling and discharge. Proper operation and maintenance includes adequate process control as well as adequate testing and monitoring quality assurance.

Inspection and sampling. The city may inspect the facilities of any (5)user to ascertain whether the purpose of this chapter is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the city or its representative ready access at all reasonable times to all parts of the premises for the purpose of inspection, sampling, records examination and copying or in the performance of any of its duties. The city, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and/or metering operations. The city will utilize qualified city personnel or a private laboratory to conduct compliance monitoring. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the city, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibility.

(6) <u>Safety</u>. While performing the necessary work on private properties, the pretreatment coordinator or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the city employees and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the monitoring and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions.

(7) <u>New sources</u>. New sources of discharges to the WWF shall have in full operation all pollution control equipment at start up of the industrial process and be in full compliance of effluent standards within ninety (90) days of start up of the industrial process.

(8) <u>Slug discharge evaluations</u>. Evaluations will be conducted of each significant industrial user according to the state and federal regulations. Where it is determined that a slug discharge control plan is needed, the user shall prepare that plan according to the appropriate regulatory guidance

(9) <u>Accidental discharges or slug discharges</u>. (a) Protection from accidental or slug discharge. All industrial users shall provide such facilities and institute such procedures as are reasonably necessary to prevent or minimize the potential for accidental or slug discharge into the WWF of waste regulated by this chapter from liquid or raw material storage areas, from truck and rail car loading and unloading areas, from in plant transfer or processing and materials handling areas, and from diked areas or holding ponds of any waste regulated by this chapter. Detailed plans showing the facilities and operating procedures shall be submitted to the pretreatment coordinator before the facility is constructed.

The review and approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility to provide the protection necessary to meet the requirements of this chapter.

(b) Notification of accidental discharge or slug discharge. Any person causing or suffering from any accidental discharge or slug discharge shall immediately notify the pretreatment coordinator in person, or by the telephone to enable countermeasures to be taken by the pretreatment coordinator to minimize damage to the WWF, the health and welfare of the public, and the environment.

This notification shall be followed, within five (5) days of the date of occurrence, by a detailed written statement describing the cause of the accidental discharge and the measures being taken to prevent future occurrence.

Such notification shall not relieve the user of liability for any expense, loss, or damage to the WWF, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or state or federal law.

(c) Notice to employees. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

18-304. <u>Reporting requirements</u>. Users, whether permitted or non-permitted may be required to submit reports detailing the nature and characteristics of their discharges according to the following subsections. Failure to make a requested report in the specified time is a violation subject to enforcement actions under section 205.

(1)<u>Baseline monitoring report</u>. (a) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under Tennessee Rule 1200-4-14-.06(1)(d), whichever is later, existing categorical industrial users currently discharging to or scheduled to discharge to the WWF shall submit to the superintendent a report which contains the information listed in subsection (b), below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the superintendent a report which contains the information listed in subsection (b), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(b) Users described above shall submit the information set forth below.

(i) Identifying information. The user name, address of the facility including the name of operators and owners.

(ii) Permit information. A listing of any environmental control permits held by or for the facility.

(iii) Description of operations. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the WWF from the regulated processes.

(iv) Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula.

(v) Measurement of pollutants.

(A) The categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.

(B) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the superintendent, of regulated pollutants in the discharge from each regulated process.

(C) Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.

(D) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in 40 CFR 136 and amendments, unless otherwise specified in an applicable categorical standard. Where the standard requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the superintendent or the applicable standards to determine compliance with the standard.

(E) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

(F) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no

pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula to evaluate compliance with the pretreatment standards

(G) Sampling and analysis shall be performed in accordance with 40 CFR 136 or other approved methods;

(H) The superintendent may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(I) The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the WWF.

(c) Compliance certification. A statement, reviewed by the user's duly authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional Operation and Maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.

(d) Compliance schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in § 18-304(2) of this ordinance.

(e) Signature and report certification. All baseline monitoring reports must be certified in accordance with § 18-304(14) of this ordinance and signed by the duly authorized representative.

(2) <u>Compliance schedule progress reports</u>. The following conditions shall apply to the compliance schedule required by § 18-304(1)(d) of this ordinance:

(a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation)

(b) No increment referred to above shall exceed nine (9) months,

(c) The user shall submit a progress report to the superintendent no later than fourteen (14) days following each date in the schedule and the final date of compliance including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule,

(d) In no event shall more than nine (9) months elapse between such progress reports to the superintendent.

(3) <u>Reports on compliance with categorical pretreatment standard</u> <u>deadline</u>. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the WWF, any user subject to such pretreatment standards and requirements shall submit to the superintendent a report containing the information described in §18-304(1)(b)(iv) and (v) of this ordinance. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with subsection (14) of this section. All sampling will be done in conformance with subsection (11).

(4) <u>Periodic compliance reports</u>. (a) All significant industrial users must, at a frequency determined by the superintendent submit no less than twice per year (April 10 and October 10) reports indicating the nature, concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the user must submit documentation required by the superintendent or the pretreatment standard necessary to determine the compliance status of the user.

(b) All periodic compliance reports must be signed and certified in accordance with this ordinance.

(c) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(d) If a user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the superintendent, using the procedures prescribed in subsection (11) of this section, the results of this monitoring shall be included in the report. (5) <u>Reports of changed conditions</u>. Each user must notify the superintendent of any significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least sixty (60) days before the change.

(a) The superintendent may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under § 18-301 of this chapter.

(b) The superintendent may issue an individual wastewater discharge permit under § 18-302 of this chapter or modify an existing wastewater discharge permit under § 18-302 of this chapter in response to changed conditions or anticipated changed conditions.

(6) <u>Report of potential problems</u>. (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a slug discharge or slug load, that might cause potential problems for the POTW, the user shall immediately telephone and notify the superintendent of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five (5) days following such discharge, the user shall, unless waived by the superintendent, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which might be incurred as a result of damage to the WWF, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in subsection (a), above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

(d) Significant industrial users are required to notify the superintendent immediately of any changes at its facility affecting the potential for a slug discharge.

(7) Reports from unpermitted users. All users not required to obtain an individual wastewater discharge permit shall provide appropriate reports to the superintendent as the superintendent may require to determine users status as non-permitted.

(8) <u>Notice of violations/repeat sampling and reporting</u>. Where a violation has occurred, another sample shall be conducted within thirty (30) days of becoming aware of the violation, either a repeat sample or a regularly scheduled sample that falls within the required time frame. If sampling

performed by a user indicates a violation, the user must notify the superintendent within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the superintendent within thirty (30) days after becoming aware of the violation. Resampling by the industrial user is not required if the city performs sampling at the user's facility at least once a month, or if the city performs sampling at the user's facility between the time when the initial sampling was conducted and the time when the user or the city receives the results of this sampling, or if the city has performed the sampling and analysis in lieu of the industrial user.

Notification of the discharge of hazardous waste. (a) Any user who (9)commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under § 18-304(5) of this ordinance. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self monitoring requirements of  $\S$  18-304(1), (3), and (4) of this chapter.

(b) Dischargers are exempt from the requirements of paragraph (a), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one (1) time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification. (c) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the superintendent, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued there under, or any applicable federal or state law.

(10) <u>Analytical requirements</u>. All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the superintendent or other parties approved by EPA.

(11) <u>Sample collection</u>. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

Except as indicated in subsections (b) and (c) below, the user (a) must collect wastewater samples using twenty-four (24) hour flow proportional composite sampling techniques, unless time proportional composite sampling or grab sampling is authorized by the superintendent. Where time proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits

(b) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(c) For sampling required in support of baseline monitoring and ninety (90) day compliance reports required in subsections (1) and (3) of this section, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the superintendent may authorize a lower minimum. For the reports required by subsection (4) of this section, the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.

(12) <u>Date of receipt of reports</u>. Written reports will be deemed to have been submitted on the date postmarked. For reports, which are not mailed, the date of receipt of the report shall govern.

(13)Recordkeeping. Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with best management practices established under §18-302. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the superintendent.

(14) <u>Certification statements</u>. Signature and certification. All reports associated with compliance with the pretreatment program shall be signed by the duly authorized representative and shall have the following certification statement attached:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Reports required to have signatures and certification statement include, permit applications, periodic reports, compliance schedules, baseline monitoring, reports of accidental or slug discharges, and any other written report that may be used to determine water quality and compliance with local, state, and federal requirements.

**18-305.** <u>Enforcement response plan</u>. Under the authority of *Tennessee Code Annotated*, § 69-3-123 *et. seq*.

(1) <u>Complaints; notification of violation; orders</u>. (a) (i) Whenever the local administrative officer has reason to believe that a violation of any provision of the Gallaway Wastewater Regulations, pretreatment program, or of orders of the local hearing authority issued under it has occurred, is occurring, or is about to occur, the local administrative officer may cause a written complaint to be served upon the alleged violator or violators.

(ii) The complaint shall specify the provision or provisions of the pretreatment program or order alleged to be violated or about to be violated and the facts alleged to constitute a violation, may order that necessary corrective action be taken within a reasonable time to be prescribed in the order, and shall inform the violators of the opportunity for a hearing before the local hearing authority.

(iii) Any such order shall become final and not subject to review unless the alleged violators request by written petition a hearing before the local hearing authority as provided in \$18-305(2), no later than thirty (30) days after the date the order is served; provided, that the local hearing authority may review the final order as provided in *Tennessee Code Annotated*, \$ 69-3-123(a)(3).

(iv) Notification of violation. Notwithstanding the provisions of subsections (i) through (iii), whenever the pretreatment coordinator finds that any user has violated or is violating this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment requirements, the city or its agent may serve upon the user a written notice of violation. Within fifteen (15) days of the receipt of this notice, the user shall submit to the pretreatment coordinator an explanation of the violation and a plan for its satisfactory correction and prevention including specific actions. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section limits the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(b) (i) When the local administrative officer finds that a user has violated or continues to violate this chapter, wastewater discharge permits, any order issued hereunder, or any other pretreatment standard or requirement, he may issue one of the following orders. These orders are not prerequisite to taking any other action against the user.

(A) Compliance order. An order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the specified time, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a federal pretreatment standard or requirement, nor does a compliance order release the user of liability for any violation, including any continuing violation.

(B) Cease and desist order. An order to the user directing it to cease all such violations and directing it to immediately comply with all requirements and take needed remedial or preventive action to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

(C) Consent order. Assurances of voluntary compliance, or other documents establishing an agreement with the user responsible for noncompliance, including specific action to be taken by the user to correct the noncompliance within a time period specified in the order.

(D) Emergency order. (1) Whenever the local administrative officer finds that an emergency exists imperatively requiring immediate action to protect the public health, safety, or welfare, the health of animals, fish or aquatic life, a public water supply, or the facilities of the WWF, the local administrative officer may, without prior notice, issue an order reciting the existence of such an emergency and requiring that any action be taken as the local administrative officer deems necessary to meet the emergency.

(2)If the violator fails to respond or is unable to respond to the order. the local administrative officer may take any emergency action as the local administrative officer deems necessary. or contract with a qualified person or persons to carry out the emergency measures. The local administrative officer may assess the person or persons responsible for the emergency condition for actual costs incurred by the city in meeting the emergency.

(ii) Appeals from orders of the local administrative officer.

(A) Any user affected by any order of the local administrative officer in interpreting or implementing the provisions of this chapter may file with the local administrative officer a written request for reconsideration within thirty (30) days of the order, setting forth in detail the facts supporting the user's request for reconsideration.

(B) If the ruling made by the local administrative officer is unsatisfactory to the person requesting reconsideration, he may, within thirty (30) days, file a written petition with the local hearing authority as provided in subsection (2). The local administrative officer's order shall remain in effect during the period of reconsideration.

(c) Except as otherwise expressly provided, any notice, complaint, order, or other instrument issued by or under authority of this section may be served on any named person personally, by the local administrative officer or any person designated by the local administrative officer, or service may be made in accordance with Tennessee statutes authorizing service of process in civil action. Proof of service shall be filed in the office of the local administrative officer.

(2) <u>Hearings</u>. (a) Any hearing or rehearing brought before the local hearing authority shall be conducted in accordance with the following, Under the authority of *Tennessee Code Annotated*, § 69-3-124:

(i) Upon receipt of a written petition from the alleged violator pursuant to this subsection, the local administrative officer shall give the petitioner thirty (30) days' written notice of the time and place of the hearing, but in no case shall the hearing be held more than sixty (60) days from the receipt of the written petition, unless the local administrative officer and the petitioner agree to a postponement;

(ii) The hearing may be conducted by the local hearing authority at a regular or special meeting. A quorum of the local

hearing authority must be present at the regular or special meeting to conduct the hearing;

(iii) A verbatim record of the proceedings of the hearings shall be taken and filed with the local hearing authority, together with the findings of fact and conclusions of law made under subsection (a)(vi). The recorded transcript shall be made available to the petitioner or any party to a hearing upon payment of a charge set by the local administrative officer to cover the costs of preparation;

(iv) In connection with the hearing, the chair shall issue subpoenas in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court of Fayette County has jurisdiction upon the application of the local hearing authority or the local administrative officer to issue an order requiring the person to appear and testify or produce evidence as the case may require, and any failure to obey an order of the court may be punished by such court as contempt;

(v) Any member of the local hearing authority may administer oaths and examine witnesses;

(vi) On the basis of the evidence produced at the hearing, the local hearing authority shall make findings of fact and conclusions of law and enter decisions and orders that, in its opinion, will best further the purposes of the pretreatment program. It shall provide written notice of its decisions and orders to the alleged violator. The order issued under this subsection shall be issued by the person or persons designated by the chair no later than thirty (30) days following the close of the hearing;

(vii) The decision of the local hearing authority becomes final and binding on all parties unless appealed to the courts as provided in subsection (b).

(viii) Any person to whom an emergency order is directed under § 18-305(1)(b)(i)(D) shall comply immediately, but on petition to the local hearing authority will be afforded a hearing as soon as possible. In no case will the hearing be held later than three (3) days from the receipt of the petition by the local hearing authority.

(b) An appeal may be taken from any final order or other final determination of the local hearing authority by any party who is or may be adversely affected, including the pretreatment agency. Appeal must be made to the chancery court under the common law writ of certiorari set out in *Tennessee Code Annotated*, § 27-8-101, *et. seq.* within sixty (60) days from the date the order or determination is made.

Show cause hearing. Notwithstanding the provisions of (c)subsections (a) or (b), the pretreatment coordinator may order any user that causes or contributes to violation(s) of this chapter, wastewater discharge permits, or orders issued hereunder, or any other pretreatment standard or requirements, to appear before the local administrative officer and show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for the action, and a request that the user show cause why the proposed enforcement action should be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. The notice may be served on any authorized representative of the user. Whether or not the user appears as ordered, immediate enforcement action may be pursued following the hearing date. A show cause hearing shall not be prerequisite for taking any other action against the user. A show cause hearing may be requested by the discharger prior to revocation of a discharge permit or termination of service.

(3) <u>Violations, administrative civil penalty</u>. Under the authority of *Tennessee Code Annotated*, § 69-3-125.

(a) (i) Any person including, but not limited to, industrial users, who does any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day during which the act or omission continues or occurs:

(A) Unauthorized discharge, discharging without a permit;

(B) Violates an effluent standard or limitation;

(C) Violates the terms or conditions of a permit;

(D) Fails to complete a filing requirement;

(E) Fails to allow or perform an entry, inspection, monitoring or reporting requirement;

(F) Fails to pay user or cost recovery charges; or

(G) Violates a final determination or order of the

local hearing authority or the local administrative officer.

(ii) Any administrative civil penalty must be assessed in the following manner:

(A) The local administrative officer may issue an assessment against any person or industrial user responsible for the violation;

(B) Any person or industrial user against whom an assessment has been issued may secure a review of the assessment by filing with the local administrative officer a written petition setting forth the grounds and reasons for the violator's objections and asking for a hearing in the

matter involved before the local hearing authority and, if a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator is deemed to have consented to the assessment and it becomes final;

(C) Whenever any assessment has become final because of a person's failure to appeal the assessment, the local administrative officer may apply to the appropriate court for a judgment and seek execution of the judgment, and the court, in such proceedings, shall treat a failure to appeal the assessment as a confession of judgment in the amount of the assessment;

(D) In assessing the civil penalty the local administrative officer may consider the following factors:

(1) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(2) Damages to the pretreatment agency, including compensation for the damage or destruction of the facilities of the publicly owned treatment works, and also including any penalties, costs and attorneys' fees incurred by the pretreatment agency as the result of the illegal activity, as well as the expenses involved in enforcing this section and the costs involved in rectifying any damages;

(3) Cause of the discharge or violation;

(4) The severity of the discharge and its effect upon the facilities of the publicly owned treatment works and upon the quality and quantity of the receiving waters;

(5) Effectiveness of action taken by the violator to cease the violation;

(6) The technical and economic reasonableness of reducing or eliminating the discharge; and

(7) The economic benefit gained by the violator.

(E) The local administrative officer may institute proceedings for assessment in the chancery court of the county in which all or part of the pollution or violation occurred, in the name of the pretreatment agency.

(iii) The local hearing authority may establish by regulation a schedule of the amount of civil penalty which can be

assessed by the local administrative officer for certain specific violations or categories of violations.

(iv) Assessments may be added to the user's next scheduled sewer service charge and the local administrative officer shall have such other collection remedies as may be available for other service charges and fees.

(b) Any civil penalty assessed to a violator pursuant to this section may be in addition to any civil penalty assessed by the commissioner for violations of *Tennessee Code Annotated*, § 69-3-115(a)(1)(F). However, the sum of penalties imposed by this section and by *Tennessee Code Annotated*, § 69-3-115(a) shall not exceed ten thousand dollars (10,000.00) per day for each day during which the act or omission continues or occurs.

(4) Assessment for noncompliance with program permits or orders. Under the authority of *Tennessee Code Annotated*, § 69-3-126.

(a) The local administrative officer may assess the liability of any polluter or violator for damages to the city resulting from any person's or industrial user's pollution or violation, failure, or neglect in complying with any permits or orders issued pursuant to the provisions of the pretreatment program or this section.

(b) If an appeal from such assessment is not made to the local hearing authority by the polluter or violator within thirty (30) days of notification of such assessment, the polluter or violator shall be deemed to have consented to the assessment, and it shall become final.

(c) Damages may include any expenses incurred in investigating and enforcing the pretreatment program of this section, in removing, correcting, and terminating any pollution, and also compensation for any actual damages caused by the pollution or violation.

(d) Whenever any assessment has become final because of a person's failure to appeal within the time provided, the local administrative officer may apply to the appropriate court for a judgment, and seek execution on the judgment. The court, in its proceedings, shall treat the failure to appeal the assessment as a confession of judgment in the amount of the assessment.

(5) <u>Judicial proceedings and relief</u>. Under the authority of *Tennessee Code Annotated*, § 69-3-127. The local administrative officer may initiate proceedings in the chancery court of the county in which the activities occurred against any person or industrial user who is alleged to have violated or is about to violate the pretreatment program, this section, or orders of the local hearing authority or local administrative officer. In the action, the local administrative officer may seek, and the court may grant, injunctive relief and any other relief available in law or equity.

(6) <u>Termination of discharge</u>. In addition to the revocation of permit provisions in § 18-302(2)(g) of this chapter, users are subject to termination of

their wastewater discharge for violations of a wastewater discharge permits, or orders issued hereunder, or for any of the following conditions:

(a) Violation of wastewater discharge permit conditions.

(b) Failure to accurately report the wastewater constituents and characteristics of its discharge.

(c) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge.

(d) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling.

(e) Violation of the pretreatment standards in the general discharge prohibitions in § 18-309.

(f) Failure to properly submit an industrial waste survey when requested by the pretreatment coordination superintendent.

The user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause, as provided in subsection (2)(c) above, why the proposed action should not be taken.

(7) <u>Disposition of damage payments and penalties--special fund</u>. All damages and/or penalties assessed and collected under the provisions of this section shall be placed in a special fund by the pretreatment agency and allocated and appropriated for the administration of its wastewater fund or combined water and wastewater fund.

(8) <u>Levels of non-compliance</u>. (a) Insignificant non-compliance: For the purpose of this guide, insignificant non-compliance is considered a relatively minor infrequent violation of pretreatment standards or requirements. These will usually be responded to informally with a phone call or site visit but may include a Notice of Violation (NOV).

(b) "Significant noncompliance." Per 1200-4-14-.08(6)(b)8.

(i) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken for each parameter taken during a six (6) month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limit.

(ii) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits multiplied by the applicable TRC (TRC=1.4 for BOD, TSS fats, oils and grease, and 1.2 for all other pollutants except pH). TRC calculations for pH are not required.

(iii) Any other violation of a pretreatment standard or requirement (daily maximum of longer-term average, instantaneous limit, or narrative standard) that the WWF determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).

(iv) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the WWF's exercise of its emergency authority under § 18-305(1)(b)(i)(D), emergency order, to halt or prevent such a discharge.

(v) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.

(vi) Failure to provide, within forty-five (45) days after their due date, required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.

(vii) Failure to accurately report noncompliance.

(viii) Any other violation or group of violations, which may include a violation of best management practices, which the WWF determines will adversely affect the operation of implementation of the local pretreatment program.

(ix) Continuously monitored pH violations that exceed limits for a time period greater than fifty (50) minutes or exceed limits by more than 0.5 s.u. more than eight (8) times in four (4) hours.

Any significant non-compliance violations will be responded to according to the Enforcement Response Plan Guide Table (Appendix A).

(9) <u>Public notice of the significant violations</u>. The superintendent shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the WWF, a list of the users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be applicable to all significant industrial users (or any other industrial user that violates subsections (C), (D) or (H) of this section) and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six
(6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment (c) Any other violation of a pretreatment standard or requirement (daily maximum of longer-term average, instantaneous limit, or narrative standard) that the WWF determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the superintendent's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to accurately report noncompliance; or

(g) Any other violation(s), which may include a violation of best management practices, which the superintendent determines will adversely affect the operation or implementation of the local pretreatment program.

(h) Continuously monitored pH violations that exceed limits for a time period greater than fifty (50) minutes or exceed limits by more than 0.5 s.u. more than eight (8) times in four (4) hours.

(10) <u>Criminal penalties</u>. In addition to civil penalties imposed by the local administrative officer and the State of Tennessee, any person who willfully and negligently violates permit conditions is subject to criminal penalties imposed by the State of Tennessee and the United States.

**18-306.** <u>Enforcement response guide table</u>. (1) <u>Purpose</u>. The purpose of this chapter is to provide for the consistent and equitable enforcement of the provisions of this ordinance.

(2) <u>Enforcement response guide table</u>. The applicable officer shall use the schedule found in Appendix A to impose sanctions or penalties for the violation of this ordinance.

18-307. <u>Fees and billing</u>. (1) <u>Purpose</u>. It is the purpose of this chapter to provide for the equitable recovery of costs from users of the city's's wastewater treatment system including costs of operation, maintenance, administration, bond service costs, capital improvements, depreciation, and equitable cost recovery of EPA administered federal wastewater grants.

(2) <u>Types of charges and fees</u>. The charges and fees as established in the city's's schedule of charges and fees may include but are not limited to:

(a) Inspection fee and tapping fee;

- (b) Fees for applications for discharge;
- (c) Sewer use charges;
- (d) Surcharge fees (see Table C);
- (e) Waste hauler permit;
- (f) Industrial wastewater discharge permit fees;
- (g) Fees for industrial discharge monitoring; and
- (h) Other fees as the city may deem necessary.

(3) <u>Fees for application for discharge</u>. A fee may be charged when a user or prospective user makes application for discharge as required by § 18-302 of this chapter.

(4) <u>Inspection fee and tapping fee</u>. An inspection fee and tapping fee for a building sewer installation shall be paid to the city's's sewer department at the time the application is filed.

(5) <u>Sewer user charges</u>. The board of commissioners shall establish monthly rates and charges for the use of the wastewater system and for the services supplied by the wastewater system.

(6) <u>Industrial wastewater discharge permit fees</u>. A fee may be charged for the issuance of an industrial wastewater discharge fee in accordance with § 18-307 of this chapter.

(7) <u>Fees for industrial discharge monitoring</u>. Fees may be collected from industrial users having pretreatment or other discharge requirements to compensate the city for the necessary compliance monitoring and other administrative duties of the pretreatment program.

(8) <u>Administrative civil penalties</u>. Administrative civil penalties shall be issued according to the following schedule. Violation are categorized in the Enforcement Response Guide Table (Appendix A). The local administrative officer may access a penalty within the appropriate range. Penalty assessments are to be assessed per violation per day unless otherwise noted.

Category 1	No penalty
Category 2	50.00-500.00
Category 3	\$500.00-\$1,000.00
Category 4	\$1,000.00-\$5,000.00
Category 5	\$5,000.00-\$10,000.00

**18-308.** <u>Validity</u>. This chapter and its provisions shall be valid for all service areas, regions, and sewage works under the jurisdiction of the city.

# **CHAPTER 4**

# CROSS-CONNECTIONS, AUXILIARY INTAKES, ETC.<sup>1</sup>

### SECTION

18-401. Definitions.

- 18-402. Standards.
- 18-403. Construction, operation, and supervision.
- 18-404. Statement required.
- 18-405. Inspections required.
- 18-406. Right of entry for inspections.
- 18-407. Correction of existing violations.
- 18-408. Use of protective devices.
- 18-409. Unpotable water to be labeled.
- 18-410. Violations and penalty.

**18-401.** <u>Definitions</u>. The following definitions and terms shall apply in the interpretation and enforcement of this chapter:

(1) "Auxiliary intake." Any piping connection or other device whereby water may be secured from a source other than that normally used.

(2) "Bypass." Any system of piping or other arrangement whereby the water may be diverted around any part or portion of a water purification plant.

(3) "Cross-connection." Any physical arrangement whereby the public water supply is connected, directly or indirectly, with any other water supply system, whether sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device which contains, or may contain, contaminated water, sewage, or other waste or liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water supply as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or change-over devices through which, or because of which, backflow could occur are considered to be cross-connections;

(4) "Interconnection." Any system of piping or other arrangement whereby the public water supply is connected directly with a sewer, drain, conduit, pool, storage reservoir, or other device which does or may contain sewage or other waste or liquid which would be capable of imparting contamination to the public water supply.

(5) "Person." Any and all persons, natural or artificial, including any individual, firm, or association, and any municipal or private corporation organized or existing under the laws of this or any other state or country.

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Plumbing and related codes: title 12.

(6) "Public water supply." The waterworks system furnishing water to the city for general use and which supply is recognized as the public water supply by the Tennessee Department of Environment and Conservation.

**18-402.** <u>Standards</u>. The municipal public water supply is to comply with *Tennessee Code Annotated*, §§ 68-221-701 to 68-221-719 as well as the Rules and Regulations for Public Water Supplies, legally adopted in accordance with this code, which pertain to cross-connections, auxiliary intakes, bypasses, and interconnections, and establish an effective ongoing program to control these undesirable water uses.

18-403. <u>Construction, operation, and supervision</u>. It shall be unlawful for any person to cause a cross-connection to be made, or allow one to exist for any purpose whatsoever, unless the construction and operation of same have been approved by the Tennessee Department of Environment and Conservation and the operation of such cross connection, auxiliary intake, bypass or interconnection is at all times under the direct supervision of the superintendent of the waterworks or his representative.

18-404. <u>Statement required</u>. Any person whose premises are supplied with water from the public water supply and who also has on the same premises a separate source of water supply, or stores water in an uncovered or unsanitary storage reservoir from which the water stored therein is circulated through a piping system, shall file with the superintendent of the waterworks a statement of the non-existence of unapproved or unauthorized cross-connections, auxiliary intakes, bypasses, or interconnections. Such statement shall also contain an agreement that no cross connection, auxiliary intake, bypass, or interconnection will be permitted upon the premises.

18-405. <u>Inspections required</u>. It shall be the duty of the \_\_\_\_\_\_ to cause inspections to be made of all properties served by the public water supply where cross-connections with the public water supply are deemed possible. The frequency of inspections and reinspection, based on potential

health hazards involved, shall be established by the superintendent of the waterworks and as approved by the Tennessee Department of Environment and Conservation.

18-406. <u>Right of entry for inspections</u>. The superintendent of the waterworks or his authorized representative shall have the right to enter, at any reasonable time, any property served by a connection to the public water supply for the purpose of inspecting the piping system or systems therein for cross-connections, auxiliary intakes, bypasses, or interconnections. On request, the owner, lessee, or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or

systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross-connections.

**18-407.** <u>Correction of existing violations</u>. Any person who now has cross-connections, auxiliary intakes, bypasses, or interconnections in violation of the provisions of this chapter shall be allowed a reasonable time within which to comply with the provisions of this chapter. After a thorough investigation of existing conditions and an appraisal of the time required to complete the work, the amount of time shall be designated by the superintendent of the waterworks.

The failure to correct conditions threatening the safety of the public water system as prohibited by this chapter and the *Tennessee Code Annotated*, § 68-221-711, within a reasonable time and within the time limits set by the superintendent of the waterworks shall be grounds for denial of water service. If proper protection has not been provided after a reasonable time, the superintendent of the waterworks shall give the customer legal notification that water service is to be discontinued and shall physically separate the public water supply from the customer's on-site piping system in such a manner that the two systems cannot again be connected by an unauthorized person.

Where cross-connections, interconnections, auxiliary intakes, or bypasses are found that constitute an extreme hazard of immediate concern of contaminating the public water system, the management of the water supply shall require that immediate corrective action be taken to eliminate the threat to the public water system. Immediate steps shall be taken to disconnect the public water supply from the on-site piping system unless the imminent hazard(s) is (are) corrected immediately.

18-408. <u>Use of protective devices</u>. Where the nature of use of the water supplied a premises by the water department is such that it is deemed

(1) Impractical to provide an effective air-gap separation,

(2) That the owner and/or occupant of the premises cannot, or is not willing, to demonstrate to the superintendent of the waterworks, or his designated representative, that the water use and protective features of the plumbing are such as to propose no threat to the safety or potability of the water supply,

(3) That the nature and mode of operation within a premises are such that frequent alterations are made to the plumbing,

(4) There is a likelihood that protective measures may be subverted, altered, or disconnected, the superintendent of the waterworks or his designated representative, shall require the use of an approved protective device on the service line serving the premises to assure that any contamination that may originate in the customer's premises is contained therein. The protective device shall be a reduced pressure zone type backflow preventer approved by the Tennessee Department of Environment and Conservation as to manufacture, model, and size. The method of installation of backflow protective devices shall be approved by the superintendent of the waterworks prior to installation and shall comply with the criteria set forth by the Tennessee Department of Environment and Conservation. The installation shall be at the expense of the owner or occupant of the premises.

Personnel of the municipal public water supply shall have the right to inspect and test the device or devices on an annual basis or whenever deemed necessary by the superintendent of the waterworks or his designated representative. Water service shall not be disrupted to test the device without the knowledge of the occupant of the premises.

Where the use of water is critical to the continuance of normal operations or protection of life, property, or equipment, duplicate units shall be provided to avoid the necessity of discontinuing water service to test or repair the protective device or devices. Where it is found that only one unit has been installed and the continuance of service is critical, the superintendent of the waterworks shall notify, in writing, the occupant of the premises of plans to discontinue water service and arrange for a mutually acceptable time to test and/or repair the device. The superintendent of the waterworks shall require the occupant of the premises to make all repairs indicated promptly, to keep the unit(s) working properly, and the expense of such repairs shall be borne by the owner or occupant of the premises. Repairs shall be made by qualified personnel acceptable to the superintendent of the waterworks .

The failure to maintain backflow prevention devices in proper working order shall be grounds for discontinuing water service to a premises. Likewise, the removal, bypassing, or altering of the protective devices or the installation thereof so as to render the devices ineffective shall constitute grounds for discontinuance of water service. Water service to such premises shall not be restored until the customer has corrected or eliminated such conditions or defects to the satisfaction of the superintendent of the waterworks.

18-409. <u>Unpotable water to be labeled</u>. In order that the potable water supply made available to premises served by the public water supply shall be protected from possible contamination as specified herein, any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as:

## WATER UNSAFE

#### FOR DRINKING

The minimum acceptable sign shall have black letters at least one-inch high located on a red background.

18-410. <u>Violations and penalty</u>. The requirements contained herein shall apply to all premises served by the city water system whether located inside or outside the corporate limits and are hereby made a part of the

conditions required to be met for the city to provide water services to any premises. Such action, being essential for the protection of the water distribution system against the entrance of contamination which may render the water unsafe healthwise, or otherwise undesirable, shall be enforced rigidly without regard to location of the premises, whether inside or outside the corporate limits.

Any person who neglects or refuses to comply with any of the provisions of this chapter shall be subject to a penalty under the general penalty provision of this code. Each day a violation is allowed to occur shall be a separate offense.

## **CHAPTER 5**

## **DROUGHT MANAGEMENT**

### SECTION

- 18-501. Authority and status to plan.
- 18-502. System characteristics and risks.
- 18-503. Purpose of the drought management plan.
- 18-504. Plan within the contact of an EOP.
- 18-505. Planning committee.
- 18-506. Goals; objectives and priorities.
- 18-507. General water uses in order of priority.
- 18-508. Inter-connections, mutual aid agreements, and backup sources.
- 18-509. Well static water levels.
- 18-510. Phased management.
- 18-511. Drought alert.
- 18-512. Voluntary water reductions.
- 18-513. Mandatory water restrictions.
- 18-514. Emergency water management.
- 18-515. Monitor supply and demand.
- 18-516. Management team.
- 18-517. Review, evaluation, and updating the management plan.

18-501. <u>Authority and status to plan</u>. Gallaway, Tennessee is a municipal corporation chartered and organized under the laws of the State of Tennessee. Gallaway owns and operates a water treatment plant and distribution system serving the citizens of the City of Gallaway and the surrounding area. The city manager of Gallaway has the authority to implement a drought management plan and the chief water treatment plant operator has been given the responsibility to complete the plan. (Ord. #40-2016, July 2016)

**18-502.** <u>System characteristics and risks</u>. The Gallaway Water System has approximately three hundred ninety seven (397) water connections. Using the household factor of 2.7 persons per household for Fayette County, this is equivalent to approximately one thousand seventy-two (1,072) persons. The usage is categorized as follows:

Water use category	Use in gallons (monthly avg)	Percent of total usage	Peak water use (monthly)	Percent of total usage	Increase in gallons (monthly)	Percent increase (peak over avg)
Residential	1,635,775	58	2,329,860	58	694,085	42
Commercial	685,308	25	1,004,250	25	318,942	46
Industrial	468,491	17	682,890	17	214,399	45

Water use	Use in gallons	Percent of	Peak	Percent	Increase in	Percent
category	(monthly avg)	total usage	water use	of total	gallons	increase (peak
			(monthly)	usage	(monthly)	over avg)
Monthly	2,789,574	100	4,017,000	100	1,227,426	44
Total						

The Gallaway Water Treatment Plant is a conventional groundwater plant with a design capacity of approximately 0.85 million gallons per day. Average usage for the system is approximately one hundred twenty-five thousand (125,000) gallons per day. The maximum daily pumpage in recent years, which occurred in October, 2015, was two hundred six thousand (206,000) gallons. The treatment plant uses three wells as its raw water source. The distribution system contains two water storage tanks with a combined capacity of three hundred fifty thousand (350,000) gallons. (Ord. #40-2016, July 2016)

18-503. Purpose of the drought management plan. Typically, drought has not affected the water source in past years. The purpose of this plan is to reduce water demand in the event of a drought where existing water supplies are inadequate to meet current demand for potable water. The significance of taking into account water use on average and during peak water demand (though it may not reflect an extreme or exceptional drought) is that system officials can identify water uses that have the potential to be reduced more easily. The point here is to identify potential discretionary or non-essential water uses, it is evident from the data above that water use by residential users typically increases forty-two percent (42%) over average water use. The forty-six percent (46%) increase in commercial use indicates that this area could be easily reduced.

Because water use data reflects a typical peak summer water use but not necessary a moderate, severe, or extreme drought, additional water use could be expected by residential customers on the system.

During the droughts of 2007 and 2008, the water treatment plant was able to meet customer demand with no restrictions implemented. Presently there are no connections with any neighboring water systems. An emergency connection with Arlington's water system is being discussed, however since their source is also groundwater, a drought that affects Gallaway would likely affect them. (Ord. #40-2016, July 2016)

18-504. <u>Plan within the contact of an EOP</u>. Development of the city's drought management plan and EOP were assigned by the water plant operator. He organized a team of individuals, including employees and local officials to help organize and frame the plan. The EOP is not available for public scrutiny. The drought management plan focuses attention on managing supplies and demand during a declared drought. (Ord. #40-2016, July 2016)

18-505. <u>Planning committee</u>. The City of Gallaway's drought management plan is a separate component of the Emergency Operation Plan (EOP). It was developed by water department staff of the town. Unlike the EOP to which the drought plan is an "annex," the drought plan includes a standby rate structure, restricts some water uses, and in some cases bans other water uses at times. (Ord. #40-2016, July 2016)

18-506. <u>Goals: objectives and priorities</u>. The initial goal of the drought management plan was to provide water to all priority uses as established by the water system under worsening drought conditions (three (3) levels). The water uses and levels of water availability take into account the maintenance of public health and safety, sustaining economic activity, preserving critical environmental resources, and life activities. (Ord. #40-2016, July 2016)

**18-507.** <u>General water uses in order of priority</u>. General water uses in order of priority:

- (1) Hospital and medical facilities;
- (2) Nursing homes and elderly care facilities;

(3) Human consumption (drinking water, domestic cooking, bathing, toilet use);

- (4) Fire protection (structural facilities, and hazardous situations);
- (5) Pets (animal hospitals, kennels) and livestock;
- (6) Environment (erosion, aquatic habitat);
- (7) Commercial uses (restaurant, laundry, office, retail);
- (8) Industry and manufacturing (sanitation, process, cooling);
- (9) Recreation (pools, athletic fields);
- (10) Landscape (shrubbery) watering (home and commercial); and

(11) Lawn watering, vehicle washing (home and commercial). (Ord. #40-2016, July 2016)

18-508. Inter-connections, mutual aid agreements, and backup sources. As a result of customers with livestock on the system with potentially inadequate streams, the plan calls for the use of fire department tankers to haul water from area streams (having available water) to assist farmers with livestock. A portion of the additional funds needed to support this activity would come from revenues generated by standby rates with the remaining funds from fees for services from farmers. (Ord. #40-2016, July 2016)

18-509. <u>Well static water levels</u>. During periods of drought or impending drought, operators at the Gallaway Water will monitor the static water levels of system wells. U.S. Drought Monitor (https://www.drought.gov/gdm/current-conditions) will be monitored to determine severity of drought, in the event that the static water levels begin to approach preset trigger points, the Tennessee Division of Water Resources will be contacted to discuss possible actions. (Ord. #40-2016, July 2016)

18-510. <u>Phased management</u>. The drought response plan is broken into four phases: drought alert, voluntary water reductions, mandatory water restrictions and emergency water management. The drought management phases and sets of trigger points along with their associated goals are described below. Failure to achieve a management phases goal within a reasonable time shall call for the next phase to be implemented. (Ord. #40-2016, July 2016)

18-511. <u>Drought alert</u>. In the drought alert phase, no reduction in water use demand is planned. The Gallaway Water System will focus on monitoring conditions, prepare for the possible implementation of "voluntary reductions," and call its city officials and EMA together to review the plan and next-step actions. (Ord. #40-2016, July 2016)

18-512. <u>Voluntary water reductions</u>. Under "voluntary reductions," Gallaway has established a water use reduction goal of ten percent (10%). This figure corresponds to approximately twelve thousand nine hundred fifty (12,950) gallons per day water use judging by peak usage. Among the trigger points for implementing this phase would be a drop in static water levels of twenty percent (20%) or an increase in the usage to (seventy-five percent (75%) capacity) six hundred thirty seven thousand five hundred (637,500) gpd for five (5) consecutive days. The public appeal would consist of news releases to the media (weekly newspaper, local radio, and regional television stations). Customers will be encouraged to use efficient water practices, e.g., watering lawns between sunset and sunrise, along with the more careful watering of shrubs and other landscape plantings. (Ord. #40-2016, July 2016)

**18-513.** Mandatory water restrictions. The goal of activating a "mandatory water restrictions" phase would be to reduce water demand by customers by fifteen percent (15%). This would amount to a reduction of approximately nineteen thousand four hundred thirty-seven (19,437) gpd. Vehicle washing will be restricted. Restrictions to car/vehicle washing will apply to commercial car washes that do not re-cycle water and to the domestic washing of cars, etc. Lawn and landscape watering will be restricted. To assist in reducing usage, the water system will reduce the amount of flushing where possible. Among the trigger points for implementing this phase would be a drop in static water levels of forty percent (40%) or an increase in the usage (eighty-five percent (85%) capacity) to seven hundred twenty-two thousand, five hundred (722,500) gpd for five (5) consecutive days. Restrictions will be provided to the public through the media and posted in public buildings such as libraries, city hall, court house, banks, and grocery stores. A fifteen dollar (\$15.00) surcharge will be assessed to all customers using over four thousand (4,000) gallons per month. System personnel will be utilized to monitor compliance with

restrictions. Customers will also be requested to report violators of the restrictions.

The following will be used to enforce restrictions:

- (a) First offense A written warning will be issued.
- (b) Second offense A fifty dollar (\$50.00) fine.

(c) Third offense - Customer's water service will be discontinued for a minimum of five (5) days. A reconnection fee will be required to have service restored. (Ord. #40-2016, July 2016)

18-514. <u>Emergency water management</u>. (1) The "emergency water management" phase of the drought plan would be triggered by severe water pressure or other hydraulic issues, the static water level drops fifty percent (50%) or more or the daily usage reaches (ninety percent (90%) capacity) seven hundred sixty-five thousand (765,000) gpd for five consecutive days. The purpose of this phase would be to reduce water use to twenty-five percent (25%) of the peak demand. This would be a reduction of approximately fifty thousand (50,000) gpd. The media will be used to strongly encourage all customers to curtail any nonessential usage. A twenty-five dollar (\$25.00) surcharge will be assessed to all customers using over four thousand (4,000) gallons per month. System personnel will be utilized to monitor compliance with restrictions. Customers will also be requested to report violators of the restrictions.

- (2) The following will be used to enforce restrictions:
  - (a) First offense A written warning will be issued.
  - (b) Second offense A fifty dollar (\$50.00) fine.

(c) Third offense - Customer's water service will be discontinued for a minimum of fifteen (15) days. A reconnection fee will be required to have service restored. (Ord. #40-2016, July 2016)

**18-515.** <u>Monitor supply and demand</u>. Gallaway has established three (3) drought management phases in addition to a "drought alert" phase. All four (4) phases are described below. In addition, numerous trigger points were identified signaling the beginning of a phase. (Ord. #40-2016, July 2016)

18-516. <u>Management team</u>. Gallaway designated the chief water treatment plant operator to be the drought plan implementation manager. He is ultimately in charge of managing the water system. In addition, the city manager of Gallaway, the chief of the fire department, and distribution supervisor make up the drought management group responsible for overseeing the implementation of the plan. They advise and assist the chief operator in gathering information, assessing the situation and recommend/advise/approve the chief operator's actions. The task group is activated and will meet as necessary once a "drought alert" has been initiated. A "drought alert" corresponds to the U.S. Drought Monitor's categorization of the water system's service area as being characterized as under "severe" drought conditions. The task group monitors water system conditions, including water demand, water supply, forecasted conditions, hydraulic conditions, water quality issues, impacted communities, public notification, plan modifications, staffing, trigger points and other issues related to the implementation of the plan. The task group and chief operator must also maintain records of their actions, system conditions at the time of management actions taken, and their effects. Finally, the drought management group and plan implementation manager must also determine and announce the step-down and/or deactivation of the plan. (Ord. #40-2016, July 2016)

18-517. <u>Review, evaluation, and updating the management plan</u>. The drought management plan was adopted on July 14, 2016, by the city board of commissioners. The drought manager will review the plan within six (6) months after any phase of the plan has been implemented and/or every five (5) years. Refinements to the drought management plan will be made as necessary. The drought manager is responsible for making the review and presenting that review before the council. (Ord. #40-2016, July 2016)

#### **TITLE 19**

## **ELECTRICITY AND GAS**

#### **CHAPTER**

1. ELECTRICITY.

2. GAS.

## **CHAPTER 1**

## ELECTRICITY<sup>1</sup>

## SECTION

19-101. To be furnished under franchise.

**19-101.** <u>To be furnished under franchise</u>. Electricity shall be furnished for the municipality and its inhabitants under such franchise as the governing body shall grant.<sup>2</sup> The rights, powers, duties, and obligations of the municipality, its inhabitants, and the grantee of the franchise shall be clearly stated in the written franchise agreement which shall be binding on all parties concerned. (2003 Code, § 19-101)

<sup>&</sup>lt;sup>1</sup>Municipal code reference Electrical code: title 12.

<sup>&</sup>lt;sup>2</sup>The franchise agreements are of record in the office of the city recorder.

## **CHAPTER 2**

## $\underline{GAS}^1$

### SECTION

- 19-201. Application and scope.
- 19-202. Definitions.
- 19-203. Application and contract for service.
- 19-204. Service charges for temporary service.
- 19-205. Connection charges.
- 19-206. Gas main extensions.
- 19-207. Gas main extension variances.
- 19-208. Meters.
- 19-209. Multiple services through a single meter.
- 19-210. Customer billing and payment policy.
- 19-211. Termination or refusal of service.
- 19-212. Termination of service by customer.
- 19-213. Access to customers' premises.
- 19-214. Inspections.
- 19-215. Customer's responsibility for system's property.
- 19-216. Customer's responsibility for violations.
- 19-217. Supply and resale of gas.
- 19-218. Unauthorized use of or interference with gas supply.
- 19-219. Damages to property due to gas pressure.
- 19-220. Liability for cutoff failures.
- 19-221. Restricted use of gas.
- 19-222. Interruption of service.
- 19-223. Schedule of rates.

**19-201.** <u>Application and scope</u>. The provisions of this chapter are a part of all contracts for receiving gas service from the city and shall apply whether the service is based upon contract, agreement, signed application, or otherwise. (2003 Code, § 19-201)

**19-202.** <u>Definitions</u>. (1) "Customer" means any person, firm, or corporation who receives gas service from the city under either an express or implied contract.

(2) "Dwelling" means any single structure, with auxiliary buildings, occupied by one or more persons or households for residential purposes.

<sup>&</sup>lt;sup>1</sup>Municipal code reference

Fuel gas code: title 12.

(3) "Premises" means any structure or group of structures operated as a single business or enterprise, provided, however, the term "premises" shall not include more than one (1) dwelling.

(4) "Service line" shall consist of the pipe line extending from any gas main of the city to private property.

Where a meter and meter box are located on private property, the service line shall be construed to include the pipe line extending from the city's gas main to and including the meter and meter box. (2003 Code, § 19-202)

**19-203.** <u>Application and contract for service</u>. Each prospective customer desiring gas service will be required to sign a standard form contract and pay a service deposit as determined by board resolution before service is supplied. The service deposit shall be refundable if and only if the city cannot supply service in accordance with the terms of this chapter. If, for any reason, a customer, after signing a contract for service, does not take such service by reason of not occupying the premises or otherwise, he shall reimburse the city for the expense incurred by reason of its endeavor to furnish the service.

The receipt of a prospective customer's application for service, regardless of whether or not accompanied by a deposit, shall not obligate the city to render the service applied for. If the service applied for cannot be supplied in accordance with the provisions of this chapter and general practice, the liability of the city to the applicant shall be limited to the return of any deposit made by such applicant. (2003 Code, § 19-203)

**19-204.** <u>Service charges for temporary service</u>. Customers requiring temporary service shall pay all costs for connection and disconnection incidental to the supplying and removing of service in addition to the regular charge for gas service. (2003 Code, § 19-204)

**19-205.** <u>Connection charges</u>. Service lines will be laid by the city from its mains to the property line at the expense of the applicant for service. The location of such lines will be determined by the city.

Before a new gas service line will be laid by the city, the applicant shall make a nonrefundable connection charge as determined by board resolution.

When a service line is completed, the city shall be responsible for the maintenance and upkeep of such service line from the main to and including the meter and meter box, and such portion of the service line shall belong to the city. The remaining portion of the service line beyond the meter box shall belong to and be the responsibility of the customer. (2003 Code, § 19-205)

**19-206.** <u>Gas main extensions</u>. Persons desiring gas main extensions must pay all of the cost of making such extensions. All such extensions shall be installed either by municipal forces or by other forces working directly under the

supervision of the city in accordance with plans and specifications prepared by an engineer registered with the State of Tennessee.

Upon completion of such extensions and their approval by the city, such gas mains shall become the property of the city. The persons paying the cost of constructing such mains shall execute any written instruments requested by the city to provide evidence of the city's title to such mains. In consideration of such mains being transferred to it, the city shall incorporate the mains as an integral part of the municipal gas system and shall furnish gas service therefrom in accordance with these rules and regulations. (2003 Code, § 19-206)

**19-207.** <u>Gas main extension variances</u>. Whenever the board of commissioners is of the opinion that it is to the best interest of the city and its inhabitants to construct a gas main extension without requiring strict compliance with the preceding section, such extension may be constructed upon such terms and conditions as shall be approved by the board of commissioners.

The authority to make gas main extensions under the preceding section is permissive only and nothing contained therein shall be construed as requiring the city to make such extensions or to furnish service to any person or persons. (2003 Code, § 19-207)

**19-208.** <u>Meters</u>. All meters shall be installed, tested, repaired, and removed only by the city.

No one shall do anything which will in any way interfere with or prevent the operation of a meter. No one shall tamper with or work on a gas meter without the written permission of the city. No one shall install any pipe or other device which will cause gas to pass through or around a meter without the passage of such gas being registered fully by the meter. (2003 Code, § 19-208)

**19-209.** <u>Multiple services through a single meter</u>. No customer shall supply gas service to more than one dwelling or premises from a single service line and meter without first obtaining the written permission of the city.

Where the city allows more than one (1) dwelling or premises to be served through a single service line and meter, the amount of gas used by all the dwellings and premises served through a single service line and meter shall be allocated to each separate dwelling or premises served. The gas and charges for each such dwelling or premises thus served shall be computed just as if each such dwelling or premises had received through a separately metered service the amount of gas so allocated to it, such computation to be made at the city's applicable gas schedule, including the provisions as to minimum bills. The separate charges for each dwelling or premises served through a single service line and meter shall then be added together, and the sum thereof shall be billed to the customer in whose name the service is supplied. (2003 Code, § 19-209) **19-210.** <u>Customer billing and payment policy</u>. Gas bills shall be rendered monthly and shall designate a standard net payment period for all members. Failure to receive a bill will not release a customer from payment obligation. There is established for all members a late payment charge as provided by board resolution.

Payment must be received in the gas department no later than 4:30 P.M. on the due date. If the due date falls on Saturday, Sunday, or a holiday, net payment will be accepted if paid on the next business day no later than 4:30 P.M.

If a meter fails to register properly, or if a meter is removed to be tested or repaired, or if gas is received other than through a meter, the city reserves the right to render an estimated bill based on the best information available. (2003 Code, § 19-210)

**19-211.** <u>Termination or refusal of service.</u> (1) <u>Basis of termination</u> <u>or refusal</u>. The city shall have the right to discontinue gas service or to refuse to connect service for a violation of, or a failure to comply with, any of the following:

(a) These rules and regulations, including the nonpayment of bills;

(b) The customer's application for service; or

(c) The customer's contract for service.

Such right to discontinue service shall apply to all gas services received through collective single connections or services, even though more than one (1) customer or tenant is furnished services therefrom, and even though the delinquency or violation is limited to only one such customer or tenant.

(2) <u>Termination of service</u>. Reasonable written notice shall be given to the customer before termination of gas service according to the following terms and conditions:

(a) Written notice of termination (cut-off) shall be given to the customer at least five (5) days prior to the scheduled date of termination. The cut-off notice shall specify the reason for the cut-off and:

(i) The amount due, including other charges; and

(ii) The last date to avoid service termination.

(iii) Notification of the customer's right to a hearing prior to service termination, and, in the case of nonpayment of bills, of the availability of special counseling for emergency and hardship cases.

(b) In the case of termination for nonpayment of bill, the employee carrying out the termination procedure will attempt before disconnecting service to contact the customer at the premises in a final effort to collect payment and avoid termination. If a customer is not at home, service may be left connected for one (1) additional day and a further notice left at a location conspicuous to the customer.

(c) Hearings for service termination, including for nonpayment of bills, will be held by appointment at the company office between the hours of 8:00 A.M. and 4:30 P.M. on any business day, or by special request and appointment a hearing may be scheduled outside those hours.

(d) Termination will not be made on any preceding day when the gas department is scheduled to be closed.

(e) If a customer does not request a hearing, or, in the case of nonpayment of a bill, does not make payment of the bill, or does not otherwise correct the problem that resulted in the notice of termination in a manner satisfactory to the gas department, the same shall proceed on schedule with service termination.

(f) Service termination for any reason shall be reconnected only after the payment of all charges due or satisfactory arrangements for payment have been made or the correction of the problem that resulted in the termination of service in a manner satisfactory to the gas department, plus the payment of a reconnection charge as determined by board resolution. (2003 Code, § 19-211)

**19-212.** <u>Termination of service by customer</u>. Customers who have fulfilled their contract terms and wish to discontinue service must give at least three (3) days' written notice to that effect unless the contract specifies otherwise. Notice to discontinue service prior to the expiration of a contract term will not relieve the customer from any minimum or guaranteed payment under such contract or applicable rate schedule.

When service is being furnished to an occupant of premises under a contract not in the occupant's name, the city reserves the right to impose the following conditions on the right of the customer to discontinue service under such a contract:

(1) Written notice of the customer's desire for such service to be discontinued may be required; and the city shall have the right to continue such service for a period of not to exceed ten (10) days after receipt of such written notice, during which time the customer shall be responsible for all charges for such service. If the city should continue service after such ten (10) day period subsequent to the receipt of the customer's written notice to discontinue service, the customer shall not be responsible for charges for any service furnished after the expiration of such ten (10) day period.

(2) During such ten (10) day period, or thereafter, the occupant of premises to which service has been ordered discontinued by a customer other than such occupant, may be allowed by the city to enter into a contract for service in the occupant's own name upon the occupant's complying with these rules and regulations with respect to a new application for service. (2003 Code,  $\S$  19-212)

**19-213.** <u>Access to customers' premises</u>. The city's identified representatives and employees shall be granted access to all customers' premises at all reasonable times for the purpose of reading meters, for testing, inspecting, repairing, removing, and replacing all equipment belonging to the city, and for inspecting customers' gas plumbing and premises generally in order to secure compliance with these rules and regulations. (2003 Code, § 19-213)

**19-214.** <u>Inspections</u>. The city shall have the right, but shall not be obligated, to inspect any installation or gas plumbing system before gas service is furnished or at any later time. The city reserves the right to refuse service or to discontinue service to any premises not in compliance with any special contract, these rules and regulations, or other requirements of the city.

Any failure to inspect or reject a customer's installation or gas plumbing system shall not render the city liable or responsible for any loss or damage which might have been avoided had such inspection or rejection been made. (2003 Code, § 19-214)

**19-215.** <u>Customer's responsibility for system's property</u>. Except as herein elsewhere expressly provided, all meters, service connections, and other equipment furnished by or for the city shall be and remain the property of the city. Each customer shall provide space for and exercise proper care to protect the property of the city on his premises. In the event of loss or damage to such property arising from the neglect of a customer to care for it properly, the cost of necessary repairs or replacements shall be paid by the customer. (2003 Code, § 19-215)

**19-216.** <u>Customer's responsibility for violations</u>. Where the city furnishes gas service to a customer, such customer shall be responsible for all violations of these rules and regulations which occur on the premises so served. Personal participation by the customer in any such violations shall not be necessary to impose such personal responsibility on him. (2003 Code, § 19-216)

**19-217.** <u>Supply and resale of gas</u>. All gas shall be supplied within the city exclusively by the city, and no customer shall, directly or indirectly, sell, sublet, assign, or otherwise dispose of the gas or any part thereof except with written permission from the city. (2003 Code, § 19-217)

**19-218.** <u>Unauthorized use of or interference with gas supply</u>. No person shall turn on or turn off any of the city's gas, valves, or controls without permission or authority from the city. (2003 Code, § 19-218)

19-219. <u>Damages to property due to gas pressure</u>. The city shall not be liable to any customer for damages caused to his gas plumbing or

property by high pressure, low pressure, or fluctuations in pressure in the city's gas mains. (2003 Code, § 19-219)

**19-220.** <u>Liability for cutoff failures</u>. The city's liability shall be limited to the forfeiture of the right to charge a customer for gas that is not used but is received from a service line under any of the following circumstances:

(1) After receipt of at least ten (10) days' written notice to cut off a gas service, the city has failed to cut off such service.

(2) The city has attempted to cut off a service but such service has not been completely cut off.

(3) The city has completely cut off a service but subsequently the cutoff develops a leak or is turned on again so that gas enters the customer's pipes from the city's main.

Except to the extent stated above, the city shall not be liable for any loss or damage resulting from cutoff failures. If a customer wishes to avoid possible damage for cutoff failures, the customer shall rely exclusively on privately owned cutoffs and not on the city's cutoff. (2003 Code, § 19-220)

**19-221.** <u>Restricted use of gas</u>. In times of emergencies or in times of gas shortage, the city reserves the right to restrict the purposes for which gas may be used by a customer and the amount of gas which a customer may use. (2003 Code, § 19-221)

**19-222.** <u>Interruption of service</u>. The city will endeavor to furnish continuous gas service, but does not guarantee to the customer any fixed pressure or continuous service. The city shall not be liable for any damages for any interruption of service whatsoever.

In connection with the operation, maintenance, repair, and extension of the municipal gas system, the gas supply may be shut off without notice when necessary or desirable, and each customer must be prepared for such emergencies. The city shall not be liable for any damages from such interruption of service or for damages from the resumption of service without notice after any such interruption. (2003 Code, § 19-222)

**19-223.** <u>Schedule of rates</u>. All gas service shall be furnished under such rate schedules as the city may from time to time adopt by resolution.<sup>1</sup> (2003 Code, § 19-223)

<sup>&</sup>lt;sup>1</sup>Administrative resolutions are of record in the office of the city recorder.

#### TITLE 20

#### **MISCELLANEOUS**

#### CHAPTER

- 1. FAIR HOUSING.
- 2. TREE MANAGEMENT.
- 3. PUBLIC RECORDS POLICY.

### **CHAPTER 1**

### FAIR HOUSING

#### SECTION

- 20-101. Policy.
- 20-102. Definitions.
- 20-103. Unlawful practice.
- 20-104. Discrimination in the sale or rental of housing.
- 20-105. Discrimination in the financing of housing.
- 20-106. Discrimination in the provision of brokerage services.
- 20-107. Exemption.
- 20-108. Administration.
- 20-109. Education and conciliation.
- 20-110. Enforcement.
- 20-111. Investigations, subpoenas, giving of evidence.
- 20-112. Enforcement by private persons.

**20-101.** <u>Policy</u>. It is the policy of the City of Gallaway to provide, within constitutional limitations, for fair housing throughout the community. (2003 Code, § 20-101)

**20-102.** <u>Definitions</u>. (1) "Discriminatory housing practice" means an act that is unlawful under §§ 20-104, 20-105 or 20-106.

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

(3) "Family" includes a single individual.

(4) "Person" includes one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and judiciaries.

(5) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy the premises owned by the occupant. (2003 Code, § 20-102)

**20-103.** <u>Unlawful practice</u>. Subject to the provisions of subsection (2) and § 20-107, the prohibitions against discrimination in the sale or rental of housing set forth in § 20-104 shall apply to:

- (1) All dwellings except as exempted by subsection (2).
- (2) Nothing in § 20-104 shall apply to:

Any single-family house sold or rented by an owner: (a)Provided that such private individual owner does not own more than three such single-family houses at any one (1) time; provided further that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one (1) such sale within any twenty-four (24) month period; provided further that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at one (1) time; provided further that the sale or rental of any such single-family house shall be excepted from the application of this chapter only if such house is sold or rented:

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

(ii) Without the publication, posting or mailing, after notice of any advertisement or written notice in violation of § 20-104(3) of this chapter, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(b) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one (1) of such living quarters as his residence.

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

(a) He has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein, or

(b) He has, within the preceding twelve (12) months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or interest therein; or

(c) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families. (2003 Code,  $\S$  20-103)

**20-104.** <u>Discrimination in the sale or rental of housing</u>. As made applicable by § 20-103 and except as exempted by §§ 20-103(2) and 20-107, it shall be unlawful:

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

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

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

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

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, familial status, or handicap. (2003 Code, § 20-104)

**20-105.** <u>Discrimination in the financing of housing</u>. It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm, or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance because of the race, color, religion, sex, national origin, familial status, or handicap of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial

assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: provided, that nothing contained in this section shall impair the scope or effectiveness of the exception contained in § 20-103(2). (2003 Code, § 20-105)

**20-106.** <u>Discrimination in the provision of brokerage services</u>. It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms of conditions of such access, membership, or participation, on account of race, color, religion, sex, national origin, familial status, or handicap. (2003 Code, § 20-106)

**20-107.** <u>Exemption</u>. Nothing in this chapter shall prohibit a religious organization, association, or society, or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, sex, national origin, familial status, or handicap, nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its member or from giving preferences to its members. (2003 Code, § 20-107)

**20-108.** <u>Administration</u>. (1) The authority and responsibility for administering this chapter shall be the city manager of the City of Gallaway.

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

(3) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the city manager to further such purposes. (2003 Code, § 20-108)

20-109. <u>Education and conciliation</u>. Immediately after the enactment of the ordinance codified herein, the city manager shall commence such

educational and conciliatory activities as will further the purposes of this chapter. He may call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this chapter and his suggested means of implementing it, and may endeavor with their advice to work out programs of voluntary compliance and of enforcement. (2003 Code,  $\S$  20-109)

**20-110.** Enforcement. (1) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the city manager. Complaints shall be in writing and shall contain such information and be in such form as the city manager requires. Upon receipt of such a complaint, the city manager shall furnish a copy of the same to the person or persons who allegedly committed or is about to commit the alleged discriminatory housing practice. Within thirty (30) days after receiving a complaint, or within thirty (30) days after the expiration of any period of reference under subsection (3) below, the city manager shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the city manager decides to resolve the complaints, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by information methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned. Any employee of the city manager who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than one (1) year.

(2) A complaint under subsection (1) above shall be filed within one hundred and eighty (180) days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the city manager, which shall be granted whenever it would be reasonable to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(3) If within thirty (30) days after a complaint is filed with the city manager, the city manager has been unable to obtain voluntary compliance with this chapter, the person aggrieved may, within thirty (30) days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The city manager will assist with this filing.

(4) If the city manager has been unable to obtain voluntary compliance within thirty (30) days of the complaint, the person aggrieved may, within thirty (30) days hereafter, commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this chapter, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

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

(6) Whenever an action filed by an individual shall come to trial, the city manager shall immediately terminate all efforts to obtain voluntary compliance. (2003 Code, § 20-110)

**20-111.** <u>Investigations, subpoenas, giving of evidence</u>. (1) In conducting an investigation, the city manager shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation; provided, however, that the city manager first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The city manager may issue subpoenas to compel its access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court of the district in which the investigation is taking place. The city manager may administer oaths.

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

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

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

(5) In the case of contumacy or refusal to obey a subpoena, the city manager or other person at whose request it was issued may petition for its

enforcement in the municipal or state court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the city manager, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than one (1) year, or both. Any person who, with intent thereby to mislead the city manager, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the city manager pursuant to its subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by other means falsify any documentary evidence, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than one (1) year, or both.

(7) The City of Gallaway attorney shall conduct all litigation in which the city manager participates as a party or as amicus pursuant to this chapter. (2003 Code, § 20-111)

**20-112.** <u>Enforcement by private persons</u>. (1) The rights granted by §§ 20-103, 20-104, 20-105, and 20-106 may be enforced by civil actions in state or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty (180) days after the alleged discriminatory housing practice occurred; provided, however, that the court shall continue such civil case brought to this section or § 20-110(4) from time to time before bringing it to trial or renting dwellings; or

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

(a) Participating, without discrimination on account of race, color, religion or national origin, in any of the activities, services, organizations or facilities described in subsection 15(a);

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

(c) Any citizen because he is or has been, or in order to discourage such citizens or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, or national origin, in any of the activities, services, organizations, or facilities described in subsection 15(a), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be fined not more than one thousand dollars (\$1,000.00), or imprisoned not more than one (1) year, or both; and, if bodily injury results, shall be fined not more than ten thousand dollars (\$10,000.00), or imprisoned not more than ten years, or

both; and, if death results, shall be subject to imprisonment for any term of years or for life. (2003 Code, § 20-112)

#### **CHAPTER 2**

## TREE MANAGEMENT

#### SECTION

- 20-201. General requirements.
- 20-202. Purpose.
- 20-203. Definitions.
- 20-204. Applicability.
- 20-205. Related activities.
- 20-206. Exemptions.
- 20-207. Inspection.
- 20-208. Appeal
- 20-209. Violations and penalty.

**20-201.** <u>General requirements</u>. A permit shall be required for the removal of trees more than sixteen inches (16") in diameter. An exception will be granted for a family home site, accessory buildings, or private drives. When drives related to industry are in the planning process and trees that are sixteen inches (16") and larger in diameter are located directly in the path of the drive, the drive must detour around the tree. If a problem exists concerning this requirement, it must be presented to the planning commission for their approval. A plot plan or hand drawing of trees to be removed along with a removal and a signed clean up agreement must be presented to the planning completed within sixty (60) days of completion of said project. (2003 Code, § 20-201)

**20-201.** <u>**Purpose</u>**. The requirements in this chapter are not meant to be over bearing, unreasonable, or controlling. If a private citizen or any property owner has any future problem with this chapter, it can be dealt with through the planning commission or board of commissioners. Common sense and reasonableness are the purpose of this chapter.</u>

(1) To provide a mechanism for the management for trees and other woody vegetation within the city. This is based on the premise that trees are a part of our heritage and our future, and that they are an essential part of the quality of life in our city.

(2) To create greater human comfort by providing shade; to cool the air and otherwise temper the effects of summer heat. To reduce glare and noise levels. To promote clean air quality by increasing dust filtration.

- (3) To emphasize the importance of trees as a visual screen.
- (4) To beautify and enhance improved and undeveloped land.

(5) To ensure that tree removal does not unduly reduce the property value, all of which aid in protecting the health, safety, and general welfare of the City of Gallaway.

(6) The provisions of this chapter are intended to provide standards for and promote the preservation of trees, including, but not limited to, during the land development process and during the construction process; preventing the indiscriminate tree removal without mitigation provisions for preservation of trees within the City of Gallaway. (2003 Code, § 20-202)

**20-203.** <u>Definitions</u>. For purposes of this chapter, the following definitions shall apply:

(1) "Applicable site." Land upon which a minimum tree density must be maintained, including, but not limited to, land upon which a commercial subdivision is being developed.

(2) "Development approval." For the purpose of this chapter, an official authorization issued by the Gallaway Municipal Planning Commission and/or the board of commissioners, including, but not limited to, approvals for subdivisions, planned residential developments, and planned commercial developments.

(3) "Public tree." A tree that is located on lands for which the city has responsibility for tree management.

(4) "Retention tree." Any tree that is designated on a tree survey or tree management plan to be retained on a site.

(5) "Root protection zone." The minimum area beneath a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The root protection zone will typically be represented by the drip line of that tree.

(6) "Topping." The severe cutting back of limbs to stubs within the trees crown to such as to remove the normal canopy and disfigure the tree.

(7) "Tree removal permit." A formal letter or permit will be issued by city hall (after inspection and approval) allowing for the removal of said trees on a property. (2003 Code, § 20-203)

**20-204.** <u>Applicability</u>. (1) No subdivision development plat or plan, building permit, rezoning request, or site plan shall be approved by the Gallaway Planning Commission or an authorized Gallaway staff member without such application being in full compliance with the provisions of this chapter.

(2) As required by this chapter, a tree survey or tree management plan shall be a part of each of the above listed documents.

(3) No person shall remove, cause to be removed, poison, or damage any tree through an activity regulated by this chapter without first obtaining a tree removal permit. (2003 Code, § 20-204)

**20-205.** <u>**Related activities**</u>. The following activities require compliance with the Gallaway Tree Management Ordinance.

(1) Subdivision development (regardless of underlying zoning classification).

(2) Planned residential development (regardless of underlying zoning classification).

(3) Planned commercial development (regardless of underlying zoning classification).

(4) Any commercial or industrial activity requiring issuance of a building permit (regardless of previous approvals on or current use of land).

(5) Rezoning requests (regardless of previous approvals on or current use of land). (2003 Code, § 20-205)

**20-206.** <u>Exemptions</u>. The following activities shall be exempt from the provisions of this chapter:

(1) The necessary removal of trees by a utility company within dedicated utility easements.

(2) The removal of trees on public rights-of-way conducted by, on behalf of a federal, state, county, municipal, or other government agency in pursuit of its lawful activities or functions in the construction or improvement of public rights-of-way.

(3) The removal of any tree which has become or is a danger to human life or property.

(4) The removal of trees from recreation areas such as playgrounds, ball fields, and other such approved uses.

(5) Single-family residential sites. (2003 Code, § 20-206)

**20-207.** <u>Inspection</u>. After all blueprints or hand drawn diagrams have been delivered to city hall for the purpose of drawing permits, the city code enforcement officer will inspect the property and if found in order will furnish the planning commission and city hall with a clearance letter. (2003 Code,  $\S$  20-207)

**20-208.** <u>Appeal</u>. An appeal may be requested by a private citizen, firm, or corporation in whole or part upon the provisions of this chapter. Upon the hearing any person or party may appear and be heard in person or by agent or attorney. Appeal process as follows:

If a private citizen, company, firm, or corporation has cause to disagree with the decision of the planning commission, they must request city hall place them on the agenda for the next stated city business meeting. At that time they or their agent or attorney may present their appeal to the mayor and board of commissioners. (2003 Code, § 20-208)

**20-209.** <u>Violations and penalty</u>. 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 cost 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 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." Any time the word "fine" or similar term appears in the context of a penalty provision of this municipal code, it shall mean "civil penalty."

If cleanup of said project extends beyond the sixty (60) day limit, the city code enforcement officer will become involved and fines and penalties will be assessed accordingly. (2003 Code, § 20-209, modified)

### **CHAPTER 3**

# PUBLIC RECORDS POLICY

### SECTION

- 20-301. Definitions.
- 20-302. Requesting access to public records.
- 20-303. Responding to public records requests.
- 20-304. Inspection of records.
- 20-305. Copies of records.
- 20-306. Fees and charges and procedures for billing and payment.

**20-301.** <u>Definitions</u>. (1) "Public records." All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. (See *Tennessee Code Annotated*, § 10-7-503(a)(1)(A).)

(2) "Public records request coordinator." The individual, or individuals, designated in § 20-103(1)(c) of this policy who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. (See *Tennessee Code Annotated*, § 10-7-503(a)(1)(B).) The public records request coordinator may also be a records custodian.

(3) "Records custodian." The office, official or employee lawfully responsible for the direct custody and care of a public record. (See *Tennessee Code Annotated*, § 10-7-503(a)(1)(C).) The records custodian is not necessarily the original preparer or receiver of the record.

(4) "Requestor." A person seeking access to a public record, whether it is for inspection or duplication.

**20-302.** <u>**Requesting access to public records.**</u> (1) Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or his/her designee (or via online submission) in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.

(2) Requests for inspection only cannot be required to be made in writing. The PRRC will request a mailing (or email) address from the requestor for providing any written communication required under the TPRA.

(3) Requests for inspection may be made orally or in writing on Form  $A^1$  at City of Gallaway City Hall, 333 Old Brownsville Road, Gallaway,

<sup>&</sup>lt;sup>1</sup>Form A may be obtained at Gallaway City Hall.

Tennessee 38036, by phone at 901.867.3333, or by email to dcarpenter@gallawaytn.gov.

(4) Requests for copies, or requests for inspection and copies, shall be made in writing on Form A in person or by mail at City of Gallaway City Hall, 333 Old Brownsville Rd, Gallaway, Tennessee 38036 or by email to dcarpenter@gallawaytn.gov.

(5) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or alternative acceptable form of ID is required as a condition to inspect or receive copies of public records. (modified)

**20-303.** <u>Responding to public records requests</u>. (1) <u>Public record</u> request coordinator. (a) The PRRC shall review public record requests and make an initial determination of he following:

(i) If the requestor provided evidence of Tennessee citizenship;

(ii) If the records requested are described with sufficient specificity to identify them; and

(iii) If the city is the custodian of the records.

(b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):

(i) Advise the requestor of this policy and the elections made regarding:

(A) Proof of Tennessee citizenship;

(B) Form(s) required for copies;

(C) Fees (and labor threshold and waivers, if applicable); and

(D) Aggregation of multiple or frequent requests.

(ii) If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:

(A) The requestor is not, or has not presented evidence of being, a Tennessee citizen;

(B) The request lacks specificity;

(C) An exemption makes the record not subject to disclosure under the TPRA;

(D) The city is not the custodian of the requested records; or

(E) The records do not exist.

(iii) If appropriate, contact the requestor to see if the request can be narrowed.

(iv) Forward the records request to the appropriate records custodian in the City of Gallaway.

(c) The designated PRRC(s) is (are):

(i) Name or title: City recorder

(ii) Contact information: City of Gallaway City Hall. 333 Old Brownsville Road, Gallaway, Tennessee 38036 or by phone at 901.867.3333, or by email to dcarpenter@gallawaytn.gov.

(2) <u>Records custodian</u>. (a) Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with *Tennessee Code Annotated*,§ 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, counsel, or the OORC.

(b) If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then a records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed public records request response form which is attached as Form B,<sup>1</sup> based on the form developed by the OORC.

(c) If a records custodian denies a public record request, he or she shall deny the request in writing as provided in § 20-103(1)(b)(i), and may use the public records request response Form B.

(d) If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to-prepare the records for access, the records custodian shall use the public records request response Form B to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian should contact the requestor to see if the request can be narrowed.

(e) If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) <u>Redaction</u>. (a) If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC.

(b) Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given

<sup>&</sup>lt;sup>1</sup>Form B may be obtained at Gallaway City Hall.

for redaction shall be general in nature and not disclose confidential information. (modified)

**20-304.** <u>Inspection of records</u>. (1) There shall be no charge for inspection of public records.

(2) The location for inspection of records within the offices of the City of Gallaway shall be determined by either the PRRC or the records custodian.

(3) When a reasonable basis exists, the PRRC or a records custodian may require an appointment for inspection.

**20-305.** <u>Copies of records</u>. (1) A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.

(2) Copies will be available for pickup at City of Gallaway City Hall.

(3) Upon payment for postage, copies will be delivered to the requestor's home address by the United States Postal Service.

(4) A requestor will not be allowed to make copies of records with personal equipment. Requestors may purchase storage devices from the City of Gallaway upon which the records will be downloaded.

**20-306.** Fees and charges and procedures for billing and payment. Fees and charges for copies of public records should not be used to hinder access to public records.

(1) Records custodians shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.

(2) When fees for copies and labor do not exceed \$\_\_\_\_, the fees may be waived. (Requests for waivers for fees above \$\_\_\_\_ must be presented to, who is authorized to determine if such waiver is in the best interest of City of Gallaway and for the public good.) (Fees associated with aggregated records requests will not be waived.)

(3) Fees and charges for copies are as follows:

(a) Fifteen cents (\$0.15) per page for letter- and legal-size black and white copies.

(b) Fifty cents (\$0.50) per page for letter- and legal-size color copies.

(c) The actual cost of any other medium upon which a record/information is being produced.

(d) Labor when time exceeds one hour.

(e) If an outside vendor is used, the actual costs assessed by the vendor.

(4) Payment is to be made in cash, by personal check, or by credit card payable to the City of Gallaway and presented to the records custodian/city recorder/city clerk.

(5) Payment in advance will be required (when costs are estimated to exceed \$\_\_\_\_\_.

(6) <u>Aggregation of frequent and multiple requests</u>. (a) The City of Gallaway will aggregate record requests in accordance with the frequent and multiple request policy promulgated by the OORC when more than four (4) requests are received within a calendar month (either from a single individual or a group of individuals deemed working in concert).

(b) If more than four (4) requests are received within a calendar month:

(i) Records requests will be aggregated at the department level.

(ii) The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian will inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

(iii) Requests for items that are routinely released and readily accessible are exempt from this policy. These records include, but are not limited to: agendas and approved minutes.

SUPP-1

#### ORDINANCE NO. 59-2019

AN ORDINANCE ADOPTING AND ENACTING SUPPLEMENTAL AND REPLACEMENT PAGES FOR THE MUNICIPAL CODE OF THE CITY OF GALLAWAY, TENNESSEE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GALLAWAY, TENNESSEE, THAT:

Section 1. Ordinances codified. The supplemental and replacement pages contained herein to the City of Gallaway Municipal Code, hereinafter referred to as the "supplement," are incorporated by reference as if fully set out herein and are ordained and adopted as part of the City of Gallaway Municipal Code.

This supplement includes revisions required to the municipal code when considering Ordinance # 55-2019. Code sections affected contain citations to the amending ordinance at the end of the code section. Additional modifications to §§ 8-211, 20-302, 20-303, and the Certificate of Authenticity are also included in this supplement.

Section 2. Continuation of existing provisions. Insofar as the provisions of the supplement are the same as those of ordinances existing and in force on its effective date, the provisions shall be considered to be continuations thereof and not as new enactments.

Section 3. Penalty clause. Unless otherwise specified, wherever in the supplement, including any codes and ordinances adopted by reference, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of any such provision shall be punishable by a penalty of not more than fifty dollars (\$50.00) and costs for each separate violation; provided, however, that the imposition of a penalty under the provisions of this section 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 supplement or the municipal code or other applicable law.'

Each day any violation of the supplement continues shall constitute a separate offense.

<u>Section 4. Severability clause.</u> Each section, subsection, paragraph, sentence, and clause of the supplement, including any codes and ordinances

<sup>&#</sup>x27;State law reference

For authority to allow deferred payment of fines, or payment by installments, see Tennessee Code Annotated,§ 40-24-101 et seq.

adopted by reference, are hereby declared to be separable and severable. The invalidity of any section, subsection, paragraph, sentence, or clause in the supplement shall not affect the validity of any other portion, and only any portion declared to be invalid by a court of competent jurisdiction shall be deleted therefrom.

<u>Section 5. Construction of conflicting provisions.</u> Where any provision of the supplement is in conflict with any other provision of the supplement or municipal code, the provision which establishes the higher standard for the promotion and protection of the public health, safety, and welfare shall prevail.

<u>Section 6. Code available for public use.</u> A copy of the supplement shall be kept available in the office of the recorder for public use and inspection at all reasonable times.

<u>Section 7. Date of effect.</u> This supplement, including all the codes and ordinances therein adopted by reference, shall take effect from and after final passage, the public welfare requiring it, and shall be effective on and after that date.

Passed 1st reading <u>September 04</u>, 20<u>19</u>

Passed 2nd reading September 12, , 20\_19

Janhie Mayo, Mayor

Diane Carpenter, City Recorder

APPROVED AS TO FORM:

### ORDINANCE NO. 58-2019

## AN ORDINANCE ADOPTING AND ENACTING A CODIFICATION AND REVISION OF THE ORDINANCES OF THE CITY OF GALLAWAY, TENNESSEE.

WHEREAS some of the ordinances of the City of Gallaway 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 Gallaway, 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 "Gallaway Municipal Code," now, therefore:

BE IT ORDAINED BY THE CITY OF GALLAWAY, AS FOLLOWS:'

<u>Section 1. Ordinances codified.</u> The ordinances of the City of Gallaway 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 "Gallaway Municipal Code," hereinafter referred to as the "Municipal Code."

<u>Section 2. Ordinances repealed.</u> 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

<sup>&#</sup>x27;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.

<u>Section 4. Continuation of existing provisions.</u> 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.'

'State law reference

For authority to allow deferred payment of fines, or payment by (continued...)

<u>Section 6. Severability clause.</u> 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.

<sup>(...</sup>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 June 13, 2019.

Passed 2nd reading July 11, 2019.

Jamie Mayo, Mayor

Diane Carpenter, City Recorder