THE SMYRNA MUNICIPAL CODE

Prepared by the



October 2007

TOWN OF SMYRNA, TENNESSEE

MAYOR

Bob Spivey

VICE-MAYOR

Tony D. Dover

COUNCIL MEMBERS

H.G. Cole Paul Johns Lance Lee Mary E. Reed James A. Yates

TOWN MANAGER

Mark O'Neal

TOWN CLERK

Dianne Waldron

TOWN ATTORNEY

Michele Komorowski Elliott

Preface

The Smyrna Municipal Code contains the codification and revision of the ordinances of the Town of Smyrna, 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 substantial 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 section 2-106.

By utilizing the table of contents 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 town's ordinance book or the town recorder for a comprehensive and up to date review of the town's ordinances.

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

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

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

When the foregoing conditions are met MTAS will reproduce replacement pages for the code to reflect the amendments and additions made by such ordinances. This service will be performed at least annually and more often if justified by the volume of amendments. Replacement pages will be supplied with detailed instructions for utilizing them so as again to make the code complete and up to date.

The able assistance of Nancy Gibson, Program Resource Specialist, who did all the typing on this project and Linda Winstead, the MTAS Administrative Specialist is gratefully acknowledged.

Steve Lobertini Codification Consultant

ORDINANCE ADOPTION PROCEDURES PRESCRIBED BY THE TOWN CHARTER

The style of all town ordinances shall be: "Be it ordained by the town council of the Town of Smyrna:" Each ordinance shall be passed at two (2) separate meetings on two (2) separate days before the same is operative. However, at least thirteen (13) days shall have lapsed between the first and final passage of any ordinance. A reasonable number of written copies of ordinances shall be available to the public at the meetings and at town hall before the second and final passage by the town council. Ordinances, resolutions and other measures of the town council shall be passed by an affirmative vote of a majority of the council members present and voting. Abstentions shall be counted neither as a "yes" nor a "no" vote. All ordinances, resolutions and motions must be enacted by an affirmative vote of at least three (3) council members.

TITLE 1

GENERAL ADMINISTRATION

CHAPTER

- 1. TOWN COUNCIL.
- 2. MAYOR.
- 3. TOWN MANAGER.
- 4. TOWN CLERK.
- 5. CODE OF ETHICS.

CHAPTER 1

TOWN COUNCIL¹

SECTION

- 1-101. Time and place of regular meetings.
- 1-102. Time and place of special meetings.
- 1-103. Time and place of worksessions.
- 1-104. Order of business.
- 1-105. Method for placing items on the agenda.
- 1-106. General rules of order.
- 1-107. Adoption of ordinances.
- 1-108. Salary of mayor and town council members.
- 1-101. <u>Time and place of regular meetings</u>. The town council shall, by resolution, fix the time and place at which the regular meetings of the town council shall be held. Unless otherwise provided by resolution, the town council shall hold regular monthly meetings at 7:00 P.M. on the second Tuesday of each month at town hall. (Ord. #03-25, July 2003)
- 1-102. <u>Time and place of special meetings</u>. Whenever in the opinion of the mayor or any three (3) members of the town council, the welfare of the town demands it, the town manager shall call a special meeting of the town council. (Ord. #03-25, July 2003)
- **1-103.** <u>Time and place of worksessions</u>. The town council shall, by resolution, fix the time and place at which worksessions of the town council shall be held. (Ord. #03-25, July 2003)

¹Charter reference

Town council: art. V.

- **1-104.** <u>Order of business</u>. (1) At each meeting of the town council the following regular order of business shall be observed unless dispensed with by a majority vote of the members present:
 - (a) Call to order by the mayor;
 - (b) Roll call by the town clerk;
 - (c) Approval or correction of minutes of previous meetings;
 - (d) Correspondence/communications;
 - (e) Awards and recognitions;
 - (f) Consent agenda;
 - (g) Old business:
 - (h) New business:
 - (i) Status reports;
 - (i) Announcements:
 - (k) Adjournment.
- (2) Consent agenda items will be those items determined by the town manager to be routine matters not necessitating discussion. All consent agenda items may be voted upon simultaneously pursuant to a single motion. There will be no separate discussion of these items unless a member of the town council requests that discussion be held, in which case the item will be removed from the consent agenda and considered separately. Following passage of the remaining consent agenda items, discussion of any items removed from the consent agenda shall be held and separate motions and votes shall be taken for each of the items removed.
- (3) Public hearings which are related to matters on the agenda will be held at the time of consideration of the agenda item upon town council recess for such public hearing.
- Prior to the commencement of the regularly scheduled town council meeting, a citizens comments session shall be held beginning at 7:00 P.M. Such citizens comments session shall be open to the public and shall be held at the same location as the regularly scheduled town council meeting which follows. To be placed on the citizens comments speaker list, an individual must call the town manager's office before 4:30 P.M. on the Thursday before the council meeting and request to be added to the speaker's list, provide his or her name, address and telephone number, and state the purpose of addressing the council. Speakers are limited to three (3) minutes. Additional comments may be submitted in writing. The monthly citizens comments will be recorded separately and is not to be recorded on the official meeting audio or video tape of the council meeting. Minutes of the citizens comments session shall not be taken. The mayor and town council shall not be asked to comment on the topic presented, but will take all topics presented under advisement. (Ord. #05-34, Aug. 2005)
- 1-105. <u>Method for placing items on the agenda</u>. The town manager, or his or her designee, will prepare an agenda for each meeting of the town

council. Any member of the town council may have any additional items placed on the agenda for a meeting by notifying the town manager at least five (5) days prior to the meeting. No item may be added to the agenda after this deadline except by the affirmative vote of a majority of the members present at such meeting. (Ord. #03-25, July 2003)

- 1-106. General rules of order. The rules of order and parliamentary procedure contained in the current edition of Roberts Rules of Order Newly Revised shall govern the transaction of business by and before the town council at its meetings in all cases to which they are applicable and in which they are not inconsistent with the provisions of the charter or this code. (Ord. #03-25, July 2003)
- 1-107. Adoption of ordinances. All ordinances shall be drafted in accordance with the provisions of the charter (see particularly Section 5.10) and shall be passed at two (2) separate meetings on two (2) separate days. However, at least thirteen (13) days shall have lapsed between the first and final passage of any ordinance. Abstentions shall be counted neither as a "yes" nor a "no" vote. Ordinances, resolutions and other measures of the town council shall be passed by an affirmative vote of majority of the council members present and voting. All ordinances, resolutions and motions must be enacted by an affirmative vote of at least three council members. (Ord. #03-25, July 2003, modified)
- 1-108. Salary of mayor and town council members. Pursuant to the authority conferred by the Charter¹ of the Town of Smyrna, the Mayor of the Town of Smyrna shall receive a salary of six hundred dollars (\$600.00) per month and the remaining members of the town council shall each receive a salary of four hundred dollars (\$400.00) per month. (Ord. #03-25, July 2003)

¹Charter reference Salaries: § 5.04.

MAYOR¹

SECTION

1-201. Mayoral responsibilities.

1-202. Election of vice-mayor.

1-201. <u>Mayoral responsibilities</u>.² The mayor shall preside at all meetings of the town council at which he is present and, in his absence, the vice-mayor shall preside, and in the absence of the mayor and vice-mayor, the town council shall designate one of their number to preside. The mayor shall be the ceremonial head of the town. The mayor shall have a vote, and shall have no veto power over all actions of the town council. The mayor shall sign the minutes of the meeting of the council, all ordinances on their final passage, and execute all deeds, bonds, contracts or legal instruments made in the name of the town.

1-202. <u>Election of vice-mayor</u>. The town council shall elect one of their number as vice-mayor to carry out the duties of mayor in his/her absence, for a term of two (2) years. If the office of mayor shall become vacant, the vice-mayor shall automatically become mayor for the remainder of the unexpired term; and in the latter event, the council shall elect another of its members to the office of vice-mayor to serve during the remainder of the unexpired term. The council shall fill the vacancy in the council created by the vice-mayor becoming mayor.³

Qualifications: § 5.03.

Town council composition: § 5.01.

Office of mayor: § 5.06.

³Charter references

Vacancies: § 5.07.

Vice mayor's qualifications: § 5.02.

¹Charter references

²Charter reference

TOWN MANAGER

SECTION

- 1-301. Appointment.
- 1-302. Duties.
- 1-303. Residency requirement.
- 1-301. <u>Appointment</u>. The town council shall appoint and fix the salary of the town manager, who shall serve at the will of the town council. The town manager shall be appointed by virtue of experience and/or educational qualifications for this position. Neither the mayor nor any member of the town council shall be eligible for appointment as town manager until two (2) years have elapsed after such member shall have ceased to be mayor or a member of the town council.¹
- **1-302.** <u>Duties</u>. The town manager shall be the chief administrative officer of the town. The duties of the town manager are described in the town's charter.²
- **1-303.** Residency requirement. The town manager must become (if not already) a resident of the town within ninety (90) days after reporting to work.³

Town manager appointment, salary, removal: § 6.01.

Town manager powers and duties: § 6.04.

Residency requirements: § 6.02.

¹Charter reference

²Charter reference

³Charter reference

TOWN CLERK¹

SECTION

- 1-401. To be bonded.
- 1-402. Custodian of public records, bonds, etc.
- 1-403. To keep minutes.
- 1-404. To attest signed documents.
- **1-401.** To be bonded. The town clerk shall be bonded in such sum as may be fixed by ordinance. (1991 Code, § 1-301, modified)
- **1-402.** Custodian of public records, bonds, etc. The town clerk shall have custody of, and be responsible for maintaining all corporate bonds, records, and papers. (1991 Code, § 1-302, modified)
- 1-403. <u>To keep minutes</u>. The town clerk shall be present at all town council meetings and shall keep a full and accurate record of all its business. (1991 Code, § 1-303, modified)
- **1-404.** To attest signed documents. The town clerk shall by signature and the town seal, attest all instruments signed in the name of the town. (1991 Code, § 1-304, modified)

¹Charter reference

Town council: art. VII.

CODE OF ETHICS

SECTION

- 1-501. Applicability.
- 1-502. Definition of "personal interest."
- 1-503. Disclosure of personal interest by official with vote.
- 1-504. Disclosure of personal interest in nonvoting matters.
- 1-505. Acceptance of gratuities, etc.
- 1-506. Use of information.
- 1-507. Use of municipal time, facilities, etc.
- 1-508. Use of position or authority.
- 1-509. Outside employment.
- 1-510. Ethics complaints.
- 1-511. Violations.
- **1-501. Applicability**. (1) This chapter constitutes the code of ethics for officials and employees of the Town of Smyrna. 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 city. The words "municipal" and "municipality" include these separate entities.
- (2) This Code of Ethics does not in any manner eliminate compliance with any other ethical provisions or prohibitions contained within the Charter of the Town of Smyrna, the Smyrna Municipal Code, the Town of Smyrna Employee Handbook, written policies of the Town of Smyrna, and state and federal law. (Ord. #07-21, June 2007)
- **1-502. Definition of "personal interest."** (1) For purposes of §§ 1-503 and 1-504, "personal interest" means:
 - (a) Any financial, ownership, or employment interest in the subject of a vote by a city board not otherwise regulated by state statutes on conflicts of interest; or
 - (b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or
 - (c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s), stepparent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).
- (2) The words "employment interest" include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.

- (3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter. (Ord. #07-21, June 2007)
- 1-503. <u>Disclosure of personal interest in voting matters</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 or in the alternative, the official may recuse himself from voting on the measure. (Ord. #07-21, June 2007)
- 1-504. Disclosure of personal interest in nonvoting matters. An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects 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 town clerk. In addition or in the alternative, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter. (Ord. #07-21, June 2007)
- **1-505.** <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, with the exception of incidentals as herein defined, of any kind from anyone other than the town:
- (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 town business.

"Incidentals" are hereby defined as items, including marketing materials, but specifically excluding cash, with a value of less than fifty dollars that are not obviously given with the intent to influence specific action by an official or employee as to a specific matter.

It is not a violation of this section if an official or employee receives a reward or benefit, regardless of value, which reward or benefit is not connected to or related in any manner to the official or employee's position with the Town of Smyrna. (Ord. #07-21, June 2007)

1-506. <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.
- (3) It is not a violation of this section for an official or employee to use information for financial gain once the information is made open and discussed in a public meeting, as long as no steps toward financial gain were taken prior to the information being made open and discussed in a public meeting. (Ord. #07-21, June 2007)
- 1-507. <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, personnel, 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, personnel, 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 town. (Ord. #07-21, June 2007)
- **1-508.** <u>Use of position or authority</u>. (1) An official or employee may not use or attempt to make private purchases, for cash or otherwise, in the name of the town.
- (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 town. (Ord. #07-21, June 2007)
- **1-509.** Outside employment. An official or employee may not accept or continue any outside employment if the work conflicts with any provision of the town's charter or any ordinance or policy. (Ord. #07-21, June 2007)
- 1-510. Ethics complaints. (1) The town attorney is designated as the ethics officer of the town. Upon the written request of an official or employee potentially affected by a provision of this chapter, the town attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.
 - (2) (a) Except as otherwise provided in this subsection, the town attorney shall investigate any written and signed, credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his own initiative when he acquires information indicating a possible violation and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.

- (b) The town attorney may request that the town council hire another attorney, individual, or entity to act as ethics officer when he has or will have a conflict of interest in a particular matter. The town council may also on its own initiative obtain or appoint outside counsel to perform the duties of ethics officer as to a specific matter when the majority of the council determines such action is necessary or recommended under the circumstances.
- (c) When a written and signed complaint of a violation of any provision of this chapter is lodged against a member of the town council, the town council shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the town attorney or another individual or entity chosen by the town council.
- (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, the violation shall be dealt with as a violation of the personnel provisions rather than a violation of this code of ethics. (Ord. #07-21, June 2007)
- 1-511. <u>Violations</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, as determined in accordance with the procedures herein, is subject to punishment as provided by the town's charter or other applicable law and in addition is subject to censure by the town council. An employee who violates any provision of this chapter is subject to disciplinary action, up to and including termination. (Ord. #07-21, June 2007)

TITLE 2

BOARDS AND COMMISSIONS, ETC.

CHAPTER

- 1. BEAUTIFICATION COMMITTEE.
- 2. PARKS AND RECREATION ADVISORY BOARD.
- 3. ATHLETIC COMMITTEE.
- 4. PROJECT ASSISTANCE BOARD.
- 5. SISTER CITY COMMITTEE.
- 6. HISTORIC ZONING COMMISSION.

CHAPTER 1

BEAUTIFICATION COMMITTEE

SECTION

- 2-101. Creation, purpose.
- 2-102. Chair, membership.
- 2-103. Removal of members, filling of vacancies.
- 2-104. Quorum, meetings, and bylaws.
- 2-105. Record of proceedings to be kept.
- 2-106. Goals and objectives.
- 2-107. Powers and duties.
- 2-108. Special events.
- 2-109. Limitation on powers of the committee.
- **2-101.** Creation, purpose. There is hereby created a beautification committee which shall work for the improvement of the aesthetic nature and appearance of the town; work toward the improved cleanliness and appearance of the town; and shall work through the codes department for the town in an effort to see that the town's ordinances, codes, and regulations are strictly and fairly applied throughout the community. (Ord. #05-36, Sept. 2005)
- **2-102.** Chair, membership. The committee shall consist of eleven (11) members, all of whom shall be nominated by the town council and appointed by majority vote of the town council. The members must be residents within the corporate limits of the Town of Smyrna. The town council shall appoint one of its members to serve the length of his or her term as a liaison to the council from the committee. Those members on the committee as of the date of the amendment of the ordinance comprising this chapter shall continue to serve until the March, 2006 town council meeting. Beginning in March 2006, five (5) members shall be appointed for a one (1) year term and five (5) members shall

be appointed for a two (2) year term. Other than the appointments made in March 2006, each member shall hold his or her seat for a period of two (2) years from the date of appointment. Members of the committee shall serve without compensation.

In addition to the appointed members above, the town manager shall designate three (3), non-voting, standing members of the committee. The standing members shall be representatives of the codes department and the building and grounds department. One (1) of the three (3) standing members shall be designated and act as the secretary for the committee.

Beginning in the first meeting after committee appointments are made in March of 2006, the committee shall vote to select a chairperson for the committee from its membership, which chairperson shall serve for a period of one (1) year. (Ord. #05-36, Sept. 2005)

- 2-103. Removal of members, filling of vacancies. Members of the committee may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three (3) consecutive meetings or more than five (5) non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Committee members who are unable to attend regular meetings are expected to tender their resignation. Should a vacancy occur, then the vacancy shall be filled by appointment by a majority vote of the town council at the next council meeting after which the vacancy occurs, which appointee shall fill the unexpired term of the vacant position. (Ord. #05-36, Sept. 2005, modified)
- **2-104. Quorum, meetings, and bylaws**. A majority of the members of the committee shall constitute a quorum for the transaction of business. They may hold general or special meetings in the town hall at such times as they may by order direct and may make and establish such reasonable bylaws, rules, and regulations as may be necessary for their own government and for the full and complete execution of their powers and duties. (Ord. #05-36, Sept. 2005)
- **2-105.** Record of proceedings to be kept. The secretary shall keep a permanent record of the proceedings of the committee in a book provided for that purpose. All minutes of the meetings of the committee shall be public records. (Ord. #05-36, Sept. 2005)
- **2-106.** Goals and objectives. The committee shall consider the following list of objectives and goals but shall not be bound by any one of them and further may consider any other matters which would further the stated

purpose, powers, and duties of this committee. The list of items which may be considered include:

- (1) Conserve the town's natural beauty and visual character and charm, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to the exterior appearance of structures, signs, and other improvements.
- (2) Foster civic pride and community spirit so as to improve quality and quantity of citizen's participation in local government and in community growth, change and improvements.
- (3) Submit any recommendations reflecting the majority opinion of said committee for the improvement of the overall environment of the Town of Smyrna to the town council. (Ord. #05-36, Sept. 2005)
- **2-107.** Powers and duties. The committee shall serve as an advisory and reporting agency of the Town of Smyrna and the town council. The committee shall make such studies and perform inquiries so as to promote the beautification of the Town of Smyrna. The committee shall carry on such educational programs as it may deem advisable in the promotion of its purpose and may hold such meetings and conduct such public forums as will promote its purposes. The committee shall make such recommendations to the town council as it deems advisable in connection with projects, programs or developmental betterment of the Town of Smyrna. (Ord. #05-36, Sept. 2005)
- **2-108.** Special events. The committee may sponsor and coordinate special events, such as the Troops parade, the holiday lighting ceremony, and the purchase of decorative banners, flags, and holiday lights, as approved by resolution of the town council. All special events for the Town of Smyrna shall be approved by the town council no later than thirty (30) days in advance of the proposed special event. Each request for approval of a special event shall include a proposed budget for the event. (Ord. #05-36, Sept. 2005)
- 2-109. <u>Limitation on powers of the committee</u>. The committee shall have no authority in law, in fact, by implication or otherwise to bind the Town of Smyrna or the mayor or the town council, for any contractual obligation unless specifically authorized and permitted by resolution or ordinance of the town council dealing upon the particular subject thereof and which said limitation shall include the prohibition upon committee from incurring any monetary liability whatsoever on the part of the Town of Smyrna or the mayor or town council. (Ord. #05-36, Sept. 2005)

PARKS AND RECREATION ADVISORY BOARD¹

SECTION

2-201. Creation.

2-202. Membership.

- **2-201.** Creation. There is hereby created a Smyrna Parks and Recreation Advisory Board (hereinafter referred to as "board"), to serve in an advisory capacity to the town council and the parks and recreation director (hereinafter referred to as "director"), in matters enumerated in this chapter. (as added by Ord. #01-10, May 2001)
- **2-202.** <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 various park and recreation facilities, as may be evidenced by their training, experience and/or actions and who reside within the corporate limits of the Town of Smyrna.
- (2) <u>Composition</u>. The board shall consist of nine (9) voting members, all of whom must reside within the corporate limits of the Town of Smyrna, two (2) of whom shall be members of the town council, and one (1) of whom shall be the chief of police or his or her designee. The remaining six (6) voting members of the board shall be referred to herein as the "citizen members." All voting members of the board, other than the chief of police or his or her designee, shall be appointed by a majority vote of the town council. The town council shall also appoint, by majority vote, one (1) non-voting member who resides outside the corporate limits of the Town of Smyrna. The director shall serve as ex-officio, non-voting member of the board. All members of the board shall serve without compensation.
- (3) Terms. All members of the board, other than the director and the chief of police or his or her designee, shall be appointed for a term of two (2) years each, beginning on the first day of April of the year in which each such member was appointed. Notwithstanding the foregoing, however, no member of the town council who serves as a member of the board shall continue to serve as a member of the board after he or she ceases to be a member of the town council unless reappointed as a citizen member. The terms of all voting members, other than the chief of police or his or her designee, shall be staggered so that the terms of at least four (4) members shall expire each year.

Parks and recreation department public use facilities: title 20, chapter 2.

¹Municipal code reference

- (4) Removal. Members of the board may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three consecutive meetings or more than five non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Board members who are unable to attend regular meetings are expected to tender their resignation.
- (5) <u>Vacancies</u>. Vacancies created by causes other than the expiration of a term shall be filled for the remainder of the term in the same manner as otherwise provided in this section.
- (6) <u>Purpose of board</u>. The board shall provide citizen oversight of the conduct and supervision of the town's park and recreation facilities and activities on properties owned or controlled by the town and shall make recommendations to the appropriate town officials. The board shall advise the director in the formation of public park policy and facility development and management. The board shall recommend a program of recreation and cultural activity that will employ the leisure time of the citizens in a constructive and wholesome manner.
- (7) <u>Bylaws and regulations</u>. The board shall have the power to adopt and revise bylaws, rules, and regulations for the purpose of conducting the business of the board and the proper conduct of public recreation in the town. The board, when it deems prudent, may also make recommendations to the town council for amending this chapter.
- (8) <u>Board not empowered to obligate town or incur liability</u>. Notwithstanding anything that may be herein contained or implied to the contrary, the board shall not be empowered to obligate the town in any way or to expend or incur liability for any sum of money, except as may be provided for in the yearly budgets and appropriations adopted by the town council.
- (9) <u>Chairperson</u>. The mayor shall, on an annual basis, designate one of the citizen members of the board to serve as chairperson. The chairperson shall serve for a one-year period, beginning with the board's first meeting in April of each year, or until his or her successor has been appointed. Should a vacancy occur in the office of chairperson, the mayor shall designate another citizen member of the board to serve as chairperson for the remainder of the unexpired term. The chairperson will preside at all meetings of the board; preserve order and decorum; enforce the rules and regulations of the board; sign all letters and documents as authorized by the board (and only to the extent permitted by applicable law); and will otherwise perform the duties devolving upon a presiding officer.
- (10) Other officers. During the board's first meeting in April of each year, the board will elect a vice-chairperson from among its citizen members, who shall serve for a one-year period, or until his or her successor has been

- elected. The vice chairperson shall preside at all meetings of the board in the absence of the chairperson. The director will provide a secretary from staff who will assume charge of all records of the board and who will keep accurate and complete minutes of all meetings thereof.
- (11) <u>Meetings</u>. The board will determine a regular meeting schedule (time, place, and frequency) as necessary, but shall not meet less often than once each month, unless the chairperson determines no meeting is necessary. All meetings will be open to the public. Accurate minutes will be kept of all meetings and shall be made available to the public.
- (12) Quorum. Five (5) members of the board constitutes a quorum for the transaction of business. Seven (7) members constitutes a quorum for approval of bylaw or changes to the bylaws. Non-voting members of the board shall not be counted for purposes of determining whether a quorum is present. (Ord. #02-47, Nov. 2002, modified)

ATHLETIC COMMITTEE

SECTION

- 2-301. Creation.
- 2-302. Membership.
- 2-303. Time and place of meetings.
- **2-301.** <u>Creation</u>. An Athletic Committee is hereby created to assist the Parks and Recreation Department of the Town of Smyrna. (1991 Code, § 2-301)
- **2-302.** <u>Membership</u>. (1) <u>Criteria</u>. Membership will consist of one designated liaison chosen by each non-profit athletic organization that has an existing reciprocal relationship with the parks and recreation department. The designated liaison is subject to approval by the director of parks and recreation and will be noted in the annual written user agreements developed by the Smyrna Parks and Recreation Department. The committee will be for purposes of advice and communication and will be chaired by a designee chosen by the director of parks and recreation.
- (2) <u>Term</u>. The term of committee membership shall be for one year. A member may be allowed to remain on the committee if so designated in the yearly user agreement.
- (3) <u>Compensation</u>. Committee members shall serve without compensation.
- (4) Removal. Members of the committee may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three (3) consecutive meetings or more than five (5) non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Committee members who are unable to attend regular meetings are expected to tender their resignation.
- (5) Vacancies shall be filled in accordance with the terms of the user agreement related to the vacancy. (1991 Code, § 2-302, modified)
- **2-303.** <u>Time and place of meetings</u>. The committee shall meet on the 2nd Monday of each month at 7:00 P.M. at the town center. Notice shall be given to committee members and posted on the town's website for any changes related to meeting time or place, not less than ten (10) days in advance of the change.

PROJECT ASSISTANCE BOARD

SECTION

2-401. Creation.

2-402. Membership.

- **2-401.** Creation. There is hereby created the project assistance program for the purpose of providing financial assistance to citizens in the areas of utility services. Funding for this financial assistance comes from private donations, no public funds are utilized to provide the financial assistance. (1991 Code, § 2-401, modified)
- **2-402.** <u>Membership</u>. (1) <u>Criteria</u>. The selection of board members shall be made from individuals affiliated with the benevolent organizations in the Smyrna/LaVergne area. Such affiliation may be with a religious or non-religious organization.
- (2) <u>Composition</u>. The board shall consist of seven members. One member shall be the director of utilities or his/her designee. One member shall be the community services coordinator of the police department or his/her designee. The remaining five members shall be appointed by the town council by a majority vote. All members shall serve without compensation.
- (3) <u>Terms</u>. The director of utilities and the community services coordinator shall serve an indefinite term. The terms of the other five members shall be staggered to provide continuity and experience on the board. The terms of the project assistance board members shall be three years except that the terms of the initial board shall be staggered in the following manner. The initial members of the project assistance board shall serve the following terms:

Board	<u>Term</u>
Wanda Corbitt	3 years
Vickie Mathis	3 years
Earl Logan	2 years
Debbie Willis	2 years
James Holland	1 year

In order to provide continuity and consistency with the appointment of members of the Town of Smyrna Town Council, the calculation of the initial board member terms shall begin on April 1, 2001.

- (4) <u>Vacancies</u>. Vacancies created by causes other than the expiration of a member's term shall be filled for the remainder of the term in the same manner as otherwise provided for in this chapter.
- (5) Removal. Members of the board may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three (3) consecutive meetings or more than five (5) non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Board members who are unable to attend regular meetings are expected to tender their resignation.
- (6) <u>Powers and duties</u>. Generally the board shall provide oversight and guidance of the funds collected for the project assistance program.
- (7) <u>Bylaws and regulations</u>. The board shall have the power to adopt and revise bylaws, rules and regulations for the purpose of conducting the business of the project assistance board and for the purpose of establishing criteria for the disbursement of funds.
- (8) <u>Board not empowered to obligate town or incur liability.</u> Notwithstanding anything that may be herein contained or implied to the contrary, the board shall not be empowered without express authority of the town council, to obligate the town in any way or to expend or incur liability for any sum of money, except as may be provided for in the yearly budgets and appropriations adopted by the town council.
- (9) Officers. The board will, during the first board meeting in April, annually select from its members a chairperson to serve for a one-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 will otherwise perform the duties devolving upon a presiding officer. The board will also select a vice-chairperson. The director of utilities will provide a secretary from staff who will assume charge of all records of the board and who will keep accurate and complete minutes of all meetings thereof.
- (10) Meetings. The board will determine a regular meeting schedule as necessary, but shall not meet less than once each month, unless the chairperson and the director of utilities concur that no meeting is necessary. All meetings will be open to the public and will be conducted at town hall. Accurate minutes will be kept of all meetings and shall be made available to the public. (1991 Code, § 2-402, modified)

SISTER CITY COMMITTEE

SECTION

2-501. Creation.2-502. Membership.

- **2-501.** <u>Creation</u>. There is hereby created the sister city committee for the purpose of coordinating the exchange of cultural experiences, educational experiences and students between Smyrna, Tennessee and Zama, Japan. (1991 Code, § 2-501)
- **2-502.** <u>Membership</u>. (1) <u>Criteria</u>. The selection of committee members shall be made from individuals who have displayed a commitment to the community through their participation in other volunteer capacities.
- (2) <u>Composition</u>. The committee shall consist of seven members. The members shall be nominated by the mayor and shall be confirmed by a majority vote of the town council. All members shall serve without compensation.
- (3) <u>Terms</u>. The terms of the members shall be staggered to provide continuity and experience on the committee. The terms of the sister city committee members shall be three years except that the terms of the initial committee shall be staggered in the following manner. The initial members of the sister city committee shall serve the following terms:

<u>Name</u>	<u>Term</u>
Tina Thomas	3 years
Kathy Snider	3 years
Lydia George	2 years
Marc Michaelson	2 years
Jeanne Nolan	1 year
Rick Wise	1 year
Bill Davis	1 year

In order to provide continuity and consistency with the appointment of members of other Town of Smyrna committees and commissions, the calculation of the initial committee member terms shall begin on April 1, 2001.

- (4) <u>Vacancies</u>. Vacancies created by causes other than the expiration of a member's term shall be filled for the remainder of the term in the same manner as otherwise provided for in this chapter.
- (5) Removal. Members of the committee may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three (3) consecutive meetings or more than five (5) non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Committee members who are unable to attend regular meetings are expected to tender their resignation.
- (6) <u>Powers and duties</u>. Generally the committee shall provide oversight and guidance of the funds collected for the sister city committee, shall select participants for student exchanges, and shall coordinate other exchanges which may take place.
- (7) <u>Bylaws and regulations</u>. The committee shall have the power to adopt and revise bylaws, rules, and regulations for the purpose of conducting the business of the sister city committee.
- (8) Committee not empowered to obligate town or incur liability. Notwithstanding anything that may be herein contained or implied to the contrary, the committee shall not be empowered without the express authority of the town council, to obligate the town in any way or to expend or incur liability for any sum of money, except as may be provided for in the yearly budgets and appropriations adopted by the town council.
- (9) Officers. The committee will, during the first committee meeting in April, annually select from its members a chairperson to serve for a one-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 committee, sign all letters and documents as authorized by the committee, and will otherwise perform the duties devolving upon a presiding officer. The committee will also select a vice-chairperson. The town manager will provide a secretary from staff who will assume charge of all records of the committee and who will keep accurate and complete minutes of all meetings thereof.
- (10) Meetings. The committee will determine a regular meeting schedule as necessary, but shall not meet less than once each month, unless the chairperson and three other members concur that no meeting is necessary. All meetings will be open to the public and will be conducted at town hall. Accurate minutes will be kept of all meetings and shall be made available to the public. (1991 Code, § 2-502, modified)

HISTORIC ZONING COMMISSION

SECTION

- 2-601. Creation and membership.
- 2-602. Quorum, meetings, and by-laws.
- 2-603. Powers and duties.
- 2-604. Jurisdiction, appeal.
- 2-605. Record of proceedings to be kept.
- 2-606. Right of entry.
- 2-607. Liability of members.

2-601. <u>Creation and membership</u>. (1) Pursuant to the provisions of <u>Tennessee Code Annotated</u>, §13-7-401 <u>et seq.</u>, there is hereby created the Historic Zoning Commission, hereinafter referred to as the commission. The commission shall consist of seven (7) members, including a representative from a local patriotic or historical organization; an architect, if available; a person who is a member of the Smyrna Municipal Planning Commission at the time of the appointment; and the remainder shall come from the community in general. Members shall be appointed by the mayor and confirmed by a majority vote of the town council.

In addition to the appointed members above, the Town Manager shall designate two (2), non-voting, standing members of the committee. At least one (1) of the standing members shall be a representative of the Planning Department. The Planning Department representative shall be designated to act as the secretary for the commission.

(2) The terms of membership shall be five (5) years, except that the initial individual appointments to the commission shall be staggered so that the terms of at least one (1) member but not more than two (2) members shall expire each year.

Those members on the commission as of the date of the adoption of the ordinance comprising this chapter shall continue to serve as follows:

- (a) Those commission members whose terms expire in September 2008 shall serve until March of 2009;
- (b) Those commission members whose terms expire in September 2009 shall serve until March of 2010;
- (c) Those commission members whose terms expire in September 2010 shall serve until March of 2011;
- (d) Those commission members whose terms expire in September 2011 shall serve until March 2012;
- (e) Those commission members whose terms expire in September 2012 shall serve until March 2013.

All appointments to the commission on or after the date of the ordinance comprising this chapter shall be made at the March town council meeting, unless as necessary to fill a vacancy. Other than the appointments listed hereinabove, each member shall hold his or her seat for a period of five (5) years from the date of appointment.

- (3) Members of the committee may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three (3) consecutive meetings or more than five (5) non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Committee members who are unable to attend regular meetings are expected to tender their resignation.
- (4) Should a vacancy occur, the vacancy shall be filled by appointment by a majority vote of the town council at the next council meeting after which the vacancy occurs, which appointee shall fill the unexpired term of the vacant position.
 - (5) Members shall serve without compensation.
- (6) Beginning in the first meeting after committee appointments are made in March of 2008, the commission shall vote to select a chairperson for the committee from its membership, which chairperson shall serve for a period of one year.
- **2-602. Quorum, meetings, and by-laws**. A majority of the members of the committee shall constitute a quorum for the transaction of business. Meetings of the commission shall be held at the call of the chair and at other times as the commission may determine. The commission may hold general or special meetings in the town hall or at other locations and at such times as they may by order direct. The commission shall make, establish, and adopt such reasonable by-laws, rules, and regulations as may be necessary for their own government and for the full and complete execution of their powers and duties. The commission shall keep records of applications and actions, which shall be public records.
- **2-603.** <u>Powers and duties</u>. (1) Applications for certificates of appropriateness for reconstruction, alteration, repair, moving or demolition conducted within the H-1 Historic Overlay District shall be referred to the commission, which shall:
 - (a) Request detailed construction plans and related data pertinent to review a proposal before the commission;
 - (b) Grant, within thirty (30) days following the availability of sufficient data, a certificate of appropriateness, with or without

conditions, or the denial of such certificate, provided that the grounds for such denial are stated in writing;

- (c) Consider the following in making its decision:
- (i) Historic and/or architectural value of the existing structure:
- (ii) Relationship of exterior architectural features of the structure to the remaining structures, to the surrounding area, and to the character of the district;
- (iii) General compatibility of exterior design, arrangement, texture, and materials proposed to be used; and
- (iv) Any other factor, including aesthetic, which is reasonably related to the purposes for which the H-1 Historic Overlay District exists.
- (2) It shall be the duty of the commission to make the following determinations with respect to the H-1 Historic Overlay District:
 - (a) Appropriateness of altering or demolishing a building or structure. The commission may require interior and exterior photographs, architectural measured drawings of the exterior, or other notations of architectural features to be used for historical documentation as a condition of permission to demolish a building or structure. The photographs, drawings, and so forth, shall be provided at the expense of the applicant.
 - (b) Appropriateness of the exterior architectural features, including signs and other exterior fixtures, of new buildings and structures to be constructed.
 - (c) Appropriateness of exterior design or extension of an existing building or structure.
 - (d) Appropriateness of front, side, or rear yards, off-street parking spaces, and/or location of entrance drives into property or sidewalks along the public right-of-way, which might affect the character of a building or structure.
 - (e) The general compatibility of exterior design, arrangement, texture and material of the building or structure in relation to similar features of buildings in the immediate surroundings. However, the commission shall not consider interior arrangement or design, nor shall it make any requirements except for the purpose of preventing extensions incongruous to the historic aspects of the surroundings.
- (3) It shall be the duty of the commission to make recommendations for the establishment of H-1 Historic Overlay District zoning overlays in accordance with the procedures, criteria, and review process set forth in the Smyrna Municipal Zoning Ordinance §5.056.
- **2-604. Jurisdiction, appeal**. The commission shall have jurisdiction relating to historic zoning matters. Anyone who may be aggrieved by the final

order or judgment of the commission may have the order or judgment reviewed by the courts by the procedures of statutory certiorari as provided for in Tennessee Code Annotated, § 27-9-101, et seq.

- **2-605.** Record of proceedings to be kept. The secretary shall keep a permanent record of the proceedings of the commission in a book provided for that purpose. All minutes of the meetings of the commission shall be public records.
- **2-606.** Right of entry. The commission, its members and Town of Smyrna employees, in the performance of its work, may enter upon any land within its jurisdiction and make examination and surveys, but there shall be no right of entry into any building without the consent of the owner.
- **2-607.** <u>Liability of historic zoning commission members</u>. Any historic zoning commission member acting within the powers granted by the ordinance comprising this chapter is relieved from all personal liability for any damage and shall be held harmless by the town. Any suit brought against the commission or any member thereof shall be defended by a legal representative furnished by the town until the termination of the procedure.

TITLE 3

MUNICIPAL COURT

CHAPTER

- 1. TOWN COURT ADMINISTRATION.
- 2. TOWN JUDGE.
- 3. TOWN COURT CLERK.
- 4. TRAFFIC SCHOOL.

CHAPTER 11

TOWN COURT ADMINISTRATION²

SECTION

- 3-101. Establishment of full-time town court.
- 3-102. Maintenance of dockets.
- 3-103. Issuance of arrest warrants.
- 3-104. Issuance of summonses.
- 3-105. Issuance of subpoenas.
- 3-106. Trial and disposition of cases.
- 3-107. Appearance bonds authorized.
- 3-108. Imposition of fines, penalties, and costs.
- 3-109. Appeals.
- 3-110. Disposition and report of fines, penalties, and costs.
- 3-111. Disturbance of proceedings.
- 3-112. Employees in the judicial and courts departments.
- 3-113. Failure to appeal.

3-101. Establishment of full-time town court. A full-time town court for the Town of Smyrna, Tennessee is established. The town judge is prohibited from the practice of law or performing any of the functions of attorney or counsel, in any of the courts of this state and shall devote his full working time and attention to the business and affairs of the town court. The town judge and town court clerk shall devote his full working time and attention to the business and affairs of the office of town judge and town court clerk. (Ord. #06-28, May 2006, modified)

¹A schedule of fines, clerk's costs and court costs is of record in the office of the town clerk.

²For other provisions with respect to the town court and town judge see the charter, particularly art. IX.

- **3-102.** Maintenance of dockets. The town court 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 offenses, disposition, penalties and costs imposed and whether collected, and all other information that may be relevant. (1991 Code, § 3-102, modified)
- **3-103.** <u>Issuance of arrest warrants</u>. The town judge and judicial commissioners shall have the power to issue warrants for the arrest of persons charged with violating town ordinances and state crimes committed within the corporate town limits. (1991 Code, § 3-103)
- 3-104. <u>Issuance of summonses</u>. When a complaint of an alleged ordinance violation is made to the town judge the judge may in his discretion, in lieu of issuing an arrest warrant, issue a summons, ordering the alleged offender to personally appear before the town court at a time specified therein to answer to the charges against him. The summons shall contain a brief description of the offense charged but need not set out verbatim the provisions of the municipal code or ordinance alleged to have been violated. Upon failure of any person to appear before the town court as commanded in a summons lawfully served on him, the cause may be proceeded with ex parte, and the judgment of the court shall be valid and binding subject to the defendant's right of appeal. (1991 Code, § 3-104)
- **3-105.** <u>Issuance of subpoenas</u>. The town judge may subpoena as witnesses all persons whose testimony he believes will be relevant and material to matters coming before his court, and it shall be unlawful for any person lawfully served with such a subpoena to fail or neglect to comply therewith. (1991 Code, § 3-105)
- **3-106.** Trial and disposition of cases. Every person charged with violating a town ordinance shall be entitled to a trial and disposition of his case. When an alleged offender, by reason of drunkenness or other incapacity, is not in a proper condition or is not able to appear before the court, trial shall be set at such a time when the alleged offender is not incapacitated and is able to appear before the court. (1991 Code, § 3-106)
- **3-107.** Appearance bonds authorized. When the town judge is not available or when an alleged offender requests and has reasonable grounds for a delay in the trial of his case, he may, in lieu of remaining in jail pending disposition of his case, be allowed to post an appearance bond with the town court clerk or, in the absence of the town court clerk, with the ranking police officer on duty at the time, provided such alleged offender is not drunk or otherwise in need of protective custody. The appearance bond shall be in such

amount as the town judge shall prescribe and shall be conditioned that the defendant shall appear for trial before the town court at the stated time and place. The bond in any case may be made in the form of a cash deposit or by any corporate surety company authorized to do business in Tennessee or by two (2) private persons who individually own real property located within the county. No other type bond shall be acceptable.

When a police officer accepts a bond he shall give a receipt therefor and turn the bond over to the town court clerk within twenty-four (24) hours. (1991 Code, § 3-107)

- **3-108.** <u>Imposition of fines, penalties, and costs</u>. (1) All fines, penalties, and costs shall be imposed and recorded by the town judge on the town court docket in open court. In all cases heard and determined by him, the town judge may tax in the bill of costs the same amounts and for the same times allowed in courts of general sessions for similar work in state cases.
- (2) The town court judge is hereby authorized to charge as court costs fees as set forth in the fee schedule and adopted in accordance with the annual budget ordinance to all community service workers assigned to perform community service by the Smyrna Town Court and the Smyrna General Sessions Court to defray the costs of supervision and administration. (1991 Code, § 3-108)
- **3-109. Appeals**. (1) Appeals from municipal court judgments. Any defendant who is dissatisfied with any judgment of the town municipal court against him may, within ten days thereafter, Sundays exclusive, appeal to the circuit court of the county, upon giving and posting a proper appeal bond in the amount of \$250.00 for such person's appearance and the faithful prosecution of the appeal in accordance with <u>Tennessee Code Annotated</u>, \$16-18-307 and upon payment of filing fees as assessed by the Rutherford County Circuit Court.
- (2) Appeals from general sessions court judgments. Any defendant who is dissatisfied with any judgment of the town court sitting in its capacity as a general sessions court may appeal in accordance with state law. (1991 Code, § 3-109)
- 3-110. <u>Disposition and report of fines, penalties, and costs</u>. All funds coming into the hands of the town court clerk from violations of town ordinances or from violations of state law, in the form of fines, penalties, costs

Charter reference Town court: art. IX.

¹Ord. #01-24, Sept. 2001, increases the transportation fee for the transportation of prisoners to and from the Smyrna Town Court to \$35.00.

and forfeitures, shall be recorded by him and paid to the Town of Smyrna. At the end of each month the town court clerk shall certify to the town judge and the town manager the town court clerk's accounting for the collection or non-collection of all fines, penalties, costs and forfeitures imposed by the court, both municipal and general sessions dockets during the current month and to date for the current fiscal year. This provision will not affect the payment of statutorily designed fines which are payable to the State of Tennessee. (1991 Code, § 3-110)

- **3-111.** <u>Disturbance of proceedings</u>. It shall be unlawful for any person to create any disturbance of any trial before the town court by making loud or unusual noises, by using indecorous, profane, or blasphemous language, or by any distracting conduct whatsoever. (1991 Code, § 3-111)
- 3-112. Employees in the judicial and courts departments. All personnel in the Judicial and Courts Departments, except elected officials, are deemed employees of the Town of Smyrna and as such are required to abide by all terms of the Town of Smyrna Employee Handbook, as well as any policies and procedures related to employment with the Town of Smyrna. The town judge and the town court clerk shall act as directors of their respective departments, subject to employment and employee-related decisions being subject to approval by the Town Manager in accordance with the provisions of the Charter of the Town of Smyrna.
- **3-113.** Failure to appear. Any person who fails to appear in town court to answer a summons or citation for the violation of any ordinance or provision of this code shall be guilty of a separate civil offense punishable under the general penalty clause of this code. Such a failure to appear would also be punishable as contempt under Tennessee Code Annotated, §29-9-187.

TOWN JUDGE¹

SECTION

- 3-201. Town judge.
- 3-202. Qualifications and term.
- 3-203. Jurisdiction and powers.
- 3-204. Bail.
- 3-205. Separation of powers.
- 3-206. Popular election of judge(s).
- 3-207. Term; election procedure.
- 3-208. Vacancy.
- 3-209. Compensation.
- **3-201.** Town judge. The officer designated by the charter to handle judicial matters within the town shall preside over the municipal court and shall be known as the town judge. (1991 Code, § 3-201)
- **3-202.** Qualifications and term. The qualifications to be town judge and the term of the town judge shall be as set forth in the charter for the town. (1991 Code, §3-202, modified)
- **3-203.** <u>Jurisdiction and powers</u>. (1) <u>Violation of municipal ordinances</u>. The town judge shall have the authority to try persons charged with the violation of municipal ordinances, and to punish persons convicted of such violations by levying a civil penalty not to exceed the state authorized maximums.
- (2) <u>Violation of state laws</u>. The town judge shall also have the authority to exercise jurisdiction concurrent with courts of general sessions in all cases involving the violation of the criminal laws of the state within the corporate limits of the town.
- (3) Costs in trials of offenses against the ordinances of the town shall be provided in accordance with the fee schedule as adopted with the annual budge ordinance. Costs in other matters shall be as established under general laws of the State of Tennessee.
- (4) The town judge shall have the power to levy fines, penalties and costs, to issue all necessary process, to administer oaths, and to maintain order,

Appointment, election, qualifications, oath, compensation, and restrictions on office of town judge: § 9.02.

Exclusive judge of law and facts: § 9.06.

¹Charter reference

including the power to punish for contempt by fine or confinement not exceeding the limits provided by general laws. (1991 Code, § 3-203)

- **3-205.** Separation of powers. The town judge shall be the exclusive judge of the law and facts in every case before him and no official or employee of the town shall attempt to influence his decision except through pertinent facts presented in court. (1991 Code, § 3-205)
- **3-206.** Popular election of judge. The popular election of the town judge is hereby chosen as the method of selecting the town judge as set out in the charter of the town, and the town judge shall be popularly elected subject to the provisions to fill any vacancy as provided by the charter. (1991 Code, § 3-206)
- **3-207.** Term; election procedure. The term of office of a town judge shall be eight (8) years, except for any term that may be shorter as provided by the charter. Elections for the town judge shall be held in accordance with the provisions of the charter and in accordance with Article VII, Section 5 of the Tennessee Constitution. (1991 Code, § 3-207)
- **3-208.** <u>Vacancy</u>. A vacancy in the office of town judge shall be filled in accordance with the provisions in the charter. In the temporary absence or inability of a town judge, the court shall make arrangements for a qualified substitute according to the procedures outlined in <u>Tennessee Code Annotated</u>, § 16-15-209, for all general sessions dockets. The court will also appoint a qualified person to adjudicate matters on the municipal court docket until the judge's return. (1991 Code, § 3-208)
- **3-209.** Compensation. The salary and any other benefits relating to the office of all town judges shall be established by the board by ordinance prior to the commencement of the term of office and shall not be increased nor diminished during such term. The salary for the office of town judge is hereby fixed at a rate of 60% of the salary set for state circuit court judges as of September 1, 2006 provided in Tennessee Code Annotated, § 8-23-103. The salary shall be paid bi-weekly, from the general fund of the town. The town judge shall also receive such benefits as available to Town of Smyrna employees, on the same terms and conditions as available to Town of Smyrna employees, including, but not limited to, any cost of living adjustments paid to all Town of Smyrna employees, insurance benefits, except that long-term disability, short-term disability, and life insurance benefits shall only be available if approved by the town's insurance carrier, retirement plan benefits, and education reimbursement. The town judge shall not receive longevity pay. (Ord. #06-28, May 2006)

TOWN COURT CLERK¹

SECTION

- 3-301. Election.
- 3-302. Qualification.
- 3-303. Oath.
- 3-304. Duties.
- 3-305. Compensation.
- 3-306. Removal.
- **3-301.** Election. The town court clerk shall be elected in accordance with the provisions of the charter. (1991 Code, § 3-301)
- **3-302. Qualifications**. The qualifications to be town court clerk shall be as set forth in the charter. (1991 Code, § 3-302)
- **3-303.** Oath. The town court clerk shall take the oath of office prescribed for clerks of courts of general sessions, as well as the oath required by the charter. (1991 Code, § 3-303)
- **3-304.** <u>Duties</u>. The town court clerk shall have all the powers and duties prescribed for clerks of courts of general sessions by state law. Further, the town court clerk shall serve concurrently as clerk of the municipal court and shall be vested with all the municipal court clerk duties and responsibilities. (1991 Code, § 3-304)
- **3-305.** Compensation. The salary and other benefits relating to the office of the town court clerk shall be established by the town council by ordinance prior to the commencement of the term of office and shall not be increased nor diminished during such term. The salary for the office of town court clerk is hereby fixed at a rate of 75% of the salary set by the legislature for clerks of general sessions courts in counties with a population of 23,000 to 34,999 as of September 1, 2006 as provided in Tennessee Code Annotated, §8-24-102. The salary shall be paid bi-weekly from the general fund of the town. The town court clerk shall also receive such benefits as available to Town of Smyrna employees, on the same terms and conditions as available to Town of Smyrna employees, including, but not limited to, any cost of living adjustments paid to all Town of Smyrna employees, insurance benefits, except that long-term

Election, qualifications, oath and compensation: § 9.03.

¹Charter reference

disability, short-term disability, and life insurance benefits shall only be available if approved by the Town's insurance carrier, retirement plan benefits, and education reimbursement. The town court clerk shall not receive longevity pay. (1991 Code, § 3-305)

- **3-306.** Removal. The town court clerk shall generally be subject to removal for the same causes public officers in general are subject to removal. In addition, the town court judge may remove the town court clerk
 - (1) Upon conviction of a misdemeanor in office or of a felony.
 - (2) For failing to give security required by law or ordinance.
 - (3) For failing to pay over public money collected officially.
 - (4) For incapacity or misbehavior in office.
- (5) For any other cause to which the penalty of removal is attached by law.
- (6) For incompetence or neglect of duty or official misconduct in office. (Ord 06-28, May 2006)

TRAFFIC SCHOOL

- 3-401. Establishment.
- 3-402. Under jurisdiction of town judge.
- 3-403. Required attendance.
- 3-404. Sentencing.
- 3-405. Fees for attendance.
- **3-401.** Establishment. There is hereby established a Smyrna Traffic School whose purpose and function shall be to educate violators of traffic control laws as to the dangers of said violations in an attempt to promote safer driving within the Town of Smyrna. (1991 Code, § 3-401, modified)
- **3-402.** <u>Under jurisdiction of town judge</u>. The Smyrna Traffic School shall be under the jurisdiction of the town judge who shall have the responsibility and duty to establish the program and to regulate the content of said program. (1991 Code, § 3-402, modified)
- **3-403.** Required attendance. The Smyrna Town Judge is hereby granted the authority to require attendance at the Smyrna Traffic School for offenders who, in the sound discretion of the town judge, could benefit from such a program. (1991 Code, § 3-403)
- **3-404.** <u>Sentencing</u>. The Smyrna Town Judge shall have the absolute discretion in determining whether to sentence an offender to the Smyrna Traffic School in lieu of, or in addition to, a fine for violating Smyrna traffic control ordinances. (1991 Code, § 3-404)
- 3-405. Fees for attendance. Pursuant to the provisions of Tennessee Code Annotated, § 55-10-307, the Town of Smyrna hereby adopts and incorporates herein by reference the provisions of Tennessee Code Annotated, § 55-10-301. Pursuant to the authority granted thereby, fees established by a fee schedule adopted as a part of the budget ordinance shall be assessed to each individual attending a two-hour Smyrna Traffic School program, and to each individual attending a four-hour Smyrna Traffic School program; provided that no one shall be refused admittance for inability to pay, as determined by the town judge. The town judge is hereby granted the authority to determine which Smyrna Traffic School program offenders are required to attend. (Ord. #03-44, Jan. 2004, modified)

TITLE 4

MUNICIPAL PERSONNEL¹

CHAPTER

- 1. SOCIAL SECURITY FOR OFFICERS AND EMPLOYEES.
- 2. HUMAN RESOURCES/RISK MANAGEMENT DEPARTMENT.
- 3. MUNICIPAL PERSONNEL REGULATIONS.
- 4. OCCUPATIONAL SAFETY AND HEALTH PROGRAM.
- 5. INFECTIOUS DISEASE CONTROL POLICY.
- 6. EMPLOYEE RESIDENCY REQUIREMENTS

CHAPTER 1

SOCIAL SECURITY FOR OFFICERS AND EMPLOYEES

SECTION

- 4-101. Policy and purpose as to coverage.
- 4-102. Necessary agreements to be executed.
- 4-103. Withholdings from salaries or wages.
- 4-104. Appropriations for employer's contributions.
- 4-105. Records and reports to be made.
- 4-106. Exemptions from coverage.
- **4-101.** Policy and purpose as to coverage. It is hereby declared to be the policy and purpose of the Town of Smyrna to provide for all eligible employees and officials of the town, whether employed in connection with a governmental or proprietary function, the benefits of the system of federal old age and survivors insurance. In pursuance of said policy, and for that purpose, the town shall take such action as may be required by applicable state and federal laws or regulations. (1991 Code, § 4-101)
- **4-102.** Necessary agreements to be executed. The mayor is hereby authorized and directed to execute all the necessary agreements and amendments thereto with the state executive director of old age insurance, as agent or agency, to secure coverage of employees and officials as provided in the preceding section. (1991 Code, § 4-102)
- **4-103.** <u>Withholdings from salaries or wages</u>. Withholdings from the salaries or wages of employees and officials for the purpose provided in the first

¹Charter reference

Personnel rules: § 10.03.

section of this chapter are hereby authorized to be made in the amounts and at such times as may be required by applicable state or federal laws or regulations, and shall be paid over to the state or federal agency designated by said laws or regulations. (1991 Code, § 4-103)

- 4-104. Appropriations for employer's contributions. There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations for employer's contributions, and the same shall be paid over to the state or federal agency designated by said laws or regulations. (1991 Code, § 4-104)
- **4-105.** Records and reports to be made. The town manager or his designee, shall keep such records and make such reports as may be required by applicable state and federal laws or regulations. (1991 Code, § 4-105, modified)
- **4-106.** Exemptions from coverage. There is hereby exempted from this chapter any authority to make any agreement with respect to any position, any employee or official not authorized to be covered by applicable state and federal laws or regulations.

HUMAN RESOURCES/RISK MANAGEMENT DEPARTMENT

- 4-201. Department established; functions.
- 4-202. Manager; appointment; responsibilities.
- 4-201. <u>Department established; functions</u>. There is created and established an office of human resources/risk management department, which provides review and planning of personnel policies; coordinates the development and implementation of town personnel policies; administers the town's affirmative action program; administers the town's risk management program; and provides such other services as may be directed by the town manager. (1991 Code, § 4-201, modified)
- 4-202. Manager; appointment; responsibilities. The town manager shall appoint the manager of the human resources risk management department, who shall report directly to the town manager. The manager shall be appointed for an indefinite term and may be removed at any time. The manager shall direct the operations of the human resources/risk management department. (1991 Code, § 4-202, modified)

MUNICIPAL PERSONNEL REGULATIONS

- 4-301. Applicability.
- 4-302. Personnel policies.
- 4-303. Administration of personnel policies.
- 4-304. Classification and compensation plans.
- **4-301. Applicability**. This chapter shall apply to all employees of the town unless specifically exempt by the charter, the ordinances of the town or other applicable law, without regard to race, religion, national origin, political affiliation, sex, age, or disability. (Ord. #04-31, Oct. 2004)
- **4-302.** Personnel policies. The town manager, or his designee, shall prepare written personnel policies (which may be in the form of an employee handbook). The town council may adopt and/or amend said personnel policies from time to time by resolution. (Ord. #04-31, Oct. 2004)
- **4-303.** <u>Administration of personnel policies</u>. The personnel policies shall be administered by the town manager, or his or her designee, under the policy direction of the town council and in conformity with applicable laws. The town manager, or his or her designee, shall also:
- (1) Prepare and recommend revisions to the personnel policies to the town council for consideration;
- (2) Prepare and recommend revisions to the classification plan to the town council for consideration;
- (3) Prepare and recommend revisions to the compensation plan to the town council for consideration; and
- (4) Perform such other duties as may be assigned by the town council not inconsistent with this chapter. (Ord. #04-31, Oct. 2004)
- **4-304.** Classification and compensation plans. The town manager or his or her designee shall prepare the classification and compensation plans. The town council may adopt and/or amend the classification and compensation plans from time to time by resolution. (Ord. #04-31, Oct. 2004)

OCCUPATIONAL SAFETY AND HEALTH PROGRAM

- 4-401. Program created.
- 4-402. Title.
- 4-403. Purpose.
- 4-304. Coverage.
- 4-305. Standards authorized.
- 4-306. Variances from standards authorized.
- 4-307. Administration.
- 4-308. Funding the program.
- **4-401. Program created**. There is hereby created an Occupational Safety and Health Program for the employees of the Town of Smyrna, as follows. (Ord. #02-21, July 2002)
- **4-402.** <u>Title</u>. This chapter provides authority for establishing and administering the Occupational Safety and Health Program for the employees of the Town of Smyrna. (Ord. #02-21, July 2002)
- **4-403. Purpose**. The Town of Smyrna, in electing to establish and maintain an effective occupational safety and health program for its employees, shall:
 - (1) Provide a safe and healthful place and condition of employment.
- (2) Make, keep, preserve, and make available to the Commissioner of Labor of the State of Tennessee, his designated representatives, or persons within the Tennessee Department of Labor to whom such responsibilities have been delegated, adequate records of all occupational accidents and illnesses and personal injuries of proper evaluation and necessary corrective action as required.
- (3) Provide for education and training of personnel for the fair and efficient administration of occupational safety and health standards and provide for education and notification of all employees of the existence of this program. (Ord. #02-21, July 2002)
- **4-404.** Coverage. The provisions of the Occupational Safety and Health Program for the employees of the Town of Smyrna shall apply to all employees of each administrative department, commission, board, division, or other agency of the Town of Smyrna whether part-time or full-time, seasonal or permanent. (Ord. #02-21, July 2002)

- **4-405.** Standards authorized. The occupational safety and health standards adopted by the Town of Smyrna are the same as, but not limited to, the State of Tennessee Occupational Safety and Health Standards promulgated, or which may be promulgated, in accordance with Section 6 of the Tennessee Occupational Safety and Health At of 1972¹. (Ord. #02-21, July 2002)
- 4-406. <u>Variances from standards authorized</u>. The Town of Smyrna may, upon written application to the Commissioner of Labor of the State of Tennessee, request an order granting a temporary variance from any approved standards. Applications for variances shall be in accordance with Rules of Tennessee Department of Labor, Occupational Safety, Chapter 0800-1-2-, as authorized by <u>Tennessee Code Annotated</u>, title 50. Prior to requesting such temporary variance, the Town of Smyrna shall notify or serve notice to employees, their designated representatives, or interested parties and present them with an opportunity for a hearing. The posting of notice on the main bulletin board as designated by the Town of Smyrna shall be deemed sufficient notice to employees. (Ord. #02-21, July 2002)
- **4-407. Administration**. For the purpose of this chapter, the town manager or his designee is designated as the director of Occupational Safety and Health, to perform duties and to exercise powers assigned so as to plan, develop, and administer a safety and health plan. The director shall develop a plan of operation for the program and said plan shall become a part of this chapter when it satisfies all applicable sections of the Tennessee Occupational Safety and Health Act of 1972 and Part IV of the Tennessee Occupational Safety and Health Plan. (Ord. #02-21, July 2002)
- **4-408. Funding the program**. Sufficient funds for administering and staffing the program pursuant to this chapter shall be made available as authorized by the Town Council of the Town of Smyrna. (Ord. #02-21, July 2002)

¹State law reference <u>Tennessee Code Annotated</u>, § 50-3-601, <u>et seq</u>.

INFECTIOUS DISEASE CONTROL POLICY

SECTION

- 4-501. Purpose.
- 4-502. Coverage.
- 4-503. Administration.
- 4-504. Definitions.
- 4-505. Policy statement.
- 4-506. General guidelines.
- 4-507. Hepatitis B vaccinations.
- 4-508. Reporting potential exposure.
- 4-509. Hepatitis B virus post-exposure management.
- 4-510. Human immunodeficiency virus post-exposure management.
- 4-511. Disability benefits.
- 4-512. Training regular employees.
- 4-513. Training high risk employees.
- 4-514. Training new employees.
- 4-515. Records and reports.
- 4-516. Legal rights of victims of communicable diseases.
- 4-501. Purpose. It is the responsibility of the Town of Smyrna to provide employees a place of employment which is free from recognized hazards that may cause death or serious physical harm. In providing services to the citizens of the Town of Smyrna, employees may come in contact with life-threatening infectious diseases which can be transmitted through job related activities. It is important that both citizens and employees are protected from the transmission of diseases just as it is equally important that neither is discriminated against because of basic misconceptions about various diseases and illnesses.

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

- **4-502.** Coverage. Occupational exposures may occur in many ways, including needle sticks, cut injuries or blood spills. Several classes of employees are assumed to be at high risk for blood borne infections due to their routinely increased exposure to body fluids from potentially infected individuals. Those high risk occupations include but are not limited to:
 - (1) Paramedics and emergency medical technicians;
 - (2) Housekeeping;
 - (3) Police and security personnel;

- (4) Firefighters; and
- (5) Any other employee deemed to be at high risk per this policy and an exposure determination.
- **4-503.** Administration. This infection control policy shall be administered by the town manager or his/her designated representative who shall have the following duties and responsibilities:
- (1) Exercise leadership in implementation and maintenance of an effective infection control policy subject to the provisions of this chapter, other ordinances, the town charter, and federal and state law relating to OSHA regulations;
- (2) Make an exposure determination for all employee positions to determine a possible exposure to blood or other potentially infectious materials;
- (3) Maintain records of all employees and incidents subject to the provisions of this chapter;
- (4) Conduct periodic inspections to determine compliance with the infection control policy by municipal employees;
- (5) Coordinate and document all relevant training activities in support of the infection control policy;
- (6) Prepare and recommend to the town council any amendments or changes to the infection control policy;
- (7) Identify any and all housekeeping operations involving substantial risk of direct exposure to potentially infectious materials and shall address the proper precautions to be taken while cleaning rooms and blood spills; and
- (8) Perform such other duties and exercise such other authority as may be prescribed by the town council.
- **4-504.** <u>Definitions</u>. (1) "Body fluids" fluids that have been recognized by the Center for Disease Control as directly linked to the transmission of HIV and/or HBV and/or to which universal precautions apply: blood, semen, blood products, vaginal secretions, cerebrospinal fluid, synovial fluid, pericardial fluid, amniotic fluid, and concentrated HIV or HBV viruses.
- (2) "Exposure" the contact with blood or other potentially infectious materials to which universal precautions apply through contact with open wounds, non-intact skin, or mucous membranes during the performance of an individual's normal job duties.
- (3) "Hepatitis B Virus (HBV)" a serious blood-borne virus with potential for life-threatening complications. Possible complications include: massive hepatic necrosis, cirrhosis of the liver, chronic active hepatitis, and hepatocellular carcinoma.
- (4) "Human Immunodeficiency Virus (HIV)" the virus that causes acquired immunodeficiency syndrome (AIDS). HIV is transmitted through sexual contact and exposure to infected blood or blood components and perinatally from mother to neonate.

- (5) "Tuberculosis (TB)" an acute or chronic communicable disease that usually affects the respiratory system, but may involve any system in the body.
- (6) "Universal precautions" refers to a system of infectious disease control which assumes that every direct contact with body fluid is infectious and requires every employee exposed to direct contact with potentially infectious materials to be protected as though such body fluid were HBV or HIV infected.
- **4-505.** Policy statement. All blood and other potentially infectious materials are infectious for several blood-borne pathogens. Some body fluids can also transmit infections. For this reason, the Center for Disease Control developed the strategy that everyone should always take particular care when there is a potential exposure. These precautions have been termed "universal precautions."

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

- **4-506.** <u>General guidelines</u>. General guidelines which shall be used by everyone include:
- (1) Think when responding to emergency calls and exercise common sense when there is potential exposure to blood or other potentially infectious materials which require universal precautions.
- (2) Keep all open cuts and abrasions covered with adhesive bandages which repel liquids.
- (3) Soap and water kill many bacteria and viruses on contact. If hands are contaminated with blood or other potentially infectious materials to which universal precautions apply, then wash immediately and thoroughly. Hands shall also be washed after gloves are removed even if the gloves appear to be intact. When soap and water or handwashing facilities are not available, then use a waterless antiseptic hand cleaner according to the manufacturers recommendation for the product.
- (4) All workers shall take precautions to prevent injuries caused by needles, scalpel blades, and other sharp instruments. To prevent needle stick injuries, needles shall not be recapped, purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand. After they are used, disposable syringes and needles, scalpel blades and other sharp items shall be placed in puncture resistant containers for disposal. The

puncture resistant container shall be located as close as practical to the use area.

- (5) The town will provide gloves of appropriate material, quality and size for each affected employee. The gloves are to be worn when there is contact (or when there is a potential contact) with blood or other potentially infectious materials to which universal precautions apply:
 - (a) While handling an individual where exposure is possible;
 - (b) While cleaning or handling contaminated items or equipment;
 - (c) While cleaning up an area that has been contaminated with one of the above;

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

- (6) Resuscitation equipment shall be used when necessary. (No transmission of HBV or HIV infection during mouth-to-mouth resuscitation has been documented.) However, because of the risk of salivary transmission of other infectious diseases and the theoretical risk of HIV or HBV transmission during artificial resuscitation, bags shall be used. Pocket mouth-to-mouth resuscitation masks designed to isolate emergency response personnel from contact with a victims' blood and blood contaminated saliva, respiratory secretion, and vomitus, are available to all personnel to provide or potentially provide emergency treatment.
- (7) Masks or protective eyewear or face shields shall be worn during procedures that are likely to generate droplets of blood or other potentially infectious materials to prevent exposure to mucous membranes of the mouth, nose, and eyes. They are not required for routine care.
- (8) Gowns, aprons, or lab coats shall be worn during procedures that are likely to generate splashes of blood or other potentially infectious materials.
- (9) Areas and equipment contaminated with blood shall be cleaned as soon as possible. A household (chlorine) bleach solution (1 part chlorine to 10 parts water) shall be applied to the contaminated surface as a disinfectant leaving it on for a least 30 seconds. A solution must be changed and re-mixed every 24 hours to be effective.
- (10) Contaminated clothing (or other articles) shall be handled carefully and washed as soon as possible. Laundry and dish washing cycles at 120° are adequate for decontamination.
- (11) Place all disposable equipment (gloves, masks, gowns, etc...) in a clearly marked plastic bag. Place the bag in a second clearly marked bag (double bag). Seal and dispose of by placing in a designated "hazardous" dumpster. NOTE: Sharp objects must be placed in an impervious container and shall be properly disposed of.
- (12) Tags shall be used as a means of preventing accidental injury or illness to employees who are exposed to hazardous or potentially hazardous

conditions, equipment or operations which are out of the ordinary, unexpected or not readily apparent. Tags shall be used until such time as the identified hazard is eliminated or the hazardous operation is completed.

All required tags shall meet the following criteria:

- (a) Tags shall contain a signal word and a major message. The signal word shall be "BIOHAZARD", or the biological hazard symbol. The major message shall indicate the specific hazardous condition or the instruction to be communicated to employees.
- (b) The signal word shall be readable at a minimum distance of five (5) feet or such greater distance as warranted by the hazard.
- (c) All employees shall be informed of the meaning of the various tags used throughout the workplace and what special precautions are necessary.
- (13) Linen soiled with blood or other potentially infectious materials shall be handled as little as possible and with minimum agitation to prevent contamination of the person handling the linen. All soiled linen shall be bagged at the location where it was used. It shall not be sorted or rinsed in the area. Soiled linen shall be placed and transported in bags that prevent leakage.

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

- (14) Whenever possible, disposable equipment shall be used to minimize and contain clean-up.
- **4-507.** <u>Hepatitis B vaccinations</u>. The Town of Smyrna shall offer the appropriate Hepatitis B vaccination to employees at risk of exposure free of charge and in amounts and at times prescribed by standard medical practices. The vaccination shall be voluntarily administered. High risk employees who wish to take the HBV vaccination should notify their department head who shall make the appropriate arrangements through the Infectious Disease Control Coordinator.
- **4-508.** Reporting potential exposure. Town employees shall observe the following procedures for reporting a job exposure incident that may put them at risk for HIV or HBV infections (i.e., needle sticks, blood contact on broken skin, body fluid contact with eyes or mouth, etc...):
- (1) Notify the Infectious Disease Control Coordinator of the contact incident and details thereof.
- (2) Complete the appropriate accident reports and any other specific form required.
- (3) Arrangements will be made for the person to be seen by a physician as with any job-related injury.

Once an exposure has occurred, a blood sample should be drawn after consent is obtained from the individual from whom exposure occurred and tested for Hepatitis B surface antigen (HBsAg) and/or antibody to human immunodeficiency virus (HIV antibody). Testing of the source individual should be done at a location where appropriate pretest counseling is available. Post-test counseling and referral for treatment should also be provided.

4-509. <u>Hepatitis B virus post-exposure management</u>. For an exposure to a source individual found to be positive for HBsAg, the worker who has not previously been given the hepatitis B vaccine should receive the vaccine series. A single dose of hepatitis B immune globulin (HBIG) is also recommended, if it can be given within seven (7) days of exposure.

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

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

4-510. Human immunodeficiency virus post-exposure management. For any exposure to a source individual who has AIDS, who is found to be positive for HIV infection, or who refuses testing, the worker should be counseled regarding the risk of infection and evaluated clinically and serologically for evidence of HIV infection as soon as possible after the exposure. The worker should be advised to report and seek medical evaluation for any acute febrile illness that occurs within 12 weeks after the exposure. Such an illness, particularly one characterized by fever, rash, or lymphadenopathy, may be indicative of recent HIV infection.

Following the initial test at the time of exposure, seronegative workers should be retested 6 weeks, 12 weeks, and 6 months after exposure to determine whether transmission has occurred. During this follow-up period (especially the first 6 - 12 weeks after exposure) exposed workers should follow the U.S. Public Health service recommendation for preventing transmission of HIV. These include refraining from blood donations and using appropriate protection during sexual intercourse. During all phases of follow-up, it is vital that worker confidentiality be protected.

If the source individual was tested and found to be seronegative, baseline testing of the exposed worker with follow-up testing 12 weeks later may be

performed if desired by the worker or recommended by the health care provider. If the source individual cannot be identified, decisions regarding appropriate follow-up should be individualized. Serologic testing should be made available by the town to all workers who may be concerned they have been infected with HIV through an occupational exposure.

- **4-511.** <u>Disability benefits</u>. Entitlement to disability benefits and any other benefits available for employees who suffer from on-the-job injuries will be determined by the Tennessee Worker's Compensations Bureau in accordance with the provisions of Tennessee Code Annotated, § 50-6-303.
- **4-512.** Training regular employees. On an annual basis all employees shall receive training and education on precautionary measures, epidemiology, modes of transmission and prevention of HIV/HBV infection and procedures to be used if they are exposed to needle sticks or potentially infectious materials. They shall also be counseled regarding possible risks to the fetus from HIV/HBV and other associated infectious agents.
- 4-513. <u>Training high risk employees</u>. In addition to the above, high risk employees shall also receive training regarding the location and proper use of personal protective equipment. They shall be trained concerning proper work practices and understand the concept of "universal precautions" as it applies to their work situation. They shall also be trained about the meaning of color coding and other methods used to designate contaminated material. Where tags are used, training shall cover precautions to be used in handling contaminated material as per this policy.
- **4-514.** Training new employees. During the new employee's orientation to his/her job, all new employee will be trained on the effects of infectious disease prior to putting them to work.
- 4-515. Records and reports. (1) Reports. Occupational injury and illness records shall be maintained by the infectious disease control coordinator. Statistics shall be maintained on the OSHA-200 report. Only those work-related injuries that involve loss of consciousness, transfer to another job, restriction of work or motion, or medical treatment are required to be put on the OSHA-200.
- (2) <u>Needle sticks</u>. Needle sticks, like any other puncture wound, are considered injuries for recordkeeping purposes due to the instantaneous nature of the event. Therefore, any needle stick requiring medical treatment (i.e. gamma globulin, hepatitis B immune globulin, hepatitis B vaccine, etc...) shall be recorded.
- (3) <u>Prescription medication</u>. Likewise, the use of prescription medication (beyond a single dose for minor injury or discomfort) is considered

medical treatment. Since these types of treatment are considered necessary, and must be administered by physician or licensed medical personnel, such injuries cannot be considered minor and must be reported.

- (4) <u>Employee interviews</u>. Should the town be inspected by the U.S. Department of Labor Office of Health Compliance, the compliance safety and health officer may wish to interview employees. Employees are expected to cooperate fully with the compliance officers.
- **4-516.** <u>Legal rights of victims of communicable diseases</u>. Victims of communicable diseases have the legal right to expect, and municipal employees, including police and emergency service officers are duty bound to provide, the same level of service and enforcement as any other individual would receive.
- (1) Officers assume that a certain degree of risk exists in law enforcement and emergency service work and accept those risks with their individual appointments. This holds true with any potential risks of contacting a communicable disease as surely as it does with the risks of confronting an armed criminal.
- (2) Any officer who refuses to take proper action in regard to victims of a communicable disease, when appropriate protective equipment is available, shall be subject to disciplinary measures along with civil and, or criminal prosecution.
- (3) Whenever an officer mentions in a report that an individual has or may have a communicable disease, he shall write "contains confidential medical information" across the top margin of the first page of the report.
- (4) The officer's supervisor shall ensure that the above statement is on all reports requiring that statement at the time the report is reviewed and initiated by the supervisor.
- (5) The supervisor disseminating newspaper releases shall make certain the confidential information is not given out to the news media.
- (6) All requests (including subpoenas) for copies of reports marked "contains confidential medical information" shall be referred to the town attorney when the incident involves an indictable or juvenile offense.
- (7) Prior approval shall be obtained from the town attorney before advising a victim of sexual assault that the suspect has, or is suspected of having a communicable disease.
- (8) All circumstance, not covered in this policy, that may arise concerning releasing confidential information regarding a victim, or suspected victim, of a communicable disease shall be referred directly to the appropriate department head or town attorney.
- (9) Victims of a communicable disease and their families have a right to conduct their lives without fear of discrimination. An employee shall not make public, directly or indirectly, the identity of a victim or suspected victim of a communicable disease.

- (10) Whenever an employee finds it necessary to notify another employee, police officer, firefighter, emergency service officer, or health care provider that a victim has or is suspected of having a communicable disease, that information shall be conveyed in a dignified, discrete and confidential manner. The person to whom the information is being conveyed should be reminded that the information is confidential and that it should not be treated as public information.
- (11) Any employee who disseminates confidential information in regard to a victim, or suspected victim of a communicable disease in violation of this policy shall be subject to serious disciplinary action and/or civil/and/or criminal prosecution.

EMPLOYEE RESIDENCY REQUIREMENTS

- 4-601. Applicability
- 4-602. Residency at time of employment not required.
- 4-603. Residency required within 180 days after report for work.
- 4-604. Applicability to existing employees.
- 4-605. Removal by town manager required for noncompliance.
- **4-601.** Applicability. The provisions of this chapter shall only be applicable to those employees of the Town of Smyrna holding the following positions: director of finance, chief of police, fire chief, director of parks and recreation; director of community services; town engineer/director of public works; and director of utilities. (Ord. #04-31, Oct. 2004)
- **4-602.** Residency at time of employment not required. Residence within the Town of Smyrna at the time of employment of any person subject to the provisions of this chapter shall not be required as a condition of employment. (Ord. #02-12, April 2002)
- 4-603. Residency required within 180 days after reporting for work. Within one-hundred eighty (180) days after reporting for work, any person subject to the provisions of this chapter must become a resident of the Town of Smyrna and maintain such residency throughout the duration of such person's employment. In the event that an employee of the Town of Smyrna becomes subject to the provisions of this chapter by virtue of promotion from a position not subject to the provisions of this chapter, such person must become a resident of the Town of Smyrna within one-hundred eighty (180) days after the date of such promotion and maintain such residency throughout the duration of such person's employment. (Ord. # 02-12, April 2002)
- **4-604.** Applicability to existing employees. Any person serving in a position subject to the provisions of this chapter on the date of adoption of this chapter who is a resident of the Town of Smyrna on such date must maintain such residency throughout the duration of his or her employment. (Ord. #02-12, April 2002, modified)
- 4-605. Removal by town manager required for noncompliance. In the event that a person subject to the provisions of this chapter fails to establish and maintain residency within the Town of Smyrna in accordance with the provisions of this chapter, such person shall be removed from his or her position by the town manager. A person removed by the town manager in

accordance with the provisions of this chapter shall be ineligible to hold a position subject to the provisions of this chapter until such time as he or she becomes a resident of the Town of Smyrna. (Ord. #02-12, April 2002)

TITLE 5

MUNICIPAL FINANCE AND TAXATION¹

CHAPTER

- 1. REAL PROPERTY TAXES.
- 2. PRIVILEGE AND BUSINESS TAXES GENERALLY.
- 3. WHOLESALE BEER TAX.
- 4. HOTEL/MOTEL TAX.
- 5. IMPACT FEES.
- 6. CONTRIBUTIONS TO NONPROFIT CHARITABLE AND NONPROFIT CIVIC ORGANIZATIONS.
- 7. FINANCE DEPARTMENT.
- 8. PURCHASE, SALE, AND INVENTORY OF TOWN PROPERTY.

CHAPTER 1

REAL PROPERTY TAXES

SECTION

- 5-101. When due and payable.
- 5-102. When delinquent--penalty and interest.
- **5-101.** When due and payable. Taxes levied by the town against real property shall become due and payable and delinquent on the dates prescribed in the charter. (1991 Code, § 5-101)
- 5-102. When delinquent—penalty and interest. All real property taxes becoming delinquent shall be subject to such penalty and interest as is authorized and prescribed by the charter. (1991 code, § 5-102)

¹Charter references

Finance: art. XI. Taxation: art. XII.

PRIVILEGE AND BUSINESS TAXES GENERALLY

SECTION

5-201. Tax levied.

5-202. License required.

5-201. <u>Tax levied</u>. Except as otherwise specifically provided in this code, there is hereby levied on all vocations, occupations, and businesses declared by the general laws of the state to be privileges taxable by municipalities, an annual privilege tax in the maximum amount allowed by said state laws.

The taxes provided for in the state's "Business Tax Act" are hereby expressly enacted, ordained, and levied on the businesses, business activities, vocations, and occupations carried on within the Town of Smyrna at the rates and in the manner prescribed by the said act. (1991 Code, § 5-301)

5-202. <u>License required</u>. No person shall exercise any such privilege within the Town of Smyrna without a currently effective privilege license, which shall be issued by the town clerk to each applicant therefor upon the applicant's compliance with all regulatory provisions in this code and payment of the appropriate privilege or business tax. Violations of this section shall be punished under the general penalty provisions of this code of ordinances. (1991 Code, § 5-302, modified)

Tennessee Code Annotated, § 67-4-701, et seg.

¹State law reference

WHOLESALE BEER TAX

SECTION

5-301. To be collected.

5-301. <u>To be collected</u>. The town clerk is hereby directed to take appropriate action to assure payment to the town of the wholesale beer tax levied by the "Wholesale Beer Tax Act," as set out in <u>Tennessee Code Annotated</u>, title 57, chapter 6. (1991 Code, § 5-401)

HOTEL/MOTEL TAX

- 5-401. Definitions.
- 5-402. Levy of tax.
- 5-403. Tax added to room invoice.
- 5-404. Remittance to director of finance.
- 5-405. Offer to absorb tax prohibited.
- 5-406. Penalties and interest for delinquency.
- 5-407. Records.
- 5-408. Administration.
- 5-409. Reports and records of paid funds.
- 5-410. Proceeds to become part of town's general fund.
- 5-411. Tax is additional tax.
- 5-412. Annual audits.
- **5-401.** <u>**Definitions**</u>. As used in this chapter, unless the context requires otherwise:
- (1) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- (2) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist court, tourist camp or campground, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.
- (3) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodging, or accommodations in a hotel for a period of less than thirty (30) continuous days.
- (4) "Transient" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodging, or accommodations in a hotel room or campground for a period of less than thirty (30) days.
- (5) "Consideration" means the consideration charged whether or not received, for the occupancy of a hotel valued in money whether received in money, goods, labor or otherwise, including all receipts, cash, credits, property and service of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged or received from any person.
- (6) "Operator" means the person operating the hotel whether as owner, lessee, or otherwise.

- (7) "Tax collection official" means the town clerk/coordinator. (1991 Code, § 5-501)
- **5-402.** Levy of tax. A privilege tax is hereby levied in the Town of Smyrna, Tennessee, upon the privilege of occupancy in any hotel by a transient in an amount not to exceed the limits established in Tennessee Code Annotated, § 67-4-1401, et seq., of the consideration charged by the operator. The rate of the tax shall be set by the annual fee schedule ordinance of the Town Council of the Town of Smyrna. The tax imposed is a privilege tax upon the transient occupying such room and is to be collected and distributed as herein provided. (1991 Code, § 5-502, modified)
- **5-403.** Tax added to room invoice. The tax shall be added by each operator to each invoice prepared by the operator for the occupancy of their hotel. Such invoice is to be given directly or transmitted to the transient, a copy thereof filed by month and retained by the operator as provided in § 5-407 hereof. (1991 Code, § 5-503)
- 5-404. Remittance to director of finance. (1) The tax hereby levied shall be remitted by all operators who lease, rent, or charge for any rooms or spaces in hotels to the town clerk/coordinator no later than the twentieth (20th) day of each month next following such collection from the transient. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to, during or after occupancy, as may be the custom of the operator. The obligation to the town shall be that of the operator.
- (2) For the purpose of compensating the operator in accounting for and remitting the tax levied by this chapter, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the city clerk/coordinator in the form of a deduction in submitting his report and paying the amount due by him, provided, however, that the amount due was not delinquent at the time of payment.
- (3) Refunds or credits are given to persons and operators for occupancies lasting more than thirty (30) continuous days. (1991 Code, § 5-504, modified)
- **5-405.** Offer to absorb tax prohibited. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded. (1991 Code, § 5-505, modified)
- **5-406.** Penalties and interest for delinquency. Taxes collected by an operator which are not remitted to the town clerk/coordinator on or before the

due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of 12% per annum, and in addition for a penalty on such taxes of 1% for each month or fraction thereof that such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of knowing and willful refusal of an operator to collect or remit the tax is a Class A misdemeanor, punishable upon conviction by a fine that doesn't exceed state authorized maximums. Each occurrence (each day), shall constitute a separate offense. (1991 Code, § 5-506, modified)

- **5-407.** Records. It is the duty of every operator liable for the collection and payment of any tax imposed by this chapter, to keep and preserve for a period of three (3) years, beginning December 31st of the year of the taxable event, all records necessary to determine the amount of such tax, which records the tax collection official shall have the right to inspect at all reasonable times. (1991 Code, § 5-507)
- **5-408.** <u>Administration</u>. In administering and enforcing the provisions of this chapter, the tax official shall have as additional power the powers and duties with respect to collection of taxes provided in <u>Tennessee Code Annotated</u>, title 67, or otherwise provided by law.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in <u>Tennessee Code Annotated</u>, § 67-1-911, it being the intent of this chapter that the provisions of law which apply to the recovery of taxes illegally assessed and collected shall apply to the tax collected under the authority of this chapter; provided, the tax collection official shall possess those powers and duties as provided in <u>Tennessee Code Annotated</u>, § 67-1-707(a), with respect to the adjustment and settlement with taxpayers of all errors of taxes collected by him under the authority of this chapter and to direct the refunding of the same. Notice of any tax paid under protest shall be given the tax collection official. Any suit for recovery shall be brought against such tax collection official. (1991 Code, § 5-508)

- **5-409.** Reports and records of paid funds. The city clerk/coordinator shall faithfully account for, make proper reports of, and maintain records of all funds paid to and received by such clerk for the privilege tax. (1991 Code, § 5-509)
- **5-410.** Proceeds to become part of town's general fund. The proceeds of the tax imposed by the Act, when collected and paid to the city clerk/coordinator, shall become part of the Town of Smyrna general fund. (1991 Code, § 5-510)

- **5-411.** Tax is additional tax. The privilege tax levied by this chapter shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied. (1991 Code, § 5-511)
- **5-412.** Annual audits. Pursuant to <u>Tennessee Code Annotated</u>, § 67-4-1406, an annual audit is required to be done by the Town of Smyrna, of all operators, and quarterly reports made to council about these audits.

IMPACT FEES

- 5-501. General impact fee provisions.
- 5-502. Road impact fees.
- 5-503. Park impact fees.
- 5-504. Fire impact fees.
- **5-501.** General impact fee provisions. (1) Purpose. This chapter is intended to ensure timely construction of off-site public capital improvements that are necessary to serve new development by ensuring that necessary financing is available for such improvements. The impact fees to be paid by each new development pursuant to this chapter are to be proportional to the impact that the new development will have on the types of facilities for which the fees are charged.
- (2) <u>Applicability</u>. Until any impact fee required by this chapter has been paid in full, no certificate of occupancy shall be issued. A stop work order shall be issued on any development for which the applicable impact fee has not been paid in full. The collection of impact fees shall apply to all new development in the town, unless otherwise provided herein.
 - (a) The movement of a structure onto a lot shall be considered development and shall be subject to the impact fee provisions, unless otherwise provided herein.
 - (b) The impact fee provisions shall not apply to the following actions:
 - (i) Placing on a lot in the town a temporary construction trailer or office, but only for the life of the building permit issued for the construction served by the trailer or office;
 - (ii) Any development, including but not limited to the mere subdivision of land, installation of utilities, or the use of land for limited recreational, agricultural, filling or dredging purposes, which, in the opinion of the administrator, will not result in a significant net increase in the demand for public facilities subject to this chapter.
 - (iii) The park impact fee shall not apply to nonresidential development;
 - (iv) Any project or development paid for by the Rutherford County School System.
 - (3) <u>Definitions</u>. (a) "Administrator" shall be the director of planning or persons designated by the town to administer this chapter.
 - (b) "Industry" means a building principally used in connection with mining; construction; manufacturing; scientific research,

investigation, testing, or experimentation; or transportation, communication, electric, gas and sanitary services; excluding buildings associated with these activities but principally used for office purposes as defined herein.

- (c) "Major roadway system" means all existing or planned collector or arterials roadways that are identified on the town's adopted major thoroughfare plan map and are or will be the responsibility of the town to improve and maintain.
- (d) "Mobile home/RV park" means a lot principally used, designed, or adapted for use to accommodate more than one mobile home or recreational vehicle on individual pad sites.
- (e) "Multi-family" means a building used for two or more dwelling units, in which individual living accommodations are provided for each family.
- (f) "Nonresidential development" means any development that does not principally consist of residential dwelling units and accessory uses.
- (g) "Office" means a building principally used, designed or adapted for the provision of executive, management, administrative or professional services. Typical uses include administrative offices and services, including real estate, insurance, property management, investment, personnel, travel, secretarial services, telephone answering, professional or consulting services in the fields of law, architecture, design, engineering, accounting and similar professions, business offices of public utilities, organizations and associations, or other use classifications when the service rendered is that customarily associated with administrative office services, but not involving medical or dental services or the sale of merchandise, except as an incidental use.
- (h) "Retail/commercial/public" means a shopping center or any other nonresidential development not fitting the categories of office, industrial or warehouse as herein defined.
- (i) "Single-family detached" means a detached dwelling on an individual lot principally used, designed, or adapted for use by a single family.
- (j) "Warehouse" means a building primarily devoted to the storage of materials.
- (4) <u>Benefit district</u>. (a) There shall be one impact fee benefit district, which encompasses the entire town.
- (b) The appropriateness of the designation and boundaries of the benefit district shall be reviewed by the town as part of the impact fee revision process set forth in § 5-501(16). Following such review and a public hearing, the benefit district may be amended.
- (c) Impact fees collected within the benefit district shall be spent within the benefit district.

- (5) <u>Phase-in schedule</u>. The impact fees shall be assessed at 50 % of the maximum amounts determined according to subsection (7) and (8) below. This percentage may be subsequently increased, but only by action of the town council amending this chapter.
- (6) <u>Calculation based on fee schedule</u>. Impact fees shall be calculated as follows.
 - (a) Unless an applicant requests an administrative determination or individual assessment as set forth in the following subsections, the impact fees shall be calculated for the proposed development based on the development plan approval or permit allowing the use, according to the applicable fee schedule.
 - (b) The following impact fee schedules are hereby adopted and incorporated herein by reference:
 - (i) Road impact fee schedule (§ 5-502(1));
 - (ii) Park impact fee schedule (§ 5-503(1));
 - (iii) Fire impact fee schedule (§ 5-504(1)).
 - (c) The units of development specified in the fee schedule shall be interpreted as follows:
 - (i) A hotel or motel "room" shall include any space that is part of the same rental unit and that does not have a separate entrance.
 - (ii) Building square footage shall be measured in terms of gross floor area, as defined in Section 2.020, Definitions, of the town's zoning ordinance.
 - (d) For categories of uses not specified in the applicable impact fee schedule, the administrator shall apply the category of use set forth in the applicable fee schedule that is deemed to be most similar to the proposed use.
 - (e) If the development plan approval or permit for the proposed development indicates a mix of uses in the development, the impact fees shall be calculated separately for each use according to the fee schedule, and the results aggregated.
 - (f) For an addition to or replacement of existing structures, or a change of use, the impact fee to be paid shall be the difference, if any, between
 - (i) The fee, if any, that would be payable for existing development on the site or, in the case of demolition or removal of a structure or the reuse of a vacant structure, the previous development and use on the site, provided that the demolition or removal of the structure or the discontinuation of the previous use has occurred within five (5) years of the date of submittal of the application for which impact fees are assessed; and
 - (ii) The fee, if any, that would be payable for the total development on the site after the new development.

- (g) Upon written request of an applicant, the administrator shall provide an estimate of the current fee based on the data provided by the applicant. However, the administrator shall not be responsible for determining at such preliminary date the accuracy of the information provided.
- (7) <u>Individual assessments</u>. If any person submitting an application for which payment of an impact fee is a prerequisite to approval believes that the impacts of the proposed development will be substantially less than would be indicated by using a strict interpretation of the fee schedule or an administrative determination of the fee, such person may submit an individual assessment of the impact of the proposed development, consistent with the methodology set forth in subsection (a) below. A request for an individual assessment must be made prior to submittal of an application for a building permit.
 - (a) The individual assessment shall be subject to the following special standards and procedures:
 - (i) Road impact fees: as set forth in § 5-502(2);
 - (ii) Park impact fees: as set forth in § 5-503(2);
 - (iii) Fire impact fees: as set forth in § 5-504(2).
 - (b) The town shall accept the calculations of the individual assessment if the administrator finds that:
 - (i) The proposed development is in fact so unique in the impacts it will generate that the strict application of the fee schedule or administrative determination would result in inaccurate impact projections; and
 - (ii) The individual assessment results in a fee that differs by at least five percent (5%) from the fees calculated under the fee schedule or administrative determination.
 - (c) If the town accepts the computations of the individual assessment under this section, the applicable fee shall be determined from the individual assessment, regardless of whether it is higher or lower than the fee calculated under the fee schedule or administrative determination.
 - (8) <u>Collection of fees</u>. The collection of impact fees shall be as follows:
 - (a) Except as set forth in the following paragraph, the impact fees for all new development shall be calculated and collected in conjunction with the application for the certificate of occupancy issued on or after January 1, 2000, provided that the accompanying building permit shall also have been issued on or after December 15, 1999.
 - (b) For other uses not ultimately requiring a building permit, electrical permit, certificate of compliance or occupancy, or other permit subsequent to development plan approval, the fee shall be calculated and collected at the time of approval of the development plan.

- (9) <u>Fund accounting</u>. (a) The town shall establish a separate accounting fund in which the impact fees collected for a particular type of facility within the benefit district shall be credited. Such fees shall be invested by the town and the yield on such fees, at the actual rate of return to the town, shall be credited to such accounting fund periodically in accordance with the accounting policies of the town. Such funds shall be segregated from other town monies for accounting purposes.
- (b) Any yield on such accounting fund into which the fees are deposited shall accrue to that fund and shall be used for the purposes specified for such fund.
- (c) The town shall maintain and keep financial records for such accounting fund showing the revenues to such fund and the disbursements from such fund, in accordance with normal town accounting practices. The records of such fund shall be open to public inspection in the same manner as other financial records of the town.
- (10) <u>Expenditure of fees</u>. Impact fees may only be spent on qualifying improvements, as follows:
 - (a) Road impact fees: as set forth in § 5-502(3);
 - (b) Park impact fees: as set forth in § 5-503(2);
 - (c) Fire impact fees: as set forth in § 5-504(3).
 - Refunds. (a) Any impact fee or portion thereof collected pursuant to this chapter, which has not been committed for a use permitted by § 5-501(10) within six (6) years from the last day of the fiscal year in which it was received by the town, shall be refunded to the current record owner of the property upon written application. Impact fees shall be deemed to be "committed" when they have been spent or encumbered by contract. Impact fees shall be deemed to be committed in the order in which they are received and committed by the town. The refund shall include accrued interest at the rate of return on investments earned by the town on such amount. In disbursing such funds the town may rely on the written certification of the current record owner of the property as to his entitlement to the refund, in the absence of a written assertion by another party that such proposed payee is not the proper payee. If in doubt, the town may deposit such funds in an appropriate court for disposition as the court may determine. In such event, the town may deduct from the funds deposited an amount equal to the reasonable cost of causing the funds to be deposited with the court, including reasonable attornev's fees.
 - (b) If development for which an impact fee has been paid has not begun, the impact fee and any accrued interest thereon shall be returned to the applicant provided that the applicant applies for the refund in writing within sixty (60) days after the expiration of the building permit or other approval (or any extension thereof) on which it was assessed.

- (c) The town shall charge an administrative fee for verifying and computing the refund of three percent (3%) of the amount of the refund.
- (12) Offsets. Offsets, which are reductions from the impact fee that would otherwise be due from a development, shall be subject to the following provisions. Offsets adjustments shall be credited at the same percent of the maximum impact fee rate assessed per fee type.
 - (a) The administrator shall grant an offset only for qualifying improvements, as defined in § 5-501(10), or cash contributions for such improvements, that are required to be made by the fee payer as a condition of development approval for the type of facility against which such offset is claimed.
 - (b) Offsets shall be allowable and payable only to offset impact fees otherwise due for the same category of improvements and shall not result in reimbursements from, nor constitute a liability of, the town.
 - (c) Offsets shall be given only for the value of any construction of improvements or contribution or dedication of land or money by a fee payer or his predecessor in title or interest for qualifying improvements of the same category for which an impact fee was imposed.
 - (d) No offset shall be provided under this section for contributions, payments or construction made more than ten (10) years prior to the effective date of this chapter.
 - (e) The person applying for an offset shall be responsible for providing appraisals of land and improvements, construction cost figures, and documentation of all contributions and dedications necessary to the computation of the offset claimed. The administrator shall have no obligation to grant offsets to any person who cannot provide such documentation in such form as the administrator may reasonably require.
 - (f) The value of land dedicated or donated shall be based on the appraised land value of the parent parcel (which land value is based on the date of transfer of ownership to the town) as determined by a certified appraiser who was selected and paid for by the applicant, and who used generally accepted appraisal techniques. If the town disagrees with the appraised value, the town may engage another appraiser at the town's expense, and the value shall be an amount equal to the average of the two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by the property owner and the town. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties.
 - (g) Offsets provided for qualifying improvements meeting the requirements of this section shall be valid from the date of approval until ten (10) years after the date of approval or until the last date of construction within the project, whichever occurs first.

- (h) The right to claim offsets shall run with the land and may be claimed only by owners of property within the development for which the qualifying improvement was required.
- (i) Any claim for offsets must be made no later than the time of submittal of a building permit application or application for another permit subsequent to development plan approval that is subject to impact fees. Any claim not so made shall be deemed waived.
- (13) <u>Developer agreements</u>. (a) Where a development includes or requires a qualifying improvement, as defined in § 5-501(10), the town and the developer may agree in writing to have the developer participate in the financing or construction of part or all of the qualifying improvements. Such agreement may provide for cash reimbursements, offsets, or other appropriate compensation to the developer for the developer's participation in the financing and/or construction of the improvements.
 - (b) The agreement shall include:
 - (i) The estimated cost of the qualifying improvements, using the lowest responsive bid by a qualified bidder, which bid is approved by the administrator; or, if no bid is available, the estimated cost certified by a licensed engineer and approved by the administrator;
 - (ii) A schedule for initiation and completion of the improvement;
 - (iii) A requirement that the improvement be designed and completed in compliance with any applicable town ordinances; and,
 - (iv) Such other terms and conditions as deemed necessary by the town.
- (14) Appeals. (a) A feepayer affected by a decision of the administrator under this chapter may appeal such decision to the town council, by filing with the administrator within ten (10) working days of the date of the decision, a written notice stating and specifying briefly the grounds of the appeal. The administrator shall place the appeal on the town council's agenda for the next regularly scheduled meeting.
- (b) The town council, after a hearing, shall have the power to affirm or reverse the decision of the administrator. In making its decision, the town council shall apply the standards of the relevant sections of this chapter. If the town council reverses the decision of the administrator, it shall direct the administrator to recalculate the fee, offset or refund in accordance with its findings. In no case shall the town council have the authority to negotiate the amount of the fee.
- (15) <u>Supplemental regulation</u>. (a) Except as herein otherwise provided, impact fees are in addition to any other requirements, taxes, fees, or assessments imposed by the town on development or the issuance of building permits or certificates of occupancy which are imposed on and

due against property within the jurisdiction of the town. Such fees are intended to be consistent with the town's comprehensive plan, capital improvements program, development regulations and other town policies, ordinances and resolutions by which the town seeks to ensure the provision of capital facilities in conjunction with development.

- (b) In addition to the use of impact fees, the town may finance qualifying capital improvements through the issuance of bonds, the formation of assessment districts or any other authorized mechanism, in such manner and subject to such limitations as may be provided by law.
- (16) <u>Updates</u>. Not less often than every five (5) years, the town council, following a public hearing, shall review and, if warranted, recommend changes in the schedules of impact fees. Factors to be considered may include, without limitation, past and projected growth in residential and nonresidential development, qualifying improvements actually constructed, changing levels of service, revised cost estimates for qualifying improvements, changes in the availability of other funding sources, changes in demand generation characteristics, sources of non-town funds and such other factors as may be relevant. (1991 Code, § 5-601, as amended by Ord. #07-07, Feb. 2007, and Ord. #07-10, April 2007, modified)

5-502. Road impact fees. (1) Road impact fee schedule. At the option of the applicant, the road impact fee may be calculated based on the fee schedule adopted with the annual budget ordinance. The administrator shall determine the land use category in the fee schedule that best represents the proposed use in terms of trip generation characteristics. The definitions of the land use categories in the Institute of Transportation Engineers (ITE) Trip Generation manual shall be used as a guide in determining the appropriate land use category for the proposed use. In the event that the administrator determines that the land use categories in the fee schedule do not accurately reflect the proposed development, the administrator shall determine the fee based on the land use categories, trip generation rates or equations and/or primary trip data contained in the most current edition of the ITE Trip Generation manual and the ITE Trip Generation Handbook. The administrator shall make the determination of the appropriate land use category, trip generation rate or equation and primary trip factor based on the appropriateness and quality of the data, the guidelines for determining whether to use trip generation rates or equations set forth in the ITE manual, and other relevant considerations. Once the appropriate land use and travel demand factors have been determined, the administrator shall calculate the fee using the following formula.

MAXIMUM = PK HR VMT x NET COST/VMT

FEE

PK HR VMT = PK HR TRIPS x % NEW x LENGTH $\div 2$

Where:

PK HR TRIPS = Trip ends during PM peak hour of adjacent street

traffic

% NEW = Percent of trips that are primary, as opposed to

passby or diverted-link trips

LENGTH = Average length of a trip on the major roadway system

 $\div 2$ = Avoids double-counting trips for origin and

destination

NET COST/VMT = Average net cost to accommodate a new vehicle-mile

of travel during the peak hour. Until recalculated by an update of the impact fee study, this shall be

\$1,445.

(2) <u>Individual assessments of road impact fees</u>. Individual assessments of road impact fees shall be allowed as follows:

- (a) The traffic study shall be signed by the traffic engineer submitting the assessment and shall include, without limitation, the following elements:
 - (i) A projection of the number of vehicular trips entering and departing from the project during an average weekday.
 - (ii) If the site is already developed, and some or all of the existing development will be replaced by the completed project, a calculation of the number of vehicular trips for that portion of the existing development which will be replaced by the completed project.
 - (iii) The percentage of those trips identified in (i) and (ii) above, which are "primary trips" (as opposed to "pass-by trips" or "diverted-link trips" for which the project is not the primary destination).
 - (iv) The assumptions and conclusions from which any projections are made. If the assumptions or conclusions are derived from the current edition of the ITE manual or other standard reference materials, the materials shall be identified and appropriate excerpts or specific references provided. Otherwise, the reasoning underlying the assumptions and conclusions shall be clearly stated in writing.
 - (v) Such other information as the administrator shall reasonably request.

- (b) The administrator shall determine the fee based on the review of the independent assessment and the guidelines and formula described in the preceding section § 5-502 (1), Road impact fee schedule.
- (3) <u>Use of road impact fees</u>. (a) The revenues from road impact fees collected within the benefit district and accrued interest on such revenues shall be used to finance project costs of capacity-expanding improvements to the major roadway system, as determined by the town council, provided that the improvements are located within the same benefit district. Such revenues may also fund the cost of consultants used in updating the transportation portion of the capital improvements program and in updating the road impact fee computations.
- (b) Capacity-expanding improvements are those that increase the capacity of the major roadway system to accommodate additional traffic. Such improvements include, but are not limited to, widening of roadways to increase land and/or shoulder width or to add additional travel lanes, signalization, addition of turn lanes and other intersection improvements. Improvements such as intersection improvements or acceleration/deceleration lanes that primarily serve traffic entering or exiting a development project shall not be considered capacity-expanding improvements.
- (c) Qualifying project costs include project engineering costs; the acquisition cost of rights-of-way and easements, including legal costs; the construction cost of improvements, including, but not limited to, public street travel lanes, public pedestrian and bicycle pathways, turning lanes or the portion thereof located within the right-of-way of a public street, lighting, signalization, signage and landscaping improvements that are required for the road improvement to function effectively; and the principal, interest and other financing costs of bonds, notes or other obligations issued by or on behalf of the town to finance qualified improvements.
- (d) Monies collected as road impact fees shall not be used to pay for any of the following:
 - (i) Construction, acquisition or expansions of public facilities other than qualifying major roadway system improvements;
 - (i) Repair, operation or maintenance of existing or new public street or pathway improvements;
 - (ii) Town personnel and consultants hired for purposes other than those expressly permitted under this section;
 - (iii) Streets, pathways and related transportation improvements that are within and intended to serve only a specific development such as a new residential subdivision. (1991 Code, § 5-602, modified)

- **5-503.** Park impact fees. (1) Park impact fee schedule. At the option of the applicant, the park impact fee may be calculated based on the fee schedule adopted with the annual budget ordinance. The administrator shall determine the land use category in the fee schedule that best represents the proposed use.
- (2) <u>Individual assessments of park impact fees</u>. Individual assessments of part impact fees shall be allowed as follows:
 - (a) The individual assessment shall include, without limitation, the following elements:
 - (i) A projection of the number of persons residing in the development project during an average day.
 - (ii) If the site is already developed, and some or all of the existing development will be replaced by the completed project, a calculation of the number of occupants for that portion of the existing development that will be replaced by the completed project.
 - (iii) The percentage of usage of the town's park and recreational facilities by the residents of the project compared to the usage by a typical development in the town with the same mix of housing types.
 - (iv) A written description of the assumptions, data and calculations used to support the conclusions, including appropriate excerpts and specific references for all data sources.
 - (v) Such other information as the administrator shall reasonably request.
 - (b) The administrator shall determine the fee based on the review of the independent assessment and the following formula

MAXIMUM FEE = PERSONS x NET COST/PERSON

Where:

PERSONS = Average number of persons expected to be

 $residing in the \, development \, during \, an \, average \,$

day

NET COST/PERSON = Average net cost to accommodate a new person

with town parks and recreation facilities at the existing level of service. Until recalculated by an update of the impact fee study, this shall be

\$220.10 per person.

(3) <u>Use of park impact fees</u>. (a) The revenues from park impact fees collected within the benefit district and accrued interest on such revenues shall be used to finance project costs of capacity-expanding improvements

to the town's parks and recreation facilities, as determined by the town council, provided that the improvements are located within the same benefit district. Such revenues may also fund the cost of consultants used in updating the parks and recreation portion of the capital improvements program and in updating the park impact fee computations.

- (b) Capacity-expanding improvements are those that add land and facilities to the town's park and recreation system that are available to be used by town residents. Such improvement include, but are not limited to, acquiring or developing new parks and recreation facilities, improvements to existing parks that add new facilities, and expansions of existing recreation facilities.
- (c) Qualifying project costs include project design and engineering costs; the acquisition cost of land and easements, including legal costs; the construction cost of improvements; and the principal, interest and other financing cost of bonds, notes or other obligations issued by or on behalf of the town to finance qualified improvements.
- (d) Monies collected as park impact fees shall not be used to pay for any of the following:
 - (i) Construction, acquisition or expansion of public facilities other than qualifying parks and recreation improvements;
 - (ii) Repair, operation, maintenance or replacement of existing parks and recreation facilities;
 - (iii) Private parks and recreational facilities that are not open to the public. (1991 Code, § 5-603, modified)
- **5-504.** Fire impact fees. (1) Fire impact fee schedule. At the option of the applicant, the fire impact fee may be calculated based on the fee schedule adopted with the annual budget ordinance. The administrator shall determine the land use category in the fee schedule that best represents the proposed use.
- (2) <u>Individual assessments of fire impact fees</u>. Individual assessments of fire impact fees shall be allowed as follows:
 - (a) The individual assessment shall include, without limitation, the following elements:
 - (i) A projection of the functional population (calculated according to the formula below) residing in the development project during an average day.
 - (ii) If the site is already developed, and some or all of the existing development will be replaced by the completed project, a calculation of the functional population for that portion of the existing development that will be replaced by the completed project.
 - (iii) The percentage by which the development project should be expected to place more or less demand on town fire

facilities than a typical development with the same mix of land use types.

- (iv) A written description of the assumptions, data and calculations used to support the conclusions, including appropriate excerpts and specific references for all data sources.
- (v) Such other information as the administrator shall reasonably request.
- (b) The administrator shall determine the fee based on the review of the independent assessment and the following formula

MAXIMUM FEE = FUNC POP x NET COST/FUNC POP

FUNC POP = RES FUNC POP + NONRES FUNC POP

Where:

RES FUNC POP = One-half of the average number of persons

expected to be residing in the development

during an average day

NONRES FUNC POP = The sum of hours spent by employees and

visitors on the site of the development during

an average weekday, divided by 16

NET COST/FUNC POP = Average net cost to accommodate a new

functional person with town fire facilities at the existing level of service. Until recalculated by an update of the impact fee study, this shall

be \$258.34 per functional population.

- (3) <u>Use of fire impact fees</u>. (a) The revenues from fire impact fees collected within the benefit district and accrued interest on such revenues shall be used to finance project costs of capacity-expanding improvements to the town's fire facilities, as determined by the town council, provided that the improvements are located within the same benefit district. Such revenues may also fund the cost of consultants used in updating the fire facilities portion of the capital improvements program and in updating the fire impact fee computations.
- (b) Capacity-expanding improvements are those that add land and facilities to the town's fire facilities that are available to serve town residents. Such improvement include, but are not limited to, acquiring or developing new fire stations, including land acquisition, expansions to existing fire stations that add additional space for firefighters or firefighting equipment, and acquisition of new firefighting apparatus or support vehicles.

- (c) Qualifying project costs include project design and engineering costs; the acquisition cost of land and easements, including legal costs; the construction cost of improvements; and the principal, interest and other financing costs of bonds, notes or other obligations issued by or on behalf of the town to finance qualified improvements.
- (d) Monies collected as fire impact fees shall not be used to pay for any of the following:
 - (i) Construction, acquisition or expansion of public facilities other than qualifying fire facilities;
 - (ii) Repair, operation, maintenance or replacement of existing fire stations or equipment;
 - (iii) Acquisition of apparatus, vehicles or equipment that essentially replaces existing or older equipment that is being taken out of service; provided that if the new equipment will provide better service than the comparable equipment being retired and is more costly than the current replacement cost of the existing equipment, the difference in cost may be funded out of fire impact fees. (1991 Code, § 5-604, modified)

CONTRIBUTIONS TO NONPROFIT CHARITABLE AND NONPROFIT CIVIC ORGANIZATIONS¹

SECTION

- 5-601. Authority.
- 5-602. Definitions.
- 5-603. Appropriations to promote general welfare.
- 5-604. Procedure for requesting appropriations.
- 5-605. Requirements for budget document.
- 5-606. Town council to adopt special resolution.
- 5-607. Limitations on amount and use of appropriations.
- 5-608. Filing of annual report required with request for financial assistance.
- 5-609. Filing of financial statement required of organizations receiving financial assistance.
- 5-610. Publication of notice required for appropriation to non-charitable organization.
- **5-601.** Authority. According to <u>Tennessee Code Annotated</u>, § 6-54-111, the Town of Smyrna has the authority to appropriate funds for the financial aid of any nonprofit charitable organization or any nonprofit civic organizations in accordance with the guidelines required by the comptroller of the treasury. (Ord. #02-07, March 2002)
- **5-602.** <u>**Definitions**</u>. For the purpose of this chapter, the following terms shall have the meaning given herein:
- (1) "Audit." The methodical examination of records with intent to verify their accuracy.
- (2) "Nonprofit charitable organization." An organization classified under §§ 501(c)(3), (4), or (6) by the Internal Revenue Service in which no part of the net earnings inures or may lawfully inure to the benefit of any private shareholder or individual and which provides year-round services benefitting the general welfare of the residents of the Town of Smyrna.
- (3) "Nonprofit civic organization." A civic organization exempt from taxation pursuant to § 501(c)(4) or (c)(6) of the Internal Revenue Code of 1954, as amended, which operates primarily for the purpose of bringing about civic betterments and social improvements through efforts to maintain and increase employment opportunities in the Town of Smyrna by promoting industry, trade,

Charitable solicitation: title 9, chapter 2.

Roadblocks: § 16-114.

¹Municipal code references

- commerce, tourism and recreation by inducing manufacturing, industrial, governmental, educational, financial, service, commercial, recreational, and agricultural enterprises to locate in or remain in the Town of Smyrna. (Ord. #02-07, March 2002)
- **5-603.** Appropriations to promote general welfare. Any funds appropriated shall be used to promote the general welfare of the residents of the Town of Smyrna.
- 5-604. <u>Procedure for requesting appropriations</u>. Contribution requests shall be accepted by the finance director's office through March 15th each year and considered annually during budget deliberations by the town council. Requests received after March 15th, shall be considered on an as needed basis by the town council. (Ord. #02-07, March 2002, modified)
- **5-605.** Requirements for budget document. The budget document of the Town of Smyrna shall include the name of each nonprofit charitable or nonprofit civic organization and the specific amount appropriated for each organization. (Ord. #02-07, March 2002)
- **5-606.** <u>Town council to adopt special resolution</u>. The town council shall adopt a special resolution, stating the purpose for which funds are being appropriated, for each nonprofit charitable organization or nonprofit civic organization that is to receive town funds. (Ord. #02-07, March 2002)
- 5-607. <u>Limitations on amount and use of appropriations</u>. Payments to nonprofit charitable or nonprofit civic organizations shall be limited to the amounts appropriated for such purposes and in keeping with the town's guidelines for how the appropriated funds may be spent. (Ord. #02-07, March 2002)
- 5-608. Filing of annual report required with request for financial assistance. The Town of Smyrna shall require any nonprofit charitable or nonprofit civic organization which desires financial assistance from the town to file with the town clerk a copy of an annual report of its business affairs and transactions which includes, but is not limited to, a copy of an annual audit, its program which serves the residents of the Town of Smyrna and the proposed use of the financial assistance. Such report will be open for public inspection during regular business hours of the town clerk's office. Requests that are unaccompanied by said annual report are incomplete and will not be considered by the town council. The town council, upon consideration of the relevant facts and circumstances surrounding the organization and the appropriation of town funds, and in consultation with the finance director or other independent financial consultant to the town, shall have the authority to determine whether

any such annual report and audit contains sufficient financial information and has been prepared with sufficient formality to satisfy the requirements of Tennessee Code Annotated, § 6-54-111(c). (Ord. #02-07, March 2002)

- 5-609. Filing of financial statement required of organizations receiving financial assistance. The Town of Smyrna shall require each nonprofit charitable or nonprofit civic organization receiving financial assistance from the town to file with the finance director a copy of the organization's annual report of its business affairs and transactions and the proposed use of the contributed funds. The annual report shall include, but is not limited to, the organization's financial statement, including financial information about the program that serves the Town of Smyrna's residents. (Ord. #02-07, March 2002)
- 5-610. Publication of notice required for appropriation to non-charitable organization. Appropriations to nonprofit organizations other than charitable organizations may be made only after notices have been published in a newspaper of general circulation in the Town of Smyrna of the intent to make an appropriation to a nonprofit, but not a charitable, organization specifying the intended amount of the appropriation and the purpose for which the appropriation will be spent. (Ord. #02-07, March 2002, modified)

FINANCE DEPARTMENT¹

SECTION

- 5-701. Establishment.
- 5-702. Director.
- 5-703. Director duties and responsibilities.
- **5-701.** Establishment. There is hereby created a finance department for the purpose of maintaining the financial operations of the town. (Ord. #02-08, April 2002)
- **5-702.** <u>Director</u>. The functions of the finance department shall be executed under the supervision and control of the director of finance. The director of finance shall be appointed by the town manager for an indefinite term. The director of finance shall be subject to the personnel policies established by the town. (Ord. #02-08, April 2002)
- **5-703.** <u>Director duties and responsibilities</u>. The director of finance shall have charge of the administration of the financial affairs of the town. The director of finance shall have the following powers and duties:
- (1) To supervise all disbursements and expenditures to assure that payment has been legally authorized and appropriated, and that sufficient encumbered appropriations exist for the payment of all claims and expenditures;
- (2) To develop, supervise and maintain the general accounting system for the town government;
- (3) To regularly, at least once a month and at the end of each fiscal year, prepare and submit to the town manager a report indicating the financial condition of the town;
- (4) To establish, supervise, and maintain a system of data processing for the handling of accounting information and other reports and tabulations required by the town;
- (5) To compile the preliminary budget data, including capital and operating expenditure projections, and revenue projections for the town manager;
- (6) To prepare and maintain a current inventory of all equipment of the town;
- (7) To audit and approve, before payment, all bills, invoices, payrolls, demands, or charges against the town, and determine the regularity,

Annual departmental budgets required: § 11.02.

¹Charter reference

correctness, and, with the advice of the town attorney, the legality of such claims, demands, and charges;

- (8) To supervise the work of preparing the town payroll and to maintain records of all payroll data; and
- (9) To perform such other duties as may be imposed by ordinance or resolution of the town council, or as the town manager may direct. (Ord. #02-08, April 2002)

PURCHASE, SALE, AND INVENTORY OF TOWN PROPERTY

SECTION

- 5-801. Compliance with Municipal Purchasing Law of 1983.
- 5-802. Office of purchasing agent created.
- 5-803. Definitions.
- 5-804. Terms, conditions and procedures for purchasing.
- 5-805. Exceptions to competitive bids.
- 5-806. Advertising and bidding.
- 5-807. Specifications and quality standards.
- 5-808. Notice inviting bids.
- 5-809. Submittal and opening of bids.
- 5-810. Acceptance or rejection of bids.
- 5-811. Determination of lowest responsible bidder.
- 5-812. Awards to other than lowest bidder.
- 5-813. Bid bonds or deposits.
- 5-814. Performance and payment bond.
- 5-815. Contract approval and change orders.
- 5-816. Public inspection of records.
- 5-817. Conflicts of interest.
- 5-818. Items consumed in the course of work or items thought to be worthless.
- 5-819. Inventory of property required.
- 5-820. Transfer and sale of materials and equipment.
- 5-821. Procedure for sale of materials and equipment.
- **5-801.** Compliance with Municipal Purchasing Law of 1983. The Town of Smyrna shall comply in all respects with the Municipal Purchasing Law of 1983, Tennessee Code Annotated, §§ 6-56-301 through 6-56-307. (Ord. #02-09, April 2002, modified)
- **5-802.** Office of purchasing agent created. The town manager or his designee is the purchasing agent for the town and will operate under the rules, regulations, and requirements of this chapter. The purchasing agent is hereby authorized to execute purchase orders on behalf of the town for supplies, equipment, materials or services as approved and funded in the budget, without regard to amount. (Ord. #02-09, April 2002)
- **5-803. Definitions**. The following definitions will apply with respect to the provisions of this chapter:
- (1) "Department head." Director, manager and supervisor level personnel;

- (2) "Purchase." The authorized single acquisition of supplies, equipment, materials or services for and on behalf of the Town of Smyrna and for which there is a clearly defined budgetary authorization;
- (3) "Responsible." A bidder who has the capacity in all respects to perform fully the contract requirements, and who has the integrity and reliability which will assure good faith performance; and
- (4) "Responsive." A bid that conforms in all material respects to all documents, whether attached or incorporated by reference, utilized for soliciting such bid. (Ord. #02-09, April 2002)
- **5-804.** Terms, conditions and procedures for purchasing. The purchasing agent and suppliers in the procurement of goods and services for the Town of Smyrna shall comply with the following terms, conditions and procedures:
- (1) All purchases of supplies, materials, equipment and services shall be pursuant to a request from a department head whose budgetary appropriation will be charged therewith, and such supplies, materials, equipment and services shall conform to specifications approved by the purchasing agent;
- (2) All supplies, materials, equipment and services obtained by purchase, lease or lease-purchase agreements shall be made or entered into in accordance with the prescribed limits contained herein, and the purchase or contract awarded to the lowest responsive and responsible bidder, provided that any or all bids may be rejected as prescribed in this chapter;
- (3) The practice of "split bidding" is hereby declared to be improper, illegal and against the public interest. The practice of "split-bidding" is defined to be the practice of submitting multiple purchase requests for the same supplies, materials, equipment or services where the sum of the cost of the several purchases is equal to the bid limits contained herein and splitting the department's requirements into several purchases would thereby avoid the necessity for the purchasing agent to require competitive bids;
- (4) The purchasing agent shall not accept the bid of any 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 town by such vendor or contractor; and
- (5) The town manager may reject all bids and authorize the making of public improvements or accomplishment of any other town work by a town department. (Ord. #02-09, April 2002, modified)
- **5-805.** Exceptions for competitive bids. Except as otherwise provided in this chapter, all purchases, leases or lease-purchase agreements shall be made or entered into only after public advertisement and competitive bid, except as follows:

- (1) When any goods or services may not be procured by competitive means because of the existence of a single source of supply or because of a proprietary product that is required by the town. Department heads will notify the purchasing agent of the intent to purchase from a sole source or proprietary vendor. A record of all such sole source or proprietary purchases shall be made by the purchasing agent and shall specify the amount paid, the items purchased, and from whom the purchase was made. A report of such sole source or proprietary purchases shall be made as soon as possible to the town manager by the purchasing agent and shall include all items of information as required for the record:
- (2) To purchases or leases of any supplies, materials, or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work. Department heads will notify the purchasing agent of the intent to make an emergency purchase. A record of any such emergency purchase shall be made by the purchasing agent authorizing such emergency purchase and shall specify the amount paid, the items purchased, from whom the purchase was made and the nature of the emergency. A report of any emergency purchase shall be made as soon as possible to the town council and town manager by the purchasing agent and shall include all items of information as required in the record;
 - (3) To purchase, lease, or lease-purchase real property;¹
- (4) To purchase, lease, or lease purchase from any federal, state, or local government unit or agency of secondhand articles or equipment or other materials, supplies, commodities, and equipment;
- (5) To purchase from other local governments in conformity with Tennessee Code Annotated, § 12-3-1001;
- (6) Fuel and fuel products may be purchased in the open market without public advertisement, but shall whenever possible be based on at least three (3) competitive bids. Fuel and fuel products may be purchased from the Tennessee Department of General Services contract where available;²
- (7) To purchase through the Tennessee Department of General Services;
- (8) To secure professional service contracts under <u>Tennessee Code</u> Annotated, § 12-4-106;
- (9) To obtain tort liability insurance purchases as provided in <u>Tennessee Code Annotated</u>, § 29-20-407;

¹State law reference

Tennessee Code Annotated, § 6-56-304(5) and (6).

²State law reference

Tennessee Code Annotated, § 6-56-304(7).

- (10) To purchase, for resale, of natural gas and propane gas;¹
- (11) To any other purchase, lease or lease-purchase exempt from the requirements of public advertisement and competitive bidding pursuant to applicable federal or state law; and
- (12) To purchase through the U.S. Communities Government Purchasing Alliance. (Ord. #02-09, April 2002, modified)
- **5-806.** Advertising and bidding. All supplies, materials, equipment and services obtained by purchase, lease or lease-purchase agreements shall be made or entered into accordingly;
- (1) All purchases, leases or lease-purchases with expenditures of four thousand dollars (\$4,000) or less in any fiscal year shall not require any public advertisement or competitive bidding.
- (2) All purchases, leases, or lease-purchase arrangements with expenditures of less than ten thousand dollars (\$10,000) but more than four thousand dollars (\$4,000) in any fiscal year may be made in the open public market without public advertisement, but shall, whenever possible, be based upon at least three (3) competitive bids; provided, however, that this exemption shall not apply to purchases of like items which individually cost less than ten thousand dollars (\$10,000), but which are customarily purchased in lots of two (2) or more, if the total purchase price of such items would exceed ten thousand dollars (\$10,000) during any fiscal year and, provided further, that this exemption shall not apply to leases of like or related items which individually may be leased or lease-purchased with total payments of less than ten thousand dollars (\$10,000) in any fiscal year, but which are customarily leased or lease purchased in numbers of two (2) or more, if the total lease or lease purchase of the payments for such items under a single agreement would be ten thousand dollars (\$10,000) or more in any fiscal year.
- (3) All purchases, leases or lease-purchase agreements with expenditures of ten thousand dollars (\$10,000) or more in any fiscal year shall be made or entered into only after public advertisement and sealed competitive bid. Any such transaction shall be evidenced by a written contract. (Ord. #02-09, April 2002, modified)
- 5-807. Specifications and quality standards. Each department head shall have the right to request goods or services that meet whatever standards they consider necessary for efficient operation, however, specifications must not be unduly restrictive for the purpose of favoring a particular brand or manufacturer, but shall be so written that the town will try to receive three (3) competitive bids. It will be the responsibility of the department head to provide

¹State law reference

Tennessee Code Annotated, § 6-56-304(8).

specifications where at least two (2) vendors can competitively bid or provide written documentation why the purchase is a sole source or proprietary purchase. (Ord. #02-09, April 2002)

- **5-808.** Notice inviting bids. Notice inviting bids shall be published at least once in a local newspaper as the purchasing agent may direct and may be published in other publications. Such notice shall include a general description of the articles to be purchased, shall state where bid blanks and written specifications may be secured, and the time and place for opening bids. (Ord. #02-09, April 2002)
- **5-809.** Submittal and opening of bids. Bids shall be submitted sealed, as prescribed in bid specifications, and shall be identified as bids on the envelope. Such bids shall be opened in public in the presence of at least two (2) town employees at the time and place stated in the public notice, and a tabulation of all bids so received shall be made available upon request. (Ord. #02-09, April 2002)
- 5-810. Acceptance or rejection of bids. The purchasing agent shall have and hereby is granted the authority to reject any or 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 have the right to reject any bid in any instance where there are not at least two (2) bidders on the same invitation to bid; however, this shall not prevent the purchasing agent from accepting a bid where there is only one (1) bidder, if, in the opinion of the purchasing agent, the best interest of the town will be served by doing so. (Ord. #02-09, April 2002)
- **5-811.** <u>Determination of lowest responsible bidder</u>. In determining the lowest responsible bidder, in addition to price, the purchasing agent shall consider:
- (1) The ability, capacity and skill of the bidder to perform the contract or provide the services required;
- (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - (4) The quality or performance of previous contracts or services;
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required;

- (8) The ability of the bidder to provide future maintenance and services;
 - (9) The number and scope of conditions attached to the bid;
- (10) All prices, quality, merchandise, or services being equal, the Town of Smyrna will favor local suppliers when they are gross receipts taxpayers of the Town of Smyrna; and
 - (11) Compliance with applicable state law. (Ord. #02-09, April 2002)
- 5-812. Awards to other than lowest bidders. When the award is not recommended by the purchasing agent to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the department head and filed with all the other papers relating to the transaction. Award to other than the lowest bidder must be approved by the town council. (Ord. #02-09, April 2002)
- 5-813. Bid bonds or deposits. When deemed necessary, bid bonds or deposits shall be prescribed and noted in the public notices inviting bids. Any such bond or deposit shall be in such amount as the purchasing agent shall determine and unsuccessful bidders shall be entitled to return of the bonds or deposits where such has been required. A successful bidder shall forfeit any required deposit upon failure on such bidder's part to enter into a contract within thirty (30) days after the award, if a specified time is not otherwise stated in the bid specifications. The terms and approval of such bonds or deposits shall be in accordance with applicable law. (Ord. #02-09, April 2002)
- **5-814.** Performance and payment bond. The purchasing agent may and is hereby granted the authority to require a bond, before entering into a contract, in such amount as he shall find reasonably necessary to protect the best interests of the town. The terms and approval of such a bond shall be in accordance with applicable law. (Ord. #02-09, April 2002)
- 5-815. Contract approval and change orders. All contracts shall be approved by the town council and executed by the mayor. All contract change orders of ten thousand dollars (\$10,000) or more shall be approved by the town council prior to execution. Contract change orders for less than ten thousand dollars (\$10,000), or change orders that require immediate attention in order to not jeopardize the timing of the project, may be administratively approved by the town manager, provided that the town council has approved the funds for it. The town manager and/or the purchasing agent shall notify the town council of all such change orders. (Ord. #02-09, April 2002, modified)
- **5-816.** Public inspection of records. The purchasing agent shall keep a complete record of all quotations, bids, and purchase orders. Such records shall be open to public inspection. (Ord. #02-09, April 2002)

- 5-817. Conflicts of interest. No purchase shall be made from, nor any contract for purchase of services made with, any person, firm, or corporation in which any elected official, officer or employee of the town is financially interested except when such person, firm, or corporation is the sole source for such goods or services in Rutherford County, Tennessee, and then in such instance all purchases shall be subject to prior approval by the town council and in accordance with applicable state law. No officer or employee of the town 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 town, except on behalf of and for the use of the town. (Ord. #02-09, April 2002, modified)
- 5-818. <u>Items consumed in the course of work or items thought to be worthless</u>. Town property which may be consumed in the course of normal town business and items thought to be worthless shall be disposed of in a like manner to any other refuse. Said items shall be simply charged off as a routine cost of doing business. (Ord. #02-09, April 2002)
- 5-819. <u>Inventory of property required</u>. The purchasing agent shall assist the finance director in maintaining an inventory of all public property and equipment according to the fixed asset policy. When possible, each item of such property shall be labeled, serially numbered, or identifiable in some way as town property. When such inventory is made, one (1) copy thereof shall be filed in the finance department. The inventory shall be adjusted annually as additional properties are acquired or disposed of by the town. (Ord. #02-09, April 2002)
- 5-820. <u>Transfer and sale of materials and equipment</u>. The purchasing agent may transfer to or between departments supplies, materials and equipment. When it is determined by the purchasing agent that material and/or equipment exists which is not needed by any town department, the town council may authorize the purchasing agent to direct the sale thereof, and the proceeds from any sale or sales shall be deposited in the appropriate fund of the town. (Ord. #02-09, April 2002)
- **5-821.** <u>Procedure for sale of materials and equipment</u>. The disposal of surplus, obsolete, or unused materials or equipment shall be by competitive sealed bid or public auction including by internet auction in accordance with the following:
- (1) The purchasing agent shall cause notice of sale to be published in a newspaper of general circulation, giving a general description of the items to be sold, where bids are to be received and time and place of the sale. The purchasing agent may, in addition, solicit competitive sealed bids from prospective buyers, by telephone, by sending them copies of newspaper notices,

or by any other method or methods designed to reach the greatest number of prospective buyers;

- (2) Surplus is to be sold to the highest and best bidder with the right retained by the town to reject any or all bids or to waive any informalities or immaterial defects contained in said bids;
- (3) Competitive sealed bids shall be submitted to the purchasing agent, and shall be identified as bids on the envelope. Sealed bids shall be opened in public in the presence of at least two (2) town employees;
- (4) Depending upon the nature of such surplus offered, the purchasing agent may require that cash or a cashier's check in an amount equal to ten percent (10%) of the price bid be deposited by the bidder at the time of making or submitting the bid. The person to whom property is sold, either by sealed bid or at public auction, shall consummate the purchase within fourteen (14) days from and excluding the date of the award of such bid, or such person shall lose the deposit; and
- (5) The provisions of this section shall not apply when the town is selling surplus, obsolete, or unused materials or equipment to any other federal, state or local governmental unit or agency. (Ord. #02-09, April 2002)
- 5-822. Transfer and sale of surplus real property. When it is determined by the purchasing agent that real property exists, which is not needed by any town department and which property is not the subject of a planned development project of the town, the town council may declare such real property as surplus. The town council may authorize the purchasing agent to direct the sale thereof, and the proceeds from any sale or sales shall be deposited in the appropriate fund of the town.
- **5-823.** Procedure for sale of surplus real property. The disposal of surplus real property shall be by competitive sealed bid or public auction, including by internet auction, in accordance with the following:
- (1) The purchasing agent shall cause notice of the sale to be published in a newspaper of general circulation, on Channel 3, and on the town's website, giving a general description of the surplus real property to be sold, where bids are to be received and the time and place of the sale. The purchasing agent may, in addition, solicit competitive sealed bids from prospective buyers, by telephone, by sending them copies of notices, or by any other method or methods designed to reach the greatest number of prospective buyers. The purchasing agent shall specifically send notice of the sale to any and all property owners which border the surplus real property to be sold;
- (2) Surplus real property is to be sold to the highest and best bidder with the right retained by the town to reject any or all bids or to waive any informalities or immaterial defects contained in said bids;
- (3) The town shall obtain a property appraisal prior to the advertisement of the sale of the surplus real property. In no event shall the

surplus real property be sold for less than the fair market value as determined by the appraisal;

- (4) Competitive sealed bids shall be submitted to the purchasing agent and shall be identified as bids on the envelope. Sealed bids shall be opened in public in the presence of at least two (2) town employees;
- (5) Sales of surplus real property shall be in accordance with the "Terms and Conditions for Sale of Surplus Real Property Policy Statement" adopted by resolution by the town council;
- (6) The provisions of this section shall not apply when the town is selling surplus real property to any other federal, state, or local governmental unit or agency.

TITLE 6

LAW ENFORCEMENT¹

CHAPTER

- 1. LAW ENFORCEMENT DEPARTMENT.
- 2. ARREST PROCEDURES.
- 3. CITATIONS, WARRANTS, AND SUMMONSES.
- 4. SPECIAL POLICE OFFICERS.

CHAPTER 1

LAW ENFORCEMENT DEPARTMENT

SECTION

- 6-101. Office established; functions.
- 6-102. Administration.
- 6-103. Police officer subject to chief's order, etc.
- 6-104. Police officer to preserve law and order, etc.
- 6-105. Police department records.
- **6-101.** Office established; functions. There is created and established a law enforcement department (Smyrna Police Department) which shall provide comprehensive law enforcement for the Town of Smyrna. (1991 Code, § 6-101)
- **6-102.** Administration. The law enforcement department shall be supervised and administered by the chief of police, who shall report directly to the town manager. The chief of police shall be appointed for an indefinite term and may be removed at any time according to the provisions of the Town of Smyrna Employee Handbook. (1991 Code, § 6-102, modified)
- **6-103.** Police officer subject to chief's order, etc. All police officers shall obey and comply with such orders and administrative rules and regulations (i.e. Standard Operating Procedures, SOP) as the police chief may officially issue. (1991 Code, § 6-103)

Emergency vehicles: title 15, chapter 2

Motor vehicles, traffic and parking: title 15.

Municipal offenses: title 11.

Project assistance board: title 2, chapter 4.

¹Municipal code references

- **6-104.** Police officer to preserve law and order, etc. All police officers shall patrol the town and preserve law and order within the town, and serve legal process issued by the town court. (1991 Code, § 6-104, modified)
- **6-105.** Police department records. The police department shall keep a comprehensive and detailed daily record, in permanent form, showing a minimum:
- (1) All known or reported offenses and/or crimes committed within the corporate limits.
 - (2) All arrests made by a police officer.
- (3) All police investigations made, funerals convoyed, fire calls answered, and other miscellaneous activities of the police department.
- (4) Any other records required to be kept by the town council or by law. The police chief shall be responsible for insuring that the police department complies with this section. (1991 Code, § 6-105)

ARREST PROCEDURES

SECTION

- 6-201. When police officer to make arrests.
- 6-202. Disposition of persons arrested.
- **6-201.** When police officer to make arrests. Unless otherwise authorized or directed in this code or other applicable law, an arrest of the person may be made by a police officer in the following cases:
- (1) Whenever he is in possession of a warrant for the arrest of the person.
- (2) Whenever an offense is committed or the person threatens a breach of the peace in the officer's presence.
- (3) Whenever a felony has in fact been committed and the officer has probable cause to believe the person has committed it. (1991 Code, § 6-201)
- 6-202. <u>Disposition of persons arrested</u>. (1) <u>For code or ordinance violations</u>. Unless otherwise provided by law, a person arrested for a violation of this code or other town ordinance, may be brought before the town court magistrate. If the arrested person is under the influence of alcohol or drugs when arrested, even if he is arrested for an offense unrelated to the consumption of alcohol or drugs, the person may be confined until he does not pose a danger to himself or to any other person.
- (2) <u>Felonies or misdemeanors</u>. A person arrested for a felony or a misdemeanor shall be disposed of in accordance with applicable federal and state law and the rules of the court, which has jurisdiction over the offender. (1991 Code, § 6-203, modified)

Deposit of driver's license in lieu of bail in traffic cases: § 15-706.

¹Municipal code reference

CITATIONS, WARRANTS, AND SUMMONSES

SECTION

6-301. Citations in lieu of arrest in traffic cases.

6-302. Summonses in lieu of arrest.

6-301. Citations in lieu of arrest in traffic cases. Pursuant to Tennessee Code Annotated, § 7-63-101, et seq., the town manager appoints the fire chief in the fire department and the building official in the building codes department special police officers having the authority to issue citations in lieu of arrest. The fire chief in the fire department shall have the authority to issue citations in lieu of arrest for violations of the fire code adopted in title 7, chapter 2 of this municipal code of ordinances. The building official in the building department shall have the authority to issue citations in lieu of arrest for violations of the building utility and housing codes adopted in titles 11, 12, 13, 14, and 17 of this municipal code of ordinances. The citation in lieu of arrest 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 and answer the charges against him. The citation 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 special officer in whose presence the offense was committed may immediately arrest the offender and proceed in accordance with Tennessee Code Annotated, § 7-63-104. 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 in lieu of arrest was issued. (1991 Code, § 6-301)

6-302. Summonses in lieu of arrest.¹ Pursuant to Tennessee Code Annotated, § 7-63-201, et seq., which authorizes the mayor and town council to designate certain town enforcement officers the authority to issue ordinance summonses in the areas of sanitation, litter control and animal control, the council designates the building official in the building codes department and the animal warden in the police department to issue ordinance summonses in those areas (town has the right to enter into an inter-local governmental agreement with any governmental agency for this service). 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 a copy of

Deposit of driver's license in lieu of bail in traffic cases: § 15-706.

¹Municipal code reference

the summons to the offender. 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 summoned 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:

- (1) Have a summons issued by the clerk of the town court, or
- (2) May seek the assistance of a police officer to witness the violation. The police officer that witnesses the violation may issue a citation in lieu of arrest for the violation, or arrest the offender for failure to sign the citation in lieu of arrest. If the police officer makes an arrest, he shall dispose of the person arrested as provided in § 6-301 above. 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. (1991 Code, § 6-302, modified)

SPECIAL POLICE OFFICERS

SECTION

- 6-401. Definitions.
- 6-402. Authority to establish additional regulations.
- 6-403. Authorization required to carry weapon.
- 6-404. Application for commission.
- 6-405. Investigation of applicant for commission.
- 6-406. Prior commissions.
- 6-407. Conditions of commissions.
- 6-408. Bond.
- 6-409. Oath
- 6-410. Powers
- 6-411. Identification.
- 6-412. Report of use of weapon.
- 6-413. Conduct.
- **6-401. Definitions**. When used in this chapter, the term "special police officer" means any person commissioned by the chief of police to enforce the non-traffic related codes and ordinances of the Town of Smyrna, or any portion thereof. (Ord. #04-41, Nov. 2004, modified)
- **6-402.** Authority to establish additional regulations. The chief of police has the authority to establish and enforce reasonable rules and regulations for the operation of special police officers in the interest of public safety, morals and welfare, and to effectuate the general purpose of this chapter. (Ord. #04-41, Nov. 2004)
- 6-403. <u>Authorization required to carry weapon</u>. No special police officer may carry a firearm in the execution of his official duties unless such special police officer is also a certified police officer pursuant to <u>Tennessee Code Annotated</u>, § 38-8-107 who has been issued a written directive by the executive supervisor of the organization to which the person is or was attached or employed as contemplated in <u>Tennessee Code Annotated</u>, § 39-17-1315(a)(1), or such special police officer is in possession of a valid handgun carry permit under <u>Tennessee Code Annotated</u>, § 39-17-1351 and is so authorized by separate written directive of the chief of police. Any special police officer designated to carry firearms shall be required to undergo the same training in proper use of firearms as required of sworn, uniformed police officers of the Town of Smyrna, and shall not carry firearms in a manner or place which is prohibited by law. Special police officers may carry other weapons only as specifically authorized by the chief of police. No special police officer is authorized to carry a weapon

of any type if possession of such weapon is prohibited by the terms of 16 U.S.C. § 922. (Ord. #04-41, Nov. 2004, modified)

- **6-404.** <u>Application for commission</u>. Applications for commissions under this chapter shall be made upon forms prepared and made available by the chief of police and shall state:
- (1) The full name, age, residence, and present and previous occupations of the applicant;
 - (2) Whether the applicant is a legal resident of the United States;
- (3) A specific description of the location of the principal site of applicant's employment, or where the commission will be used;
- (4) The number of years of experience the applicant has had as a special police officer or in a related field;
- (5) The length of time the applicant has been a bona fide resident of the state immediately preceding the filing of the application;
- (6) The length of time the applicant has been a bona fide resident of the town immediately preceding the filing of the application;
- (7) A recent photograph of the applicant and a full set of fingerprints; and
 - (8) Proof of the applicant's good character.

The application shall contain such other information as the chief of police shall find reasonably necessary to effectuate the general purpose of this chapter and to make a fair determination of whether the terms of this chapter have been complied with. (Ord. #04-41, Nov. 2004, modified)

- **6-405.** <u>Investigation of applicant for commission</u>. After receipt of the information required by § 6-404 of this chapter, the chief of police shall cause an investigation to be made of the applicant to determine the applicant's good character and qualifications for the commission. (Ord. #04-41, Nov. 2004)
- **6-406.** <u>Prior commissions</u>. Any commission as a special police officer issued by the chief of police prior to the effective date of this chapter shall expire as of December 31, 2004. Notwithstanding the foregoing, however, nothing in this chapter shall be construed as altering, amending or repealing the provisions of chapter 3 of this title. (Ord. #04-41, Nov. 2004)
- **6-407.** <u>Conditions of commissions</u>. The following conditions shall apply to all commissions:
- (1) No special police officer appointed under this chapter shall perform duties as special police officer other than those for which he is appointed.
- (2) Commissions issued under this chapter are to be issued in the sole discretion of the chief of police, and shall be subject to revocation or suspension by the chief of police, in his or her discretion.

- (3) The color and design of all uniforms shall be as approved by the chief of police and may be different from that of the regular town police. Authorization to wear clothing other than the designated uniform while serving the town shall be granted only by the chief of police and must be in writing. Unless specifically designated by the chief of police in writing, non-employees of the Town of Smyrna shall not wear any uniform or other indicia of employment or agency with the Town of Smyrna or the Smyrna Police Department.
 - (4) Commissions issued under this chapter shall not be transferrable.
- (5) Any special police officer commission issued pursuant to an applicant's employment with the Town of Smyrna or any other governmental entity shall be revoked in the event such special police officer's employment with the Town of Smyrna or said other governmental entity ends.
- (6) This chapter shall not create any additional due process rights for employees of the Town of Smyrna. (Ord. #04-41, Nov. 2004, modified)
- **6-408. Bond**. All special police officers not employed by the Town of Smyrna shall be required to give the following bond in the penal sum of ten thousand dollars (\$10,000.00):

State of Tennessee
County of Rutherford
Town of Smyrna
Know all men by these presents: That we,, as principal, and
as his/her surety, are held and firmly bound unto the Town
of Smyrna, Rutherford County, Tennessee in the penal sum of ten thousand and
no/100 dollars (\$10,000.00), for the payment whereof well and truly to be made,
we bind ourselves respectively and our respective heirs.
Signed this day of, 20
The condition of the above bond is such that whereas the above principal
has been duly appointed by the chief of police of the Town of Smyrna to be a
special police officer during pleasure of said chief of police.
Now if said principal shall well and duly and faithfully perform and
fulfill, according to law, all and singular the duties of said office for the said
term, then said bond is null and void; otherwise it is to remain in full force and
effect.
Principal
Surety
(Ord. #04-41, Nov. 2004)

oath:

6-409. Oath. All special officers shall be required to take the following

- 6-410. <u>Powers</u>. Special police officers appointed under the provisions of this chapter shall have the same power and authority to issue citations for violations of and otherwise enforce the codes and ordinances of the Town of Smyrna as regular police officers of the town, but not otherwise. In his or her discretion, the chief of police may limit the authority of any special police officer to enforcement of only certain sections of the codes and ordinances of the Town of Smyrna. No special police officer shall have the power or authority to make arrests except as may be authorized by <u>Tennessee Code Annotated</u>, § 40-7-109 or use force in the discharge of said special police officer's duties except as may be authorized b <u>Tennessee Code Annotated</u>, § 39-11-621. (Ord. #04-41, Nov. 2004)
- **6-411.** <u>Identification</u>. Each special police officer appointed by the chief of police shall carry identification which clearly indicates that the appointee is a special police officer, include as a part thereof a picture which shall be no more than one (1) year old, indicate whether the appointee may carry a weapon and under what conditions, and indicate the restrictions of the commission, if any. (Ord. #04-41, Nov. 2004, modified)
- **6-412.** Report of use of weapon. All special police officers shall make a full written report to the chief of police any time they use a weapon in the discharge of their duties, immediately after the incident. (Ord. #04-41, Nov. 2004)
- **6-413.** Conduct. Special police officers shall conduct themselves at all times in such a manner as to reflect favorably the Town of Smyrna and the Smyrna Police Department. (Ord. #04-41, Nov. 2004)

TITLE 7

FIRE PROTECTION AND FIREWORKS¹

CHAPTER

- 1. FIRE CODE.
- 2. GENERAL PROVISIONS.
- 3. FIRE DEPARTMENT.
- 4. FIREWORKS.
- 5. OPEN BURNING.
- 6. AUTOMATIC SPRINKLERS.

CHAPTER 1

FIRE CODE

SECTION

- 7-101. Fire code adopted.
- 7-102. Enforcement.
- 7-103. Modifications
- 7-104. Gasoline trucks.
- 7-105. Violations.
- 7-101. <u>Fire code adopted</u>. Pursuant to authority granted by <u>Tennessee Code Annotated</u>, §§ 6-54-501--6-54-506, and for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, the <u>International Fire Code</u>,² 2006 edition, is hereby adopted and incorporated by reference as a part of this municipal code, and is hereinafter referred to as the fire code. (Ord. #04-46, Dec. 2004, modified)
- **7-102.** Enforcement. The fire code shall be enforced by the building official or his/her designee. He shall have the same powers as the state fire marshal if he is a certified Tennessee fire inspector. (Ord. #04-46, Dec. 2004, modified)

Emergency vehicles: title 15, chapter 2.

Fires in streets: § 16-112.

Illegal use of fire hydrants: § 18-110.

Private fire lines: § 18-107.

¹Municipal code references

²Copies of this code are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

- **7-103.** <u>Modifications</u>. The fire code is adopted with the following exceptions:
- (1) Chapter 2, § 202 definitions. Group I-4, child care facility, the exception is deleted.
- (2) Chapter 9, §903.2.7 group R, add "Exception, Group R-3 one and two family dwellings shall not be required to install an automatic fire sprinkler system except where special conditions exist as determined by the authority having jurisdiction.
- (3) Chapter 9, § 907.2.2 group B. Change the occupant load from 500 or more persons to 200 or more persons.
 - (4) Adopt appendices A, B, C, and D.
- (5) Chapter 33, § 3308.11 retail display and sale. The first sentence of this section is deleted. (Ord. #05-04, Feb. 2005, modified)
- **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. (1991 Code, § 7-205)
- 7-105. <u>Violations</u>. It shall be unlawful for any person to violate any of the provisions of this chapter or the fire prevention code hereby adopted, or fail to comply therewith, or violate or fail to comply with any order made thereunder; or build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken; or fail to comply with such an order as affirmed or modified by the town council or by a court of competent jurisdiction, within the time fixed herein. The application of a penalty under the general penalty clause for the town code shall not be held to prevent the enforced removal of prohibited conditions. Each day a violation is allowed to continue shall constitute a separate offense. (1991Code, § 7-207, modified)

GENERAL PROVISIONS

SECTION

- 7-201. Fire limits described.
- 7-202. Required access for fire apparatus.
- **7-201.** <u>Fire limits described</u>. The corporate fire limits shall be as follows:

The present town limits of the Town of Smyrna, and as said town limits are later extended by annexation. (1991 Code, § 7-701)

- **7-202.** Required access for fire apparatus. (1) For all buildings covered by Tennessee Code Annotated, § 68-120-101, et seq., required access for fire apparatus shall be provided in accordance with Appendix D of the International Fire Code, 2006 edition, adopted herein.
- (2) The designation, use, and maintenance of fire lanes on private property shall be accomplished as specified by the building official.
- (3) It shall be unlawful for any person to park motor vehicles on, or otherwise obstruct, any fire lane.
- (4) The only exception shall be when any combination or private fire protection facilities, including, but not limited to, fire-resistive roofs, fire separation walls, space separation and automatic fire extinguishing systems, are provided and approved by the building official as an acceptable alternate, this section shall not apply. (1991 Code, § 7-102, modified)

FIRE DEPARTMENT¹

SECTION

- 7-301. Establishment, equipment, and membership.
- 7-302. Objectives.
- 7-303. Organization, rules, and regulations.
- 7-304. Records and reports.
- 7-305. Chief responsible for training and maintenance.
- 7-306. Chief to be assistant to state officer.
- 7-307. Destruction of property.
- 7-308. Police authority of firefighters.

7-301. Establishment, equipment, and membership. There is hereby established a fire department to be supported and equipped from appropriations by the town council. All apparatus, equipment, and supplies shall be purchased by or through the town and shall be and remain the property of the town. The fire department shall be composed of a chief and any such staff as the town council shall authorize. (Ord. #02-04, Feb. 2002, modified)

7-302. Objectives. 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;
- (6) To perform such rescue work as its equipment and/or training of its personnel makes practicable. (Ord #02-04, Feb. 2004)
- **7-303.** Organization, rules, and regulations. The chief of the fire department shall set up the organization of the department, make definite assignments to individuals, and shall formulate and enforce such rules and regulations as shall be necessary for the orderly and efficient operation of the fire department. (Ord #02-04, Feb. 2004)
- **7-304.** Records and reports. The chief of the fire department shall keep adequate records of all fires, inspections, apparatus, equipment, personnel, and work of the department. He/she shall submit a written report on such matters to the town manager as the town manager requires. The town manager

Special privileges with respect to traffic: title 15.

¹Municipal code reference

- shall submit a report on those matters to the town council as they may require. (Ord #02-04, Feb. 2004, modified)
- **7-305.** Chief responsible for training and maintenance. The chief of the fire department shall be fully responsible for the training of the firefighters and maintenance of all property and equipment of the fire department. (Ord #02-04, Feb. 2004)
- 7-306. Chief to be assistant to state officer. Pursuant to requirements of Tennessee Code Annotated, § 68-102-108, the chief of the fire department is designated as an assistant to the state commissioner of commerce and insurance and banking and is subject to all the duties and obligations imposed by chapter 102 of title 68 of said Tennessee Code Annotated, and shall be subject to the directions of the fire prevention commissioner in the execution of the provisions thereof. (Ord #02-04, Feb. 2004, modified)
- **7-307.** <u>Destruction of property</u>. During the progress of any fire, firefighters may remove or destroy any property when reasonably necessary to prevent the further spread of the fire. (Ord #02-04, Feb. 2004)
- **7-308.** Police authority of firefighters. Pursuant to <u>Tennessee Code Annotated</u>, § 55-8-108, firefighters shall have the same powers and authority as police officers of the town while going to, attending, and returning from a fire alarm. (Ord #02-04, Feb. 2004, modified)

FIREWORKS

SECTION

- 7-401. Purpose.
- 7-402. Definition of terms.
- 7-403. Permit required.
- 7-404. Permit fee.
- 7-405. Privilege licenses required.
- 7-406. Permissible types of fireworks.
- 7-407. Conditions for sale and use permissible items.
- 7-408. Retail sale of permissible items--time limitations--exceptions.
- 7-409. Public displays--permits--regulation.
- 7-410. Regulations governing storing, locating or display of fireworks.
- 7-411. Unlawful acts in the sale, handling or private use of fireworks.
- 7-412. Seizure and destruction of fireworks.
- 7-413. Penalty for violation.
- 7-414. Exceptions to application.
- 7-415. Permissible dates and times of discharge.
- 7-416. Discharge on other dates.
- 7-417. Discharge on town property prohibited.
- 7-418. Compliance with applicable laws and standards required.
- 7-419. Removal of debris required.
- 7-420. Violations related to discharge.
- **7-401.** Purpose. The purpose of this chapter is to provide an ordinance for regulation of the manufacture, sale, display and use of certain fireworks for both private and public display within the corporate limits of the Town of Smyrna, Tennessee setting certain guidelines which shall provide for the general safety and welfare of the citizens thereof.
- **7-402.** <u>Definitions</u>. As used in this chapter, the following terms shall have the meaning ascribed to them herein in accordance with <u>Tennessee Code Annotated</u>, § 68-104-101, unless clearly indicated otherwise.
- (1) "Distributor" means any person engaged in the business of making sales of fireworks to any other person engaged in the business of reselling fireworks either as a retailer, wholesaler, or any person who receives, brings, or imports any fireworks of any kind, in any manner into the Town of Smyrna, except to a holder of a manufacturer's, distributor's or wholesaler's permit issued by the State Fire Marshal and the Smyrna Town Manager.
- (2) "D.O.T. Class C Common/1.4G fireworks" means all articles of fireworks as are now or hereafter classified as "D.O.T. Class C Common/1.4G

fireworks" in the regulations of the United States Department of Transportation for transportation of explosive and other dangerous articles.

- (3) "Manufacturer" means any person engaged in the making, manufacture or construction of fireworks of any kind within the Town of Smyrna.
- (4) "Permit" means the written authority of the town manager issued under the authority of this chapter.
 - (5) "Person" means, any individual, firm, partnership or corporation.
- (6) "Retailer" means any person engaged in the business of making retail sales of firework at specified times during the year as provided herein.
- (7) "Sale" means an exchange of articles of fireworks for money and also includes the barter, exchange, gift or offer thereof, and each such transaction made by any person, whether as principal, proprietor, salesman, agent, association, co-partnership, or one (1) or more individuals.
- (8) "Special fireworks" means all articles of fireworks that are classified as Class B/1.3G explosives in the regulation of the United States Department of Transportation and includes all articles other than those classified as Class C.
- 7-403. Permit required. Any person, corporation or business entity desiring to sell fireworks as defined in Tennessee Code Annotated, § 68-104-108 shall first secure and obtain any and all necessary permits and comply with any and all rules and regulations set forth in Tennessee Code Annotated, § 68-104-101 and all following code sections pertaining to fireworks thereinafter stated including all provisions through Tennessee Code Annotated, § 68-104-116 to the extent the same are not in conflict with the further provisions of this chapter. (1991 Code, § 7-401, modified)
- **7-404.** Permit fee. The permit fee for the permit provided for in § 7-403 of this chapter shall be established by a fee schedule adopted as a part of the budget ordinance, and the permit shall be valid for thirty (30) days. However, the town council may in its discretion waive the permit fee for any non-profit organization requesting the permit.
- **7-405.** <u>Privilege licenses required</u>. The issuance of permits provided for herein shall not replace or relieve any person of state, county or municipal privilege licenses as now or hereafter provided by law. Permittees shall comply with the Town of Smyrna Fireworks Permit requirements on file with the town clerk.
- **7-406.** Permissible types of fireworks. It is unlawful for any individual, firm, partnership or corporation to possess, sell or use within the Town of Smyrna, or ship into the Town of Smyrna, except as provided in this

chapter, any pyrotechnics commonly known as "fireworks" other than the following permissible items:

- (1) Those items now or hereafter classified as D.O.T. Class 5 Common/1.4G fireworks; or
- (2) Those items that comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission and permitted for use by the general public under its regulations.
- 7-407. Conditions for sale and use permissible items. No permissible articles of common fireworks, shall be sold, offered for sale, or possessed within the Town of Smyrna, or used within the town, unless it is properly named and labeled to conform to the nomenclature of allowed fireworks and unless it is certified an "common fireworks" on all shipping cases and by imprinting on the article or retail container "D.O.T. Class C Common/1.4G fireworks," such imprint to be of sufficient size and so positioned as to be readily recognized by law enforcement authorities and the general public. The fire marshal of the State of Tennessee regulations relative to the possession and sale of fireworks, their storage and safety requirements, are here and now incorporated by reference herein, together with the National Fire Protection Association (NFPA 1123 and 1126), and the International Fire Code, all in full force and effect within the town.
- **7-408.** Retail sale of permissible items time limitations exceptions. Permissible articles of fireworks may be sold at retail to residents of the Town of Smyrna and used within the Town of Smyrna from June 20th through July 5th, and December 20th through January 2nd of each year only, except that "fireworks" does not include toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five one-hundredths (25/100) grains or less of explosive compounds are used, provided they are so constructed that the hand cannot come in contact with the cap when in place for exploding, and toy paper pistol caps which contain less than twenty-five one-hundredths (25/100) grains of explosive compounds, cone, bottle, tube, and other type serpentine pop-off novelties, model rockets, wire sparklers, containing not over one hundred (100) grams of composition per item (sparklers containing chlorate or perchlorate sales may not exceed five (5) grams of composition per item), emergency flares, matches, trick matches, and cigarette loads, the sale and use of which shall be permitted at all times.
- **7-409.** Public displays-permits-regulation. Nothing in this chapter shall be construed as applying to the shipping, sale, possession, and use of fireworks for public displays by holders of a permit for a public display to be conducted in accordance with the rules and regulations promulgated by the State Fire Marshal. Such items of fireworks which are to be used for public

display only and which are otherwise prohibited for sale and use within the Town of Smyrna shall include display shells designed to be fired from mortars and display set pieces of fireworks classed by the regulation of the United States Department of Transportation as "Class B Special/1.3G fireworks" and shall not include such items of commercial fireworks as cherry bombs, tubular salutes, repeating bombs, aerial bombs and torpedoes. Public displays shall be performed only under competent supervision, and after the persons or organizations making such displays shall have received written approval from the fire chief, police chief, and the town manager, or their designees, and applied for and received a permit for such displays issued by the state fire marshal. Applicants for permits for such public displays shall be made in writing and shall show that the proposed display is to be so located and supervised that it is not hazardous to property and that it shall not endanger human lives. Possession of special fireworks for re-sale to holders of a permit for public fireworks displays shall be confined to holders of a distributors permit only. Applicants for a permit for public display of fireworks, not using common fireworks, shall submit with the application a non-refundable application fee established in the fee schedule adopted as part of the budget ordinance.

- 7-410. Regulations governing storing, locating or display of fireworks. (1) Placing, storing, locating or displaying fireworks in any window where the sun may shine through glass onto the fireworks so displayed or to permit the presence of lighted cigars, cigarettes, or pipes within one hundred (100) feet of where the fireworks are offered for sale is hereby declared unlawful and prohibited. At all places where fireworks are stored or sold, there must be posted signs with the words "fireworks--no smoking" in letters not less than four (4) inches high. No fireworks shall be sold at retail at any location where paints, oils or vanishes are for sale or use, unless such paints, oils or varnishes are kept in their original consumer containers, nor where resin, turpentine, gasoline or any other flammable substance is stored or sold, if the storage creates an undue hazard to any person or property.
- (2) All firework devices that are readily accessible to handling by consumers or purchaser, must have their fuses protected in such a manner as to protect against accidental ignition of an item by spark, cigarette ash or other ignition source. Safety-type thread-wrapped and coated fuses shall be exempt from this provision.
- (3) All firework devices sold under a duly issued permit must be located not less than three hundred (300) feet from any gasoline dispensing pump.
- (4) As permits are temporary for a period not to exceed thirty (30) days, the permit shall state any sales site must be at all times free from litter and debris, including the termination date of authorized selling periods. Violation of this provision, for which citation may issue, may give cause to refuse issuance of another permit for a period not to exceed three (3) years.

7-411. <u>Unlawful acts in the sale, handling or private use of fireworks</u>. (1) It is unlawful to:

- (a) Offer for retail sale or to sell any fireworks to children under the age of sixteen (16) years or to any intoxicated or irresponsible person. Sales to minors shall be made in accordance with the state law;
- (b) Explode or ignite fireworks within six hundred (600) feet of any church, hospital, asylum, public school or within five hundred (500) feet of where fireworks are stored, sold or offered for sale, or within five hundred (500) feet of a gasoline retailer or wholesale storage facility;
- (c) Ignite or discharge any permissible articles of fireworks within or throw the same from a motor vehicle while within, nor shall any person place or throw any ignited article of fireworks into or at such a motor vehicle, or at or near any person or group of people.
- (2) All items of fireworks which exceed the limits of D.O.T. Class C Common/1.4G fireworks as to explosive composition, such items being commonly referred to as "illegal ground salutes" designed to produce an audible effect, are expressly prohibited from shipment into, manufacture, possession, sale or use within the Town of Smyrna for any purpose. This subsection shall not effect display fireworks authorized by this chapter.
- (3) Fail to comply with the town's zoning ordinance relative to minimum front building line set back requirements set forth in the town's zoning ordinance.
- **7-412.** Seizure and destruction of fireworks. (1) The Smyrna Town Manager, or designee, may seize as contraband any fireworks other than "Class C common fireworks" or "special fireworks" for public displays, which are sold, displayed, used or purchased in violation of this chapter.
 - (2) Before any seized fireworks may be destroyed:
 - (a) If the owner of such seized fireworks is known, the town manager shall give notice by registered mail or personal service to such owner, of the fire chief's intention to destroy such seized materials. Such notice shall inform the owner of the owner's right to a hearing. Upon the request of the owner, the town manager shall conduct an appropriate contested case hearing concerning such destruction of fireworks in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, title 4, chapter 5.
 - (b) If the identity of the owner of any seized fireworks is not known to the town manager, the town manager shall cause to be published, in a newspaper of general circulation in the county wherein the seizure was made, notice of such seizure, and of the fire chief's intention to destroy such fireworks. The notice shall be published once each week for three (3) consecutive weeks and if no person claims ownership of the fireworks within ten (10) days of the date of the last publication, the fire chief may proceed to destroy the fireworks. If the

owner does claim the fireworks within the time specified, a hearing as set out in this subsection shall be held.

- **7-413.** Penalty for violation. Any individual, firm, partnership or corporation that violates any provision of this chapter, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding state authorized maximum limits. In addition, the Town of Smyrna may refuse to issue another permit to the holder of a permit so convicted for a period not to exceed three (3) years.
- 7-414. Exceptions to application. Nothing in this chapter shall be construed as applying to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation or of illuminating devices for photographic use, nor as applying to the military or naval forces of the United States, of the State of Tennessee or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, theatrical, or athletic events, nor as applying to the transportation, sale or use of fireworks solely for agricultural purposes, providing the purchaser first secures a written permit to purchase and use fireworks for agricultural purposes only from the state fire marshal, and after approval of the county agricultural agent of the county in which the fireworks are to be used and the fireworks must at all times be kept in possession of the farmer to whom the permit is issued. Such permits and fireworks shall not be transferable. Items sold for agricultural purposes shall be limited to those items that are legal for retail sale and use within the Town of Smyrna.
- **7-415.** Permissible dates and times of discharge. The discharge of common fireworks within the corporate limits of the Town of Smyrna shall be restricted to the following dates and times:

July 3 through July 59:00 A.M. until 10:00 P.M.December 31 through January 29:00 A.M. until 10:00 P.M.

Notwithstanding the foregoing, the dates of July 4 through December 31 of each year, the discharge of common fireworks will be restricted between the hours of 9:00 A.M. and 1:00 A.M. (Ord. #02-35, Sept. 2002, modified)

- 7-416. <u>Discharge on other dates and times prohibited; special permits</u>. (1) The discharge of all common fireworks within the corporate limits of the Town of Smyrna on times and dates not authorized by this chapter are strictly prohibited.
- (2) Requests for special permits to discharge common fireworks within the corporate limits of the Town of Smyrna during times and dates not authorized by this chapter may be submitted for consideration to the fire chief,

the chief of police and the town manager. All requests must be submitted no less than 15 days prior to the scheduled event. The special authorization required shall be reviewed based upon, but not limited to, the following criteria:

- (a) The risk to public health and safety;
- (b) Any financial obligations incurred by the town to provide adequate protection from possible hazards;
 - (c) The location of the event;
- (d) Any possible disturbance of the peace violations in the Town of Smyrna;
- (e) Whether the display will serve the common good of the citizens of the Town of Smyrna.
- (3) Any and all requests which fail to serve the general good of the community may be denied at the discretion of the town manager based upon recommendations from the fire chief or the chief of police.
- (4) Requests for special permits to discharge common fireworks as provided in this section shall be accompanied by a non-refundable application fee established in the fee schedule adopted as part of the budget ordinance. (Ord. #02-35, Sept. 2002, modified)
- **7-417.** Discharge on town property prohibited. No fireworks shall be discharged or carried onto property of the Town of Smyrna, including, without limitation, any or all of the town's public parks; provided, however, that the provisions of this section shall not apply event sponsored by the Town of Smyrna. (Ord. #02-35, Sept. 2002)
- 7-418. Compliance with applicable law and standards required. Any and all discharges of fireworks within the corporate limits of the Town of Smyrna must comply with Tennessee Code Annotated, § 68-104-211, and NFPA 1123, and the most recently adopted version of the International Fire Code by the Town of Smyrna. (Ord. #02-35 Sept. 2002, modified)
- 7-419. Removal of debris required. Any parties or individuals who discharge fireworks within the corporate limits of the Town of Smyrna either for public display or personal use must clear any debris from public roadways or rights of way after the discharge of the fireworks. If any such debris is not removed, such parties or individuals may be cited under § 16-107 of the Smyrna Municipal Code and/or Tennessee Code Annotated, § 39-14-502, (Ord. #02-35, Sept. 2002)
- **7-420.** <u>Violations related to discharge</u>. It shall be unlawful and a misdemeanor for any person to ignite, discharge, use or explode any common fireworks within the corporate limits of the Town of Smyrna except in accordance with the provisions of this chapter. Each day a violation is allowed

to continue shall constitute a separate offense. (Ord. #02-35, Sept. 2002, modified)

CHAPTER 5

OPEN BURNING

SECTION

- 7-501. Purpose.
- 7-502. Permit required, etc.
- 7-503. Permit application.
- 7-504. Authority to suspend permit/burning.
- 7-505. Compliance with chapter.
- 7-506. Exemptions.
- 7-507. Unauthorized burning prohibited.
- 7-508. Violation and penalty.
- **7-501. Purpose**. The purpose of this chapter is to prevent fires that may be hazardous to life and property, eliminate potentially dangerous accumulations of combustible materials and to assist the city in eliminating unlawful, unnecessary and indiscriminate burning.
- **7-502. Permit required, etc**. (1) No open burning shall be permitted within the Town of Smyrna without a permit, except as provided in § 7-506.
- (2) A permit may be issued at no charge pursuant to this chapter for the destruction of leaves, grass, and other natural vegetation which has been cut and stacked, or raked, as a result of residential, commercial, industrial, or institutional yard clean-up.
- (3) All such permits shall be available for inspection throughout the period of time the permit is issued and the open burning is in progress.
- **7-503. Permit application**. To obtain a permit required by this chapter, the applicant shall contact the Town of Smyrna Fire Department to request a permit. The fire department may issue an open burning permit in its discretion considering fire safety hazards.
- **7-504.** Authority to suspend permit/burning. (1) Regardless of any established permit period, the fire chief or his designee shall have the authority to forbid, restrict or suspend any and all burning or cancel any permit upon determining that weather or other conditions are unfavorable or hazardous for outdoor fires.
- (2) The fire chief or his designee in granting or denying such permission, shall take into consideration the atmospheric conditions, the site of the proposed burning in relation to proximate structures, the availability of fire suppression equipment at the site, the attendance of a competent person during the burning, and any other local conditions that might make such a fire hazardous.

- **7-505.** <u>Compliance with chapter</u>. (1) The person to whom the permit is issued shall be the person responsible for any consequences of action for any damages, injuries or claims resulting from such burning or for responsibility of obtaining any other permit that may be required.
- (2) A garden hose and water supply or other fire extinguishing equipment must be on hand and a competent person in constant attendance until all fire has been extinguished.
- (3) The location of the fire shall not be less than fifty (50) feet from any structure and adequate provision shall be made to prevent fire from spreading within fifty (50) feet of any structure.
- **7-506.** Exemptions. The following type of outdoor fires are exempt from the permit process:
 - (1) Contained cooking fires;
 - (2) Fire in outdoor fire pits or fireplaces;
- (3) Open fires for the training and instruction of fire fighting personnel;
- (4) Heating on construction projects, provided the burning is in a suitable metal container.
- **7-507.** <u>Unauthorized burning prohibited</u>. The open burning of any garbage, trash, rubbish, construction debris, waste material, or any other type of combustible material by any person, firm or corporation is hereby prohibited, except as provided in this chapter.
- **7-508.** <u>Violation and penalty</u>. The violation of any provision of this chapter is punishable under the general penalty provision of this municipal code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 6

AUTOMATIC SPRINKLERS

SECTION

- 7-601. Automatic fire sprinkler systems required.
- 7-602. Terms defined.
- 7-603. Buildings requiring sprinkler systems.
- 7-604. Standard of construction and installation.
- 7-605. Maintenance of system required.
- 7-606. Inspection.
- 7-607. Miscellaneous provisions.
- 7-608. Parking structures; car washes.
- 7-609. Enforcement.
- **7-601.** Automatic fire sprinkler systems required. Automatic fire sprinkler systems shall be installed and maintained in operable condition in the buildings and at the locations specified in this chapter. Such systems shall be installed in each building that shall be built or for which a building permit is issued more than ninety days after the effective date of the ordinance comprising this chapter.
- **7-602.** <u>Terms defined</u>. Whenever in this chapter the words or phrases hereinafter in this section defined are used, they shall have the following meaning:
- (1) "Automatic fire extinguishing system" shall mean an approved system of devices and equipment that automatically detects a fire and discharges an approved fire-extinguishing agent onto or in the area of a fire.
- (2) "Automatic fire sprinkler system" shall mean an integrated system of piping connected to a water supply, with listed sprinklers that automatically initiate water discharge over a fire area. Where required, the sprinkler systems shall also include a control valve and a device for actuating an alarm when the system operates.
- (3) "Building" shall mean any structure that encloses a space used for sheltering any occupancy. Each portion of a building separated from other portions by a firewall shall be considered as a separate building. The term "building" shall also include any garage, out building or other accessory building used for any commercial or industrial purpose. For dwellings only, "building" shall not include any detached accessory structure containing no life hazards upon review and written justification and approval by the fire codes inspector and the building official. The term "building" as used in this chapter shall not include "dwellings" as defined in § 7-602(4) or "manufactured homes" as defined in § 7-602(11).

- (4) "Dwelling" shall mean any building that contains not more than one- or two- dwelling units intended to be used, rented, leased, let, or hired out to be occupied or that are occupied for habitation purposes.
- (5) "Dwelling unit" shall mean one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit, that normally have cooking, living, sanitary, and sleeping facilities.
- (6) "Existing building" shall mean any structure erected prior to the adoption of this ordinance or any structure for which a permit has been issued no more than ninety days after the effective date of this ordinance.
- (7) "Fire chief" shall mean the fire chief of the Smyrna Fire Department.
- (8) "Fire department connection" shall mean a hose connection at grade level or street level for use by the fire department only for the purposes of supplying water to standpipes and/or sprinkler systems.
- (9) "Fire code enforcement official" shall mean the code enforcement official appointed by the town manager or his designee to enforce the fire codes of the Town of Smyrna.
- (10) "Gross floor area" shall mean the area within the inside perimeter of the exterior walls with no deductions for corridors, stairs, closets, thickness of walls, columns or other features, exclusive of area open and unobstructed to the sky.
- (11) "Manufactured home" shall mean a structure, transportable in one or more sections, that in the traveling mode is eight body feet or more in width and forty body feet or more in length or, where erected on-site is three hundred twenty (320) square feet or more, and that is build on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation where connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained there.
- (12) "New building" shall mean any structure for which a building permit is issued more than ninety (90) days after the adoption of this code. The term "new building" as used in this chapter shall not include "dwellings" as defined in § 7-602(4) or "manufactured homes" as defined in § 7-602(11). The term "new building" as used in this chapter shall not include buildings in which there are only Group B occupancies as defined in Section 304.1 of the International Building Code if such building is less than 10,000 square feet and not otherwise physically connected to another building.
- (13) "Retrofit" shall mean the mandatory installation of an automatic fire sprinkler system in a structure that exists at the time of adoption of this ordinance.
- (14) "Renovated buildings" shall mean construction to the building that is greater than fifty percent (50%) of the estimated cost of reconstructing the entire structure or where more than fifty percent (50%) of the gross square footage has been substantially altered.

- **7-603.** <u>Buildings requiring sprinkler systems</u>. (1) All new buildings shall be provided with an automatic fire sprinkler system regardless of the gross floor area, except as may otherwise be provided herein.
- (2) Renovated buildings for which a permit is issued more than ninety (90) days after the effective date of the ordinance comprising this chapter shall be retrofitted and provided with an automatic fire sprinkler system.
- (3) Any addition to an existing building which addition is over five hundred (500) square feet, or any addition which brings the building area to fifteen hundred (1500) square feet or more shall cause the entire building to conform to the requirements for new buildings.
- (4) The provisions of this section shall not apply to one- and two-family dwellings or to manufactured homes. The provisions of this section shall not apply to buildings in which there are only Group B occupancies as defined in Section 304.1 of the International Building Code if such building is less than 10,000 square feet and not otherwise physically connected to another building.
- 7-604. Standard of construction and installation. Automatic fire sprinkler systems required by this ordinance and automatic fire sprinkler systems voluntarily implemented shall be designed and installed in accordance with the most recently adopted version of the International Building Code and the International Fire Code and in accordance with the scope and purpose of the latest edition of the following standards as published by the National Fire Protection Association for the applicable occupancy:
 - (1) NFPA 13, Standard of the Installation of Sprinkler Systems.
- (2) NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.
- (3) NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

Where the provisions of this chapter conflict with the above, the most stringent as to the chapter and the standards shall apply. Where any provision of the automatic sprinkler ordinance contained in this chapter conflict with any provision of the International Code Council codes adopted by the town council or any standards applied herein, the most stringent provision and standards shall apply.

7-605. <u>Maintenance of system required</u>. Occupied or unoccupied buildings or portions thereof having a sprinkler system in place, whether or not such system is required by this chapter, shall maintain all sprinklers and standpipe systems and all component parts in workable condition at all times, and it shall be unlawful for any owner or occupant or agent of either to reduce the effectiveness of the protection those systems provide. This section does not prevent the owner or occupant of a building from temporarily reducing or discontinuing the protection when necessary in order to conduct testing, repairs, alterations, or additions to the system, provided that the testing, repairs,

alterations, or additions are done in such a way as to avoid the creation of a safety hazard, and provided that the fire department and the fire codes enforcement official have been notified that the work will be done, informed of the time the system will be shut down and then notified when the system is put back on line.

- **7-606.** <u>Inspection</u>. (1) The fire codes official for the town shall provide an initial inspection of the automatic fire suppression system or automatic sprinkler system for structures meeting the criteria for this chapter. This inspection shall not guarantee proper installation of said system, but will insure that the system exists.
- (2) All automatic sprinkler systems and automatic fire extinguishing systems, and appurtenances thereto, shall be installed, tested, inspected, and maintained in accordance with the National Fire Protection Association Standards and the most recently adopted codes of the International Code Council. A certificate or other proof of proper installation shall be provided to the town by a registered fire sprinkler system contractor as defined in and provided for in Tennessee Code Annotated, §62-32-101, et seq. prior to the issuance of a certificate of occupancy, including any temporary certificate of occupancy.
- (3) All buildings containing an approved automatic sprinkler system or automatic fire extinguishing system, with the exception of one- and two-family dwellings, shall be inspected and tested annually by a qualified sprinkler technician. A written copy of the yearly inspection and test report shall be forwarded to the fire codes official office. Buildings, with the exception of one- and two-family dwellings, shall be subject to random inspection by the fire codes enforcement official in order to verify the existence of the system and to verify that the system is on line.
- 7-607. <u>Miscellaneous provisions</u>. (1) Where an automatic fire sprinkler system is determined to increase the hazard to the property or occupants to be protected, other automatic fire extinguishing systems appropriate for the hazard shall be designed, installed, tested, inspected, and maintained in accordance with National Fire Protection Association standards. Such systems must be inspected and approved after installation by the fire codes official and a certificate or other proof of proper installation shall be provided to the town by a registered fire sprinkler system contractor as defined in and provided for in <u>Tennessee Code Annotated</u>, §62-32-101, <u>et seq.</u>, prior to the issuance of a certificate of occupancy, including any temporary certificate of occupancy.
- (2) Automatic fire sprinkler systems in dwellings must be a looped flow through design. Final pressure in the system in dwellings must be at least seven psi at the sprinkler head. Minimum size of sprinkler lines in dwellings

shall be three fourths (¾) of an inch and in no event shall be smaller than the minimum size line required for a looped flow through system.

- (3) Every new fire department connection for an automatic fire sprinkler system shall be located a minimum of thirty (30) feet from the building. All fire department connections for automatic fire sprinkler systems shall be equipped with an approved fire department connection plug or locking cap. Fire department connections on existing buildings shall be equipped with an approved fire department connection plug or locking cap within one year of the date of the adoption of this ordinance. It shall be unlawful to tamper with or otherwise damage, block, or disable the fire department connection plug or locking cap.
- (4) With the exception of one- and two-family dwellings, a fire hydrant shall be located not more than one hundred (100) feet from the fire department connection to the sprinkler system.
- (5) Where building fire alarm facilities are not provided in one- or two-family dwellings, all control valves must be placed in a locked cabinet with an approved locking device. Actuation of the extinguishing system shall require at least one building alarm to sound within the facility. Alarms shall be installed in accordance with NFPA 72.
- (6) With the exception of one- and two-family dwellings, an approved automatic sprinkler system shall include an evacuation alarm which will sound and be audible throughout the entire building when the sprinkler system is activated. An internal fire alarm system may be utilized to meet this requirement, provided it is interconnected to activation of the sprinkler system.
- (7) It shall be unlawful and a violation of this chapter to disable, damage, or otherwise tamper with tamper alarms related to any automatic fire extinguishing system.
- (8) A key box shall be provided outside the main entrance to any non-residential building regulated hereunder, containing a key to allow access to all fire department areas, except duplexes and multi-family dwellings which shall only provide access to fire department control valves. The key box shall be a standard brand and shall be approved by the fire codes official and fire chief for the Town of Smyrna. The key box shall be installed on all new construction. Key boxes, approved in accordance with this section, shall be placed on existing buildings within one year of the date of the adoption of the ordinance comprising this chapter. The location of the key box shall be standardized and shall be placed as specified by agreement of the fire codes enforcement official and the fire chief. Each key box installation location shall be approved by the fire codes official and fire chief for the town. Access to the key box shall not be blocked. It shall be unlawful and a violation of this chapter to disable, damage, or otherwise tamper with such key boxes.
- **7-608.** Parking structures; car washes. (1) Parking structures are exempt from the provisions of this chapter unless:

- (a) The parking structure is defined as closed within the most recently adopted version of the International Building Code definitions and thereby requires mechanical ventilation;
- (b) The parking area is located within or under an occupied building; or
- (c) Free standing parking structures allowed this exemption must have fire department stand pipe connections available on all floors at a distance not to exceed two hundred fifty (250) feet from any point.
- (2) Open bay car washes are exempt from the provisions of this chapter.

7-609. Enforcement. Any person, firm, or corporation being the owner or having control or use of any building or premises that violates any of the provisions of this chapter, shall be guilty of a civil offense and shall be fined the maximum authorized penalty under state law for each offense. Each day such violation is permitted to exist after notification shall constitute a separate offense.

When any violation of any provision of this chapter shall be found to exist, the building official, upon recommendation and agreement by the fire chief, the fire codes official, and the town manager for the Town of Smyrna, is hereby authorized and directed to institute any and all actions and proceedings either legal or equitable, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the town, including but not limited to the issuance of a "stop work" order to aid in the enforcement of any of the provisions of this chapter or the issuance of a citation to municipal court.

TITLE 8

ALCOHOLIC BEVERAGES

CHAPTER

- 1. CONSUMPTION OF ALCOHOLIC BEVERAGES ON PREMISES.
- 2. BEER.

CHAPTER 1

CONSUMPTION OF ALCOHOLIC BEVERAGES ON PREMISES¹

SECTION

- 8-101. Subject to certain statutes and regulations.
- 8-102. Terms defined.
- 8-103. Regulations and prohibited practices.
- 8-104. Revocation of beer permit reported to ABC.
- 8-105. Prohibited sexual or pornographic conduct.
- 8-106. Privilege taxes.
- 8-107. Sales to minors prohibited.
- 8-108. Prohibited acts by state law.
- 8-109. Violations; penalty.
- **8-101.** Subject to certain statutes and regulations. (1) The general provisions of state law relating to alcoholic beverages as contained in <u>Tennessee Code Annotated</u>, title 57, as it may be amended from time to time, and hereby adopted as part of this title and are fully incorporated in this title by reference.
- (2) The various rules and regulations promulgated from time to time by the Tennessee Alcoholic Beverage Commission and Department of Revenue regarding the sale of alcoholic beverages are hereby adopted as a part of this title and are fully incorporated herein by reference.
- (3) It shall be unlawful to engage in the business of selling, storing, transporting or distributing or to purchase or possess alcoholic beverages within the corporate limits of the Town of Smyrna, except as provided by <u>Tennessee Code Annotated</u>, title 57, and by rules and regulations promulgated thereunder, and as provided in this title.
- (4) Title 57, chapter 4, inclusive, of the <u>Tennessee Code Annotated</u>, as it may be amended from time to time, is hereby adopted so as to be applicable to all sales of alcoholic beverages for on-premises consumption which are regulated by said code when such sales are conducted within the corporate

¹Municipal code references Alcohol: title 11, chapter 2. limits of the Town of Smyrna. It is the intent of the town council that <u>Tennessee Code Annotated</u>, title 57, chapter 4, shall be effective in the Town of Smyrna, the same as if said code sections were copied herein verbatim. (Ord. #02-53, Jan. 2003, modified)

- **8-102.** <u>Terms defined</u>. The definitions set forth in <u>Tennessee Code Annotated</u>, § 57-4-102, as the same may be amended from time to time, are incorporated herein as if copied verbatim in their entirety. (Ord. #02-53, Jan. 2003)
- 8-103. Regulations and prohibited practices. It shall be unlawful for any person, firm or corporation holding a license to sell alcoholic beverages for consumption on the premises to violate the rules, regulations, and prohibited practices set forth in Tennessee Code Annotated, §§ 57-4-201 through 204, as such sections may be amended from time to time, which code sections are incorporated herein as if copied verbatim in their entirety. (Ord. #02-53, Jan. 2003)
- 8-104. Revocation of beer permit reported to ABC. When any person, firm, or corporation holds both a license to sell alcoholic beverages for consumption on the premises and a beer permit, should the beer permit be revoked or suspended, the beer board is hereby directed to send a notice of the suspension or revocation to the Alcoholic Beverage Commission pursuant to Tennessee Code Annotated, § 57-4-202(b). In addition, when the beer board is considering the suspension of any such licensee's beer permit, consideration shall also be given to suspending the licensee's license for the sale of alcoholic beverages for consumption on the premises as provided in Tennessee Code Annotated, § 57-4-202. The beer board shall have the authority to suspend the license for the sale of alcoholic beverages for consumption on the premises of any such person, firm, or corporation as authorized by Tennessee Code Annotated, § 57-4-202 for the same period of time as such licensee's beer permit may be suspended. Should the beer board suspend the license for the sale of alcoholic beverages for consumption on the premises of any such licensee, the beer board is hereby directed to send a notice of the suspension of said license to the Alcoholic Beverage Commission. (Ord. #02-53, Jan. 2003)
- 8-105. Prohibited sexual or pornographic conduct. Tennessee Code Annotated, § 57-4-204, as the same may be amended from time to time, is incorporated herein as if copied verbatim in its entirety. The Smyrna Police Department is hereby authorized and directed to conduct investigations into

¹Municipal code references Adult oriented establishments: title 9, chapter 6.

alleged violations of said code section. The Smyrna Police Department shall report any such violations to the Alcoholic Beverage Commission as authorized by <u>Tennessee Code Annotated</u>, § 57-4-204(e). (Ord. #02-53, Jan. 2003)

- **8-106.** <u>Privilege taxes.</u> (1) Privilege taxes for the sales of alcoholic beverages for consumption on premises shall be in accordance with <u>Tennessee Code Annotated</u>, title 57, chapter 4, and as restated in the fee schedule adopted with the annual budget.
- (2) The foregoing taxes shall be payable on the date the license is issued by the Alcoholic Beverage Commission and the foregoing taxes shall be prorated from said date of issuance until the next following October 1, at which time a full year's taxes shall then be due and immediately payable.
- (3) Should the licensee also hold a beer permit issued by the town, a failure to pay taxes under this section shall constitute grounds for suspension or revocation of the beer permit. (Ord. #02-53, Jan. 2003, modified)
- 8-107. Sales to minors prohibited. No holder of a license for the sale of alcoholic beverages for consumption on the premises or any other person shall sell, furnish, dispose of, or give any alcoholic beverage to any person under the minimum age provided by state law, Tennessee Code Annotated, § 57-4-203, as the same may be amended from time to time. No such licensee or any employee thereof shall sell, furnish, dispose of or give any beer or malt beverage to any person under the minimum age provided by state law, Tennessee Code Annotated, § 57-4-203, as the same may be amended from time to time. (Ord. #02-53, Jan. 2003)
- **8-108.** Prohibited acts by state law. It shall be unlawful for any person to violate Tennessee Code Annotated, § 57-4-203, as the same may be amended from time to time, which is incorporated herein as if copied verbatim in its entirety. (Ord. #02-53, Jan. 2003)
- 8-109. <u>Violations; penalty</u>. Any violation of the provisions of this chapter shall constitute a misdemeanor and shall, upon conviction, be punishable by a penalty under the general penalty clause of this code. Upon conviction of any person under this chapter, the town court clerk shall immediately certify said conviction directly to the Tennessee Alcoholic Beverage Commission. Each day a violation is allowed to continue shall constitute a separate offense. (Ord. #02-53, Jan. 2003, modified)

CHAPTER 2

BEER

SECTION

- 8-201. Beer board established.
- 8-202. Powers.
- 8-203. Members.
- 8-204. Terms.
- 8-205. Administration.
- 8-206. Officers.
- 8-207. Meetings.
- 8-208. Record of proceedings to be kept.
- 8-209. Requirements for beer board quorum and action.
- 8-210. "Beer" defined.
- 8-211. Beer business lawful but subject to regulation.
- 8-212. Permit required for engaging in beer business.
- 8-213. Beer permits shall be restrictive.
- 8-214. Permits for certain premises prohibited.
- 8-215. Application for and issuance or refusal of permit.
- 8-216. Filing, investigation of, and action on applications.
- 8-217. Permits not transferable.
- 8-218. Permits may be issued to hotels, clubs, and lodges.
- 8-219. Permit to be posted.
- 8-220. Privilege tax.
- 8-221. Sales and consumption prohibited during certain hours.
- 8-222. Prohibited conduct or activities by beer permit holders.
- 8-223. Suspension or revocation of permit; civil penalty.
- 8-224. Sales to minors prohibited; employment of ex-convicts prohibited.
- 8-225. Employees liable for violations of this chapter.
- 8-226. Penalties; violation.
- 8-227. Continued existence.
- **8-201.** Beer board established. There is hereby established a Beer Board for the Town of Smyrna, Tennessee. (Ord. #03-03, Feb. 2003)
- 8-202. <u>Powers</u>. The beer board shall have the power to and is hereby directed to regulate the selling, storing for sale, distributing for sale and manufacturing of beer within the corporate limits of the Town of Smyrna in accordance with the provisions of this chapter. The beer board is authorized to make and establish reasonable bylaws, rules, and regulations as may be necessary for their own government and for the full and complete execution of their powers and duties. The beer board is hereby vested with all authority to issue, deny, revoke and suspend permits for the sale of beer, as provided by the

- laws of the State of Tennessee and in accordance with the rules and procedures set forth in this chapter. The beer board shall operate in accordance with the provisions of this chapter in accordance with such other rules and procedures as may be promulgated by said board. (Ord. #03-03, Feb. 2003, modified)
- **8-203.** <u>Members</u>. The beer board shall be composed of five (5) members who shall be residents of the Town of Smyrna and who shall be appointed by a majority vote of the town council. All members of the beer board shall serve without compensation. Members may not serve more than eight (8) consecutive years on the board. (Ord. #03-03, Feb. 2003)
- 8-204. Terms. The terms of the members of the beer board shall be staggered to provide for continuity and experience on the board. The terms of the board shall be four (4) years each. Members of the board may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three (3) consecutive meetings or more than five (5) non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Board members who are unable to attend regular meetings are expected to tender their resignation. Any vacancy shall be filled by the town council for the remainder of the unexpired term. (Ord. #03-03, Feb. 2003, modified)
- **8-205.** Administration. To facilitate its deliberations, the beer board shall be assisted by the town manager, and/or employees designated by the town manager. (Ord. #03-03, Feb. 2003, modified)
- **8-206.** Officers. The beer board shall annually elect a chairman from among its membership to preside over its deliberations. Likewise, the beer board shall annually elect a vice-chairman from among its membership to preside over the beer board's deliberations in the absence of the chairman. The town manager, or another employee designated by the town manager, shall be the ex-officio secretary of the beer board. (Ord. #03-03, Feb. 2003, modified)
- 8-207. <u>Meetings</u>. The beer board shall hold regular meetings at such place and time 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 reasonable notice to all members. The beer board may adjourn a meeting at any time to another time and place. All meetings shall be open to the public. (Ord. #03-03, Feb. 2003)

- 8-208. Record of proceedings to be kept. The secretary 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 before the board; a copy of each motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. (Ord. #03-03, Feb. 2003)
- 8-209. Requirements for beer board quorum and action. The attendance of at least a majority of the members of the 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. (Ord. #03-03, Feb. 2003, modified)
- 8-210. "Beer" defined. The term "beer" as used in this chapter shall be defined in accordance with Tennessee Code Annotated, § 57-5-101 as beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, except wine as defined in Tennessee Code Annotated, § 57-3-101(a)(20); provided, however, that no more than fortynine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol. (Ord. #03-03, Feb. 2003, modified)
- 8-211. Beer business lawful but subject to regulation. It shall hereafter be lawful to transport, store, sell, distribute, possess, receive, and/or manufacture beer within the corporate limits of the Town of Smyrna, subject to all regulations, limitations, and restrictions provided by <u>Tennessee Code Annotated</u>, title 57, chapter 5, or other laws of the state and subject to the rules, regulations, limitations, and restrictions subsequently provided herein. (Ord. #03-03, Feb. 2003)
- 8-212. Permit required for engaging in beer business. It shall be unlawful for any person, firm, corporation, including a municipal corporation or any subdivision thereof, joint-stock company, syndicate or association 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 shall be accompanied by a non-refundable application fee as set forth in Tennessee Code Annotated, § 57-5-104(a). Said fee shall be in the form of a cashier's check payable to the Town of Smyrna. Each applicant must be a person of good moral character and he must certify that he has read and is familiar with the provisions of this chapter. (Ord. #03-03, Feb. 2003, modified)

8-213. Beer permits shall be restrictive. All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. 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 such holder's permit. It shall likewise be unlawful for any such beer permit holder not to comply with any and all express restrictions or conditions which may be written into such holder's permit by the beer board.

Any person or entity holding a permit for both on-premises consumption and off-premises consumption, as well as any person or entity holding a permit effective for more than one restaurant or business within the same building, shall be notified of the change in the ordinance by the town clerk within ten (10) days after the effective date of the ordinance comprising this section and affected permittees must obtain new permits in accordance with the revised beer ordinance within one hundred twenty (120) days. (Ord. #03-03, Feb. 2003, modified)

- 8-214. Permits for certain premises prohibited. (1) No permit shall be issued to sell beer or other beverage coming within the provisions of this chapter in violation of any provision of state law, or where such sale will cause congestion of traffic or will interfere with schools, churches, or other places of public gathering, or will otherwise interfere with the public health, safety, or morals. In no event will a permit be issued authorizing the manufacture, storage or sale of beer within three hundred (300) feet of any school, church, funeral home, hospital, licensed day care facility, or other place of public gathering. For purposes of this section, distances shall be measured in a straight line from the closest point of the applicant's building to the closest point of the building of the school, church, funeral home, hospital, licensed day care facility, or other place of public gathering; provided, however, that if the applicant leases space in a shopping center or strip mall, the distance shall be measured in a straight line from the closest point of the nearest interior wall of the applicant's leased space to the closest point of the building of the school, church, funeral home, hospital, licensed day care facility, or other place of public gathering. The judgment of the beer board on such matters shall be final except as same is subject to court review.
- (2) No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school, church, or other place of public gathering if a valid permit had been issued to any business on that same location as of January 1, 1993, unless beer is not sold, distributed or manufactured at that location during any continuous six-month period after January 1, 1993.

- (3) No permit shall be issued to sell any beverage coming within the provisions of this chapter for consumption on the premises where the primary or principal business carried on is the sale of groceries, drugs, candies, soda, fountain drinks, merchandise, or commodities, other than the serving of meals and lunches; provided, nothing in this section shall prevent sale or consumption in dining rooms and lunch rooms of stores where such rooms are separate and distinct from other departments.
- (4) Notwithstanding anything herein to the contrary, the three hundred (300) foot minimum distance requirement contained in subsection (a) of this section shall not apply with respect to any school, church, funeral home, hospital, licensed day care facility, or other place of public gathering that is located in a shopping center or strip mall.
- (5) Any permit holder possessing a valid permit to sell beer on the effective date of the ordinance comprising this chapter, may continue to possess such permit and after the effective date of this chapter notwithstanding the fact that such permit holder's location does not comply with the distance regulations set forth in this section, provided, that such permit remains in compliance with the other provisions of this chapter. In accordance with § 8-217 of this chapter, any such permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name. Any new applicant for permit related to the same location must comply with the distance regulations set forth in this section. (Ord. #04-40, Nov. 2004, modified)
- 8-215. <u>Application for and issuance or refusal of permit</u>. Before any permit is issued by the beer board, the applicant therefor shall file with the secretary a sworn application in writing establishing the following facts which are hereby made conditions of any permit issued and any misstatement of fact shall be sufficient for cause for the revocation of such permit:
- (1) The applicant shall be a citizen of the United States or a legal resident alien, or if a firm, syndicate, association or other business entity, the members thereof holding an interest greater than forty nine percent (49%) shall be citizens or legal resident aliens of the United States, and no applicant shall be less than twenty-one (21) years of age. The applicant shall designate the location of the premises where the business will be conducted and shall name the owner or owners (including members, shareholders, officers and/or mangers) of the premises.
- (2) No person shall be employed in the storage, sale, or manufacture of such beverage except citizens of the United States or legal resident aliens.
- (3) The applicant shall not engage in the sale of such beverages except at the place or places for which the beer board has issued a permit or permits to said applicant.
- (4) No sale of such beverage shall be made except in accordance with the following conditions:

- (a) If the application is for a permit to sell for consumption on the premises, said applicant will make no sale except where meals or lunches are regularly served at tables or counters under a regular permit.
- (b) If the application is for a permit to sell at hotels, sales for consumption on the premises will be made only at tables and to persons in guest rooms.
- (c) If the application is for a permit in a club or lodge, such applicant must be a regularly incorporated club or lodge operating under a charter and bylaws in which the officers are elected by the regular membership. Members of said organization must pay a substantial membership or initiation fee. The purpose of organization and existence of said club shall be for purposes other than the sale of beverages covered by this chapter.
- (d) If the application is for a permit to sell not for consumption on the premises, no sale will be made for consumption on the premises. Furthermore, no consumption shall be allowed on the premises. No such beverage will be kept for sale on said premises except in the original packages or containers.
- (5) No sale shall be made to persons under twenty one (21) years of age.
- (6) Neither the applicant, nor any person employed by him in the sale, storage, or distribution of beer, nor any person, firm, corporation, joint-stock company, syndicate, or association having at least five percent (5%) ownership interest in the applicant, has been convicted of any violation of the laws against possession, sale, manufacture or transportation of beer or other alcoholic beverages, or any crime involving moral turpitude or any conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last ten (10) years. If an applicant has a disqualifying criminal cause pending against him at the time of application for a beer permit, then the board may require that the applicant report to the town clerk within thirty (30) days of resolution of the pending criminal matter, the final outcome of the matter, which outcome or resolution may cause the applicant's beer permit to be placed on the beer board agenda for consideration of suspension or revocation in accordance with § 8-223. Failure to timely report in accordance with this provision shall be considered by the board in its deliberations.
- (7) The applicant shall conduct the business in person for himself. If the applicant is acting as agent, the application shall state the person for whom the applicant intends to act.
- (8) The applicant shall comply with the by-laws and rules of procedure of the Smyrna Beer Board.

The applicant shall not purchase beer except from manufacturers or distributors licensed to manufacture or distribute such beverage in this state. No manufacturer or distributor shall sell beer for resale except to those who have been licensed by the beer board.

The beer board shall consider each application filed and grant or refuse the permit according to its best judgment of the facts and circumstances. Revocation of a beer permit at one location shall not be the sole disqualifying factor in considering the issuance of beer permits at other locations. The action of the beer board in granting or refusing a permit shall be final except as same is subject to court review.

Any applicant making a false statement in the application shall forfeit such applicant's permit and shall not be eligible to receive any permit for a period of ten (10) years. (Ord. #03-03, Feb. 2003, modified)

- 8-216. Filing, investigation of, and action on applications. Applications for permits shall be filed with the secretary, who shall make an investigation. The police department and the codes enforcement and inspection division shall assist in the investigation. Upon completion of said investigation, the secretary shall submit the application to the beer board at its next meeting. The beer board shall consider the application and shall endorse its action thereon. If approved, the secretary shall issue a permit. (Ord. #03-03, Feb. 2003)
- 8-217. Permits not transferable. (1) A permit shall be valid only for the owner to whom the permit is issued and cannot be transferred to another owner. If the owner is a corporation, a change of ownership will occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner. In addition, a permit shall be valid only for a business operating under the name identified in the permit application.
- (2) Except as provided in § 8-213, a permit is valid only for a single location and cannot be transferred to another location. A permit shall be valid for all decks, patios, and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business; provided, however, that if a deck or patio is added subsequent to the initial permitting process, it must comply with all applicable distance requirements in this code.
- (3) A permit holder must return such holder's permit to the Town of Smyrna within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business's name; provided, that notwithstanding the failure to return a beer permit, a permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name. (Ord. #03-03, Feb. 2003)
- 8-218. Permits may be issued to hotels, clubs, and lodges. A permit may be issued for the sale of any beverage coming within the provisions of this chapter in hotels, clubs, or lodges, subject to all the limitations and restrictions contained in Tennessee Code Annotated, title 57, chapter 5, and subject to the limitations and restrictions provided by this chapter. (Ord. #03-03, Feb. 2003)

- **8-219.** Permit to be posted. The permit required by this chapter shall be posted in a conspicuous place on the premises by the permit holder, together with all other permits, licenses and stamps as required by law. (Ord. #03-03, Feb. 2003)
- 8-220. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer an annual privilege tax as set forth in Tennessee Code Annotated, § 57-5-104(b)(1). 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 of each year to the Town of Smyrna, 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. The Town of Smyrna shall mail written notice to each permit holder of the payment date of the annual tax at least thirty (30) days prior to January 1. Notice shall be mailed to the address specified by the permit holder on its permit application. If a permit holder does not pay the tax by January 31 or within thirty (30) days after the written notice of the tax is mailed, whichever is later, then the Town of Smyrna shall notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the beer board may suspend or revoke the permit or impose a civil penalty pursuant to § 8-223. (Ord. #03-03, Feb. 2003, modified)
- 8-221. Sales and consumption prohibited during certain hours. No sale, disposition, use or consumption of any beverage coming within the provisions of this chapter shall be made within the hours of 3:00 A.M. and 6:00 A.M. Nor shall any permit holder give away or otherwise dispense any beverage coming within the provisions of this chapter to any person during the hours prohibited in the immediately preceding sentence. (Ord. #03-03, Feb. 2003)

8-222. <u>Prohibited conduct or activities by beer permit holders</u>. It shall be unlawful for any beer permit holder to:

(1) Be convicted of any violation of the laws against possession, sale, manufacture or transportation of beer or other alcoholic beverages, any crime involving moral turpitude or any conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last ten (10) years. If a permit holder shall become convicted of an aforementioned crime, then he shall have the duty to report said conviction to the town clerk within ten (10) days of such conviction, which conviction may cause the permit holder's beer permit to be placed on the beer board agenda for consideration of suspension or revocation in accordance with § 8-223. Failure to timely report in accordance with this provision shall be considered by the board in its deliberations;

- (2) Employ any person convicted of any violation of the laws against possession, sale, manufacture or transportation of beer or other alcoholic beverages, any crime involving moral turpitude, or any conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last ten (10) years. If a permit holder shall employ any person who becomes convicted of an aforementioned crime, then he shall have the duty to report said conviction to the town clerk within ten (10) days of such conviction, which conviction may cause the permit holder's beer permit to be placed on the beer board agenda for consideration of suspension or revocation in accordance with § 8-223. Failure to timely report in accordance with this provision shall be considered by the board in its deliberations.
- (3) Employ any minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer, except as permitted under state law:
- (4) Make or allow any sale of beer to a person under twenty-one (21) years of age;
- (5) Allow gambling or gambling devices of any kind or description on the premises (other than as authorized by state law);
- (6) Allow any person under twenty-one (21) years of age to loiter in or about such permit holder's place of business.
 - (7) Make or allow any sale of beer to any intoxicated person.
- (8) Allow any intoxicated, disorderly or disreputable person, or any person previously convicted for violation of the laws relating to beer or other alcoholic beverages to loiter in or about such permit holder's place of business;
- (9) Allow any beverages of alcoholic content greater than five (5) percent by weight to be brought into such permit holder's premises for consumption therein unless such permit holder also has a license to sell liquor by the drink;
- (10) Distribute or sell beverages in bottles or other containers unless such containers shall bear a label or cap showing the name of the manufacturer thereof;
- (11) Allow any loud, unusual or obnoxious noises to emanate from such permit holder's premises;
- (12) Allow such permit holder's place of business to become a public nuisance or a nuisance to law enforcing agencies of the Town of Smyrna or Rutherford County, or create a nuisance or materially contribute to creating or maintaining a public nuisance;
- (13) Operate a disorderly place of business or permit or allow fighting or boisterous or disorderly conduct on the premises; or
- (14) Allow or engage in any criminal activity on the premises. (Ord. #04-40, Nov. 2004, modified)
- 8-223. <u>Suspension or revocation of permit; civil penalty</u>. (1) The beer board shall have the power to revoke or suspend any permit for any

violation of any provision of this chapter. Whenever it shall be brought to the attention of the beer board that any declaration of fact contained in the application is false, or that there has been any violation of any provision or state or federal law regulating the sale, storage or transportation of alcoholic beverages or any statute of the State of Tennessee regulating beer or other alcoholic beverages, or that there has been any violation of any provision of this chapter, expressly including the prohibited acts herein, or that the limitations and conditions of the permit have been violated, or that the permit holder fails to file a report or pay any tax or license fee required, the beer board may revoke or suspend such permit. No permit shall be revoked or suspended until a public hearing is held by the beer board after reasonable notice is given to the public and to all known parties in interest. Revocation proceedings may be initiated by the chief of police or by any member of the beer board.

(2) Notwithstanding any other provision herein, pursuant to <u>Tennessee Code Annotated</u>, §57-5-608, the beer board shall not revoke or suspend the permit for off-premises sale of beer of a "responsible vendor" qualified under the requirements of <u>Tennessee Code Annotated</u>, §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 and/or is otherwise in compliance with the Tennessee Responsible Vendor Act, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. The beer board may permanently revoke or suspend the beer permit of a responsible vendor when the permit holder has at least two (2) violations for the sale of beer to a minor within a twelve (12) month time period.

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.

"Responsible vendor" shall mean 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, <u>Tennessee Code Annotated</u>, §57-5-601, <u>et seq</u>. "Clerk" shall mean any person working in a capacity to sell beer directly to consumers for off-premises consumption.

Pursuant to <u>Tennessee Code Annotated</u>, §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-month period. The revocation shall be for three (3) years.

It is the duty of the permittee to advise the beer board of participation and provide proof thereof, in the responsible vendor program at the time of the hearing.

Upon determination that a sale to a minor has been made by the beer board, the beer board shall report the sale to the alcoholic beverage commission within fifteen (15) days of the determination of the sale. Additionally, if the beer board determines that a clerk of an off-premises beer permit holder certified under Tennessee Code Annotated, §57-5-606, sold beer to a minor, the beer board shall report the name of the clerk to the alcoholic beverage commission within fifteen (15) days of determination of the sale. The certification of the clerk shall be invalid, and the clerk may not reapply for a new certificate for a period of one year from the date of the beer board's determination.

(3) The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that is not a responsible vendor, or a permit holder that is a responsible vendor but who is non-compliant with the provisions and requirements of the Tennessee Responsible Vendor Act, 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, as defined in subsection (2), 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 suspension or revocation 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 town may impose.

- (4) Where a permit has been revoked, no new permit may be issued to permit the sale of beer on the same premises until after the expiration of one (1) year from the date the revocation becomes final and effective. The beer board, in its discretion, may determine that issuance of a license or permit before the expiration of one (1) year from the date of the revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the license or any family member who could inherit from such individual under the statute of interstate succession. (Ord. #03-03, Feb. 2003, modified)
- 8-224. Sales to minors prohibited; employment of ex-convicts prohibited. A permit holder engaging in the business regulated hereunder or any employee thereof shall not make or permit to be made any sales to minors. Neither the person engaging in such business nor persons employed by that person shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture and transportation of beer or any other alcoholic beverages or any crime involving moral turpitude or any conviction for

a crime violating a drug or alcohol law or a crime involving physical violence, within the last ten (10) years. (Ord. #03-03, Feb. 2003, modified)

- 8-225. Employees liable for violations of this chapter. Any employee of any permit holder who violates the provisions of this chapter or any provision of Tennessee Code Annotated, title 57, chapter 5, while so employed by such permit holder shall be guilty of a misdemeanor which shall be punishable by a fine of not to exceed the state authorized maximum, in addition to any suspension, revocation or civil penalty in lieu thereof which may be imposed on the permit holder by the beer board pursuant to § 8-223. (Ord. #03-03, Feb. 2003, modified)
- **8-226.** Penalties; violation. Except s provided in § 8-223, any violation of this chapter shall constitute a misdemeanor and shall, upon conviction, be punishable by a penalty under the general penalty clause of this code. Each day a violation shall be allowed to continue, and each sale which violates the provisions of this chapter, shall constitute a separate offense. (Ord. #03-03, Feb. 2003)
- **8-227.** Continued existence. Notwithstanding anything herein to the contrary, the members of the beer board, as the beer board exists on the effective date of this chapter, shall continue to serve for the remainder of their respective terms, or until their earlier resignation or removal. (Ord. #03-03, Feb. 2003)

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC. 1

CHAPTER

- 1. PEDDLERS, ETC.
- 2. CHARITABLE SOLICITORS.
- 3. TAXICABS.
- 4. CABLE TELEVISION.
- 5. ADULT-ORIENTED ESTABLISHMENTS.

CHAPTER 1

PEDDLERS, ETC.

SECTION

- 9-101. Definitions.
- 9-102. Permit required.
- 9-103. Exemptions.
- 9-104. Application for permit.
- 9-105. Use of streets.
- 9-106. Exhibition of permit.
- 9-107. Police to enforce.
- 9-108. Revocation or suspension of permit.
- 9-109. Reapplication.
- 9-110. Expiration and renewal of permit.
- **9-101.** <u>Definitions</u>. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:
- (1) "Peddler" means any person, firm or corporation, either a resident or a nonresident of the city, who has no permanent regular place of business and

¹Municipal code references

Beer: title 8.

Building: title 12. Plumbing: title 12. Housing code: title 12. Junkyards: title 13. Privilege taxes: title 5.

Refuse: title 17.

Water and sewer: title 18.

Utilities: title 19.

who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

- (2) "Solicitor" means any person, firm or corporation who goes from dwelling to dwelling, business to business, place to place, or from street to street, taking or attempting to take orders for any goods, wares or merchandise, or personal property of any nature whatever for future delivery, except that the term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.
- (3) "Solicitor for charitable or religious purposes" means any person, firm, corporation or organization who or which solicits contributions from the public, either on the streets of the city or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who does not sell or offer to sell any single item at a cost to the purchaser in excess of ten dollars (\$10.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets one of the following conditions:
 - (a) Has a current exemption certificate from the Internal Revenue Service issued under Section 501(c)(3) of the Internal Revenue Service Code of 1954, as amended.
 - (b) Is a member of United Way, Community Chest or similar "umbrella" organizations for charitable or religious organizations.
 - (c) Has been in continued existence as a charitable or religious organization in Rutherford County for a period of two (2) years prior to the date of its application for registration under this chapter.
- (4) "Solicitor for subscriptions" means any person who solicits subscriptions from the public, either on the streets of the town, or from door to door, business to business, place to place, or from street to street, and who offers for sale subscriptions to magazines or other materials protected by provisions of the Constitution of the United States.
- (5) "Transient vendor" means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "merchandise" means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-public place including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those

premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months.¹

- (6) "Street barker" means any peddler who does business during recognized festival or parade days in the town and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade.
- **9-102.** Permit required. It shall be unlawful for any peddler, street barker, solicitor, or transient vendor to ply his trade within the corporate limits without first obtaining a permit therefor 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. (1991 Code, § 9-101, modified)
- **9-103.** Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to persons selling agricultural products, who in fact, themselves produced the products being sold, or bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic, or philanthropic organizations. (1991 Code, § 9-102, modified)
- **9-104.** Application for permit. Applicants for a permit under this chapter must file with the town clerk a sworn written application containing the following:
 - (1) Name 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;

<u>Tennessee Code Annotated</u>, § 62-30-101, <u>et seq.</u>, contains permit requirements for "transitory vendors."

The definition of "transient vendors" is taken from <u>Tennessee Code Annotated</u>, § 62-30-101(3). Note also that <u>Tennessee Code Annotated</u>, § 67-4-709 (a) prescribes that transient vendors shall pay a tax of \$50.00 for each 14 day period in each county and/or municipality in which such vendors sell or offer to sell merchandise for which they are issued a business license, but that they are not liable for the gross receipts portion of the tax provided for in <u>Tennessee Code Annotated</u>, § 67-4-709(b).

¹State law references

- (4) The dates for which the applicant intends to do business or make solicitations;
 - (5) Length of time for which the right to do business is desired;
- (6) Complete name and permanent address of the business or organization the applicant represents;
- (7) The make, model, complete description, and license tag number and state of issue, of each vehicle to be used to make sales or solicitations, whether or not such vehicle is owned individually by the person making sales or solicitations, by the business or organization itself, or rented or borrowed from another business or person;
- (8) At the time of filing the application, a non-refundable fee as set forth in the fee schedule adopted with the annual budget ordinance shall be paid to the town clerk to cover processing of the application.
- (9) Each applicant for a permit as a transient vendor shall submit with his application a tax set in accordance with <u>Tennessee Code Annotated</u>, § 67-4-709(a) for each fourteen (14) day period in which the vendor sells or offers merchandise for which they are issued a business license. (1991 Code, § 9-103, modified)
- 9-105. <u>Use of streets</u>. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where such 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. (1991 Code, § 9-108)
- 9-106. Exhibition of permit. Permittees are required to have in their possession a valid permit while making sales or solicitations, and shall be required to exhibit their permits at the request of any police officer or code enforcement officer. (1991 Code, § 9-109, modified)
- **9-107.** Police to enforce. It shall be the duty of all police officers to see that the provisions of this chapter are enforced. (1991 Code, § 9-110, modified)
- **9-108.** Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be suspended or revoked by the town council 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.

- (2) Notice of the hearing for revocation or suspension of a permit shall be given by the town clerk 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 town manager may temporarily suspend a permit pending the revocation hearing. (1991 Code, § 9-111, modified)
- **9-109.** Reapplication. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1991 Code, § 9-112)
- 9-110. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the town. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days.
- **9-111.** <u>Violation and penalty</u>. In addition to any other action the town may take against a permit holder in violation of this chapter, such violation shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense.

CHAPTER 2

CHARITABLE SOLICITORS¹

SECTION

- 9-201. Permit required.
- 9-202. Requirements as to application and hearing.
- 9-203. Prerequisites for a permit.
- 9-204. Denial of a permit.
- 9-205. Exhibition of permit.
- 9-206. Violation and penalty.
- 9-201. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the town clerk authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1991 Code, § 9-201)
- 9-202. Requirements as to application and hearing. (1) No person shall be eligible for a charitable solicitors permit if he has been convicted of a felony within the last ten (10) years or if he has been convicted of any misdemeanor involving theft or fraud. Applications shall be made under oath and in writing to the town manager. The chief of police or his designee shall perform a criminal background check.
 - (2) The application shall state the:
 - (a) Name and address of the applicant:
 - (b) The name and address of the charity for which contributions shall be sought;
 - (c) The name and address of the representative official of the charity for which contributions shall be sought;
 - (d) Documentation showing registration with the State of Tennessee and the most recent annual report, if any;
 - (e) The dates for which contributions shall be solicited within the town;

Contributions to non-profit charitable and non-profit civic organizations: title 5, chapter 6.

Roadblocks: § 16-114.

¹Municipal code references

- (f) A copy of any and all literature which shall be provided to citizens by the solicitors at the time of solicitation, which documentation shall not be used as a basis for denial of a permit; and
 - (g) Such further information as the town manager may require.
- (3) The application shall be submitted at least ten (10) business days prior to the date—solicitation is scheduled to begin. Within five (5) days after receipt of an application, the town manager shall make a thorough investigation of the applicant and recommend to the town clerk whether or not such charitable solicitor permit shall be granted considering the information in the application and the considerations of § 9-203 herein. If an applicant is denied a permit, the applicant may request a hearing by the town council. Such request for a hearing must be received within five (5) days of the denial for the permit. The hearing shall be conducted at the next regularly scheduled town council meeting. The discussion of the town council as to whether or not to grant or deny the permit shall be final.
- **9-203.** Prerequisites for a permit. The town clerk shall issue a permit authorizing charitable or religious solicitations when, after a reasonable investigation, he finds the following facts to exist:
- (1) The applicant has a good character and reputation for honesty and integrity, or if the applicant is not an individual person, that every member, managing officer, or agent of the applicant has a good character or reputation for honesty and integrity.
- (2) The control and supervision of the solicitation will be under responsible and reliable persons.
- (3) The applicant has not engaged in any fraudulent transaction or enterprise.
- (4) The solicitation will not be a fraud on the public but will be for a bona fide charitable or religious purpose.
- (5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1991 Code, § 9-202)
- **9-204.** Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the town council if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1991 Code, § 9-203)
- **9-205.** Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any police officer or person solicited. (1991 Code, § 9-204, modified)
- 9-206. <u>Violation and penalty</u>. In addition to any other action the town may take against a permit holder in violation of this chapter, such violation

shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense.

TAXICABS¹

SECTION

- 9-301. Taxicab franchise and privilege license required.
- 9-302. Requirements as to application and hearing.
- 9-303. Liability insurance or bond 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. Trademark and permit number displayed.
- 9-310. Identification card required.
- 9-311. Qualifications for driver's permit.
- 9-312. Revocation or suspension of driver's permit.
- 9-313. Drivers not to solicit business.
- 9-314. Parking restricted.
- 9-315. Drivers to use direct routes.
- 9-316. Taxicabs not to be used for illegal purposes.
- 9-317. Miscellaneous prohibited conduct by drivers.
- 9-318. Transportation of more than one passenger at the same time.
- 9-319. Violation and penalty.
- 9-301. <u>Taxicab franchise and privilege license required</u>. (1) It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the town and has a currently effective privilege license. For purposes of this section, the definition of taxicab shall include limousine.
- (2) Before a franchise will be granted, the franchisee shall pay a one-time franchise application fee, to the town treasurer, the rate of which is established in the fee schedule adopted in the annual budget ordinance. Annually thereafter, on or before September 1, the franchisee shall pay a franchise renewal fee per taxicab registered for operation in the town, such franchise renewal fee to be established in the fee schedule adopted in the annual budget ordinance. It is the duty of the franchisee to provide the number and identifying information for each taxicab operating in the town. All taxicabs and drivers operating under a franchise hereunder must be registered with the town

¹Municipal code reference Privilege tax: title 5. treasurer within ten (10) days of being added to the taxicab fleet or as a driver for the franchisee. (1991 Code, § 9-301, modified)

- 9-302. Requirements as to application and hearing. No person shall be eligible 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 service; present the application to the town council; and make a recommendation to either grant or refuse a franchise to the applicant. The town council 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 town council 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 taxicab franchise. Those persons already operating taxicabs when this code is adopted, shall not be required to make application under this section, but shall be required to comply with all of the other provisions hereof. (1991 Code, § 9-302, modified)
- 9-303. <u>Liability insurance or bond required</u>. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy or bond for each vehicle authorized in an amount equal to that required by the state's financial responsibility law as set out in <u>Tennessee Code Annotated</u>, title 55, chapter 12. The insurance policy or bond 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 insuror to both the insured and the town clerk of Smyrna. (1991 Code, § 9-303)
- 9-304. Revocation or suspension of franchise. The town council, 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. (1991 Code, § 9-304)

- 9-305. Mechanical condition of vehicles. It shall be unlawful for any person to operate any taxicab in the town unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear 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 intervention or assistance of the driver. The motor and all the 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. (1991 Code, § 9-305)
- 9-306. <u>Cleanliness of vehicles</u>. All taxicabs operated in the town shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (1991 Code, § 9-306)
- **9-307.** Inspection of vehicles. All taxicabs shall be inspected at least semiannually by the chief of police or his designee to insure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (1991 Code, § 9-307, modified)
- **9-308.** <u>License and permit required for drivers</u>. (1) 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.
- (2) A person seeking a taxicab driver's permit must submit an application as herein below provided and submit to the town treasurer a one-time taxicab driver application fee, the rate of which is established in the fee schedule adopted in the annual budget ordinance. Said taxicab driver's permit shall be effective for one year from the date of issuance. A taxicab driver's permit may be renewed on or within ten days of the expiration of the taxicab driver's permit upon the completion of a renewal application and payment of the taxicab driver's renewal fee to the town treasurer, the rate of which is established in the fee schedule adopted in the annual budget ordinance. Failure to renew a taxicab driver's permit within the stated time will require the applicant to apply for a new permit and pay the taxicab driver application fee. (1991 Code, § 9-308, modified)
- **9-309.** Trademark and permit number displayed. It shall be unlawful for any person to operate a passenger motor vehicle for hire in the town unless said vehicle shall have the name of the company operating such vehicle and permit number painted on each side and on the back in lettering of at least three (3) inches in height.

- **9-310.** <u>Identification card required</u>. Each driver must have an identification card with a picture of the driver, certified by the chief of police, posted in a conspicuous place in each passenger vehicle during the time said vehicle is driven by the authorized driver.
- **9-311.** Qualifications for driver's permit. No person shall be issued a taxicab driver's permit unless he pays an annual permit fee as adopted by the town council in the fee schedule to the town and complies with the following to the satisfaction of the chief of police:
 - (3) Makes written application to the chief of police;
- (4) Is at least eighteen (18) years of age and holds a state special chauffeur's license;
- (5) 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;
- (6) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs;
- (7) Produces affidavits of good character from two (2) reputable citizens of the town who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application;
- (8) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent traffic offenses;
 - (9) Is familiar with the state and local traffic laws.
- (10) Such other information as may be reasonably required. (1991 Code, § 9-309, modified)
- 9-312. Revocation or suspension of driver's permit. The town manager or his designee, 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 § 9-311. (1991 Code, § 9-310)
- **9-313.** Drivers not to solicit business. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the town for the purpose of obtaining patronage for their cabs. (1991 Code, § 9-311)
- **9-314.** Parking restricted. It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the town for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging passengers if such stops are made so as not to unreasonably interfere with or

obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1991 Code, § 9-312, modified)

- **9-315.** Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route, unless directed otherwise by the customer. (1991 Code, § 9-313)
- **9-316.** <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. (1991 Code, § 9-314)
- 9-317. <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 unreasonable disturb the peace, quiet, and tranquility of the town in any way. (1991 Code, § 9-315)
- 9-318. <u>Transportation of more than one passenger at the same</u> time. No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (1991 Code, § 9-316)
- **9-319.** <u>Violation and penalty</u>. In addition to any other action the town may take against a permit holder in violation of this chapter, such violation shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense.

CABLE TELEVISION¹

SECTION

- 9-401. Preamble.
- 9-402. To be furnished under franchise.
- 9-403. Definitions.
- 9-404. Applicability of policies and procedures.
- 9-405. Application for franchise.
- 9-406. Information required in application.

9-401. <u>Preamble</u>. Modern telecommunications policy, law and regulations encourage the emergence of competition in all telecommunications markets. Increased competition in the provision of all telecommunications services is expected, including in the provision of cable television service. The emergence of such competition could increase the quality and availability of enhanced telecommunications services via cable systems, encourage lower rates, encourage better customer service, and generally benefit consumers. Policies and procedures regarding application for and review of applications for competitive cable franchises will streamline the processing of requests to provide such competitive telecommunications services.

In view of the foregoing, the town has formulated a franchise application and review process for entities seeking competitive franchises with the town. Pursuant to this process, the town has delineated the information which must be provided in an application for a competitive franchise, detailed a process for the review of such an application and the negotiation of franchise terms and conditions, and provided for the presentation of a formal recommendation regarding the grant of a competitive franchise to the town. (1991 Code, § 9-501)

- 9-402. <u>To be furnished under franchise</u>. Cable television shall be furnished to the Town of Smyrna and its inhabitants under franchise granted by the Town Council of the Town of Smyrna, Tennessee. The rights, powers, duties and obligations of the Town of Smyrna and its inhabitants are clearly stated in the franchise agreement executed by, and which shall be binding upon the parties concerned.
- **9-403.** <u>**Definitions**</u>. (1) "Applicant" shall mean a cable company that files an application with the town.

¹For <u>complete details</u> relating to the cable television franchise agreement see Ord. #04-20 dated June 8, 2004 in the office of the town clerk.

- (2) "Application" shall mean the information, documentation, and data of the form and substances required herein, filed by a cable company with the town requesting the town's consideration regarding any recommendation to grant a competitive franchise.
- (3) "Application fee" shall mean a fee which is intended to cover all costs incurred by the town related to processing applications up to and including the grant of a franchise (if any) including, but not limited to, staff's and attorney's time in reviewing and considering an application and related information, negotiating the terms and conditions of franchises, and preparing recommendations, franchises and other documentation related to such applicant.
- (4) "Cable company" shall mean any person or entity owning a significant interest in, controlling, operating, managing or leasing a cable system (or any components thereof in the public rights-of-way) within the town or the state, or any person seeking a franchise to do so.
 - (5) "Cable service" shall mean
 - (a) The one-way transmission to subscribers of video programming or other programming services; and
 - (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services. For purposes of these policies and procedures, "cable service" includes, but is not limited to, the provision of internet service over a cable system.
- (6) "Cable system" shall mean the facility of a cable company consisting of a set of closed transmission paths and associated signal generations, reception and control equipment that is designed to provide cable service, and includes video programming and which is provided to multiple subscribers within the town, but such terms do not include:
 - (a) A facility that only serves to retransmit the television signals of one or more television broadcast stations;
 - (b) A facility that serves subscribers without using any public rights-of-way;
 - (c) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a system if such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interaction on-demand services;
 - (d) An open video system that complies with 47 U.S.C. § 573; and
 - (e) Any facilities of any electric utility used solely for operating its electronic utility system.

A reference to a cable system in these policies and procedures refers to any part of such system including, without limitation, converters. The foregoing definition of "system" shall not be deemed to circumscribe or limit the valid authority of the town to regulate or franchise the activities of any other communications system or provider of communications service to the full extent permitted by law.

- (7) "Town" shall mean the Town of Smyrna, Tennessee, and its agencies commissions and departments.
- (8) "Town council" shall mean the governing body of the town or its lawful designee.
- (9) "Franchise" shall mean any nonexclusive authorization granted by the town in the form of a franchise, privilege, permit, license or other municipal authorization to construct, own, control, operate, maintain, or manage a cable system within the public rights-of-way to provide cable service within the town.
- (10) "Institutional network" shall mean a discrete communications network provided by a cable company to institutions designated by the town, as provided in a franchise ordinance.
- (11) "Policies and procedures" shall mean these policies and procedures governing the town's processing of applications for franchises.
- (12) "Public rights-of-way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the town in which the town now or hereafter holds any property interest, including, but not limited to, any riparian rights, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purposes of installing, operating and maintaining a cable system. No reference in these policies and procedures to a "public right-of-way" shall be deemed to be a representation or guarantee by the town that its interest in or other right to control the use of such property is sufficient to permit use of the property for the purpose of installing, operating and maintaining a cable system.
- (13) "Subscriber" shall mean any person or entitle who receives service via a cable system. In the case of multiple office buildings or multiple dwelling units, the term "subscriber" means the lessee, tenant or occupant. (1991 Code, § 9-502)
- **9-404.** Applicability of policies and procedures. These policies and procedures apply to every cable system and every cable company, including a cable company which constructs, operates and/or maintains a cable system or provides a cable service in whole or in part through facilities owned, controlled, managed or operated by another provider, that seeks to operate within the territorial limits of the town. (1991 Code, § 9-503)
- **9-405.** Application for franchise. (1) In the event the town receives notice that a cable company is interested in applying for a franchise, the town

shall publish a notice of intent to franchise within a reasonable time and in accordance with this section.

- (2) <u>Notice of intent to franchise</u>. Any notice of intent to franchise shall be published once each week for two successive weeks in a newspaper of general circulation in the town, requesting applications for a franchise. The notice must include at least the following information:
 - (a) The closing date for the submission of applications;
 - (b) The amount of the application fee charged by the town, and the method for its submission;
 - (c) A statement by the town of criteria and priorities against which the applicants for a franchise may be evaluated (e.g. financial, legal, technical);
 - (d) A statement that applications for a franchise must contain at least the information required by § 9-406 of these policies and procedures;
 - (e) The name, address and telephone number of the individual(s) who may be contacted for further information.
- (3) Review of applicants. Applications for a competitive franchise shall contain such information as is required below in these policies and procedures and shall be submitted to the town. Review by the town of any applications pursuant to these policies and procedures and final determination by the town regarding whether to franchise such applicant(s) may be based on any relevant factors. Such relevant factors may include comparisons of the level and quality and nature of cable services proposed by the applicant to that provided by the incumbent cable company, the needs and interests of the community and institutions, as identified solely by the town, and information regarding industry trends, state-of-the-art technologies, services and other related information.
- (4) <u>Public hearing on applications</u>. A public hearing before the town council affording reasonable notice and reasonable opportunity to be heard with respect to an application shall be scheduled by the town after the deadline for submitting applications has elapsed.
- (5) Negotiation of franchise terms. During the period prior to the public hearing on an application, the responsible town employee(s), town council and applicant may negotiate specific franchise terms and conditions for recommendation and presentation to the town council. In addition, during this period the responsible town employee(s) and town council shall review the application and may request such additional information necessary to make final recommendations to the town council. An applicant shall assist the town in its review by providing all information requested by the town no later than the date(s) specified by the responsible town employee(s) or town council regardless of whether the requested information is a trade secret or is proprietary or confidential.
- (6) <u>Determination</u>. Determinations by the responsible town employee(s) regarding the qualifications of applicant(s) and recommendations

to the town council regarding the grant of a franchise shall be made based on information provided by the applicant as required herein and such other information which the responsible town employee(s) deem relevant in their sole discretion. The responsible town employee(s) may, in their sole discretion, consider information developed during any negotiations with the applicant and any information or evidence adduced by the incumbent cable company. After the public hearing referenced in § 9-405(4) the responsible town employee(s) shall issue written recommendations to the town council regarding the application. These recommendations may include a franchise document for adoption by the town.

- (7) <u>Award of franchise</u>. A franchise may be awarded only by an ordinance adopted by the town council, subject to Section 2.01(12) of the Charter.
- (8) Cost of reviewing application and issuing franchise. The applicant shall pay the application fee required below and the application fee shall be non-refundable. The application fee is required for the purpose of reimbursing the town for all costs associated with processing applications pursuant to these policies and procedures through and including any granting of a franchise. Should the application fee not cover the expenses of the town, those unreimbursed expenses shall be reimbursed prior to any consideration of the franchise by the town. A successful applicant shall be fully responsible to reimburse the town for all costs of awarding the franchise. (1991 Code, § 9-505)
- **9-406.** <u>Information required in application</u>. An application for a competitive franchise must be signed by an authorized officer or principle of the cable company and be notarized and must include at least the following:
- (1) A statement that the applicant seeks to construct a cable system and to provide cable services within the town;
- (2) The name, street address, e-mail address and telephone number of the individuals who are authorized to provide and certify information on behalf of the applicant.
- (3) Plans for analog and digital channel capacity, including both the total number of analog and digital channels capable of being energized in the system and the number of analog and digital channels to be energized immediately;
- (4) A statement of the television and radio signals for which permission to carry will be requested from the Federal Communications Commission or any other required regulatory agency;
- (5) A description of the proposed system design, including at least the following terms:
 - (a) The general area for location of antennae and the headend;
 - (b) The schedule for activating two-way capacity and any other system capacity to be activated in conjunction with the cable system;
 - (c) The type of automated services to be provided;

- (d) The minimum number of video channels, other cable services, and other kinds of services to be made available to residents;
- (e) The number of channels and services to be made available for public educational and governmental access programming; and
- (f) A plan for funding of facilities for public, educational and governmental access programming and/or a plan for interconnection and provision of such programming in cooperation with the incumbent cable company.
- (6) Plans for the provision of institutional network capacity and services or other "in-kind" services and the terms, conditions and technical standards under which institutional network service is to be provided to governmental, educations, and other institutional entities;
- (7) A list of all institutions that will receive institutional network service;
- (8) A schedule of proposed rates in relation to the services to be provided, and a proposed policy regarding unusual or difficult service connections;
- (9) A description of the area(s) within the town to be served, including line extension commitments;
- (10) A time schedule for construction of the entire system with the time sequence for wiring the various parts of the area(s) to be served;
- (11) Information supporting and indicating the applicant's financial, technical and legal qualifications and experience in the cable communications field, if any;
- (12) An identification of the municipalities in which the applicant either owns or operates a cable system, directly or indirectly, or has outstanding franchises for which no system has been built;
- (13) Detailed plans for financing of the proposed system, which must indicate every significant anticipated source of capital and significant limitations or conditions with respect to the availability of the indicated sources or capital;
- (14) A statement of ownership detailing the corporate organization of the applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director;
- (15) A description of intracompany relationships, including parent, subsidiary or affiliated companies;
- (16) A statement of a form and substance acceptable to the town indemnifying the town fully against any claims or liabilities alleged as a result of the town's exercise of these policies and procedures including any such claims or liabilities alleged or asserted by the incumbent cable company;
- (17) An agreement to pay the town a franchise fee at least equal to the fee paid by the incumbent providers;
- (18) A notation and explanation of omissions or other variations with respect to the requirements of the application; and,

(19) Submission of an application fee in an amount set by the town council in the fee schedule adopted as part of the annual budget ordinance. (1991 Code, § 9-506, modified)

ADULT-ORIENTED ESTABLISHMENTS¹

SECTION

- 9-501. Purpose.
- 9-502. Definitions.
- 9-503. License required.
- 9-504. Application for license.
- 9-505. Standards for issuance of license.
- 9-506. Permit required.
- 9-507. Application for permit.
- 9-508. Standards for issuance of permit.
- 9-509. Fees.
- 9-510. Display of license or permit.
- 9-511. Renewal of license or permit.
- 9-512. Revocation of license or permit.
- 9-513. Hours of operation.
- 9-514. Responsibilities of the operator.
- 9-515. Prohibitions and unlawful sexual acts.
- 9-516. Sale or exhibition to minors of indecent publications, pictures or articles.
- 9-517. Penalties and prosecution.
- 9-518. Severability.
- 9-501. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the town. It is not the intent nor effect of this ordinance 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.
- **9-502. Definitions**. For the purpose of this chapter, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:
- (1) "Adult bookstore" means an establishment having as a substantial portion of its stock in trade ("substantial portion" meaning over 20% of floor area, or over 20% of inventory by units or value, or over 20% of revenues) in books, films, video cassettes, compact discs, computer software, computer

¹Municipal code reference Alcoholic beverages: § 8-105,

generated images or text, or magazines and other periodicals or publications or reproductions of any kind which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined below, and including adult-oriented films, movies, or live entertainment, for observation by patrons therein.

- (2) "Adult cabaret" is defined to mean an establishment which features as a principle use of its business, entertainers and/or waiters and/or bartenders and/or any other employee or independent contractor, who expose to public view of the patrons within said establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material; including swim suits, lingerie or latex covering. Adult cabarets shall include commercial establishments which feature entertainment of an erotic nature including exotic dancers, table dancers, private dancers, strippers, male or female impersonators, or similar entertainers.
- (3) "Adult-entertainment" means any exhibition of any adult-oriented: motion pictures, live performance, computer or CD Rom generated images, displays of adult-oriented images or performances derived or taken from the internet, displays or dance of any type, which has a substantial portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal or partial removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.
- (4) "Adult mini-motion picture theater" means an enclosed building with a capacity of less than fifty (50) persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below, for observation by any means by patrons therein.
- (5) "Adult motion picture theater" means an enclosed building with a capacity of fifty (50) or more persons regularly used for presenting materials having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, for observation by any means by patrons therein.
- (6) "Adult-oriented establishment" shall include, but not be limited to, "adult bookstore," "adult motion picture theaters," "adult mini-motion picture establishments," or "adult cabaret," and further means any premises to which the public patrons or members (regardless of whether or not the establishment is categorized as a private or members only club) are invited or admitted and/or which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the

purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An "adult-oriented establishment" further includes, without being limited to, any "adult entertainment studio" or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

- (7) "Employee" means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult-oriented establishment.
- (8) "Entertainer" means any person who provides entertainment within an adult-oriented establishment as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.
- (9) "Operator" means any person, partnership, corporation, or entity of any type or character operating, conducting or maintaining an adult-oriented establishment.
 - (10) "Specified sexual activities" means:
 - (a) Human genitals in a state of actual or simulated sexual stimulation or arousal;
 - (b) Acts or simulated acts of human masturbation, sexual intercourse or sodomy;
 - (c) Fondling or erotic touching of human genitals, pubic region, buttock or female breasts.
 - (11) "Specified anatomical areas" means:
 - (a) Less than completely and opaquely covered:
 - (i) Human genitals, pubic region;
 - (ii) Buttocks;
 - (iii) Female breasts below a point immediately above the top of the areola; and
 - (b) Human male genitals in an actual or simulated discernibly turgid state, even if completely opaquely covered.
- (12) "Town council" means the Town Council of the Town of Smyrna, Tennessee.
- **9-503.** <u>License required</u>. (1) Except as provided in subsection (5) below, from and after the effective date of this chapter, no adult-oriented establishment shall be operated or maintained in the Town of Smyrna without first obtaining a license to operate issued by the Town of Smyrna.
- (2) A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one (1) adult-oriented establishment must have a license for them.

- (3) No license or interest in a license may be transferred to any person, partnership, or corporation.
- (4) It shall be unlawful for any entertainer, employee or operator to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed adult-oriented establishment.
- (5) All existing adult-oriented establishments at the time of the passage of this chapter must submit an application for a license within on hundred twenty (120) days of the passage of this chapter on second and final reading. If a license is not issued within said one hundred twenty (120) day period, then such existing adult-oriented establishment shall cease operations.
- (6) No license may be issued for any location unless the premises is lawfully zoned for adult-oriented establishments and unless all requirements of the zoning ordinance are complied with.
- **9-504.** Application for license. (1) Any person, partnership, or corporation desiring to secure a license shall make application to the Police Chief of the Town of Smyrna. The application shall be filed in triplicate with and dated by the police chief. A copy of the application shall be distributed promptly by the police chief to the town clerk and to the applicant.
- (2) The application for a license shall be upon a form provided by the police chief. An applicant for a license including any partner or limited partner of the partnership applicant, and any officer or director of the corporate applicant and any stockholder holding more than five (5) percent of the stock of a corporate applicant, or any other person who is interested directly in the ownership or operation of the business (including but not limited to all holders of any interest in land of members of any limited liability company) shall furnish the following information under oath:
 - (a) Name and addresses, including all aliases;
 - (b) Written proof that the individual(s) is at least eighteen (18) years of age;
 - (c) All residential addresses of the applicant(s) for the past three (3) years;
 - (d) The applicants' height, weight, color of eyes and hair;
 - (e) The business, occupation or employment of the applicant(s) for five (5) years immediately preceding the date of the application;
 - (f) Whether the applicant(s) previously operated in this or any other county, city or state under an adult-oriented establishment license or similar business license; whether the applicant(s) has ever had such a license revoked or suspended, the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;
 - (g) All criminal statutes, whether federal or state, or town ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations;

- (h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of each applicant;
- (i) The address of the adult-oriented establishment to be operated by the applicant(s);
- (j) The names and addresses of all persons, partnerships, limited liability entities, or corporations holding any beneficial interest in the real estate upon which such adult-oriented establishment is to be operated, including but not limited to, contract purchasers or sellers, beneficiaries of land trust or lessees subletting to applicant;
- (k) If the premises are leased or being purchased under contract, a copy of such lease or contract shall accompany the application;
- (l) The length of time each applicant has been a resident of the Town of Smyrna, or its environs, immediately preceding the date of the application;
- (m) If the applicant is a limited liability entity, the applicant shall specify the name, the date and state of organization, the name and address of the registered agent and the name and address of each member of the limited liability entity;
- (n) A statement by the applicant that he or she is familiar with the provisions of this chapter and is in compliance with them;
- (o) All inventory, equipment, or supplies which are to be leased, purchased, held in consignment or in any other fashion kept on the premises or any part or portion thereof for storage, display, any other use therein, or in connection with the operation of said establishment, or for resale, shall be identified in writing accompanying the application specifically designating the distributor business name, address phone number, and representative's name; and
- (p) Evidence in form deemed sufficient to the town manager that the location for the proposed adult-oriented establishment complies with all requirements of the zoning ordinances as now existing or hereafter amended.
- (3) Within ten (10) days of receiving the results of the investigation conducted by the Smyrna Police Department, the police chief shall notify the applicant that his/her application is conditionally granted, denied or held for further investigation. Such additional investigation shall not exceed thirty (30) days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the police chief shall advise the applicant in writing whether the application is granted or denied. All licenses shall be further held pending consideration of the required special use zoning permit by the town council.
- (4) Whenever an application is denied or held for further investigation, the police chief shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter before the town

council at which time the applicant may present evidence as to why his/her license should not be denied. The town council shall hear evidence as to the basis of the denial and shall affirm or reject the denial of any application at the hearing. If any application for an adult-oriented establishment license is denied by the town council and no agreement is reached with the applicant concerning the basis for denial, the town attorney shall institute suit for declaratory judgment in the Chancery Court of Rutherford County, Tennessee, within five (5) days of the date of any such denial and shall seek an immediate judicial determination of whether such license or permit may be properly denied under the law.

- (5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the police chief.
- **9-505.** Standards for issuance of license. (1) To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:
 - (a) If the applicant is an individual:
 - (i) The applicant shall be at least eighteen (18) years of age.
 - (ii) The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.
 - (iii) The applicant shall not have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.
 - (b) If the applicant is a corporation:
 - (i) All officers, directors and stockholders required to be named under § 9-503 shall be at least eighteen (18) years of age.
 - (ii) No officer, director or stockholder required to be named under § 9-503 shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of application.
 - (c) If the applicant is a partnership, joint venture, limited liability entity, or any other type of organization where two (2) or more persons have a financial interest:

- (i) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age.
- (ii) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.
- (iii) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.
- (2) No license shall be issued unless the Smyrna Police Department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the police chief no later than twenty (20) days after the date of the application.
- **9-506.** Permit required. In addition to the license requirements previously set forth for owners and operators of "adult-oriented establishments," no person shall be an employee or entertainer in an adult-oriented establishment without first obtaining a valid permit issued by the police chief.
- **9-507.** Application for permit. (1) Any person desiring to secure a permit as an employee or entertainer shall make application to the police chief. The application shall be filed in triplicate with and dated by the police chief. A copy of the application shall be distributed promptly by the police chief to the town clerk and to the applicant.
- (2) The application for a permit shall be upon a form provided by the police chief. An applicant for a permit shall furnish the following information under oath:
 - (a) Name and address, including all aliases;
 - (b) Written proof that the individual is at least eighteen (18) years of age;
 - (c) All residential addresses of the applicant for the past three (3) years;
 - (d) The applicant's height, weight, color of eyes, and hair;
 - (e) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application;
 - (f) Whether the applicant, while previously operating in this or any other city or state under an adult-oriented establishment permit or similar business for whom applicant was employed or associated at the time, has ever had such a permit revoked or suspended, the reason

therefore, and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation;

- (g) All criminal statutes, whether federal, state or town ordinance violation, convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations;
- (h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of the applicant;
- (i) The length of time the applicant has been a resident of the Town of Smyrna, or its environs, immediately preceding the date of the application; and
- (j) A statement by the applicant that he or she is familiar with the provisions of this chapter and is in compliance with them.
- (3) Within ten (10) days of receiving the results of the investigation conducted by the Smyrma Police Department, the police chief shall notify the applicant that his application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigations, the police chief shall advise the applicant in writing whether the application is granted or denied.
- (4) Whenever an application is denied or held for further investigation, the police chief shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter before the town council at which time the applicant may present evidence bearing upon the question.
- (5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the police chief.
- **9-508.** Standards for issuance of permit. (1) To receive a permit as an employee or entertainer, an applicant must meet the following standards:
 - (a) The applicant shall be at least eighteen (18) years of age;
 - (b) The applicant shall not have been convicted of or pleaded no contest to a felony or any crime involving moral turpitude or prostitution, obscenity or other crime of a sexual nature (including violation of similar adult-oriented establishment laws or ordinances) in any jurisdiction within five (5) years immediately preceding the date of the application;
 - (c) The applicant shall not have been found to violate any provision of this chapter within five (5) years immediately preceding the date of the application.

- (2) No permit shall be issued until the Smyrna Police Department has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the police chief not later than twenty (20) days after the date of the application.
- **9-509.** <u>Fees</u>. (1) A non-refundable license fee as set forth in the fee schedule adopted with the annual budget ordinance shall be submitted with the application for a license.
- (2) A non-refundable permit fee as set forth in the fee schedule adopted with the annual budget ordinance shall be submitted with the application for a permit.
- **9-510.** <u>Display of license or permit</u>. (1) The license shall be displayed in a conspicuous public place in the adult-oriented establishment.
- (2) The permit shall be carried by an employee and/or entertainer upon his or her person and shall be displayed upon request of a customer, any member of the Smyrna Police Department, or any person designated by the town council.
- 9-511. Renewal of license or permit. (1) Every license issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the police chief. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the police chief. A copy of the application for renewal shall be distributed promptly by the police chief to the town clerk and to the operator. The application for renewal shall be a form provided by the police chief and shall contain such information and data, given under oath or affirmation, as may be required by the town council.
- (2) A non-refundable license renewal fee as set forth in the fee schedule adopted with the annual budget ordinance shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty as set forth in the fee schedule adopted with the annual budget ordinance shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires.
- (3) If the Smyrna Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the police chief.
- (4) Every permit issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance unless sooner revoked, and must be renewed before an employee and/or entertainer is allowed to continue employment in an adult-oriented establishment in the following calendar year. Any employee and/or entertainer desiring to renew a permit shall make

application to the police chief. The application for renewal must be filed not later than sixty (60) days before the permit expires. The application for renewal shall be filed in triplicate with and dated by the police chief. A copy of the application for renewal shall be distributed promptly by the police chief to the town clerk and to the employee. The application for renewal shall be upon a form provided by the police chief and shall contain such information and data, given under oath or affirmation, as may be required by the town council.

- (5) A non-refundable permit renewal fee as set forth in the fee schedule adopted with the annual budget ordinance shall be submitted with the application for renewal. In addition to said renewal fee, a late penalty as set forth in the fee schedule adopted with the annual budget ordinance shall be assessed against the applicant who files for renewal less than sixty (60) days before the license expires.
- (6) If the Smyrna Police Department is aware of any information bearing on the employee's qualifications, that information shall be filed in writing with the police chief.
- **9-512.** Revocation of license or permit. (1) The police chief shall revoke a license or permit for any of the following reasons:
 - (a) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.
 - (b) The operator, entertainer, or any employee of the operator, violates any provision of this chapter or any rule or regulation adopted by the town council pursuant to this chapter; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the town council shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.
 - (c) The operator or employee becomes ineligible to obtain a license or permit.
 - (d) Any cost or fee required to be paid by this chapter is not paid.
 - (e) An operator employs an employee who does not have a permit or provide space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit.
 - (f) Any intoxicating liquor, cereal malt beverage, narcotic or controlled substance is allowed to be sold or consumed on the licensed premises.
 - (g) Any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any adult-oriented entertainment or adult-oriented material.

- (h) Any operator, employee or entertainer denies access of law enforcement personnel to any portion of the licensed premises wherein adult-oriented entertainment is permitted or to any portion of the licensed premises wherein adult-oriented material is displayed or sold.
- (i) Any operator allows continuing violations of the rules and regulations of the Rutherford County Health Department.
- (j) Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition.
- (k) Any minor is found to be loitering about or frequenting the premises.
- (2) The police chief, before revoking or suspending any license or permit, shall give the operator or employee at least ten (10) days' written notice of the charges against him or her and the opportunity for a public hearing before the town council, at which time the operator or employee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.
- (3) The transfer of a license or any interest in a license shall automatically and immediately revoke the license. The transfer of any interest in a non-individual operator's license shall automatically and immediately revoke the license held by the operator. Such license shall thereby become null and void.
- (4) Any operator or employee whose license or permit is revoked shall not be eligible to receive a license or permit for five (5) years from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for two (2) years from the date of revocation of the license.
- **9-513.** <u>Hours of operation</u>. (1) No adult-oriented establishment shall be open between the hours of 1:00 A.M. and 8:00 A.M. Monday through Saturday, and between the hours of 1:00 A.M. and 12:00 P.M. on Sunday.
- (2) All adult-oriented establishments shall be open to inspection at all reasonable times by the Smyrna Police Department, the Rutherford County Sheriff's Department, or such other persons as the town council may designate.
- **9-514.** Responsibilities of the operator. (1) The operator shall maintain a register of all employees and/or entertainers showing the name, and aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, and duties of each employee and such other information as may be required by the town council. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

- (2) The operator shall make the register of the employees available immediately for inspection by police upon demand of a member of the Smyrna Police Department at all reasonable times.
- (3) Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- (4) An operator shall be responsible for the conduct of all employees and/or entertainers while on the licensed premises and any act or omission of any employees and/or entertainer constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.
- (5) There shall be posted and conspicuously displayed in the common areas of each adult-oriented establishment a list of any and all entertainment provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the Smyrna Police Department at all reasonable times.
- (6) No operator or employee of an adult-oriented establishment shall allow any minor in or on the premises, to loiter around or to frequent an adult-oriented establishment, or to allow any minor to view adult entertainment as herein defined. It is a violation of this section if any person knowingly allows a person under the age of eighteen years on or in the premises of an adult oriented establishment as herein defined.
- (7) Every adult-oriented establishment shall be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be visible from the common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. It shall be unlawful to install booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose, but especially for the purpose of secluded viewing of adult-oriented motion pictures or other types of adult entertainment.
- (8) The operator shall be responsible for and shall provide that any room or area used for the purpose of viewing adult-oriented motion pictures or other types of live adult entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirely.
- (9) No operator, entertainer, or employee of an adult-oriented establishment shall demand or collect all or any portion of a fee for entertainment before its completion.

(10) A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

This Adult-Oriented Establishment is Regulated by the Town of Smyrna Municipal Code. Entertainers are:

- 1. Not permitted to engage in any type of sexual conduct;
- 2. Not permitted to expose their sex organs;
- 3. Not permitted to demand or collect all or any portion of a fee for entertainment before its completion.
- 9-515. <u>Prohibitions and unlawful sexual acts</u>. (1) No operator, entertainer, or employee of an adult-oriented establishment shall permit to be performed, offer to perform, perform or allow customers, employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.
- (2) No operator, entertainer, or employee shall encourage or permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus or genitals of any other person.
- (3) No operator, entertainer, or employee shall encourage or permit any other person upon the premises to touch, caress, or fondle his or her breasts, buttocks, anus or genitals.
- (4) No operator, entertainer, employee, or customer shall be unclothed or in such attire, costume, or clothing so as to expose to view any portion of the sex organs, breasts or buttocks of said operator, entertainer, or employee with the intent to arouse or gratify the sexual desires of the operator, entertainer, employee or customer.
- (5) No entertainer, employee or customer shall be permitted to have any physical contact with any other person on the premises during any performance and all performances shall only occur upon a stage at least eighteen (18") inches above the immediate floor level and removed six feet (6') from the nearest entertainer, employee and/or customer.
- 9-516. Sale or exhibition to minors of indecent publications, pictures or articles. (1) Every person who shall willfully engage in the business of selling, lending, giving away, showing, advertising for sale or distributing to any person under the age of eighteen (18) years of age or who has in his possession with the intent to engage in such business or to otherwise offer for sale or commercial distribution to any individual under the age of eighteen (18) years of age, or who shall display at a newsstand or any other business establishment frequented by minors under eighteen (18) years of age or any place where minors are or may be invited as part of the general public, any motion picture, live show or any still pictures, photographs or any book, pocketbook, pamphlet or magazine, the cover or contents of which exploits, is devoted to or is principally made up of descriptions or depictions of illicit sex or sexual immorality, or which is lewd, lascivious or indecent, or which consists of

pictures of nude or partially denuded figures posed or presented in a manner to provoke or arouse lust or passion or to exploit sex, lust or other perversion for commercial gain or any article or instrument of indecent or immoral use shall, upon conviction, be punished as provided in <u>Article IX</u> of the charter of the Town of Smyrna.

- (2) For the purpose of this section, "description or depiction of illicit sex or sexual immorality" shall mean:
 - (a) Human genitals in a state of sexual stimulation or arousal.
 - (b) Acts of human masturbation, sexual intercourse or sodomy.
 - (c) Fondling or other erotic touching of human genitals, pubic region, buttocks or the female breasts.
- (3) For the purpose of this section, "nude or partially denuded figures" shall mean:
 - (a) Less than completely or opaquely covered:
 - (i) Human genitals;
 - (ii) Pubic regions;
 - (iii) Buttocks:
 - (iv) Female breasts below a point immediately below the top of the areola; or
 - (v) Human male genitals in a discernible turgid state, even if completely and opaquely covered.
- (4) For the purpose of this section, "knowingly" shall mean having knowledge of the character and content of the publication, or failure on notice to exercise reasonable inspection which would disclose the content and character of the publication.
- **9-517.** Penalties and prosecution. (1) Any person, partnership, corporation, or other business entity who is found to have violated this chapter shall be fined a definite sum not exceeding fifty dollars (\$50.00) for each violation and shall result in the suspension or revocation of any permit or license.
- (2) Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation.
- 9-518. Severability clause. Each section and provision of this chapter is hereby declared to be independent sections and subsections and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such

sections and provisions would have been passed independently of such section or provision so known to be invalid.

TITLE 10

ANIMAL CONTROL¹

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. Cruel treatment prohibited.
- 10-107. Inspections of premises.
- 10-108. Seizure and disposition of animals.
- 10-109. Violation and penalty.
- **10-101.** Running at large prohibited. It shall be unlawful for any person owning or being in charge of any cows, swine, sheep, horses, mules 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.

Any person, including its owner, knowingly or negligently permitting an animal to run at large may be prosecuted under this section even if the animal is picked up and disposed of under other provisions of this chapter, whether or not the disposition includes returning the animal to its owner. (1991 Code, § 10-101, modified)

- **10-102.** <u>Keeping near a residence or business restricted</u>. (1) No person shall keep or allow any animal or fowl enumerated in the preceding section to come within one thousand (1,000) feet of any residence, place of business, or public street.
- (2) The above provision shall not apply to lots zoned for agricultural use or to lots primarily used for farming operations existing properly under the

¹Municipal code reference Animals on sidewalks: § 16-111.

provisions of the Town of Smyrna Municipal Zoning Ordinance. (1991 Code, § 10-102, modified)

- **10-103.** Pen or enclosure to be kept clean. When animals or fowls are kept within the corporate limits, the building, structure, corral, pen, or enclosure in which they are kept shall at all times be maintained in a clean and sanitary condition. (1991 Code, § 10-103)
- **10-104.** Adequate food, water, and shelter, etc., to be provided. No animal or fowl shall be kept or confined in any place where the food, water, shelter, and ventilation are not adequate and sufficient for the preservation of its health, 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. (1991 Code, § 10-104)

- 10-105. <u>Keeping in such manner as to become nuisance</u> <u>prohibited</u>. No animal or fowl shall be kept in such a place or condition as to become a nuisance either because of noise, odor, contagious disease, or other reason. (1991 Code, § 10-105)
- 10-106. <u>Cruel treatment prohibited</u>. It shall be unlawful for any person to unnecessarily beat or otherwise abuse or injure any dumb animal or fowl. (1991 Code, § 10-106)
- 10-107. <u>Inspections of premises</u>. For the purpose of making inspections to insure compliance with the provisions of this title, the code enforcement officers 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. (1991 Code, § 10-107, modified)
- 10-108. Seizure and disposition of animals. Any animal or fowl found running at large or otherwise being kept in violation of this chapter may be seized by any police officer or other properly designated officer or official and confined in a pound provided or designated by the town council. 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 town council.

The pound keeper shall collect from each person claiming an impounded animal or fowl reasonable fees, in accordance with a schedule approved by the town council, to cover the costs of impoundment and maintenance.

10-109. <u>Violation 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.

DOGS AND CATS

SECTION

- 10-201. Rabies vaccination and registration required.
- 10-202. Dogs and cats to wear tags.
- 10-203. Running at large prohibited.
- 10-204. Vicious dogs to be securely restrained.
- 10-205. Noisy dogs or cats prohibited.
- 10-206. Confinement of dogs or cats suspected of being rabid.
- 10-207. Seizure and disposition of dogs and cats.
- 10-208. Destruction of vicious or infected dogs running at large.
- 10-209. Violation and penalty.
- **10-201.** Rabies vaccination and registration required. It shall be unlawful for any person to own, keep, or harbor any dog or cat without having the same duly vaccinated against rabies and registered in accordance with the provisions of the "Tennessee Anti-Rabies Law" <u>Tennessee Code Annotated</u>, §§ 68-8-101, et seq. (1991 Code, § 10-201, modified)
- **10-202.** <u>Dogs and cats to wear tags</u>. It shall be unlawful for any person to own, keep, or harbor any dog or cat which does not wear a tag evidencing the vaccination and registration required by the preceding section. (1991 Code, § 10-202, modified)
- **10-203.** Running at large prohibited.¹ It shall be unlawful for any person knowingly to permit any dog or cat owned by him or under his control to run at large within the corporate limits.

Any person, including its owner, knowingly or negligently permitting a dog or cat to run at large may be prosecuted under this section even if the dog or cat is picked up and disposed of under other provisions of this chapter, whether or not the disposition includes returning the dog or cat to its owner. (1991 Code, § 10-203, modified)

10-204. <u>Vicious dogs to be securely restrained</u>. It shall be unlawful for any person to own or keep any dog known to be vicious or dangerous unless such dog is so confined and/or otherwise securely restrained as to provide reasonably for the protection of other animals and persons. A violation of this

¹State law references

Tennessee Code Annotated, §§ 44-8-108, 68-8-108, and 68-109.

section shall subject the offender to a penalty under the general penalty provision of this code.

- **10-205.** Noisy dogs or cats prohibited. No person shall own, keep, or harbor any dog or cat which, by loud and frequent barking, whining, or howling, disturbs the peace and quiet of any neighborhood. (1991 Code, § 10-205, modified)
- 10-206. Confinement of dogs or cats suspected of being rabid. If any dog or cat has bitten any person or is suspected of having bitten any person or is for any reason suspected of being infected with rabies, the animal control officer or chief of police may cause such dog or cat to be confined or isolated for such time as he reasonably deems necessary to determine if such dog or cat is rabid. (1991 Code, § 10-206, modified)
- 10-207. Seizure and disposition of dogs and cats. Any dog or cat 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 town council. If the dog or cat is wearing a tag the owner shall be notified in person, by telephone, or by a postcard addressed to his last-known mailing address to appear within five (5) days and redeem his dog or cat by paying a reasonable pound fee, in accordance with a schedule approved by the town council, or the dog or cat will be sold or humanely destroyed. If the dog or cat is not wearing a tag it shall be sold or humanely destroyed unless legally claimed by the owner within three (3) days. No dog or cat shall be released in any event from the pound unless or until such dog or cat has been vaccinated and has a tag evidencing such vaccination placed on its collar.
- 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 police officer or other properly designated officer.¹
- 10-209. <u>Violation 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.

For a Tennessee Supreme Court case upholding the summary destruction of dogs pursuant to appropriate legislation, see <u>Darnell v.</u> Shapard, 156 Tenn. 544, 3 S.W.2d 661 (1928).

¹State law reference

TITLE 11

MUNICIPAL OFFENSES¹

CHAPTER

- 1. MISDEMEANORS OF THE STATE ADOPTED.
- 2. ALCOHOL.
- 3. FORTUNE TELLING, ETC.
- 4. OFFENSES AGAINST THE PEACE AND QUIET.
- 5. INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL.
- 6. FIREARMS, WEAPONS AND MISSILES.
- 7. TRESPASSING AND INTERFERENCE WITH TRAFFIC.
- 8. MISCELLANEOUS.
- 9. PUBLIC NUISANCES.
- 10. RECYCLABLE MATERIALS.
- 11. GRAFFITI.
- 12. CURFEW.

CHAPTER 1

MISDEMEANORS OF THE STATE ADOPTED

SECTION

11-101. Misdemeanors of the state adopted.

11-101. <u>Misdemeanors of the state adopted</u>. Except where prohibited by state law, all offenses against the State of Tennessee which are committed within the corporate limits and which are defined by the state law or are recognized by the common law to be misdemeanors are hereby designated and declared to be offenses against this municipality also. Any violation of any such law within the corporate limits is also a violation of this section. (1991 Code, § 11-101)

¹Municipal code references

Animal control: title 10.

Housing and utility codes: title 12. Fireworks and explosives: title 7.

Traffic offenses: title 15.

Streets and sidewalks (non-traffic): title 16.

ALCOHOL1

SECTION

- 11-201. Drinking beer, etc., on streets, etc.
- 11-202. Minors in beer places.
- 11-203. Violation and penalty.
- 11-201. <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 or intoxicating liquor 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. (1991 Code, § 11-228, modified)
- 11-202. <u>Minors in beer places</u>. No one under twenty-one (21) years of age shall loiter in or around or otherwise frequent any place where beer is sold at retail for consumption on the premises. (1991 Code, § 11-222)
- 11-203. <u>Violation 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.

Sale of alcoholic beverages, including beer: title 8.

State law reference

See <u>Tennessee Code Annotated</u> § 39-17-310 (<u>Arrest for Public Intoxication</u>, cities may not pass separate legislation).

¹Municipal code reference

FORTUNE TELLING, ETC.

SECTION

- 11-301. Fortune telling, etc.
- 11-302. Violation and penalty.
- 11-301. <u>Fortune telling, etc</u>. It shall be unlawful for any person to conduct the business of, solicit for, or ply the trade of fortune teller, clairvoyant, hypnotist, palmist, phrenologist, or other mystic endowed with supernatural powers. (1991 Code, § 11-234, modified)
- 11-302. <u>Violation and penalty</u>. A violation of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation shall be allowed to continue shall constitute a separate offense.

OFFENSES AGAINST THE PEACE AND QUIET

SECTION

- 11-401. Disturbing the peace.
- 11-402. Anti-noise regulations.
- 11-403. Violation and penalty.
- 11-401. <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. (1991 Code, § 11-202)
- 11-402. <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) <u>Blowing horns</u>. The sounding of any horn or signal device on any automobile, motorcycle, bus, truck, or other vehicle while not in motion except as a danger signal if another vehicle is approaching, apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.
 - (b) 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 a manner or with such volume, particularly during the hours between 11:00 P.M. and 7:00 A.M., as to annoy or disturb the quiet, comfort, or repose of persons in any office or hospital, or in any dwelling, hotel, or other type of residence, or of any person in the vicinity.
 - (c) <u>Yelling, shouting, hooting, etc.</u> 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, dwelling, hotel, or other type of residence, or of any person in the vicinity.

- (d) <u>Pets</u>. 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.
- (e) <u>Use of vehicle</u>. The use of any automobile, motorcycle, truck, or vehicle so out of repair, so loaded, or in such manner as to cause loud and unnecessary grating, grinding, rattling, or other noise.
- (f) <u>Blowing whistles</u>. 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.
- (g) <u>Exhaust discharge</u>. 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.
- (h) Building operations. The erection (including excavation), demolition, alteration, or repair of any building in any residential area or section or the construction or repair of streets and highways in any residential area or section, other than between the hours of 7:00 A.M. and 6:00 P.M. on Monday through Friday and on Saturday between the hours of 8:00 A.M. and 6:00 P.M., except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building official or his designee granted for a period while the emergency continues not to exceed thirty (30) days. If the building official or his designee 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 during hours other than allowed herein; 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 during hours other than specifically allowed herein, upon application being made at the time the permit for the work is awarded or during the process of the work.
- (i) Noises near schools, hospitals, churches, etc. The creation of any excessive noise on any street adjacent to any hospital or adjacent to any school, institution of learning, church, or court while the same is in session.
- (j) <u>Loading and unloading operations</u>. 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.
- (k) <u>Noises to attract attention</u>. 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.

- (l) <u>Loudspeakers or amplifiers on vehicles</u>. The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other purposes.
- (2) <u>Exceptions</u>. None of the terms or prohibitions hereof shall apply to or be enforced against:
 - (a) <u>Town vehicles</u>. Any vehicle of the town while engaged upon necessary public business.
 - (b) Repair of streets, etc. Excavations or repairs of bridges, streets, or highways at night, by or on behalf of the town, the county, or the state, when the public welfare and convenience renders it impracticable to perform such work during the day.
 - (c) Noncommercial and nonprofit use of loudspeakers or amplifiers. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character and in the course of advertising functions sponsored by nonprofit organizations. However, no such use shall be made until a permit therefor is secured from the town clerk. 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. (1991 Code, § 11-233, modified)
- 11-403. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL¹

- 11-501. Impersonating a government officer or employee.
- 11-502. False emergency alarms.
- 11-503. Violation and penalty.
- 11-501. <u>Impersonating a government officer or employee</u>. No person other than an official police officer of the town shall wear the uniform, apparel, or badge, or carry any identification card or other insignia of office like or similar to, or a colorable imitation of that adopted and worn or carried by the official police officers of the town. Furthermore, no person shall deceitfully impersonate or represent that he is any government officer or employee. (1991 Code, § 11-211)
- 11-502. <u>False emergency alarms</u>. It shall be unlawful for any person to intentionally make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance, or to aid or abet in the commission of such act. Property owners of homes or businesses that have building alarm systems are responsible for ensuring that alarms are not set off except in cases of emergency. For all false alarms, whether set off intentionally, accidentally, or due to malfunction of the alarm system, over three (3) in a calendar year, fines will be assessed to the property owner or lessor, as applicable, as established in the fee schedule. (1991 Code, § 11-217, modified)
- 11-503. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

¹Municipal code reference Law enforcement: title 6.

FIREARMS, WEAPONS AND MISSILES

- 11-601. Air rifles, etc.
- 11-602. Throwing of missiles.
- 11-603. Discharge of firearm within town prohibited.
- 11-604. Violation and penalty.
- 11-601. <u>Air rifles, etc</u>. (1) It shall be unlawful for any person in the town to discharge any air gun, air pistol, air rifle, "BB" gun, paintball gun, or sling shot capable of discharging a metal, plastic or any other find of material, bullet or pellet, whether propelled by spring, compressed air, expanding gas, explosive, or other force-producing means or method in a reckless manner. For purposes of this section only reckless shall refer to a person who is aware of but consciously disregards a substantial and unjustifiable risk of harm to person or property.
- (2) Sporting events, utilizing such items as listed in subsection (1), shall be an exception to the prohibitions in subsection (1), if such sporting events are in a contained area and have been approved in advance by the chief of police.
- (3) It shall be unlawful to discharge any item listed in subsection (1) from or across any street, alley, public way, or railroad right of way. It shall be unlawful to discharge or possess any item listed in subsection (1) in any municipal building or in any municipal park, except as approved in writing under terms and conditions set forth by the town manager. (1991 Code, § 11-213, modified)
- 11-602. <u>Throwing of missiles</u>. It shall be unlawful for any person maliciously to throw any stone, snowball, bottle, or any other missile upon or at any vehicle, building, or other public or private property or upon or at any person. (1991 Code, § 11-214, modified)
- 11-603. <u>Discharge of firearm within town prohibited</u>. It shall be unlawful for any unauthorized person to discharge a firearm within the town. (1991 Code, § 11-212, modified)
- 11-604. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

TRESPASSING AND INTERFERENCE WITH TRAFFIC

SECTION

- 11-701. Trespassing.
- 11-702. Interference with traffic.
- 11-703. Violation and penalty.
 - 11-701. <u>Trespassing</u>. (1) <u>On premises open to the public</u>. (a) It shall be unlawful for any person to defy a lawful order, personally communicated to him by the owner or other authorized person, not to enter or remain upon the premises of another, including premises which are at the time open to the public.
 - (b) The owner of the premises, or his authorized agent, may lawfully order another not to enter or remain upon the premises if such person is committing, or commits, any act which interferes with, or tends to interfere with, the normal, orderly, peaceful or efficient conduct of the activities of such premises.
- (2) On premises closed or partially closed to public. It shall be unlawful for any person to knowingly enter or remain upon the premises of another which is not open to the public, notwithstanding that another part of the premises is at the time open to the public.
- (3) <u>Vacant buildings</u>. It shall be unlawful for any person to enter or remain upon the premises of a vacated building after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.
- (4) <u>Lots and buildings in general</u>. It shall be unlawful for any person to enter or remain on or in any lot or parcel of land or any building or other structure after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.
- (5) <u>Peddlers, etc.</u> 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.¹
- 11-702. <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

Provisions governing peddlers: title 9, chapter 1.

¹Municipal code reference

with the free passage of pedestrian or vehicular traffic thereon. (1991 Code, § 11-232)

11-703. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

MISCELLANEOUS

- 11-801. Abandoned refrigerators, etc.
- 11-802. Caves, wells, cisterns, etc.
- 11-803. Posting notices, etc.
- 11-804. Disorderly conduct.
- 11-805. Violation of airport authority rules and regulations.
- 11-806. Violation and penalty.
- 11-801. <u>Abandoned refrigerators, etc.</u> It shall be unlawful for any person to leave in any place accessible to children any abandoned, unattended, unused, or discarded refrigerator, icebox, or other container with any type latching or locking door without first removing therefrom the latch, lock, or door, or otherwise sealing the door in such a manner that it cannot be opened by any child. (1972 Code, § 11-223, modified)
- 11-802. <u>Caves, wells, cisterns, etc.</u> It shall be unlawful for any person to permit to be maintained on property owned or occupied by him any cave, well, cistern, or other such opening in the ground which is dangerous to life and limb without an adequate cover or safeguard. (1991 Code, § 11-231)
- 11-803. <u>Posting notices, etc.</u> No person shall paint, make or fasten, in any way, any show-card, poster, or other advertising device or sign upon any public or private property unless legally authorized to do so. (1991 Code, § 11-227, modified)
- **11-804.** Disorderly conduct. (1) A person commits an offense who, in a public place and with intent to cause public annoyance or alarm:
 - (a) Engages in fighting or in violent or threatening behavior;
 - (b) Refuses to obey an official order to disburse issued to maintain public safety in dangerous proximity to a fire, hazard or other emergency; or
 - (c) Creates a hazard or physically offensive condition by any act that serves no legitimate purpose.
- (2) A person also violates this section who makes unreasonable noise which prevents others from carrying on lawful activities. (1991 Code, § 11-236)
- 11-805. <u>Violation of airport authority rules and regulations</u>. Any violation of the rules and regulations of the Metropolitan Airport Authority, dated September 1, 1970 including any updates, amendments or authorized replacements, is declared to be a misdemeanor of the Town of Smyrna. Said

rules and regulations are of record in the office of the town clerk and are incorporated herein by reference as fully as if copied herein verbatim. (1991 Code, § 11-229, modified)

11-806. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

PUBLIC NUISANCES

- 11-901. Certain public nuisances defined and prohibited.
- 11-902. Notice of violations.
- 11-903. Hearing before town judge.
- 11-904. Abatement of nuisances by town.
- 11-905. Town clerk to keep files and records.
- 11-906. Violation and penalty.
- 11-901. Certain public nuisances defined and prohibited. The allowing or permitting (1) of debris, rubbish, trash, tin cans, bottles, papers, or stagnant water to accumulate, (2) or a dense growth of trees, vines, grass, and underbrush to develop, (3) or any property which is in a filthy or deteriorated condition due to fire destruction, natural deterioration, or abandonment or (4) property which is allowed to accumulate unwholesome or offensive matter such as would allow the breeding of flies, rodents, or other vermin on any lot, tract, or parcel of land within the corporate limits of the Town of Smyrna to such an extent that it constitutes a menace to life, property, public health or public welfare is hereby specifically prohibited and declared to be a public nuisance, and also a misdemeanor. (1991 Code, § 11-301)
- 11-902. Notice of violations. If the town building official determines that conditions exist in violation of the preceding section he shall notify the recorded owner of the property in writing at his last known mailing address of the conditions on the property that constitute a menace to life, property, public health, and/or public welfare and demand that said owner cause such condition or conditions to be remedied immediately. He shall also cause a copy of the notice to be served by a police officer of the Town of Smyrna upon the occupant of said property, if any, or upon any agent of the owner thereof if available. The mailing of such notice shall be sufficient proof thereof, and the delivery of notice shall be equivalent to mailing. If the mailing address of the owner is not known, and the property is unoccupied and the owner has no agent in the Town of Smyrna, the notice shall be posted upon said property as notice to the owner thereof. (1991 Code, § 11-302, modified)
- 11-903. <u>Hearing before town judge</u>. Within ten (10) days after the mailing of the notice, or the service thereof, the owner of the property shall have the right to have a hearing upon written request to the building official before the town judge to show that said condition or conditions do not exist or to show why the items that are complained of do not constitute a menace to life, property, public health and/or public welfare, or why said condition or conditions

should not be remedied by the Town of Smyrna at the expense of the owner of the property. At such hearing, the Town of Smyrna and the property owner may introduce such witnesses as deemed necessary to show the described condition or conditions existing upon the property. (1991 Code, § 11-303, modified)

11-904. Abatement of nuisances by town. If the condition or conditions described in the notice have not been remedied within ten (10) days after the mailing or service thereof or in the event of a hearing as hereinabove provided, after notice to the property owner, occupant, agent, or notice posted, of the decision of the town judge, the building official shall cause said condition to be remedied by the Town of Smyrna at the expense of the owner of the property. After causing the condition or conditions to be remedied, the building official shall certify to the town clerk the expense incurred in remedying such condition or conditions together with a certificate as to the condition of the property which necessitated the incurring of the expense, a copy of the notice mentioned above with proof of service thereof, and a copy of the result of the hearing before the town judge, if any. The expense shall thereupon become and constitute a lien and charge upon the property which shall be payable with interest at the rate of ten percent (10%) per annum from the date of such certification, until paid, collectable at the time any real property taxes on said property become due and payable to the Town of Smyrna, Tennessee. Such expense and charge shall be a first and prior lien against the property, subject only to the lien for taxes to the County of Rutherford and of the same character as the lien of the Town of Smyrna for municipal taxes. Upon failure of the owner of the property to pay the lien, it may be enforced in the same manner as tax liens in favor of the Town of Smyrna and shall be certified by the town clerk to the back tax attorney along with the certification of other taxes assessed against the property in the town, and not paid when due. Any property owner shall have the right to have a hearing before the town judge to show cause, if any, why such expense and charge should not constitute a lien against his property upon written request for a hearing to the town clerk within ninety (90) days after the lien for taxes is imposed upon the property. Such owner shall also have the right at this hearing to have determined the reasonableness of the expense or charge made by the municipality in remedying the condition or conditions existing upon the property of such owner. (1991 Code, § 11-304, modified)

11-905. <u>Town clerk to keep files and records</u>. The town clerk of the Town of Smyrna shall keep a complete set of files and records relating to such liens, and shall include the amounts of such liens and tax statements thereafter submitted to the owners of lots, tracts, or parcels of land subject to such liens. (1991 Code, § 11-305)

11-906. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

RECYCLABLE MATERIALS¹

SECTION

11-1001. Anti-theft and anti-pilferage of recyclable material collection facilities or depository.

11-1001. Anti-theft and anti-pilferage of recyclable material collection facilities or depository. It shall be unlawful for any person to steal, pilfer or rummage through materials deposited in a recyclable material collection facility. (1991 Code, § 11-401)

¹Municipal code reference Refuse: title 17.

GRAFFITI

- 11-1101. Intent and findings.
- 11-1102. Declaration of public nuisance.
- 11-1103. Terms defined.
- 11-1104. Graffiti unlawful.
- 11-1105. Removal of graffiti.
- 11-1106. Notice to owner, possessor of property.
- 11-1107. Authorization to use municipal funds.
- 11-1108. Authorization for the municipality to remove graffiti.
- 11-1109. Authorization to use persons assigned to perform community service.
- 11-1110. Reimbursement to municipality.
- 11-1111. Reward for information.
- 11-1112. Violations.
- 11-1101. Intent and findings. Graffiti on public and private property is a blighting factor which deteriorates property and also depreciates the value of the property and the value of the adjacent and surrounding properties. The town council of the Town of Smyrna concurs with the findings of the general assembly of the State of Tennessee related to graffiti. It is the town council's intent to provide for the prohibition of the placement of graffiti on public and private property as herein set forth. Graffiti is inconsistent with the town's aesthetic standards, and unless it is quickly removed from public and private properties, other adjacent properties will become the target of graffiti. The existence of graffiti tends to breed community discontent and criminal activity. The prompt removal of graffiti is necessary to prevent its proliferation. While the property and its owner or possessor is a victim of the graffiti, it is always the duty of the property owner or possessor to remove graffiti as soon as reasonably possible. To assist in preventing and controlling the further spread of graffiti. town council authorizes the use of town funds to remove graffiti on public and private property as set forth herein and as provided in accordance with Tennessee Code Annotated, §6-54-127. (Ord. #06-47, Oct. 2006)
- 11-1102. <u>Declaration of public nuisance</u>. For the purpose of promoting the public safety, health, welfare, convenience and enjoyment, to protect the public investment in public property, and to preserve and enhance the scenic beauty of property visible from publicly owned property, the town council of the Town of Smyrna finds and declares that graffiti constitutes a public nuisance that may be abated and curtailed in accordance with the laws of this state. (Ord. #06-47, Oct. 2006)

- 11-1103. <u>Terms defined</u>. (1) "Advertising" shall for purposes of this section mean any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner or tenant of the property, or an agent of such owner or tenant, for the purpose of promoting products or services or conveying information to the public.
- (2) "Graffiti" shall mean, without limitation, any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, fences, gate, building or other structure; provided, this definition shall not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, by an authorized agent for such owner or tenant, or unless otherwise approved by the owner or tenant.
- (3) "Publicly owner property" shall mean the property owned or controlled by a federal, state, or local governmental entity, including, but not limited to, public parks, streets, roads and sidewalks.
- (4) "Tenant" shall mean any person shown by the records of the register of deed's office as a lessee of property, or any person lawfully in actual physical possession of property. (Ord. #06-47, Oct. 2006)
- 11-1104. <u>Graffiti unlawful</u>. (1) It shall be unlawful for any person to write, paint, inscribe, scratch, scrawl, spray, place or draw graffiti of any type on any public of private building, structure or any other real or personal property.
- (2) It shall be unlawful for any person to possess, while in any public building or facility, or while on private property, any of the following materials with the intent to use such materials to violate subsection (1) and/or subsection (3): spray paint containers, paint, ink, marking pens containing non-water soluble fluid, brushes, applicators or other materials for marking, scratching, or etching.
- (3) It shall be unlawful for the owner and/or occupant of fixed real or personal property located within the public view to place or give permission to place graffiti, as defined herein, on said real or personal property if the graffiti tends to incite violence by referring to gang or criminal activity, depicts or expresses obscenity as defined by <u>Tennessee Code Annotated</u>, § 39-17-901 or contains defamatory material about a public or private person, except as otherwise allowed by law. (Ord. #06-47, Oct. 2006)
- 11-1105. Removal of graffiti. It shall be unlawful for any person owning property, acting as manager of agent for the owner of property, or in possession or control of property to fail to remove or effectively obscure any graffiti upon such property. (Ord. #06-47, Oct. 2006)

- 11-1106. Notice to owner, possessor of property. (1) In the event that the police department finds that graffiti exists, the chief of police or his designee, shall mail or deliver a written order to the owner and possessor of the subject real property, addressed to the owner's last known address and to the property address. Notice may also be accomplished by posting the order in a clearly visible location on the subject property. The written order should contain the following:
 - (a) A description of the real estate sufficient for identification;
 - (b) Inform the owner/possessor that the police department has found graffiti exists on the property; and
 - (c) An order that the owner and/or possessor remove or obliterate the graffiti within fifteen (15) days;
 - (d) Inform the owner that graffiti has been declared a public nuisance and that failure to remove the graffiti may result in further civil action by the town; and
 - (e) Inform the owner that failure to remove graffiti is unlawful and may result in citation to municipal court.
- (2) By written request, the 15-day time period for removal of graffiti may be waived due to weather conditions by the chief of police.
- (3) The property owner may also request assistance, in writing, for the graffiti removal based on the owner's inability to perform removal.
- (4) A property owner, occupant, or lessee may appeal the order to remove the graffiti by filing a written appeal with the town manager before the expiration of the 15-day time period. The town manager shall place the appeal for consideration by the town council at the next regularly scheduled town council meeting. (Ord. #06-47, Oct. 2006)
- 11-1107. Authorization to use municipal funds. The municipality may use municipal funds to remove graffiti or other inscribed material from publicly owned real or personal property or privately owned real or personal property visible from publicly owned property and located within the Town of Smyrna and to replace or repair publicly owned property or privately owned property visible from publicly owned property within the Town of Smyrna that has been defaced with graffiti or other inscribed material. The town manager, or his designee, may authorize the use of municipal funds for the purposes described herein in an amount up to one thousand dollars (\$1,000.00). Expenditure of amounts in excess of one thousand dollars (\$1,000.00) shall be submitted for town council approval. (Ord. #06-47, Oct. 2006)
- 11-1108. Authorization for the municipality to remove graffiti. The municipality may remove graffiti or other inscribed material, or if the graffiti or other inscribed material cannot be removed cost-effectively, repair or replace that portion of the property that was defaced, but the municipality may not paint, repair, or replace other parts of the property that were not defaced

by graffiti. Written consent of the property owner and possessor of the property, if not the same, shall be obtained. The written consent shall contain method of removal of the graffiti. (Ord. #06-47, Oct. 2006)

- 11-1109. <u>Authorization to use persons assigned to perform community service</u>. The municipality may use persons assigned to perform community service work, as ordered by a general sessions, criminal, or juvenile court, to perform graffiti removal services under supervision. (Ord. #06-47, Oct. 2006)
- 11-1110. Reimbursement to municipality. In the event the person or persons responsible for the graffiti are convicted and the court orders the offender(s) to pay restitution for the cost of the clean up, and the town has expended funds to remove the graffiti, the restitution shall be directed to the town as reimbursement for the cost of the clean up. (Ord. #06-47, Oct. 2006)
- 11-1111. Reward for information. The town shall pay a reward of two hundred fifty dollars (\$250.00) to person(s) who report information to the police department, which information leads to the arrest and conviction of any person who unlawfully applies graffiti to any public property or private property visible from the public right-of-way. The determination of the reward shall be made by the chief of police or his designee. (Ord. #06-47, Oct. 2006)
- 11-1112. <u>Violations</u>. Any person, firm, or corporation, whether owner, occupant, or lessee, violating or failing to comply with any provision of this chapter or any notice or order issued pursuant to is provisions, shall be punished by a fine not to exceed the state authorized maximum of fifty dollars (\$50.00) per violation. Each day that a violation continues shall be deemed a separate offense and punishable as such. (Ord. #06-47, Oct. 2006)

CURFEW

SECTION

- 11-1201. Purpose.
- 11-1202. Definitions.
- 11-1203. Curfew enacted; exceptions.
- 11-1204. Parental involvement in violation unlawful.
- 11-1205. Involvement by owner or operator of vehicle unlawful.
- 11-1206. Involvement by operator or employee of establishment unlawful.
- 11-1207. Giving false information unlawful.
- 11-1208. Enforcement.
- 11-1209. Violation of §§ 11-1203, 11-1204, 11-1205, or 11-1206 punishable by fine.
- 11-1210. Severability.

11-1201. Purpose. The purpose of this chapter is to:

- (1) Promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the town;
- (2) Promote the safety and well-being of minors, whose inexperience renders them particularly vulnerable to becoming participants in unlawful activity, particularly unlawful drug activity, and to being victimized by older criminals; and
 - (3) Foster and strengthen parental responsibility for children.
- **11-1202. Definitions**. As used in this chapter, the following words have the following meanings:
- (1) "Curfew hours" means the hours of 12:30 A.M. through 5:00 A.M. each day.
- (2) "Emergency" means unforeseen circumstances, and the resulting condition or status, requiring immediate action to safeguard life, limb, or property. The word includes, but is not limited to, fires, natural disasters, automobile accidents, or other similar circumstances.
- (3) "Establishment" means any privately-owned business place within the Town operated for a profit and to which the public is invited, including, but not limited to, any place of amusement or entertainment. The word "operator" with respect to an establishment means any person, firm, association, partnership (including its members or partners), and any corporation (including its officers) conducting or managing the establishment.
- (4) "Minor" means any person under eighteen (18) years of age who has not been emancipated under Tennessee Code Annotated, § 29-31-101, et seq.
 - (5) "Parent" means:

- (a) A person who is a minor's biological or adoptive parent and who has legal custody of the minor, including either parent if custody is shared under a court order or agreement;
- (b) A person who is the biological or adoptive parent with whom a minor regularly resides;
- (c) A person judicially appointed as the legal guardian of a minor; and/or
- (d) A person eighteen (18) years of age or older standing in loco parentis (as indicated by authorization by a parent as defined in this definition for the person to assume the care or physical custody of the minor, or as indicated by any other circumstances).
- (6) "Person" means an individual and not a legal entity.
- (7) "Public place" means any place to which the public or a substantial portion of the public has access, including, but not limited to: streets, sidewalks, alleys, parks, and the common areas of schools, hospitals, apartment houses or buildings, office buildings, transportation facilities, and shops.
 - (8) "Remain" means:
 - (a) To linger or stay at or upon a place; or
 - (b) To fail to leave a place when requested to do so by a law enforcement officer or by the owner, operator, or other person in control of that place.
- (9) "Temporary care facility" means a non-locked, non-restrictive shelter at which a minor may wait, under visual supervision, to be retrieved by a parent. A minor waiting in a temporary care facility may not be handcuffed or secured by handcuffs or otherwise to any stationary object.
- 11-1203. <u>Curfew enacted; exceptions</u>. It is unlawful for any minor, during curfew hours, to remain in or upon any public place within the Town, to remain in any motor vehicle operating or parked on any public place within the town, or to remain in or upon the premises of any establishment within the town, unless:
 - (1) The minor is accompanied by a parent; or
 - (2) The minor is involved in an emergency; or
- (3) The minor is engaged in an employment activity, or is going to or returning home from employment activity, without detour or stop; or
- (4) The minor is on the sidewalk directly abutting a place where he or she resides with a parent; or
- (5) The minor is attending an activity supervised by adults and sponsored by a school, religious, or civic organization, by a public organization or agency, or by a similar organization, or the minor is going to or returning from such an activity without detour or stop; or
- (6) The minor is on a errand at the direction of a parent, and the minor has in his or her possession a writing signed by the parent containing the name, signature, address, and telephone number of the parent authorizing the errand,

the telephone number where the parent may be reached during the errand, the name of the minor, and a brief description of the errand, the minor's destination(s) and the hours the minor is authorized to be engaged in the errand; or

- (7) The minor is involved in interstate travel through, or beginning or terminating in, the Town of Smyrna; or
- (8) The minor is exercising First Amendment rights protected by the U.S. Constitution, such as the free exercise of religion, freedom of speech, and freedom of assembly.
- 11-1204. <u>Parental involvement in violation unlawful</u>. It is unlawful for a minor's parent knowingly to permit, allow, or encourage a violation of § 11-1203 of this chapter.
- 11-1205. <u>Involvement by owner or operator of vehicle unlawful</u>. It is unlawful for a person who is the owner or operator of a motor vehicle knowingly to permit, allow, or encourage a violation of § 11-1203 of this chapter using the motor vehicle.
- 11-1206. <u>Involvement by operator or employee of establishment unlawful</u>. It is unlawful for the operator or any employee of an establishment knowingly to permit, allow, or encourage a minor to remain on the premises of the establishment during curfew hours. It is a defense to prosecution under this section that the operator or employee promptly notified law enforcement officials that a minor was present during curfew hours and refused to leave.
- 11-1207. Giving false information unlawful. It is unlawful for any person, including a minor, knowingly to give a false name, address, or telephone number to any law enforcement officer investigating a possible violation of § 11-1203 of this chapter. Each violation of this section is punishable by the state authorized maximum fine as set forth in the fee schedule adopted as part of the annual budget ordinance.
- 11-1208. Enforcement. (1) Minors. Before taking any enforcement action, a law enforcement officer who is notified of a possible violation of § 11-1203 shall make an immediate investigation to determine whether or not the presence of the minor in a public place, motor vehicle, or establishment during curfew hours is a violation of that section. If the investigation reveals a violation, the officer may charge the minor with a violation of § 11-1203 and may issue a citation requiring the minor to appear in juvenile court. The officer shall, as soon as practicable, release the minor to his/her parent(s). If a minor refuses to give an officer his/her name and address or the name and address of his/her parent(s), or if no parent can be located, or if located, no parent appears to accept custody of the minor, the minor may be taken to a crisis center or juvenile

- shelter and/or may be taken to a judge or juvenile intake officer of the juvenile court to be dealt with as required by law.
- (2) Others. If an officer's investigation reveals that a person has violated §§ 11-1203, 11-1204, 11-1205, or 11-1206 of this chapter, the officer may charge the person with a violation and issue a citation directing the person to appear in court, including municipal court.
- 11-1209. <u>Violation of §§ 11-1203, 11-1204, 11-1205, or 11-1206</u> punishable by fine. A violation of §§ 11-1203, 11-1204, 11-1205, or 11-1206 is punishable by the state authorized maximum fine as set forth in the fee schedule adopted as part of the annual budget ordinance.
- 11-1210. <u>Severability</u>. If any portion of this chapter is declared invalid, other portions that can be given effect without the invalid portion shall remain in effect, and to that end the provisions of this chapter are declared severable.

TITLE 12

BUILDING, UTILITY, ETC. CODES¹

CHAPTER

- 1. BUILDING CODE.
- 2. EXISTING BUILDING CODE.
- 3. EXCAVATION AND GRADING CODE.
- 4. MECHANICAL CODE.
- 5. PLUMBING CODE.
- 6. INTERNATIONAL RESIDENTIAL CODE.
- 7. MODEL ENERGY CODE.
- 8. INTERNATIONAL PROPERTY MAINTENANCE CODE.
- 9. CODES ENFORCEMENT AND INSPECTION DIVISION.
- 10. CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS.

CHAPTER 1

BUILDING CODE

SECTION

- 12-101. Building code adopted.
- 12-102. Modifications.
- 12-103. Code available in clerk's office.
- 12-104. Violation and penalty.
- **12-101.** <u>Building code adopted</u>.² The <u>International Building Code</u>, 2006 edition, and amendments thereto, is hereby adopted and incorporated by reference as part of this municipal code, and is hereinafter referred to as the building code. (Ord. # 04-46, Dec. 2004, modified)
- **12-102.** <u>Modifications</u>. Whenever the building code refers to the "chief appointing authority" it shall be deemed to be a reference to the town manager. The building code is adopted with the following exceptions:
 - (1) Chapter 3, § 308.5.2 child care facility, the exception is deleted.

¹Municipal code references

Fire code: title 7. Gas code: title 19.

Slum clearance: title 13, chapter 2.

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

- (2) Chapter 9, §903.2.7 group R, add "Exception: Group R-3 one and two family dwellings shall not be required to install an automatic fire sprinkler system except where special conditions exist as determined by the authority having jurisdiction.
- (3) Chapter 9, § 907.2.2 Group B, the occupant load is changed from 500 to 200.
 - (4) Appendix B shall be adopted. (Ord. #04-46, Dec. 2004, modified)
- **12-103.** <u>Code available in clerk's office</u>. At least one (1) copy of the building code has been placed in the town clerk's office, and shall be kept there for the use and inspection of the public. (1991 Code, § 12-103)
- **12-104.** <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

EXISTING BUILDING CODE

- 12-201. Existing building code adopted.
- 12-202. Modification of designated official.
- 12-203. Code available in clerk's office.
- 12-204. Violation and penalty.
- **12-201.** Existing building code adopted. The International Existing Building Code, 2006 edition, and amendments thereto, is hereby adopted and incorporated by reference as part of this municipal code, and is hereinafter referred to as the existing building code. (Ord. # 04-46, Dec. 2004, modified)
- 12-202. <u>Modification of designated official</u>. The building official or his designee of the Town of Smyrna, who has duties corresponding to the duties of officials named in the <u>International Existing Building Code</u>, as adopted by the Town of Smyrna, shall be responsible for the enforcement of the existing building code provisions. (Ord. #04-46, Dec. 2004, modified)
- 12-203. <u>Code available in clerk's office</u>. At least one (1) copy of the existing building code has been placed in the town clerk's office, and shall be kept there for the use and inspection of the public. (1991 Code, § 12-403)
- 12-204. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

EXCAVATION AND GRADING CODE

- 12-301. Grading and excavation code adopted.
- 12-302. Modification of designated official.
- 12-303. Code available in clerk's office.
- 12-304. Application for grading.
- 12-305. Plans and specifications.
- 12-306. Issuance of permit.
- 12-307. Engineering review fees.
- 12-308. Violation and penalty.
- 12-301. <u>Grading and Excavation code adopted</u>. The <u>Standard Excavation and Grading Code</u>, 1975 edition, and amendments thereto, is hereby adopted and incorporated by reference as part of this municipal code, and is hereinafter referred to as the excavation and grading code. (1991 Code, § 12-501)
- 12-302. <u>Modification of designated official</u>. The director of public works or his designee of the Town of Smyrna, who has duties corresponding to the duties of officials named in the <u>Standard Excavation and Grading Code</u>, as adopted by the Town of Smyrna, shall be responsible for the enforcement of the excavation and grading code provisions. (1991 Code, § 12-502, modified)
- **12-303.** Code available in clerk's office. At least one (1) copy of the excavation and grading code has been placed in the town clerk's office, and shall be kept there for the use and inspection of the public. (1991 Code, § 12-503)
- **12-304.** <u>Application for grading</u>. (1) To obtain a permit the applicant shall first file an application therefor in writing on a form furnished for that purpose. Every such application shall:
 - (a) Identify and describe the work to be covered by the permit for which application is made;
 - (b) Describe the land on which the proposed work is to be done, by lot, block, tract, and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.
 - (c) Be accompanied by plans and specifications as required in § 12-305 of this code;

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

- (d) State the estimated quantities of work involved.
- (e) Be signed by the permittee, or his authorized agent, who may be required to submit evidence to indicate such authority;
 - (f) Information that shall be required includes:
 - (i) Temporary cover during the grading and development period.
 - (ii) Permanent grass and vegetative cover for the area.
 - (iii) Stabilization by means of mulching (non-vegetative materials).
 - (iv) Sodding the area subject to erosion.
 - (v) Use of low-growing plants, vines, shrubs or other ground covers to stabilize sediment-producing areas.
 - (vi) Constructing diversionary channels and terraces across the slope.
 - (vii) Construction of structures that will stabilize the grade in water channels.
 - (viii) Sediment basins constructed in such manner that failure of the structure would not result in loss of life or interruption of use or service of public utilities.
 - (ix) Use of grassed waterways for the safe disposal of runoff water.
 - (x) Staging development to avoid having large areas in an erosive condition at one time.
 - (xi) Utilization of existing topography in planning development to minimize erosion, such as planning roadways parallel to contours.
 - (xii) Leaving critical areas in an undisturbed condition or correction of critical areas which cause erosion hazard.
- (2) <u>Information on plans</u>. Plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this code and all relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give the location of the work and the name and address of the owner and the person by whom they were prepared.
 - (3) The plans shall include the following information:
 - (a) General vicinity of the proposed site.
 - (b) Property limits and accurate contours of existing ground and details of terrain and area drainage.
 - (c) Limiting dimensions, elevations or finish contours to be achieved by the grading, and proposed drainage channels and related construction.
 - (d) Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of, the proposed work together with a map

showing the drainage area and the estimated run-off of the area served by any drains. Upstream drainage must be considered and explained if any adverse effect is possible. Plans for removal, recontouring or other final disposition of sediment basins or other structural improvements or devices shall be included in the plan. If a sedimentation basin is required, it should be designed by registered engineers in accordance with property guidelines.

(e) Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners which are within 15 feet of the property or which may be affected by the proposed grading operations.

Specifications shall contain information covering construction and material requirements.

- (f) All elevations must be stated in Mean Sea Level Datum and this fact indicated in a note on the plan sheet.
 - (g) Location of areas of proposed paving.
 - (h) Limits of vegetative clearing.
 - (i) Estimates of exposed time of denuded land.
 - (j) Plans for vegetation re-establishment.
- (k) A schedule for performance of all earthwork, earth stabilization, and reclamation activities.
- (l) A soil erosion control plan which shall include the following items:
 - (i) <u>Minimize grading</u>. The plan should relate to the specific site conditions, and should keep land grading and land disturbance to a minimum under the circumstances.
 - (ii) Storm drainage. Both surface and underground stormwater drainage systems should be integrated to accommodate the increased runoff incurred during land grading.
 - (iii) <u>Cover</u>. Existing and future protective vegetative cover should be emphasized, and grading operations and sediment control measures should be minimize land exposure to erosion.
 - (iv) <u>Sediment basins</u>. Sediment basins for high sediment producing areas should be planned, installed, and maintained as safety devices to catch and trap excessive sediment from the development site.
 - (v) Use of low-growing plants, vines, shrubs or other ground covers to stabilize sediment-producing areas.
 - (vi) Constructing diversionary channels and terraces across the slope.
 - (vii) Construction of structures that will stabilize the grade in water channels.

- (viii) Sediment basins constructed in such manner that failure of the structure would not result in loss of life or interruption of use or service of public utilities.
- (ix) Use of grassed waterways for the safe disposal of runoff water.
- (x) Staging development to avoid having large areas in an erosive condition at one time.
- (xi) Utilization of existing topography in planning development to minimize erosion, such as planning roadways parallel to contours.
- (xii) Leaving critical areas in an undisturbed condition or correction of critical areas which cause erosion hazard.
- (xiii) Within any sinkhole, no fill shall be used without approval of the town engineer and the Tennessee Department of Environment and Conservation. (1991 Code, § 12-504, modified)
- 12-305. <u>Plans and specifications</u>. When required each application for a grading permit shall be accompanied by two sets of plans and specifications, and supporting data consisting of a soil engineering report and engineering geology report. The plans and specifications shall be prepared and signed by a civil engineer. (1991 Code, § 12-505, modified)
- 12-306. <u>Issuance of permit</u>. The application, plans, and specifications filed by an applicant for a permit shall be checked by the director of public works or his designee. Such plans shall be reviewed by the director of public works or his designee to check compliance with all applicable laws and ordinances. If the director of public works or his designee is satisfied that the work described in an application for permit and the plans filed therewith conform to the requirements of this code and other pertinent laws and ordinances, and that the fees specified in this chapter have been paid, he may issue a permit therefor to the applicant. The director of public works may at his discretion require approval by the planning commission prior to issuance of a grading permit.

When the director of public works or his designee issues the permit, he shall endorse in writing or stamp on both sets of plans and specifications "APPROVED." Such approved plans and specifications shall not be changed, modified, or altered without authorization from the director of public works or his designee and all work shall be done in accordance with the approved plans. (1991 Code, § 12-506, modified)

12-307. Engineering review fees. The director of public works or his designee shall also make the necessary site inspection(s) and make appropriate recommendations thereof, prior to the issuance of a cut and fill permit.

The fees are established in the fee schedule, adopted with the annual budget. (1991 Code, § 12-507, modified)

12-308. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

MECHANICAL CODE

- 12-401. Mechanical code adopted.
- 12-402. Modification of designated officials.
- 12-403. Code available in clerk's office.
- 12-404. Violation and penalty.
- **12-401.** <u>Mechanical code adopted</u>. The <u>International Mechanical Code</u>, 2006 edition, and amendments thereto, is hereby adopted and incorporated by reference as part of this municipal code, and is hereinafter referred to as the mechanical code. (Ord. #04-46, Dec. 2004, modified)
- **12-402.** <u>Modification of designated officials</u>. The building official or his designee of the Town of Smyrna, who has duties corresponding to the duties of officials named in the <u>International Mechanical Code</u>, as adopted by the Town of Smyrna, shall be responsible for the enforcement of the mechanical code provisions. (Ord. #04-46, Dec. 2004, modified)
- 12-403. <u>Code available in clerk's office</u>. At least one (1) copy of the mechanical code has been placed in the town clerk's office, and shall be kept there for the use and inspection of the public. (1991 Code, § 12-803)
- 12-404. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

PLUMBING CODE

- 12-501. Plumbing code adopted.
- 12-502. Modifications of designated official.
- 12-503. Code available in clerk's office.
- 12-504. Violation and penalty.
- **12-501.** Plumbing code adopted. The International Plumbing Code, 2006 edition, and amendments thereto, is hereby adopted and incorporated by reference as part of this municipal code, and is hereinafter referred to as the plumbing code. (Ord. #04-46, Dec. 2004, modified)
- 12-502. <u>Modification of designated official</u>. The building official or his designee of the Town of Smyrna, who has duties corresponding to the duties of officials named in the <u>International Plumbing Code</u>, as adopted by the Town of Smyrna, shall be responsible for the enforcement of the plumbing code provisions. (Ord. #04-46, Dec. 2004, modified)
- **12-503.** Code available in clerk's office. At least one (1) copy of the plumbing code has been placed in the town clerk's office, and shall be kept there for the use and inspection of the public. (1991 Code, § 12-903)
- 12-504. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

INTERNATIONAL RESIDENTIAL CODE

- 12-601. International residential code adopted.
- 12-602. Modifications.
- 12-603. Available in clerk's office.
- 12-604. Violations.
- 12-601. <u>International Residential Code adopted</u>. Pursuant to authority granted by <u>Tennessee Code Annotated</u>, §§ 6-54-501 through 6-54-506 and for the purpose of regulating the fabrication, erection, construction, enlargement, alterations, repair, location, and use of detached one and two family dwellings and their appurtenances and accessory structures, the <u>International Residential Code</u>, ¹ 2006 edition, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the residential code. (Ord. #04-46, Dec. 2004, modified)
- **12-602.** <u>Modifications</u>. The residential code is adopted with the following exceptions:
- (1) Chapter 1, § R105.2 work exempt from permit, building (1) is changed from 200 square feet to 100 square feet.
 - (2) Appendices A, B, C, E, and G, are adopted.
- (3) Chapter 3, § R311.4.3 landings at doors add "provided the exterior door swings out over the stairway" at the end of the first sentence. (Ord. #04-46, Dec. 2004, modified)
- **12-603.** <u>Available in clerk's office</u>. Pursuant to the requirements of <u>Tennessee Code Annotated</u>, § 6-54-502, one (1) copy of the dwelling code has been placed on file in the clerk's office and shall be kept there for the use and inspection of the public. (1991 Code, § 12-1003)
- **12-604.** <u>Violations</u>. It shall be unlawful for any person to violate or fail to comply with any provision of the dwelling code as herein adopted by reference and modified. (1991 Code, § 12-1004)

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

MODEL ENERGY CODE¹

SECTION

- 12-701. Model energy code adopted.
- 12-702. Modifications.
- 12-703. Available in clerk's office.
- 12-704. Violations and penalty.

by <u>Tennessee Code Annotated</u>, §§ 6-54-501 through 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 <u>Model Energy Code</u>² 1995 edition, as prepared and maintained by The Council of American Building Officials, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the energy code.

12-702. <u>Modifications</u>. Whenever the energy code refers to the "responsible government agency," it shall be deemed to be a reference to the Town of Smyrna. When the "building official" is named it shall, for the purposes of the energy code, mean the building official or his designee who is designated to administer and enforce the provisions of the energy code.

12-703. Available in clerk's office. Pursuant to the requirements of the Tennessee Code Annotated, § 6-54-502, one (1) copy of the energy code has been placed on file in the clerk's office and shall be kept there for the use and inspection of the public.

<u>Tennessee Code Annotated</u>, § 13-19-106 requires Tennessee cities <u>either</u> to adopt the Model Energy Code, 1992 edition, or to adopt local standards equal to or stricter than the standards in the energy code.

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.

²Copies of this code (and any amendments) may be purchased from The Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041.

¹State law reference

12-704. <u>Violations and penalty</u>. It shall be a civil offense for any person to violate or fail to comply with any provision of the energy code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty that does not exceed state authorized maximum limits. Each day a violation is allowed to continue shall constitute a separate offense.

INTERNATIONAL PROPERTY MAINTENANCE CODE¹

- 12-801. International property maintenance code adopted.
- 12-802. Modification of designated official; conflict.
- 12-803. Code available in clerk's office.
- 12-804. Violation and penalty.
- 12-801. <u>International property maintenance code adopted</u>. The <u>International Property Maintenance Code</u>, 2006 edition, and amendments thereto, is hereby adopted and incorporated by reference as part of this municipal code, and is hereinafter referred to as the property maintenance code.
- 12-802. <u>Modification of designated official; conflict</u>. (1) The building official or his designee of the Town of Smyrna, who has duties corresponding to the duties of officials named in the <u>International Property Maintenance Code</u>, as adopted by the Town of Smyrna, shall be responsible for the enforcement of the property maintenance code provisions.
- (2) To the extent that any provisions contained within the <u>International Property Maintenance Code</u>, 2006 edition, or amendments thereto, conflict with provisions of the Smyrna Municipal Code not contained in the property maintenance code, the provisions of the Smyrna Municipal Code shall prevail over the provisions of the International Property Maintenance Code.
- **12-803.** Code available in clerk's office. At least one (1) copy of the property maintenance code has been placed in the town clerk's office, and shall be kept there for the use and inspection of the public.
- 12-804. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

¹Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

CODES ENFORCEMENT AND INSPECTION DIVISION

SECTION

- 12-901. Division established.
- 12-902. Building official; appointed.
- 12-903. Responsibilities.
- 12-904. Right of entry.
- **12-901.** <u>Division established</u>. There is hereby established a division of the Town of Smyrna designated as codes enforcement and inspection division, which division shall be under the supervision, direction and administration of the planning manager. (Ord. 02-27, Aug. 2002, modified)
- **12-902.** <u>Building official; appointed</u>. The planning manager shall appoint the building official of the town, who shall serve as the head of the codes enforcement and inspection division and who shall report directly to the planning manager. (Ord. #02-27, Aug. 2002, modified)
- **12-903.** Responsibilities. The codes enforcement and inspection division shall be responsible for supervision, administration, and enforcement of all building codes, plumbing codes, gas codes, housing codes, health codes of the town.

The codes enforcement and inspection division shall be responsible for observing, inspecting, and ensuring the accurate and proper installation of any and all public improvements which the planning commission has ordered or permitted developers to install under existing codes of the Town of Smyrna. The codes enforcement and inspection division shall also be responsible for zoning enforcement, for the issuance and approval of all building and occupancy permits, and for reviewing all building plans under the supervision and administration of the planning manager. (Ord. #02-27, Aug. 2002, modified)

12-904. <u>Right of entry</u>. The codes enforcement inspection division is authorized to enter premises or structures at reasonable times to inspect and enforce applicable codes subject to constitutional restrictions or unreasonable searches and seizures. If entry is refused or not obtained, the codes official or his designee is authorized to seek an administrative inspection warrant as permitted in § 12-803.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

- 12-1001. Creation.
- 12-1002. Membership.
- 12-1003. Terms and removal of members.
- 12-1004. Election of officers.
- 12-1005. Purpose.
- 12-1006. Quorum, meetings, and by-laws.
- 12-1007. Appeals to board.
- 12-1008. Powers.
- 12-1009. Enforcement of decisions.
- 12-1000. Notice of appeal to board.
- 12-1011. Time for hearing.
- 12-1012. Rules of procedures.
- 12-1013. Timeliness of decisions.
- 12-1014. Previous appeals of same issue.
- 12-1015. Applicability.
- **12-1001.** <u>Creation</u>. There is hereby established the Construction Board of Adjustments and Appeals for the Town of Smyrna. (1991 Code, § 2-201, modified)
- 12-1002. Membership. Due to safety concerns and the necessity of a level of technical expertise, the board shall consist of seven (7) members and two (2) alternates, all of whom shall be recommended by consensus of the town manager, building official and fire inspector and appointed by majority vote of the town council. The members must be residents of the Town of Smyrna. The members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors, a fire service industry representative or building industry representatives. Of the two (2) alternate members, one shall be a member at large from the building industry and one shall be a member at large from the public. A board member shall not act in a case in which he has a personal or financial interest. (1991 Code, § 2-202, modified)
- 12-1003. <u>Terms and removal of members</u>. The members shall be appointed for three year terms, except that on the initial appointment, two shall be appointed for one year, two for two years, and three for three years, so as to insure that no more than one-third of the board is appointed or replaced in any 12 month period. The two alternates shall serve one year terms. Members of the board may be removed by the town council for neglect of duty, conflict of

interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three consecutive meetings or more than five non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Board members who are unable to attend regular meetings are expected to tender their resignation. A vacancy on said board shall be filled by the town council for the unexpired term of such vacancy. The members of said board shall serve without compensation. (1991 Code, § 2-203, modified)

- 12-1004. Election of officers. As soon as practical after their appointment, the members of the board shall meet and organize by electing a chairman and a vice-chairman. Thereafter officers of the board shall be elected by the members at the March meeting of the board. The building official shall act as secretary of the board and shall make a detailed record of all of its proceedings, which shall set forth the reasons for its decisions, the vote of each member, the absence of a member, and any failure of a member to vote. The building official shall handle such additional duties as the board may deem proper. All minutes of the meetings of the board shall be public records. (1991 Code, § 2-204, modified)
- **12-1005. Purpose**. The board shall have the power to hear appeals of decisions and interpretations of the building official, housing official and fire official (hereinafter collectively referred to as "official") and consider variances of the technical codes. (1991 Code, § 2-205)
- 12-1006. Quorum, meetings, and by-laws. A simple majority of the board shall constitute a quorum. In varying any provision of the codes as adopted by town council, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the appropriate official, not less than four affirmative votes, but not less than a majority of the board, shall be required. In the event that regular members are unable to attend a meeting, the alternate members shall vote. (1991 Code, § 2-206, modified)
- **12-1007.** <u>Appeals to board</u>. The owner of a building, structure or service system, or his duly authorized agent, may appeal a decision of the appropriate official to the board whenever any one of the following conditions are claimed to exist:
- (1) The appropriate official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.

- (2) The provisions of the codes, all as amended from time to time, do not apply to this specific case.
- (3) That an equally good or more desirable form of installation can be employed in any specific case.
- (4) The true intent and meaning of this code or any of the regulations thereunder have been misconstrued or incorrectly interpreted.
- (5) To permit, in appropriate cases where the application of the requirement of the codes adopted by town council in the allowance of the stated time for the performance of any action required hereunder would appear to cause undue hardship on an owner, one or more extensions of time, not to exceed one hundred twenty (120) days each, from the date of such decision of the board. Applications for additional extensions of time shall be heard by the board. Such requests for additional extensions of time shall be filed with the housing office not less than thirty (30) days prior to the expiration of the current extension. (1991 Code, § 2-208, modified)
- **12-1008.** Powers. The board, when so appealed to and after a hearing, may vary the application of any provisions of the codes to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of the codes, the technical codes or public interest, or when, in its opinion the interpretation of the appropriate official shall be modified or reversed, and also finds all of the following:
- (1) That special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.
- (2) That the special conditions and circumstances do not result from the action or inaction of the applicant.
- (3) That granting the variance requested will not confer on the applicant any special privilege that is denied by the codes to other buildings, structures or service system.
- (4) That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.
- (5) That the grant of the variance will be in harmony with the general intent and purpose of the codes and will not be detrimental to the public health, safety and general welfare. (1991 Code, § 2-208)
- **12-1009.** Enforcement of decisions. In granting the variance, the board shall prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the board may prescribe appropriate conditions and safeguards in conformity with the codes. Violation of the conditions of a variance shall be deemed a violation of the codes. (1991 Code, § 2-209, modified)

- **12-1010.** Notice of appeal to board. Notice to appeal shall be in writing to the building official and filed within thirty (30) calendar days after the decision is rendered by the building official. Appeals shall be in a form acceptable to the appropriate official and shall be accompanied by the necessary fees as set in the fee schedule adopted in accordance with the budget ordinance. (1991 Code, § 2-210, modified)
- **12-1011.** <u>Time for hearing</u>. In the case of a building, structure or service system which, in the opinion of the building official or fire official, as appropriate, is unsafe, unsanitary or dangerous, the building official or fire official, as applicable, may, in his order, limit the time for such appeals to a shorter period. (1991 Code, § 2-211)
- 12-1012. Rules of procedure. The board shall establish its own rules of procedure for accomplishment of its duties and functions, provided that such rules shall not be in conflict with the provisions of the codes and the laws of the State of Tennessee. The board shall meet at regular intervals on call of the chairman, but in any event, the board shall meet within thirty (30) calendar days after notice of appeal has been received. No less than ten (10) days prior to hearing of the board, notice of the place, time and date of such meetings shall be given all the members of the board and all interested parties in each case to be heard by the board. (1991 Code, § 2-212, modified)
- 12-1013. <u>Timeliness of decisions</u>. The board shall, in every case, reach a decision no later than sixty (60) days from the date of the hearing. Each decision of the board shall also include the reasons for the decision and shall specify in what manner such variance or modification is made and the conditions upon which such decision is made. If a decision of the board reverses or modifies a refusal, order, or disallowance of the appropriate official, or varies the application of any provision of the codes, the appropriate official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building official, housing official, or fire official, as appropriate, and shall be open to public inspection. A certified copy of the decision shall be sent by certified mail, return receipt requested, to the appellant and a copy shall be kept publicly posted in the office of the appropriate official for two weeks after filing. Every decision of the board shall be final, subject, however, to such remedy as any aggrieved party might have at law or in equity. (1991 Code, § 2-213, modified)
- **12-1014.** Previous appeals of same issue. An appeal involving the any codes adopted by the town council should not be considered where an appeal case has been previously decided involving the same premises. (1991 Code, § 2-214, modified)

12-1015. <u>Applicability</u>. The provisions of this chapter shall replace and supersede provisions in the adopted codes related to the boards of appeals.

TITLE 13

PROPERTY MAINTENANCE REGULATIONS¹

CHAPTER

- 1. MISCELLANEOUS.
- 2. SLUM CLEARANCE.
- 3. JUNKYARDS.
- 4. ABANDONED, WRECKED VEHICLES, ETC.

CHAPTER 1

MISCELLANEOUS

SECTION

- 13-101. Smoke, soot, cinders, etc.
- 13-102. Stagnant water.
- 13-103. Weeds, bushes, shrubs, etc.
- 13-104. Overgrown and dirty lots.
- 13-105. Open storage.
- 13-106. Contractors to keep construction sites clean.
- 13-107. Dead animals.
- 13-108. Swimming pools, spas or hot tubs.
- 13-109. Health and sanitation nuisances.
- 13-110. Violation and penalty.
- 13-101. Smoke, soot, cinders, etc. It shall be unlawful for any person to permit or cause the escape of such quantities of dense smoke, soot, cinders, noxious acids, fumes, dust, or gases as to be detrimental to or to endanger the health, comfort, and safety of the public or so as to cause or have a tendency to cause injury or damage to property or business. (1991 Code, § 13-101)
- 13-102. <u>Stagnant water</u>. It shall be unlawful for any person knowingly to allow any pool of stagnant water to accumulate and stand on his property without treating it so as effectively to prevent the breeding of mosquitoes. It shall be unlawful for any person knowingly to allow any swimming pool, spa, or hot tub to be in an unclean or unsanitary condition or to be in a condition of disrepair, if such swimming pool, spa, or hot tub contains water, so as to be

¹Municipal code references

Animal control: title 10.

Littering streets, etc.: § 16-107.

Refuse: title 17.

detrimental to or to endanger the health, comfort, and safety of the public or to encourage the infestation of mosquitos or other insects. (1991 Code, § 13-102, modified)

- 13-103. Weeds, bushes, shrubs, etc. (1) Weeds. Every owner or tenant of property shall periodically cut the grass and other vegetation commonly recognized as weeds on his property, and it shall be unlawful for any person to fail to comply with an order by the codes enforcement and inspection division to cut such vegetation when it has reached a height of over one foot, except for those parcels containing five acres or more land area.
- (2) Parcels containing five (5) acres or more. Parcels containing five (5) acres or more land area that fronts a public street or roadway or adjoins a developed area shall be cleared of all weeds, tall grass and other noxious vegetation within fifty (50) feet of the property line adjoining the developed area and within fifty (50) feet of the pavement edge of any street or roadway adjoining the subject parcel to and including the right-of-way to the pavement edge. Excluded here from are natural wooded areas containing trees four (4) inches in diameter or larger on the subject property. The property owner shall be responsible for mowing grass and noxious vegetation on the edge of the trees on the property, including areas along adjoining developed areas or public rights-of-way.
- (3) Bushes, shrubs, hedges, and trees. Every owner or tenant of property shall periodically cut and trim the bushes, shrubs, hedges, and trees surrounding his residence or buildings so as to allow safe ingress and egress into and from the residence or building. It shall be unlawful for any person to cause or to allow bushes, shrubs, hedges, and trees to block ingress or egress into and from any door or window. It shall be unlawful for any person to fail to comply with an order by the codes enforcement and inspection division to cut or trim such bushes, shrubs, hedges, and trees when safe ingress and egress cannot be achieved from any door or window.
- (4) <u>Designation of public officer or department</u>. The Codes Enforcement and Inspection Division shall be designated to enforce the provisions of this section.
- (5) Notice to property owner. It shall be the duty of the Codes Enforcement and Inspection Division to serve notice upon the owner of record and tenant, if applicable, in violation of subsection (1) above, a notice in plain language to remedy the condition within ten (10) days (or twenty (20) days if the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), excluding Saturdays, Sundays, and legal holidays. The notice shall be posted on the property and if the property owner or tenant, if applicable, is known, then sent by certified United States Mail, return receipt requested and by regular United States Mail addressed to the last known address of the owner of record or tenant. The notice shall state that the owner

of the property or tenant is entitled to a hearing, and shall, at the minimum, contain the following additional information:

- (a) A brief statement that the owner and/or tenant is in violation of § 13-103 of the Smyrna Municipal Code, and that the property of such owner may be cleaned-up at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;
- (b) The person, office, address, and telephone number of the department or person giving the notice;
- (c) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the town; and
- (d) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing before the town manager or his designee.
- Clean-up at property owner's expense. If the property owner of (6)record fails or refuses to remedy the condition within ten (10) days after receiving the notice (twenty (20) days if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials) and/or does not request a hearing within the same time period, the codes enforcement and inspection division shall immediately cause the condition to be remedied at a cost in conformity with reasonable standards, and the cost thereof shall be assessed against the owner of the property. The town is authorized to use either internal labor and equipment or private contractors at its discretion to enforce the provisions of this article. Failure to make a request for a hearing within the aforementioned notice period shall without exception constitute a waiver of the right to a hearing. The town attorney is authorized to take legal action to collect the costs of clean up assessed against the property owner and to take any and all necessary actions to place a lien against the property for the costs of clean up if not paid. In addition to or in the alternative, the codes enforcement and inspection division may cite the property owner and/or tenant to municipal court for violation of the ordinance provisions.
- (7) <u>Judicial review; appeal</u>. Any person aggrieved by an order or act of the town under the provisions of this article may seek judicial review of the order or act. The time period established in subsection (6) above shall be stayed during the pendency of judicial review.
- (8) <u>Supplemental nature of this section</u>. The provisions of this section are in addition and supplemental to, and not in substitution for, any other provision in the municipal charter, this municipal code of ordinances or other applicable law which permits the town to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property conditions so as to endanger the health, safety, or welfare of other citizens or to encourage the infestation of vermin, under its charter, any other provisions of this municipal code of ordinances or any other applicable law. (1991 Code, § 13-103, modified)

- 13-104. Overgrown and dirty lots.¹ (1) Prohibition. Pursuant to the authority granted to municipalities under <u>Tennessee Code Annotated</u>, § 6-54-113, it shall be unlawful for any owner of record of real property to create, maintain, or permit to be maintained on such property the growth of trees, vines, grass, underbrush and/or the accumulations of debris, trash, litter, or garbage or any combination of the preceding elements so as to endanger the health, safety, or welfare of other citizens or to encourage the infestation of rats and other harmful animals.
- (2) <u>Limitation on application</u>. The provisions of subsection (5) shall not apply to any parcel of property upon which an owner-occupied residence is located. The provisions of subsection (6) shall apply to any parcel of property upon which an owner-occupied residence is located.
- (3) <u>Designation of public officer or department</u>. The town manager shall designate an appropriate department or person to enforce the provisions of this section.
- (4) Notice to property owner. It shall be the duty of the department or person designated by the town manager to enforce this section to serve notice upon the owner of record in violation of subsection (1) above, a notice in plain language to remedy the condition within ten (10) days (or twenty (20) days if the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), excluding Saturdays, Sundays, and legal holidays. The notice shall be sent by registered or certified United States Mail, addressed to the last known address of the owner of record. The notice shall state that the owner of the property is entitled to a hearing, and shall, at the minimum, contain the following additional information:
 - (a) A brief statement that the owner is in violation of § 13-104 of the Smyrna Municipal Code, which has been enacted under the authority of Tennessee Code Annotated, § 6-54-113, and that the property of such owner may be cleaned-up at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;
 - (b) The person, office, address, and telephone number of the department or person giving the notice;
 - (c) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the town; and

¹Municipal code reference

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

- (d) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing before the town manager or his designee.
- Clean-up at property owner's expense. If the property owner of record fails or refuses to remedy the condition within ten (10) days after receiving the notice (twenty (20) days if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), the department or person designated by the town council to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards, and the cost thereof shall be assessed against the owner of the property. Failure to make a request for a hearing within the aforementioned notice period shall without exception constitute a waiver of the right to a warning. Upon the filing of the notice with the office of the register of deeds in Rutherford County, the costs shall be a lien on the property in favor of the municipality, second only to liens of the state, county, and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right, or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. These cost shall be placed on the tax rolls of the municipality as a lien and shall be added to property tax bills to be collected at the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes. In addition or in the alternative, the codes enforcement and inspection division may cite the property owner and/or tenant to municipal court for violation of the ordinance provisions.
- When the owner of an owner-occupied residential property fails or refuses to remedy the condition within ten (10) days after receiving the notice (twenty (20) days if the owner is a carrier engaged in the transportation of property), the department or person designated by the town council to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in accordance with reasonable standards in the community, with these costs to be assessed against the owner of the property. Failure to make a request for a hearing within the aforementioned notice period shall without exception constitute a waiver of the right to a hearing. The provisions in subsection (5) above shall apply to the collection of costs against the owner of an owner-occupied residential property except that the municipality must wait until cumulative charges for remediation equal or exceed five hundred dollars (\$500.00) before filing the notice with the register of deeds and the charges becoming a lien on the property. After this threshold has been met and the lien attaches, charges for costs for which the lien attached are collectible as provided in subsection (5) above for these charges. In addition to or in the alternative, the codes enforcement and inspection division may cite

the property owner and/or tenant to municipal court for violation of the ordinance provisions.

- (7) <u>Judicial review; appeal</u>. Any person aggrieved by an order or act of the town under the provisions of this article above may seek judicial review of the order or the act. The time period established in subsections (5) or (6) above shall be stayed during the pendency of judicial review.
- (8) Supplemental nature of this section. The provisions of this section are in addition and supplemental to, and not in substitution for, any other provision in the municipal charter, this municipal code of ordinances or other applicable law which permits the town to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property the growth of trees, vines, grass, weeds, underbrush and/or the accumulation of the debris, trash, litter, or garbage or any combination of the preceding elements, under its charter, any other provisions of this municipal code of ordinances or any other applicable law. (1991 Code, § 13-104, modified)
- **13-105.** <u>Open storage</u>. It shall be unlawful for the owner or occupant of a building, structure or property to utilize the premises of such property for the open storage of any abandoned motor vehicle, ice box, refrigerator, stove, glass, building material, building rubbish or similar items.
- 13-106. <u>Contractors to keep construction sites clean</u>. It shall be unlawful for the owner, agent or contractor in charge of any construction or demolition site to cause, maintain, permit or allow to be caused, maintained or permitted the accumulation of any litter on the site before, during or after completion of the construction or demolition project.
- 13-107. <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 town clerk and dispose of such animal in such manner as the codes enforcement and inspection division shall direct. (1991 Code, § 13-105, modified)
- 13-108. <u>Swimming pools, spas or hot tubs</u>. (1) <u>Prohibition</u>. It shall be unlawful for any owner of record of real property to create, maintain, or

§ 13-102 applies to cases where the town wishes to prosecute the offender in town court. § 13-106 can be used when the town seeks to clean up the swimming pool, spa, or hot tub at the owner's expense and place a lien against the property for the cost of the clean-up but not to prosecute the owner in town court.

¹Municipal code reference

permit to be maintained on such property swimming pools, spas, or hot tubs in an unclean or unsanitary condition or in a state of disrepair if such swimming pool, spa, or hot tub contains water so as to endanger the health, safety or welfare of other citizens or to encourage the infestation of mosquitoes or other insects.

- (2) <u>Designation of public officer or department</u>. The codes enforcement and inspection division shall be designated to enforce the provisions of this section.
- (3) Notice to property owner. It shall be the duty of the codes enforcement and inspection division to serve notice upon the owner of record in violation of subsection (1) above, a notice in plain language to remedy the condition within ten (10) days (or twenty (20) days if the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), excluding Saturdays, Sundays, and legal holidays. The notice shall be posted on the property and sent by registered or certified United States Mail, addressed to the last known address of the owner of record and if the property owner is unknown, then notice shall be posted on the property. The notice shall state that the owner of the property is entitled to a hearing, and shall, at the minimum, contain the following additional information:
 - (a) A brief statement that the owner is in violation of § 13-108 of the Smyrna Municipal Code and that the property of such owner may be cleaned up at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;
 - (b) The person, office, address, and telephone number of the department or person giving the notice;
 - (c) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the town; and
 - (d) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing before the town manager or his designee.
- (4) <u>Clean-up at property owner's expense</u>. If the property owner of record fails or refuses to remedy the condition within ten (10) days after receiving the notice (twenty (20) days if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), the codes enforcement and inspection division shall immediately cause the condition to be remedied at a cost in conformity with reasonable standards, and the cost thereof shall be assessed against the owner of the property. The town is authorized to use either internal labor and equipment or private contractors at its discretion to enforce the provisions of this code. Failure to make a request for a hearing within the aforementioned notice period shall without exception constitutes a waiver of the right to a hearing. The town attorney is authorized to take legal action to collect the costs of clean-up assessed against the property owner and

to take any and all necessary action to place a lien against the property for the costs of clean up if not paid. In addition to or in the alternative, the codes enforcement and inspection division may cite the property owner to municipal court for violation of the ordinance provisions.

- (5) <u>Judicial review; appeal</u>. Any person aggrieved by an order or act of the town under the provisions of the subsection above may seek judicial review of the order or act. The time period established in subsection (4) above shall be stayed during the pendency of judicial review.
- (6) <u>Supplemental nature of this section</u>. The provisions of this section are in addition and supplemental to, and not in substitution for, any other provision in the municipal charter, this municipal code of ordinances or other applicable law which permits the town to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property swimming pools, spas, or hot tubs in an unclean or unsanitary condition or in a state of disrepair if such swimming pool, spa, or hot tub contains water so as to endanger the health, safety, or welfare of other citizens or to encourage the infestation of mosquitoes and other insects under its charter, any other provisions of this municipal code of ordinances or any other applicable law.
- 13-109. <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. (1991 Code, § 13-106)
- 13-110. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

SLUM CLEARANCE¹

SECTION

- 13-201. Findings of board.
- 13-202. Definitions.
- 13-203. "Public officer" designated; powers.
- 13-204. Initiation of proceedings; hearings.
- 13-205. Orders to owners of unfit structures.
- 13-206. When public officer may repair, etc.
- 13-207. When public officer may remove or demolish.
- 13-208. Lien for expenses; sale of salvage materials; other powers not limited.
- 13-209. Basis for a finding of unfitness.
- 13-210. Service of complaints or orders.
- 13-211. Enjoining enforcement of orders.
- 13-212. Additional powers of public officer.
- 13-213. Powers conferred are supplemental.
- 13-214. Structures unfit for human habitation deemed unlawful.
- 13-215. Violation and penalty.
- 13-201. <u>Findings of board</u>. Pursuant to <u>Tennessee Code Annotated</u>, § 13-21-101, <u>et seq.</u>, the town council finds that there exists in the town structures which are unfit for human occupation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the town.
- **13-202.** <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 town council charged with governing the town.
- (3) "Municipality" shall mean the Town of Smyrna, Tennessee, and the areas encompassed within existing town limits or as hereafter annexed.
- (4) "Owner" shall mean the holder of title in fee simple and every mortgagee of record.

¹State law reference

Tennessee Code Annotated, title 13, chapter 21.

- (5) "Parties in interest" shall mean all individuals, associations, corporations and others who have interests of record in a dwelling and any who are in possession thereof.
- (6) "Place of public accommodation" means any building or structure in which goods are supplied or services performed, or in which the trade of the general public is solicited.
- (7) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the town or state relating to health, fire, building regulations, or other activities concerning structures in the town.
- (8) "Public officer" means any officer or officers of a municipality or the executive director or other chief executive officer of any commission or authority established by such municipality or jointly with any other municipality who is authorized by this chapter to exercise the power prescribed herein and pursuant to <u>Tennessee Code Annotated</u>, § 13-21-101, <u>et seq</u>.
- (9) "Structure" means any dwelling or place of public accommodation or vacant building or structure suitable as a dwelling or place of public accommodation.
- 13-203. "Public officer" designated; powers. There is hereby designated and appointed a "public officer," to be the building official of the town, to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by the building inspector.
- **13-204.** Initiation of proceedings; hearings. Whenever a petition is filed with the public officer by a public authority including but not limited to a representative from the codes enforcement and inspection division, or by at least five (5) residents of the town charging that any structure is unfit for human occupancy or use, or whenever it appears to the public officer (on his own motion) that any structure is unfit for human occupation or use, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and parties in interest of, such structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the service of the complaint; and the owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint; and the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.
- 13-205. Orders to owners of unfit structures. If, after such notice and hearing as provided for in the preceding section, the public officer determines that the structure under consideration is unfit for human occupation

or use, he shall state in writing his finding of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

- (1) If the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure (not exceeding fifty percent [50%] of the reasonable value), requiring the owner, within the time specified in the order, to repair, alter, or improve such structure to render it fit for human occupation or use or to vacate and close the structure for human occupation or use; or
- (2) If the repair, alteration or improvement of said structure cannot be made at a reasonable cost in relation to the value of the structure (not to exceed fifty percent [50%] of the value of the premises), requiring the owner within the time specified in the order, to remove or demolish such structure.
- 13-206. When public officer may repair, etc. If the owner fails to comply with the order to repair, alter, or improve or to vacate and close the structure as specified in the preceding section hereof, the public officer may cause such structure to be repaired, altered, or improved, or to be vacated and closed; and the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human occupation or use. The use or occupation of this building for human occupation or use is prohibited and unlawful."
- 13-207. When public officer may remove or demolish. If the owner fails to comply with an order, as specified above, to remove or demolish the structure, the public officer may cause such structure to be removed and demolished.
- 13-208. Lien for expenses; sale of salvaged materials; other **powers not limited**. The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be assessed against the owner of the property, and shall upon the filing of the notice with the office of the register of deeds of Rutherford County, 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. 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 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, he shall sell the salvageable materials of such structure in accordance with the policies and procedures for the sale of surplus property 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 Rutherford County by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the person found to be entitled thereto by final order or decree of such court. Nothing in this section shall be construed to impair or limit in any way the power of the Town of Smyrna to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

13-209. <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 Town of Smyrna. Such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; or uncleanliness.

13-210. Service of complaints or orders. Complaints or orders issued by the public officer pursuant to this chapter shall be served upon persons, either personally or by registered mail, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) consecutive weeks in a newspaper printed and published in the town. In addition, a copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order. A copy of such complaint or order shall also be filed for record in the Register's Office of Rutherford County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law.

13-211. <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.

- 13-212. <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 town in order to determine which structures therein are unfit for human occupation or use;
- (2) To administer oaths, affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examination, provided that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter; and
- (5) To delegate any of his functions and powers under this chapter to such officers and agents as he may designate.
- 13-213. <u>Powers conferred are supplemental</u>. This chapter shall not be construed to abrogate or impair the powers of the town with regard to the enforcement of the provisions of its charter or any other ordinances or regulations, nor to prevent or punish violations thereof, and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by the charter and other laws.

13-214. <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 town structures which are unfit for human occupation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the town.

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

13-215. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

JUNKYARDS¹

SECTION

- 13-301. Definitions.
- 13-302. Junkyard screening.
- 13-303. Screening methods.
- 13-304. Requirements for effective screening.
- 13-305. Maintenance of screens.
- 13-306. Utilization of highway right-of-way.
- 13-307. Non-conforming junkyards.
- 13-308. Permits and fees.
- 13-309. Designation of public officer or department.
- 13-310. Violation and penalty.
- **13-301.** <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) "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.
- (4) "Person" means any individual, firm, agency, company, association, partnership, business trust, joint stock company, body politic, or corporation.
- (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 town. (1991 Code, § 13-301)

Abandoned, wrecked vehicles: title 13, chapter 4.

¹Municipal code reference

- **13-302.** <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. (1991 Code, § 13-302)
- **13-303.** <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.
 - (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. (1991 Code, § 13-303)
- 13-304. Requirements for effective screening. Screening may be accomplished using natural objects, earth mounds, landscape plantings, fences, or other appropriate materials used singly or in combination as approved by the town. 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. (1991 Code, § 13-304)
- 13-305. <u>Maintenance of screens</u>. The owner or operator of the junkyard shall be responsible for maintaining the screen in good repair to insure 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 town.

If not replaced within thirty (30) days the town 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 town. (1991 Code, § 13-305, modified)

- 13-306. <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. (1991 Code, § 13-306)
- **13-307.** Non-conforming junkyards. Those junkyards within the town 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 town.
- (5) The junkyard may not be extended or enlarged. (1991 Code, § 13-307)
- **13-308.** <u>Permits and fees</u>. It shall be unlawful for any junkyard located within the town to operate with out a "Junkyard Control Permit" issued by the town.
- (1) Permits shall be valid for the fiscal year for which issued and shall be subject to renewal each year. The town'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 established by the town council in the fee schedule 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 town.
- (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. (1991 Code, § 13-308, modified)

- 13-309. <u>Designation of public officer or department</u>. The codes enforcement and inspection division shall be designated to enforce the provisions of this section.
- 13-310. <u>Violation and penalty</u>. A violation of any provision of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day an offense occurs constitutes a separate violation.

ABANDONED, WRECKED VEHICLES, ETC.1

SECTION

- 13-401. Abandoned, wrecked, dismantled or inoperative motor vehicle.
- 13-402. Presence of abandoned vehicles, etc. prohibited.
- 13-403. Notice to remove.
- 13-404. Responsibility for removal.
- 13-405. Notice procedure.
- 13-406. Failure to remove vehicle.
- 13-407. Town court.
- 13-408. Violation and penalty.

13-401. Abandoned, wrecked, dismantled or inoperative motor

- <u>vehicle</u>. (1) <u>Definitions</u>. For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
 - (a) "Town" is the Town of Smyrna.
 - (b) "Chief of police" is the Chief of Police of the Town of Smyrna.
 - (c) "Motor vehicle" is any vehicle which is self-propelled and designed to travel along the ground and shall include, but not be limited to automobiles, buses, motorbikes, motorcycles, motorscooters, trucks, tractors, go-carts, golf carts, campers and trailers. "Motor vehicles" shall also include airplanes and self-propelled boats, including watercraft such as jet skis, designed to travel along the water by motorized means.
 - (d) "Junked motor vehicle" is any motor vehicle, as defined by paragraph (c) subsection 1, which does not have lawfully affixed thereto an unexpired license plate or the condition of which is wrecked, dismantled, partially dismantled, inoperative, abandoned or discarded.
 - (e) "Person" shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.
 - (f) "Private property" shall mean any real property within the town which is privately owned and which is not public property as defined in this subsection.
 - (g) "Public property" shall mean any street or highway which shall include the entire width between the boundary lines of every way

Junkyards: title 13, chapter 3.

¹Municipal code reference

- publicly maintained for the purposes of vehicular travel, and shall also mean any other publicly owned property or facility.
- (2) Storing, parking or leaving dismantled or other such motor vehicle prohibited. No person shall park, store, leave, or permit the parking, storing, or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled, inoperative, rusted, junked, or partially dismantled condition whether attended or not, upon any public or private property within the town for a period of time in excess of seventy-two (72) hours. (1991 Code, § 15-701, modified)
- 13-402. Presence of abandoned vehicles, etc. prohibited. The presence of an abandoned, wrecked, dismantled, inoperative, rusted, junked or partially dismantled vehicle or parts thereof, on private or public property is hereby declared unlawful and is prohibited. This section shall not apply to any vehicle enclosed within a building on private property or to any vehicle held in connection with a business enterprise, lawfully licensed by the town and properly operated in the appropriate business zone, pursuant to the zoning laws of the town, or to any motor vehicle in operable condition specifically adopted or designed for operation on drag strips or raceways, or any vehicle retained by the owner for antique collection purposes. (1991 Code, § 15-702)
- 13-403. <u>Notice to remove</u>. Whenever it comes to the attention of the Smyrna Police that a violation of section (1) or section (2) as defined in this chapter has occurred or exists in the Town of Smyrna, Tennessee a notice in writing shall be served upon the occupant of the land where the violation exists, or in case there is no such occupant, then upon the owner of the property or his agent, notifying them of the existence of the violation and requesting removal of the junked motor vehicle in the time specified in this chapter. (1991 Code, § 15-703)
- 13-404. Responsibility for removal. Upon notice as provided in § 13-403 above, the owner of the abandoned, wrecked, dismantled, or inoperative vehicle and the owner or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal. (1991 Code, § 15-704)
- 13-405. <u>Notice procedure</u>. (1) The police department of the town shall give written notice of removal to the owner or occupant of the private property where the vehicle is located at least thirty (30) days before the issuance of a citation. It shall constitute sufficient notice, when a copy of same is posted in a conspicuous place upon the private property on which the vehicle is located and duplicate copies are sent by certified mail to the owner or occupant of the private property at his last known address.

- (2) <u>Content of notice</u>. The notice shall contain the request for removal within the time specified in this chapter, and the notice shall advise that upon failure to comply with the notice to remove, the police department shall issue a citation against the owner or occupant of the property for violation of this chapter. (1991 Code, § 15-705)
- 13-406. <u>Failure to remove vehicle</u>. If the vehicle is not removed within thirty (30) days after written notice duly given pursuant to this chapter, the police department shall issue a citation for violation of this chapter to the person to whom the notice has been directed. (1991 Code, § 15-706)
- **13-407.** Town court. A hearing upon the citation for violation of this chapter shall be held in the town court before the town judge who shall adjudge this matter according to the facts and law presented therein. (1991 Code, § 15-707)
- 13-408. <u>Violation and penalty</u>. Violations 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 CONTROL¹

CHAPTER

- 1. ZONING ORDINANCE.
- 2. PLANNING DEPARTMENT.
- 3. PLANNING COMMISSION.
- 4. SIGN ORDINANCE.
- 5. STORM WATER ADVISORY COMMITTEE.
- 6. STORM WATER MANAGEMENT ORDINANCE.
- 7. DEVELOPMENT AGREEMENT.

CHAPTER 1

ZONING ORDINANCE

SECTION

- 14-101. Land use to be governed by zoning ordinance.
- 14-102. Violation and penalty.
- 14-101. <u>Land use to be governed by zoning ordinance</u>. Land use within the Town of Smyrna shall be governed by the ordinance, titled "Zoning Ordinance, Smyrna, Tennessee," and any amendments thereto.
- **14-102.** <u>Violation and penalty</u>. Violations of the zoning ordinance 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.

¹The town's zoning ordinance and amendments thereto have not been included in this code. They are of record in the town clerk's office.

PLANNING DEPARTMENT

SECTION

14-201. Department established; functions.

14-202. Town planner; appointment; responsibilities

14-201. <u>Department established; functions</u>. There is hereby created and established a planning department, which department shall provide planning services; administer the town's zoning, sign, and subdivision ordinances and/or regulations; direct long-range planning activities; provide mapping functions; administer codes enforcement and inspection division; and provide such other services as may be directed by the town manager. (Ord. #02-26, Aug. 2002, modified)

14-202. <u>Town planner</u>; <u>appointment</u>; <u>responsibilities</u>. The town manager shall appoint the planning manager, who shall serve as the head of the planning department and who shall report directly to the town manager. The planning manager shall direct the operations of the planning department and codes enforcement and inspection division and shall perform such other duties as may be assigned by the town manager, or as may be requested by the town council, planning commission and/or board of zoning appeals. (Ord. #02-26, Aug. 2002, modified)

PLANNING COMMISSION¹

SECTION

- 14-301. Creation and membership
- 14-302. Organization, powers, functions and duties.
- 14-303. Continued existence.
- 14-304. Time and place of meetings.
- 14-305. Training and continuing education.

14-301. Creation and membership. Pursuant to the provisions of Tennessee Code Annotated, § 13-4-101, there is hereby created a Smyrna Municipal Planning Commission, hereinafter referred to as the planning commission. The planning commission shall consist of seven (7) members. One (1) of the members shall be the mayor or his or her designee and one (1) of the members shall be a member of the town council selected by the town council. The other five (5) members of the planning commission shall be appointed by the mayor. In making such appointments, the mayor shall strive to ensure that the racial composition of the planning commission is at least proportionately reflective of the Town of Smyrna's racial minority population. The terms of the five (5) members appointed by the mayor shall be for two (2) years each and shall be so arranged such that the term of at least one (1) member will expire each year. The terms of the mayor or his or her designee and the member selected by the town council shall run concurrently with their respective terms of office. Any vacancy in an appointed membership shall be filled for the unexpired term by the mayor, who shall also have the authority to remove any appointed member at his or her pleasure. The planning commission shall serve without compensation. (Ord. #02-28, Aug. 2002, modified)

14-302. <u>Organization, powers, functions and duties</u>. The planning commission shall be organized and shall carry out its powers, functions, and duties in accordance with all applicable provisions of <u>Tennessee Code</u> Annotated, title 13. (Ord. #02-28, Aug. 2002)

14-303. <u>Continued existence</u>. Notwithstanding anything herein to the contrary, the members of the planning commission, as such planning commission exists on the effective date of this chapter, shall continue to serve

Planning department: title 14, chapter 2.

¹Municipal code reference

for the remainder of their respective terms, or until their earlier resignation or removal. (Ord. #02-28, Aug. 2002)

- **14-304.** <u>Time and place of meetings</u>. The commission shall meet on the 1st Thursday of each month at the town hall and at other such times and locations as approved and designated by the planning commission.
- 14-305. <u>Training and continuing education</u>. Each planning commissioner shall attend training and continuing education as provided in Tennessee Code Annotated, § 13-4-101(c).

SIGN ORDINANCE

SECTION

- 14-401. Signage to be governed by sign ordinance.
- 14-402. Violation and penalty.
- **14-401.** Signage to be governed by sign ordinance. Signage within the Town of Smyrna shall be governed by the "Town of Smyrna Sign Ordinance" and any amendments thereto, as adopted and approved by ordinance of the town council.
- 14-402. <u>Violation and penalty</u>. Violations of the sign ordinance 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.

STORM WATER ADVISORY COMMITTEE¹

SECTION

14-501. Creation and purpose.

14-502. Membership.

14-503. Powers and duties.

14-501. <u>Creation and purpose</u>. There is hereby created a storm water advisory committee of the Town of Smyrna. The purpose of the storm water advisory committee is to advise and assist the Town of Smyrna in implementing a program for reducing pollutants discharged into creeks, ditches, streams and rivers, and to advance specific elements of the program, including, but not limited to, the following: public education and outreach programs; identification of sources and causes of pollution from runoff and discharges; and development of appropriate ordinances and regulations for town council consideration to govern activities that contribute to stream pollution. (Ord. #03-29, Sept. 2003)

- **14-502.** <u>Membership</u>. (1) <u>Composition</u>. The committee shall consist of seven (7) members. Members of the committee shall serve without pay and shall be appointed by a majority vote of the town council. In addition, the public works director, the town engineer, the town planner, and the storm water management coordinator shall serve as ex officio, non-voting members.
- (2) <u>Terms</u>. The terms of the members shall be staggered to provide continuity and experience on the committee. The terms of the members of the committee shall be two (2) years each, beginning on the first day of April of the year in which each such member was appointed; provided; however, that the terms of the initial members of the committee shall be staggered in the following manner. The initial members of the committee shall serve the following terms:

Name	Term
Chuck Boyett	2 years
Kevin Rigsby	2 years
Steve Steele	2 years
Paul Johns	2 years
Jerome Dempsey	1 year

Storm water management: title 14, chapter 6.

¹Municipal code reference

Name
Allen Trumbo

Ray Lee

1 year

1 year

In order to provide continuity and consistency with the appointment of members of other Town of Smyrna committees and commissions, the calculation of the terms of the initial members of the committee shall begin on April 1, 2003.

- (3) <u>Vacancies</u>. Vacancies created by causes other than the expiration of a member's term shall be filled for the remainder of such member's term in the same manner as otherwise provided for in this chapter.
- (4) Removal. Members of the committee may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three consecutive meetings or more than five non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Committee members who are unable to attend regular meetings are expected to tender their resignation. (Ord. #03-29, Sept. 2003, modified)
- 14-503. <u>Powers and duties</u>. (1) <u>Bylaws and regulations</u>. The committee shall have the power to adopt and revise bylaws, rules, and regulations for the purpose of conducting the business of the committee. The committee, when it deems prudent, may also make recommendations to the town council for amending this chapter.
- (2) Committee not empowered to obligate town or incur liability. Notwithstanding anything that may be herein contained or implied to the contrary, the committee shall not be empowered to obligate the town in any way or to expend or incur liability for any sum of money, it being the intent of the town council that the committee shall act in an advisory capacity only and shall serve only to make recommendations to the Town of Smyrna staff, planning commission and town council, as appropriate.
- (3) Officers. As soon as practical after their appointment, the members of the committee shall meet and organize by electing a chairperson and a vice-chairperson. Thereafter, officers of the committee shall be elected by the members of the committee's first meeting in April of each year. Each officer shall serve until his or her successor has been elected and qualified. The chairperson will preside at all meetings, preserve order and decorum, enforce the rules and regulations of the committee, sign all letters and documents as authorized by the committee, and will otherwise perform the duties devolving upon a presiding officer. The chairperson may participate in all discussions and shall vote as a member of the committee. The vice-chairperson shall perform

the duties of the chairperson in his or her absence. Should the office of chairperson or vice-chairperson become vacant, the committee shall, at its next meeting, elect a successor for the remainder of the unexpired term of such office, from among its members. The town manager will provide a secretary from staff who will assume charge of all records of the committee and who will keep accurate and complete minutes of all meetings thereof.

- (4) <u>Meetings</u>. The committee will determine a regular meeting schedule, provided that at least one (1) meeting of the committee be held in April of each year. The chairperson and/or town manager shall have the authority to call a special meeting of the committee, provided that sufficient public notice is given. All meetings will be open to the public and will be conducted at town hall. Accurate minutes will be kept of all meetings and shall be made available to the public.
- (5) <u>Public hearings</u>. The committee is hereby authorized and empowered to schedule and conduct public hearings.
- (6) <u>Reports</u>. The committee shall from time to time, and at least annually, submit written reports to the town council, furnishing information regarding the work and activities of the committee. (Ord. #03-29, Sept. 2003, modified)

STORM WATER MANAGEMENT ORDINANCE¹

SECTION

- 14-601. Title and purpose.
- 14-602. Jurisdiction.
- 14-603. Definitions.
- 14-604. Land disturbance permits.
- 14-605. Waivers.
- 14-606. Storm water system design and management standards.
- 14-607. Post construction.
- 14-608. Existing locations and developments.
- 14-609. Illicit discharges.
- 14-610. Enforcement.
- 14-611. Penalties.
- 14-612. Appeals.
- 14-613. Amendments.

14-601. <u>Title and purpose</u>. This ordinance shall be known as the "Storm Water Management Ordinance" for the Town of Smyrna, Tennessee.

- (1) <u>Introduction</u>. (a) Inadequate management of storm water runoff from development in a watershed increases flood flows and velocities, erodes and/or silts stream channels altering the integrity and profile of the stream regime, pollutes water, overloads existing drainage facilities with storm water and sediment, undermines floodplain management in downstream communities, reduces groundwater recharge, harms, possibly eliminating, natural fauna and flora, and threatens public health and safety. More specifically, surface water runoff can carry pollutants, including the leading pollutant, sediment, into receiving waters. The potential impacts of these pollutants and the accompanying higher velocities and greater volumes include:
 - (i) Changing natural ecosystems through sediment and pollutant deposits as well as erosion of stream banks that affect the quantity and quality of water flowing, the destruction of habitats, and the loss of plant and animal life;
 - (ii) Posing significant health risks through increased bacteria;

Storm water advisory committee: title 14, chapter 5.

¹Municipal code reference

- (iii) Accelerating algal growth to the extent of contamination of receiving waters by adding excessive nutrient loads;
- (iv) Increasing metal deposits and total suspended solids, thus creating adverse toxicity for aquatic life;
- (v) Reducing oxygen levels because of oil, grease, and organic matter;
- (vi) Affecting animal and plant life adversely, due to changing temperatures, thus decreasing dissolved oxygen levels of receiving waters.
- (b) Uncontrolled storm water can increase the incidence of flooding and the level of floods which occur, altering the integrity and profile of stream regime, endangering roads, public and private property, and human life. Altered land surfaces can change runoff rate and volume as seen in the following:
 - (i) Erosion and slumping of stream banks and undercutting roots;
 - (ii) Increased erosion rates; and
 - (iii) Uniform and shallow streambeds, providing less varied aquatic habitats.
- (c) The adverse water quality and quantity consequences described above may result in substantial economic and/or human losses. The potential losses include, but are not limited to, increased wastewater and drinking water treatment costs, diminished property values, increased flood damages and insurance rates, increased stream bank remediation as well as state and federal fines associated with water quality violations. Many future problems can be avoided through proper storm water management, whereby a comprehensive and reasonable program of regulations is fundamental to the public health, safety, and welfare and to the protection of the citizenry and environment.
- (2) <u>Purpose</u>. The purpose of this storm water management ordinance is to:
 - (a) Protect, maintain, and enhance the environment of the Town of Smyrna and the public health, safety, and the general welfare of the citizens of the town, by controlling discharges of pollutants to the Town of Smyrna's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the Town of Smyrna;
 - (b) Enable the Town of Smyrna to comply with the National Pollutant Discharge Elimination System (NPDES) Permit and applicable regulations, 40 CFR Section 122.26 for storm water discharges; and
 - (c) Allow the Town of Smyrna to exercise the powers granted in Tennessee Code Annotated, § 68-221-1105, which provides that,

among other powers municipalities have with respect to storm water facilities, is the power by ordinance or resolution to:

- (i) Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the Town of Smyrna, whether or not owned and operated by the Town of Smyrna government;
- (ii) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;
- (iii) Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;
- (iv) Review and approve plans and plats for storm water management in proposed subdivisions or commercial developments;
- (v) Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;
- (vi) Suspend or revoke permits when it is decided that the permittee has violated any applicable ordinance, resolution, or condition;
- (vii) Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
- (viii) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.
- (3) <u>Administering entity</u>. The Town of Smyrna engineering department, under the direction and supervision of the town manager, shall administer the provisions of this storm water management ordinance.
- (4) Fees. In order to fund the costs of stormwater management and of administering the provisions of this ordinance, each applicant for land disturbance permit, at the time of submitting such application therefore, shall pay a fee in the amount established by a fee schedule adopted as a part of the budget ordinance. The Town Council of the Town of Smyrna specifically reserves the right to amend this ordinance from time to time to change the amounts and/or calculation of such fees and/or to implement a different system of fees and charges to fund the costs of stormwater management and of administering the provisions of this ordinance. Notwithstanding anything herein to the contrary, the fees established by this subsection shall not become effective until sixty (60) days following the effective date of Ord. #05-07. (Ord. #04-48, Jan. 2005, as amended by Ord #05-07, March 2005, and Ord. #05-19, May 2005)

- **14-602.** <u>Jurisdiction</u>. The storm water management ordinance shall govern all properties within the corporate limits of the Town of Smyrna. (Ord. #04-48, Jan. 2005)
- 14-603. <u>Definitions</u>. For the purpose of this section, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.
- (1) "Active construction site." Any site that has a permit for grading or other related activities (even if actual construction is not proceeding) and any site where construction is occurring regardless of permits acquired.
- (2) "Appeal." A request for a review of the Town of Smyrna Engineer's interpretation of any provisions of these regulations.
- (3) "Base flood." The flood having a one percent chance of being equaled or exceeded in any given year. While this statistical event may occur more frequently, it may also be known as the "100-year flood event."
- (4) "Blue line streams." Streams that are represented on the United States Department of the Interior, Geological Survey (USGS) 1:24,000 topographic quadrangle maps.
- (5) "Best management practices" or "BMPs." The physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the Town of Smyrna, and that have been incorporated by reference into this ordinance as if fully set out therein.¹
- (6) "BMP treatment train." A technique for progressively selecting various storm water management practices to address water quality, by which groups of practices may be used to achieve a treatment goal while optimizing effectiveness, maintenance needs, and space.
- (7) "Borrow pit." An excavated area where material has been dug for use as fill at another location.
 - (8) "Bridge." A man-made conveyance over storm water flows.
- (9) "Building." Any structure built for support, shelter, or enclosure for any occupancy or storage.
- (10) "Channel." A natural or artificial watercourse with a definite bed and banks that conducts flowing water continuously or periodically.
- (11) "Community water." Any rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells, and other bodies

¹See § 14-606(1) for recommended BMP manual.

of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the Town of Smyrna.

- (12) "Contaminant." Any physical, chemical, biological, or radiological substance or matter in water.
- (13) "Culvert." A man-made conveyance of storm water flows, including a pipe or other constructed conveyance.
- (14) "Critical design-storm period." Refers to the time in which detention volume must be controlled with the pre-development flow volume as a maximum limit.
- (15) "Cut." Portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface.
- (16) "Design storm event." A hypothetical storm event, of a given frequency interval and duration, used in the analysis and design of a storm water facility.
- (17) "Discharge." Dispose, deposit, spill, pour, inject, seep, dump, leak, or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of any solid or liquid matter into the municipal separate storm sewer system.
- (18) "Easement." An acquired privilege or right of use or enjoyment that a person, party, firm, corporation, Town of Smyrna, or other legal entity has in the land of another.
- (19) "Erosion." The removal of soil particles by the action of water, wind, ice, gravity, or other geological agents, whether naturally occurring or acting in conjunction with or promoted by man-made activities or effects.
- (20) "Erosion and sediment control plan." A written plan (including drawings or other graphic representations) that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.
- (21) "Hotspot" ("priority area"). An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.
- (22) "Illicit connections." Illegal and/or unauthorized connections to the Town of Smyrna separate storm water system whether or not such connections result in discharges into that system.
- (23) "Illicit discharge." Any discharge to the municipal separate storm sewer system that is not composed entirely of storm water and not specifically exempted under §4(3).
- (24) "Land disturbing activity." Any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, grading, filling, and excavation. Land disturbing activity does not include clearing and grubbing, unless such clearing and grubbing is within

- fifty (50) feet of a drainage way, wetland, stream bank, or body of water and in such instance prior to approval from the department of public works is required.
- (25) "Maintenance." Any activity that is necessary to keep a storm water facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a storm water facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the storm water facility.
- (26) "Maintenance agreement." A document recorded in the land records that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices and facilities.
- (27) "Municipal Separate Storm Sewer System (MS4)." The conveyances owned or operated by the Town of Smyrna for the collection and transportation of storm water, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, manmade channels, and storm drains.
- (28) "National Pollutant Discharge Elimination System Permit"or "NPDES Permit." A permit issued pursuant to 33 U.S.C. 1342.
- (30) "Off-site facility." A structural BMP located outside the subject property boundary described in the permit application for land development activity.
- (31) "On-site facility." A structural BMP located within the subject property boundary described in the permit application for land development activity.
- (32) "Peak flow." The maximum instantaneous rate of flow of water at a particular point resulting from a storm event.
- (33) "Person." Any and all persons, natural or artificial, including any individual, firm or association, and any county or private corporation organized or existing under the laws of this or any other state or country.
 - (34) "Priority area"--See "Hot spot." (§ 14-603(21) of this chapter).
- (35) "Runoff." That portion of the precipitation on a drainage area that is discharged from the area into the Town of Smyrna separate storm water system.
- (36) "Sediment." Solid material, both mineral and organic, that is in suspension, or in bed load, is being transported, or has been moved from its site of origin by water, wind, ice, or gravity and has come to rest on the earth's surface either above or below sea level.
- (37) "Sedimentation." The action of soil particles suspended in storm water that settle in streambeds and can disrupt the natural flow of the stream and suffocate biota.
- (38) "Soils report." A study of soils on a subject property with the primary purpose of characterizing and describing the soils. The soils report shall be prepared by a qualified soils engineer or scientist, who shall be directly

involved in the soil characterization either by performing the investigation or by directly supervising employees.

- (39) "Stabilization." Providing adequate measures, vegetative and/or structural, that will prevent or minimize erosion from occurring.
- (40) "Storm water." Storm water runoff, snow melt runoff, surface runoff, infiltration, and drainage.
- (41) "Storm water management." The programs to maintain quality and quantity of storm water runoff to pre-development levels.
- (42) "Storm water management facilities." The drainage structures, conduits, ditches, combined sewers, sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated, or disposed.
- (43) "Storm water management plan." The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts, and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels.
- (44) "Storm water utility." The storm water utility created by ordinance of the Town of Smyrna or other entity designated by the Town of Smyrna, to administer the storm water management ordinance, and other storm water rules and regulations adopted by the Town of Smyrna.
- (45) "Structural BMPs." Devices that are constructed to provide control of storm water runoff.
- (46) "Surface water." Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, wetlands, marshes, and sinkholes.
- (47) "TDEC." The Tennessee Department of Environment and Conservation .
- (48) "Watercourse" or "Waterway." A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.
- (49) "Watershed." All land area that contributes runoff to a particular point in a stream. (Ord. #04-48, Jan. 2005, modified)
 - **14-604.** <u>Land disturbance permits</u>. (1) <u>Requirements</u>. (a) Every person shall be required to obtain a land disturbance permit from the State of Tennessee which will be utilized as the permit required by the Town of Smyrna Engineering Department in the following cases:
 - (i) Land disturbing activity disturbs one (1) or more acres of land, unless exempted under Section 4(3);
 - (ii) Land disturbing activity of less than one (1) acre of land if such activity is part of a larger common plan of development that affects one (1) or more acre of land;

- (iii) Land disturbing activity of less than one (1) acre of land, if, at the discretion of the Town of Smyrna engineering department, such activity poses a unique threat to water, public health, or safety; and
 - (iv) The creation and use of borrow pits.
- (2) <u>Wetlands permit</u>. No grading or building permit shall be issued until the applicant has obtained the appropriate wetlands permits from the U.S. Army Corps of Engineers and TDEC.
- (3) <u>Aquatic resource alteration program permit</u>. No grading or building permit shall be issued until the applicant has obtained the appropriate Aquatic Resource Alteration Program (ARAP) permit from TDEC.
- (4) <u>Grading or building permits</u>. No grading or building permit shall be issued until the applicant has obtained a land disturbance permit where the same is required by this ordinance.
- (5) $\underline{\text{Exemptions}}$. The following activities are exempt from the permit requirement:
 - (a) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources;
 - (b) Existing nursery and agricultural operations conducted as a permitted main or accessory use;
 - (c) Any logging or farming activity that complies with conservation practices or timber management practices prepared or approved by the Rutherford County Soil Conservation District or University of Tennessee Agricultural Extension Service;
 - (d) Additions or modifications to existing single family structures.
- (6) <u>Application for land disturbance permit</u>. (a) Each application shall include the following:
 - (i) Name of applicant;
 - (ii) Business or residence address of applicant;
 - (iii) Name, address, and telephone number of the owner of the property of record in the office of the assessor of property;
 - (iv) Address and legal description of subject property including the tax map reference number and parcel number of the subject property;
 - (v) Name, address, and telephone number of the contractor and any subcontractor(s) who will perform the land disturbing activity and who shall implement the erosion and sediment control plan;
 - (vi) A statement indicating the nature, extent, and purpose of the land disturbing activity including the size of the area for which the permit shall be applicable and a schedule for the starting and completion dates of the land disturbing activity;

- (vii) Where the property includes a sinkhole, the applicant shall obtain the appropriate permits from TDEC, Division of Water Supply;
- (viii) The applicant shall obtain from all other state or federal agencies any other appropriate environmental permits that pertain to the property. However, the inclusion of those permits in the application shall not foreclose the Town of Smyrna Engineering Department from imposing additional development requirements and conditions, commensurate with this ordinance, on the development of property covered by those permits.
- (b) Each application shall be accompanied by:
- (i) An erosion and sediment control plan as described in § 14-606(5); and
- (ii) A storm water management plan as described in § 14-606(4), providing for storm water management during the land disturbing activity and after the activity has been completed.
- (7) Review and approval of application. (a) The Town of Smyrna Engineering Department will review each application for a land disturbance permit to determine its conformance with the provisions of this ordinance. Within fourteen (14) working days after receiving an application, the engineering department shall provide one of the following responses in writing:
 - (i) Approval of the permit application;
 - (ii) Approval of the permit application, subject to such reasonable conditions as may be necessary to substantially secure the objectives of this ordinance, and issue the permit subject to these conditions; or
 - (iii) Denial of the permit application, indicating the reason(s).
 - (b) If the engineering department has granted conditional approval of the permit, the applicant shall submit a revised plan that conforms to the conditions established by the department. However, the applicant shall be allowed to proceed with his land disturbing activity so long as it conforms to conditions established by the department. The revised plan shall be submitted to the engineering department within ten (10) working days from the date of conditional approval.
 - (c) No development plans will be released until the land disturbance permit has been approved.
- (8) Permit duration. Every land disturbance permit shall expire and become null and void if substantial work authorized by such permit has not commenced within one hundred and eighty (180) calendar days of issuance, or is not complete within eighteen (18) months from the date of the commencement of construction.
- (9) <u>Notice of construction</u>. The applicant must notify the Town of Smyrna Engineering Department in writing ten (10) working days in advance

of the commencement of construction. The department shall conduct regular inspections of the storm water management system construction. All inspections shall be documented and written reports prepared that contain the following information:

- (a) The date and location of the inspection;
- (b) Whether construction is in compliance with the approved storm water management plan;
- (c) Variations from the approved construction specifications; and
 - (d) Any violations that may exist.
- Performance agreement/letter of credit. (a) The Town of Smyrna (10)Engineering Department may, at its discretion, require the submittal of a performance agreement/letter of credit prior to issuance of a permit in order to ensure that the storm water practices are installed by the permit holder as required by the approved storm water management plan. The amount of the installation performance agreement/letter of credit shall be the total estimated construction cost of the structural BMPs approved under the permit plus any reasonably foreseeable additional related costs, e.g., for damages or enforcement. The performance agreement/letter of credit shall contain forfeiture provisions for failure to complete work specified in the storm water management plan. The applicant shall provide an itemized construction cost estimate complete with unit prices, which shall be subject to acceptance, amendment, or rejection by the engineering department. Alternatively, the engineering department shall have the right to calculate the construction cost estimates.
- (b) The performance agreement/letter of credit shall be released in full only upon submission of as-built plans and written certification by a registered professional engineer licensed to practice in the State of Tennessee that the structural BMP has been installed in accordance with the approved plan and other applicable provisions of this ordinance. The Town of Smyrna Engineering Department will make a final inspection of the Structural BMP to ensure that it is in compliance with the approved plan and the provisions of this ordinance. Provisions for a partial prorata reduction of the performance agreement/letter of credit based on the completion of various development stages can be made at the discretion of the engineering department. (Ord. #04-48, Jan. 2005)
- 14-605. <u>Waivers</u>. (1) <u>General</u>. Every applicant shall provide for storm water management as required by this ordinance, unless a written request is filed to waive this requirement. Requests to waive these requirements shall be submitted to the Town of Smyrna Engineering Department for approval.
- (2) <u>Conditions for waiver</u>. The minimum requirements for storm water management may be waived in whole or in part upon written request of the applicant, provided that at least one of the following conditions applies:

- (a) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this ordinance;
- (b) Alternative minimum requirements for on-site management of storm water discharges have been established in a storm water management plan that has been approved by the engineering department; or
- (c) Provisions are made to manage storm water by an off-site facility. The off-site facility shall be in place and designed to provide the level of storm water control that is equal to or greater than that which would be afforded by on-site practices. Further, the facility must be operated and maintained by an entity that is legally obligated to continue the operation and maintenance of the facility.
- (3) <u>Downstream damage prohibited</u>. In order to receive a waiver, the applicant shall demonstrate, to the satisfaction of the engineering department, the waiver will not lead to any of the following conditions downstream:
 - (a) Deterioration of existing culverts, bridges, dams, and other structures;
 - (b) Degradation of biological functions or habitat;
 - (c) Accelerated stream bank or streambed erosion or siltation; or
 - (d) Increased threat of flood damage to public health, life, or property.
- (4) <u>Land disturbance permit not issued where waiver requested</u>. No land disturbance permit shall be issued where a waiver has been requested until the waiver is granted. If no waiver is granted, the plans shall be resubmitted with a storm water management plan. (Ord. #04-48, Jan. 2005)

14-606. Storm water system design and management standards.

- (1) Storm water design or BMP manual. (a) Adoption. The Town of Smyrna adopts as its storm water design and BMP manual the following publications (as such publications may hereafter be amended and/or restated from time to time), which are incorporated by reference in this ordinance as is fully set out herein:
 - (i) Town of Smyrna Subdivision Regulations (as adopted and/or amended from time to time by the Smyrna Municipal Planning Commission).
 - (ii) TDEC Erosion and Sediment Control Manual.
 - (b) These manuals include policies for dry detention basin design and water quality buffer zones and a list of acceptable BMPs, including the specific design performance criteria and operation and maintenance requirements for each storm water practice. The Storm Water Design and BMP Manual may be updated and expanded from time to time, at the discretion of the Smyrna Town Council, upon the recommendation of the Town of Smyrna Engineering Department, based

- on improvements in engineering, science, monitoring, and local maintenance experience. Storm water facilities that are designed, constructed, and maintained in accordance with these BMP criteria will be presumed to meet the minimum water quality performance standards.
- (2) <u>General performance criteria for storm water management</u>. Unless granted a waiver or judged by the engineering department to be exempt, the following performance criteria shall be addressed for storm water management at all sites:
 - (a) All site designs shall control the peak flow rates of storm water discharge associated with design storms specified in this ordinance or in the Town of Smyrna Subdivision Regulations and reduce the generation of post-construction storm water runoff to a minimum of preconstruction levels. These practices should seek to utilize pervious areas for storm water treatment and to infiltrate storm water runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical to provide treatment for both water quality and quantity;
 - (b) To protect stream channels from degradation, specific channel protection criteria shall be provided as prescribed in the BMP manual;
 - (c) Storm water discharges to critical areas with sensitive resources (i.e., cold water fisheries, shellfish beds, swimming beaches, recharge areas, and water supply reservoirs and intakes) may be subject to additional performance criteria, or may need to utilize or restrict certain storm water management practices;
 - (d) Storm water discharges from hot spots may require the application of specific Structural BMPs and pollution prevention practice;
 - (e) Prior to or during the site design process, applicants for land disturbance permits shall consult with the engineering department to determine if they are subject to additional storm water design requirements; and
 - (f) The calculations for determining peak flows as found in the Town of Smyrna Subdivision Regulations shall be used for sizing all storm water facilities.
 - (3) <u>Minimum control requirements</u>. (a) Storm water designs shall meet the multi-stage storm frequency storage requirements as identified in the Town of Smyrna Subdivision Regulations unless the engineering department has granted the applicant a full or partial waiver for a particular regulation under § 14-605.
 - (b) If hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the engineering department may impose any and all additional requirements deemed necessary to control the volume, timing, and rate of runoff.

- (4) Storm water management plan requirements. The storm water management plan shall include sufficient information to allow the engineering department to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing storm water generated at the project site. To accomplish this goal the storm water management plan shall include the following:
 - (a) Topographic Base Map: A 1" = 200' topographic base map of the site which extends a minimum of 500 feet beyond the limits of the proposed development and indicates:
 - (i) Existing surface water drainage including streams, ponds, culverts, ditches, sinkholes, wetlands; and the type, size, elevation, etc., of nearest upstream and downstream drainage structures;
 - (ii) Current land use, including all existing structures, locations of utilities, roads, and easements;
 - (iii) All other existing significant natural and artificial features;
 - (iv) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; and the limits of clearing and grading;
 - (v) Proposed Structural BMPs; and
 - (vi) A written description of the site plan and justification of proposed changes in natural conditions may also be required.
 - (b) Calculations. Hydrologic and hydraulic design calculations for the predevelopment and post-development conditions for the design storms specified in the Town of Smyrna Subdivision Regulations. These calculations shall show that the proposed storm water management measures are capable of controlling runoff from the site in compliance with this ordinance and the guidelines of the Town of Smyrna Subdivision Regulations. Such calculations shall include:
 - (i) A description of the design storm frequency, duration, and intensity where applicable;
 - (ii) Time of concentration;
 - (iii) Soil curve numbers or runoff coefficients, including assumed soil moisture conditions;
 - (iv) Peak runoff rates and total runoff volumes for each watershed area;
 - (v) Infiltration rates, where applicable;
 - (vi) Culvert, storm water sewer, ditch, and/or other storm water conveyance capacities;
 - (vii) Flow velocities;

- (viii) Data on the increase in rate and volume of runoff for the design storms referenced in the Town of Smyrna Subdivision Regulations; and
- (ix) Documentation of sources for all computation methods and field test results.
- (c) Soils Information. If a storm water management control measure depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles and soil survey reports. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.
- (d) Maintenance and repair plan. The design and planning of all storm water management facilities shall include detailed maintenance and repair procedures to ensure their continued performance. These plans will identify the parts or components of a storm water management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan. A permanent elevation benchmark shall be identified in the plans to assist in the inspection of the facility.
- (e) Landscaping plan. The applicant shall present a detailed plan for management of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. Where it is required by the BMP, this plan must be prepared by a registered landscape architect licensed in the State of Tennessee.
- (f) Maintenance easements. The applicant shall ensure access to the site for the purpose of inspection and repair by securing all the maintenance easements needed. These easements shall be binding on the current property owner and all subsequent owners of the property and shall be properly recorded with the Rutherford County Register of Deeds in perpetuity.
 - (g) Maintenance Agreement. (i) The owner of property to be served by an on-site storm water management facility shall execute an inspection and maintenance agreement that shall operate as a deed restriction binding on the current property owner and all subsequent property owners.
 - (ii) The maintenance agreement shall:
 - (A) Assign responsibility for the maintenance and repair of the storm water facility to the owner of the

property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation;

- (B) Provide for a periodic inspection by the property owner for the purpose of documenting maintenance and repair needs and ensure compliance with the purpose and requirements of this ordinance. The property owner will arrange for this inspection to be conducted by a person certified by TDEC through the Tennessee Erosion Prevention and Sediment Control Training and Certification Program who will submit a sealed report of the inspection to the engineering department. It shall also grant permission to the Town of Smyrna to enter the property at reasonable times and to inspect the storm water facility to ensure that it is being properly maintained;
- (C) Provide that the minimum maintenance and repair needs include, but are not limited to: the removal of silt, litter, and other debris, the cutting of grass, grass cuttings and vegetation removal, and the replacement of landscape vegetation, in detention and retention basins, and inlets and drainage pipes and any other storm water facilities. It shall also provide that the property owner shall be responsible for additional maintenance and repair needs consistent with the needs and standards outlined in the BMP manual;
- (D) Provide that maintenance needs shall be addressed in a timely manner, on a schedule to be determined by the engineering department; and
- (E) Provide that if the property is not maintained or repaired within the prescribed schedule, the engineering department shall perform the maintenance and repair at its expense, and bill the same to the property owner. The maintenance agreement shall also provide that the engineering department's cost of performing the maintenance shall be a lien against the property.
- (iii) The Town of Smyrna shall have the discretion to accept the dedication of any existing or future storm water management facility, provided such facility meets the requirements of this ordinance, and includes adequate and perpetual access and sufficient areas, by easement or otherwise, for inspection and regular maintenance. Any storm water facility accepted by the Town of Smyrna must also meet the town's construction standards and any other standards and specifications that apply to the particular storm water facility in question.

- (h) Erosion and sediment control plans. The applicant shall prepare an erosion and sediment control plan for all construction activities that complies with the following, § 14-606(5).
- (5) Erosion and sediment control plan requirements. The erosion and sediment control plan shall accurately describe the potential for soil erosion and sedimentation problems resulting from land disturbing activity and shall explain and illustrate the measures that are to be taken to control these problems. The length and complexity of the plan is to be commensurate with the size of the project, severity of the site condition, and potential for offsite damage. A registered professional engineer licensed in the State of Tennessee shall seal the plan. The plan shall also conform to the requirements found in the BMP manual, and shall include, at a minimum, the following:
 - (a) Project description. Briefly describe the intended project and proposed land disturbing activity, including number of units and structures to be constructed and infrastructure required;
 - (b) A topographic map with contour intervals of five (5) feet or less showing present conditions and proposed contours resulting from land disturbing activity;
 - (c) All existing drainage ways, including intermittent and wet weather, or sinkholes. Include any designated floodways or flood plains;
 - (d) A general description of existing land cover. Individual trees and shrubs do not need to be identified;
 - (e) Stands of existing trees as they are to be preserved upon project completion, specifying their general location on the property. Differentiation shall be made between existing trees to be preserved, trees to be removed, and proposed planted trees. Tree protection measures must be identified, and the diameter of the area involved shall also be identified on the plan and shown to scale. Information shall be supplied concerning the proposed destruction of exceptional and historic trees in setbacks and buffer strips, where they exist. Complete landscape plans may be submitted separately. The plan shall include the order of implementation for tree protection efforts;
 - (f) Approximate limits of proposed clearing, grading, and filling;
 - (g) Approximate flows of existing storm water leaving any portion of the site;
 - (h) A general description of existing soil types and characteristics and any anticipated soil erosion and sedimentation problems resulting from existing characteristics;
 - (i) Location, size, and layout of proposed storm water and sedimentation control improvements;
 - (j) Proposed drainage network;
 - (k) Proposed drain tile or waterway sizes;
 - (l) Approximate flows leaving site after construction and incorporating water runoff mitigation measures. The evaluation shall

include projected effects on property adjoining the site and on existing drainage facilities and systems. The plan shall address the adequacy of outfalls from the development: when water is concentrated, what is the capacity of waterways, if any, accepting storm water offsite; and what measures, including infiltration, sheeting into buffers, etc., will be used to prevent the scouring of waterways and drainage areas off-site, etc.;

- (m) The projected sequence of work represented by the grading, drainage, and erosion and sedimentation control plans as related to other major items of construction, beginning with the initiation of excavation and including the construction of any sediment basins, detention or retention facilities, or any other structural BMPs;
- (n) Specific remediation measures to prevent erosion and sedimentation runoff. Plans shall include detailed drawings of all control measures used; stabilization measures including vegetation and non-vegetation measures, both temporary and permanent, shall be detailed. Detailed construction notes and a maintenance schedule shall be included for all control measures in the plan;
- (o) Specific details for: the construction of rock pads, wash down pads, and settling basins for controlling erosion; road access points; eliminating or keeping soil, sediment, and debris on streets and public ways at a level acceptable to the engineering department. Soil, sediment, and debris brought onto streets and public ways shall be removed by the end of the workday by machine, broom, or shovel to the satisfaction of the engineering department. Failure to remove the sediment, soil, or debris shall be deemed a violation of this ordinance;
- (p) Proposed structures, location (to the extent possible) and identification of any proposed additional buildings, structures, or development on the site; and
- (q) A description of on-site measures to be taken to recharge surface water into the groundwater system through infiltration. (Ord. #04-48, Jan. 2005)
- 14-607. <u>Post construction</u>. (1) <u>As-built plans</u>. All applicants are required to submit actual as-built plans for any structures located on-site after final construction is completed. The plan shall show the final design specifications for all storm water management facilities and shall be sealed by a registered professional engineer licensed to practice in the State of Tennessee. A final inspection by the engineering department is required before any performance agreement/letter of credit will be released. The engineering department shall have the discretion to adopt provisions for a partial pro-rata reduction of the performance agreement/letter of credit on the completion of various stages of development. In addition, occupation permits shall not be granted until corrections to all BMPs have been made and accepted by the engineering department.

- (2) <u>Landscaping and stabilization requirements</u>. (a) Any area of land from which the natural vegetative cover has been either partially or wholly cleared by development activities shall be revegetated according to a schedule approved by the Town of Smyrna Engineering Department. The following criteria shall apply to revegetation efforts:
 - (i) Reseeding shall be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established;
 - (ii) Placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion shall accompany replanting with native woody and herbaceous vegetation;
 - (iii) Any area of re-vegetation must exhibit survival of a minimum of seventy-five percent (75%) of the cover crop throughout the year immediately following re-vegetation or exhibit no erosion based on engineering department field review. Revegetation shall be repeated in successive years until the aforementioned criteria are achieved. If erosion should occur anywhere on-site it should be repaired to the satisfaction of the engineering department.
- (b) In addition to the above requirements, a landscaping plan shall be submitted with the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.
- (3) <u>Inspection of storm water management facilities</u>. Periodic inspections of facilities shall be performed as provided for in § 14-506(4)(g)(ii)(B) of this chapter.
- (4) Records of installation and maintenance activities. Parties responsible for the operation and maintenance of a storm water management facility shall make records of the installation of the storm water facility, and of all maintenance and repairs to the facility, and shall retain the records for at least five (5) years.
- (5) Failure to meet or maintain design or maintenance standards. If a responsible party fails or refuses to meet the design or maintenance standards required for storm water facilities under this ordinance, the engineering department, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the storm water management facility becomes a danger to public safety or public health, the engineering department shall notify in writing the party responsible for

maintenance of the storm water management facility. Upon receipt of that notice the responsible party shall have twenty-one (21) calendar days to effect maintenance and repair of the facility in an approved manner. In the event that corrective action is not undertaken within that time, the engineering department may take necessary corrective action. The cost of any action by the engineering department under this section shall be charged to the responsible party. (Ord. #04-48, Jan. 2005)

- **14-608.** Existing locations and developments. (1) Requirements for existing locations and developments. The following requirements shall apply to all locations and development at which land disturbing activities have occurred previous to the enactment of this ordinance:
 - (a) Denuded areas shall be vegetated or covered under the standards and guidelines specified in the BMP manual and on a schedule acceptable to the engineering department;
 - (b) Cuts and slopes shall be properly covered with appropriate vegetation and/or retaining walls constructed;
 - (c) Drainage ways shall be properly covered in vegetation or secured with rip-rap, channel lining, etc., to prevent erosion;
 - (d) Trash, junk, rubbish, etc. shall be cleared from drainage ways; and
 - (e) Storm water runoff shall be controlled to the extent reasonable to prevent pollution of local waters. Such control measures may include, but are not limited to, the following:
 - (i) Ponds:
 - (A) Detention pond;
 - (B) Extended detention pond;
 - (C) Wet pond: and
 - (D) Alternative storage measures.
 - (ii) Constructed wetlands.
 - (iii) Infiltration systems:
 - (A) Infiltration/percolation trench;
 - (B) Infiltration basin;
 - (C) Drainage (recharge) well; and
 - (D) Porous pavement.
 - (iv) Filtering systems:
 - (A) Catch basin inserts/media filter;
 - (B) Sand filter:
 - (C) Filter/absorption bed; and
 - (D) Filter and buffer strips.
 - (v) Open channel:
 - (A) Swale.
- (2) <u>Requirements for existing problem locations</u>. Upon approval by the town manager, the engineering department shall, in writing, notify the owners

of existing locations and developments of specific drainage, erosion, or sediment problem affecting such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance.

- (3) Inspection of existing facilities. The engineering department may, to the extent authorized by state and federal law, establish inspection programs to verify that all storm water management facilities, including those built before as well as after the adoption of this ordinance, are functioning within design limits. These inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of the Town of Smyrna's NPDES storm water permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to:
 - (a) Reviewing maintenance and repair records;
 - (b) Sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and
 - (c) Evaluating the condition of drainage control facilities and other BMPs.
- (4) <u>Corrections of problems subject to appeal</u>. Corrective measures imposed by the Town of Smyrna Engineering Department under this section are subject to appeal under § 14-612 of this chapter. (Ord. #04-48, Jan. 2005)
- 14-609. <u>Illicit discharges</u>. (1) <u>Scope</u>. This section shall apply to all water generated on developed or undeveloped land entering the Town of Smyrna's separate storm sewer system.
- (2) <u>Prohibition of illicit discharges</u>. No person shall introduce or cause to be introduced into the Town of Smyrna separate storm sewer system any discharge that is not composed entirely of storm water. The commencement, conduct, or continuance of any non-storm water discharge to the Town of Smyrna's separate storm sewer system is prohibited except as described as follows:
 - (a) Uncontaminated discharges from the following sources:
 - (i) Water line flushing or other potable water sources;
 - (ii) Landscape irrigation or lawn watering with potable
 - water;
 (iii) Diverted stream flows;
 - (iv) Rising groundwater; i.e. storm drain infiltration
 - (v) Pumped groundwater;
 - (vi) Foundation or footing drains;

- (vii) Crawl space pumps;
- (viii) Air conditioning condensation;
- (ix) Springs;
- (x) Non-commercial washing of vehicles;
- (xi) Natural riparian habitat or wetland flows;
- (xii) Swimming pools [if dechlorinated typically less than one part per million (ppm) chlorine];
 - (xiii) Fire fighting activities; and
 - (xiv) Any other uncontaminated water source.
- (b) Discharges specified in writing by the engineering department as being necessary to protect public health and safety.
- (c) Dye testing is an allowable discharge if the engineering department has so specified in writing.
- (3) <u>Prohibition of illicit connections</u>. (a) The construction, use, maintenance, or continued existence of illicit connections to the Town of Smyrna separate storm sewer system is prohibited.
- (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (4) Reduction of storm water pollutants by use of BMPs. Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, the BMPs necessary to prevent the further discharge of pollutants to the Town of Smyrna separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section.
- Notification of spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into storm water, the Town of Smyrna separate storm sewer system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the engineering department in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the engineering department within three (3) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of

the discharge and actions taken to prevent recurrences. Records shall be retained for at least five (5) years. (Ord. #04-48, Jan. 2005)

- **14-610.** Enforcement. (1) Enforcement authority. The town manager, or his or her designee, hereinafter called the "director," shall have the authority to issue notices of violation (NOV) and citations, and to impose the civil penalties provided in this section.
 - (2) <u>Notification of violation</u>. (a) <u>Written notice</u>. Whenever the director finds that any permittee or any other person discharging storm water has violated or is violating this ordinance or a permit or order issued hereunder, the Director may serve upon such person a written NOV. Within ten (10) working days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the director. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the NOV.
 - (b) <u>Consent orders</u>. The director is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to the following subsections (d) and (e).
 - (c) Show cause hearing. The director may order any person who violates this ordinance or permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt required) at least ten (10) working days prior to the hearing.
 - (d) <u>Compliance order</u>. When the director finds that any person has violated or continues to violate this ordinance or a permit or order issued there under, he/she may issue an order to the violator directing that, following a specific time period, adequate structures and/or devices be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and BMPs.
 - (e) <u>Cease and desist orders</u>. When the director finds that any person has violated or continues to violate this ordinance or any permit

or order issued hereunder, the director may issue an order to cease and desist all such violations and direct those persons in noncompliance to:

- (i) Comply forthwith; or
- (ii) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.
- (3) <u>Conflicting standards</u>. Whenever there is a conflict between any standard contained in this ordinance and in the BMP manual adopted by the Town of Smyrna under this ordinance, the strictest standard shall prevail. (Ord. #04-48, Jan. 2005)
- 14-611. <u>Penalties</u>. (1) <u>Violations</u>. Any person who shall commit any act declared unlawful under this ordinance, who violates any provision of this ordinance, who violates the provisions of any permit issued pursuant to this ordinance, or who fails or refuses to comply with any lawful communication, order, or notice to abate or take corrective action issued by either the Town of Smyrna Engineering Department or the director, shall be guilty of a civil offense.
- (2) <u>Penalties</u>. Under the authority provided in <u>Tennessee Code Annotated</u>, § 68-221-1106, the Town of Smyrna declares that any person violating the provisions of this ordinance may be assessed a civil penalty by the director of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation. The Town of Smyrna shall give the violator reasonable notice of the assessment of any penalty.
- (3) <u>Measuring civil penalties</u>. In assessing a civil penalty, the director may consider:
 - (a) The harm done to the public health and/or the environment;
 - (b) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
 - (c) The economic benefit gained by the violator;
 - (d) The amount of effort put forth by the violator to remedy this violation;
 - (e) Any unusual or extraordinary enforcement costs incurred by the Town of Smyrna;
 - (f) The amount of penalty established by ordinance or resolution for specific categories of violations; and
 - (g) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (4) Recovery of damages and costs. In addition to the civil penalty in the prior subsection (2), the Town of Smyrna may recover, but is not limited to recover, the following:

- (a) All damages proximately caused by the violator to the Town of Smyrna, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this ordinance, or any other actual damages caused by the violation; and
- (b) The costs of the Town of Smyrna's maintenance of storm water facilities when the user of such facilities fails to maintain them as required by this ordinance.
- (5) Other remedies. The Town of Smyrna may bring legal action to enjoin the continuing violation of this ordinance, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.
- (6) Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted. (Ord. #04-48, Jan. 2005)
- **14-612.** Appeals. Pursuant to <u>Tennessee Code Annotated</u>, § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this ordinance may appeal said penalty or damage assessment to the town council.
- (1) Written appeals. The appeal shall be in writing and filed with the town clerk within thirty (30) days after the civil penalty and/or damage assessment is served in any manner authorized by law. If a petition for review is not filed within such time, the violator shall be deemed to have consented to the damage assessment and/or civil penalty and it shall become final.
- (2) <u>Public hearing</u>. The town council shall hold a public hearing not less than thirty (30), and not more than sixty (60), days after receipt of a petition for review. At least ten (10) days advance written notice, by registered mail, shall be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal.
- (3) <u>Appealing decisions</u>. Any alleged violator may appeal a decision of the Town Council pursuant to the provisions of <u>Tennessee Code Annotated</u>, title 27, chapter 8. (Ord. #04-48, Jan. 2005)
- **14-613.** <u>Amendments</u>. The town council shall have the authority to enact amendments to this ordinance from time to time. (Ord. #04-48, Jan. 2005)

DEVELOPMENT AGREEMENT

SECTION

- 14-701. Development agreement to be used.
- 14-702. Model development agreement.
- 14-703. Authority to execute on behalf of town.
- 14-704. Execution of developer agreement.
- 14-705. Failure to execute developer's agreement.
- 14-706. Failure to abide by the developer's agreement.
- 14-707. Violation and penalty.
- 14-701. <u>Development agreement to be used</u>. In any instance in which there is to be a subdivision of land or any development on a parcel of land, a development agreement shall be entered into by the developer with the Town of Smyrna. For purposes of this chapter, subdivision shall have the same meaning as in the Subdivision Regulations for Smyrna, Tennessee. Additionally, in any instance in which upon request of a developer or as required by any law, ordinance, or regulation, the town will consider plans for the installation of mainline water and/or sanitary sewer, roads, and/or storm water facilities, a development agreement shall be entered into by the developer with the town.

As used in this chapter, "developer" shall mean any person(s) or business, owning real property or seeking develop to real property for which site plan approval by the planning commission is necessary, for which a subdivision of property will occur, or for which it will be necessary to obtain approval to install a mainline water and/or sanitary sewer, roads, and/or storm water facilities.

As used in this chapter, "development" shall mean any activity upon any parcel of land for which a building or grading permit must issue and shall include the installation of mainline water and/or sanitary sewer, roads, and/or storm water facilities.

- **14-702.** <u>Model development agreement</u>. The model development agreement to be used by the town is on file in the clerk's office and may be changed from time to time and as necessary in order to address specific concerns of each development.
- 14-703. <u>Authority to execute on behalf of town</u>. The development agreement shall be executed on behalf of the town by the town manager or his designee, if such designee is designated in writing.
- 14-704. Execution of developer agreement. The development agreement shall be executed on behalf of the developer or builder prior to any

permits being issued and prior to any construction beginning on the property, including construction of any mainline water and/or sanitary sewer lines, roads, and/or storm water facilities.

- 14-705. <u>Failure to execute developer's agreement</u>. No permits, inspections, or certificates of occupancy may be granted for any development after the effective date of this ordinance unless a development agreement is on file. Failure to execute a developer agreement may result in a "stop work" order being issued and may include legal action, including but not limited, injunctive relief to enforce a cessation of activity on the site to be developed.
- 14-706. <u>Failure to abide by the developer's agreement</u>. No permits, inspections, or certificates of occupancy may be granted if the developer fails to abide by the development agreement as determined by the town manager or his designee. Failure to abide by the terms of the developer agreement may result in a "stop work" order being issued and may include legal action, including but not limited, injunctive relief to enforce a cessation of activity on the site to be developed.
- 14-707. <u>Violations and penalty</u>. Notwithstanding the provisions in §§ 14-605 and 14-606, and in addition to the remedies provided in §§ 14-605, 14-606, and the development agreement itself, violations of this chapter 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.

Violators of this chapter are subject to the termination of town utility services to the site subject to a development agreement or to which a development agreement should be executed.

A developer in violation of any provisions of this chapter shall not be eligible for and may not obtain approval for any other site plans, any other subdivision requiring approval of the town, or obtain approval from the department of public works or the utilities department, as applicable, for plans for any other installation of a mainline water and/or sanitary sewer, roads, and/or storm water facilities unless and until all violations of this chapter related to that developer are resolved.

TITLE 15

MOTOR VEHICLES, TRAFFIC AND PARKING¹

CHAPTER

- 1. MISCELLANEOUS.
- 2. EMERGENCY VEHICLES.
- 3. SPEED LIMITS.
- 4. TURNING MOVEMENTS.
- 5. STOPPING AND YIELDING.
- 6. PARKING.
- 7. ENFORCEMENT.

CHAPTER 1

MISCELLANEOUS

SECTION

- 15-101. Adoption of Rules of the Road.
- 15-102. Motor vehicle requirements.
- 15-103. Driving on closed streets, in shopping centers, etc.
- 15-104. Careless driving.
- 15-105. One-way streets.
- 15-106. Unlaned streets.
- 15-107. Laned streets.
- 15-108. Yellow lines.
- 15-109. Miscellaneous traffic control signs, etc.
- 15-110. General requirements for traffic control signs, etc.
- 15-111. Unauthorized traffic control signs, etc.
- 15-112. Presumption with respect to traffic control signs, etc.
- 15-113. School safety patrols.
- 15-114. Driving through funerals or other processions.
- 15-115. Clinging to vehicles in motion.
- 15-116. Riding on outside of vehicles.
- 15-117. Backing vehicles.
- 15-118. Projections from the rear of vehicles.
- 15-119. Causing unnecessary noise.
- 15-120. Vehicles and operators to be licensed.
- 15-121. Passing.

Excavations and obstructions in streets, etc.: title 16.

Smyrna Traffic School: title 3, ch. 4.

¹Municipal code reference

- 15-122. Motorcycles, motor driven cycles, motorized bicycles, bicycles, etc.
- 15-123. Delivery of vehicle to unlicensed driver, etc.
- 15-124. Truck traffic restricted.
- 15-125. Violation and penalty.
- **15-101.** Adoption of Rules of the Road. By the authority granted under Tennessee Code Annotated §16-18-302, the Town of Smyrna adopts by reference as if fully set forth in this section, the "Rules of the Road," as codified in Tennessee Code Annotated, §§ 55-8-101 through 55-8-131, and §§ 55-8-181 through 55-8-193, §§ 55-9-601 through 55-9-606, and § 55-12-139 and § 55-21-108 by reference as if fully set forth in this section.
- 15-102. <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 <u>Tennessee Code Annotated</u>, title 55, chapter 9. (1991 Code, § 15-101)

15-103. <u>Driving on closed streets, in shopping centers, etc.</u>

- (1) <u>Driving on closed streets</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.
 - Regulation of traffic in shopping centers. (a) It shall be unlawful for any person to cause unnecessary traffic congestion by driving a motor vehicle through public access parking lots of any shopping centers, retail stores, shopping malls, or other public places of retail sales, within the corporate limits of the Town of Smyrna, without an express purpose to purchase, engage in the act of seeking goods for purchase, or otherwise make use of the facilities of the retail centers, shopping centers, or malls for which such malls and centers were created, when a sign has been posted prohibiting such activity.
 - (b) For purposes of this section only, driving "aimlessly" shall be defined as passing through the perimeter roadways, or any other travel ways within any shopping center, shopping mall, or other retail store more than twice in any twenty (20) minute period.
 - (c) It shall be the duty of the owner of the property on which the signs are posted to request in writing that the Town of Smyrna enforce this chapter as to their property. The owner of said property may also post speed limit signs and other traffic control devices regulating the use of the premises, which regulation may be enforced by the Town of Smyrna upon written notice to the Police Department at Town of Smyrna of installation of said signs. Responsibility and cost for erection of all such signs shall be born by the property owner, as shall all cost of maintenance of said signs and/or traffic control devices, and all such signs and/or

traffic control devices shall be subject to the approval of the Town of Smyrna and shall conform to the standard uniform traffic sign regulations customarily used by the Town, said approval to be obtained prior to erection. (1991 Code, § 15-102, modified)

- **15-104.** <u>Careless driving</u>. Every person operating a vehicle upon a roadway, street, alley, private or public parking lot or parking area, or any area open to the use of the public for purposes of vehicular traffic within the corporate limits of the Town of Smyrna, shall drive in a careful and prudent manner, having due regard for the width, grade, curves, corners, traffic and use of these roadways and other aforementioned designated areas and all other attendant circumstances, so as not to endanger the life, limb or property of any person. Failure to drive in such manner shall constitute careless driving. (1991 Code, § 15-103)
- **15-105.** One-way streets. On any street for one-way traffic with posted signs indicating the authorized direction of travel at all intersections offering access thereto, no person shall operate any vehicle except in the indicated direction. (1991 Code, § 15-105)
- **15-106.** <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.
 - (c) Upon a roadway designated and signposted by the town for one-way traffic.
- (2) All vehicles proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven as close as practicable to the right hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn. (1991 Code, § 15-106)
- 15-107. <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. (1991 Code, § 15-107)

- 15-108. <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. (1991 Code, § 15-108)
- **15-109.** <u>Miscellaneous traffic control signs, etc</u>.¹ It shall be unlawful for any pedestrian or the operator of any vehicle to violate or fail to comply with any traffic control sign, signal, marking, or device placed or erected by the state or the town unless otherwise directed by a police officer.

It shall be unlawful for any pedestrian or the operator of any vehicle willfully to violate or fail to comply with the reasonable directions of any police officer. (1991 Code, § 15-109)

- Pursuant to <u>Tennessee Code Annotated</u>, § 54-5-108, all traffic control signs, signals, markings, and devices shall conform to the latest revision of the <u>Manual on Uniform Traffic Control Devices for Streets and Highways</u>, published by the U.S. Department of Transportation, Federal Highway Administration, and shall, be uniform as to type and location throughout the town. (1991 Code, § 15-110, modified)
- 15-111. <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 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. (1991 Code, § 15-111)
- 15-112. <u>Presumption with respect to traffic control signs, etc.</u> When a traffic control sign, signal, marking, or device has been placed, the

Stop signs, yield signs, flashing signals, pedestrian control signs, traffic control signals generally: §§ 15-505--15-509.

¹Municipal code references

²This manual may be obtained from the Official Compilation of the Rules and Regulations of the State of Tennessee 1680-3-1, <u>et seq.</u>, www.state.tn.us/sos/rules/1680/1680-03.

presumption shall be that it is official and that it has been lawfully placed by the proper town authority. (1991 Code, § 15-112)

- 15-113. School safety patrols. All motorists and pedestrians shall obey the directions or signals of school safety patrols when such patrols are assigned under the authority of the chief of police and are acting in accordance with instructions; provided, that such persons giving any order, signal, or direction shall at the time be wearing some insignia and/or using authorized flags for giving signals. (1991 Code, § 15-113)
- 15-114. <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. (1991 Code, § 15-114)
- 15-115. <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. (1991 Code, § 15-115)
- 15-116. Riding on outside of vehicles. It shall be unlawful for any person to ride, or for the owner or operator of any motor vehicle being operated on a street, alley, or other public way or place, to permit any person to ride on any portion of such vehicle not designed or intended for the use of passengers. This section shall not apply to persons engaged in the necessary discharge of lawful duties nor to persons riding in the load-carrying space of trucks. (1991 Code, § 15-116)
- 15-117. <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. (1991 Code, § 15-117)
- 15-118. Projections from the rear of vehicles. Whenever the load or any projecting portion of any vehicle shall extend beyond the rear of the bed or body thereof, the operator shall display at the end of such load or projection, in such position as to be clearly visible from the rear of such vehicle, a red flag being not less than twelve (12) inches square. Between one-half ($\frac{1}{2}$) hour after sunset and one-half ($\frac{1}{2}$) 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 (200) feet from the rear of such vehicle. (1991 Code, § 15-118)

- **15-119.** <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. (1991 Code, § 15-119)
- **15-120.** <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." (1991 Code, § 15-120, modified)
- 15-121. <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. (1991 Code, § 15-121)

15-122. <u>Motorcycles, motor driven cycles, motorized bicycles, bicycles, etc.</u>

- (1) <u>Definitions</u>. For the purpose of the application of this section, the following words shall have the definitions indicated:
 - (a) <u>Motorcycle</u>. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor or motorized bicycle.
 - (b) <u>Motor-driven cycle</u>. Every motorcycle, including every motor scooter, with a motor capacity that does not exceed five (5) brake

horsepower, or with a motor with a cylinder capacity not exceeding one hundred and twenty-five cubic centimeters (125cc);

- (c) <u>Motorized bicycle</u>. A vehicle with two (2) or three (3) wheels, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty (50) cubic centimeters which produces no more than two (2) brake horsepower and is capable of propelling the vehicle at a maximum design speed of no more than thirty (30) miles per hour on level ground.
- (2) Every person riding or operating a bicycle, motor cycle, motor driven cycle or motorized bicycle shall be subject to the provisions of all traffic ordinances, rules, and regulations of the town applicable to the driver or operator of other vehicles except as to those provisions which by their nature can have no application to bicycles, motorcycles, motor driven cycles, or motorized bicycles.
- (3) No person operating or riding a bicycle, motorcycle, motor driven cycle or motorized bicycle shall ride other than upon or astride the permanent and regular seat attached thereto, nor shall the operator carry any other person upon such vehicle other than upon a firmly attached and regular seat thereon.
- (4) No bicycle, motorcycle, motor driven cycle or motorized bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
- (5) No person operating a bicycle, motorcycle, motor driven cycle or motorized bicycle shall carry any package, bundle, or article which prevents the rider from keeping both hands upon the handlebars.
- (6) No person under the age of sixteen (16) years shall operate any motorcycle, motor driven cycle or motorized bicycle while any other person is a passenger upon said motor vehicle.
- (7) Each driver of a motorcycle, motor driven cycle, or motorized bicycle and any passenger thereon shall be required to wear on his head a crash helmet of a type approved by the state's commissioner of safety.
- (8) Every motorcycle, motor driven cycle, or motorized bicycle operated upon any public way within the corporate limits shall be equipped with a windshield or, in the alternative, the operator and any passenger on any such motorcycle, motor driven cycle or motorized bicycle shall be required to wear safety goggles, faceshield or glasses containing impact resistent lens for the purpose of preventing any flying object from striking the operator or any passenger in the eyes.
- (9) It shall be unlawful for any person to operate or ride on any vehicle in violation of this section, and it shall also be unlawful for any parent or guardian knowingly to permit any minor to operate a motorcycle, motor driven cycle or motorized bicycle in violation of this section. (1991 Code, § 15-122)

15-123. Delivery of vehicle to unlicensed driver, etc.

- (1) <u>Definitions</u>. (a) "Adult" shall mean any person eighteen years of age or older.
- (b) "Automobile" shall mean any motor driven automobile, car, truck, tractor, motorcycle, motor driven cycle, motorized bicycle, or vehicle driven by mechanical power.
- (c) "Custody" means the control of the actual, physical care of the minor, and includes the right and responsibility to provide for the physical, mental, moral and emotional well being of the juvenile. "Custody" as herein defined, relates to those rights and responsibilities as exercised either by the juvenile's parent or parents or a person granted custody by a court of competent jurisdiction.
- (d) "Drivers license" shall mean a motor vehicle operators license or chauffeurs license issued by the State of Tennessee.
- (e) "Juvenile" as used in this chapter shall mean a person less than eighteen years of age, and no exception shall be made for a juvenile or who has been emancipated by marriage or otherwise.
- (2) It shall be unlawful for any adult to deliver the possession of or the control of any automobile or other motor vehicle to any person, whether an adult or a juvenile, who does not have in his possession a valid motor vehicle operators or chauffeurs license issued by the Department of Safety of the State of Tennessee, or for any adult to permit any person, whether an adult or a juvenile, to drive any motor vehicle upon the streets, highways, roads, avenues, parkways, alleys or public thoroughfares in the Town of Smyrna unless such person has a valid motor vehicle operators or chauffeurs license as issued by the Department of Safety of the State of Tennessee.
- (3) It shall be unlawful for any parent or person having custody of a juvenile to permit any such juvenile to drive a motor vehicle upon the streets, highways, roads, parkways, avenues or public ways in the town in a reckless, careless, or unlawful manner, or in such a manner as to violate the ordinances of the town. (1991 Code, § 15-123)
- 15-124. Truck traffic restricted. (1) No person shall drive or park any commercial truck or trailer in excess of twelve thousand (12,000) pounds gross vehicle rated weight upon any street owned and maintained by the Town of Smyrna. The provisions of this section shall not be deemed to prohibit the parking of public school buses on private property or the lawful parking of a commercial truck or trailer in excess of twelve thousand (12,000) pounds gross vehicle rated weight upon any street for the actual loading or unloading of goods, wares, or merchandise, provided, however, that "loading and "unloading" as used in this section shall be limited to the actual time consumed in such operation. Also, this section shall not prohibit the temporary parking of said vehicles when reasonably necessitated by break-down or other emergency, provided the chief of police is promptly notified of the circumstances and

provided said parking pursuant to this emergency provision shall not be permitted in excess of twelve (12) hours.

- (2) It shall be presumed that the person or persons owning and/or operating any truck or trailer which is found parked, standing, or unoccupied within the town limits on or adjacent to a city street located within a residential zone that is not a part of the state or federal highway system, whether said vehicle be located upon private or public property, was the person or persons responsible for incurring the violation of this chapter, unless said person rebuts said presumption and proves said vehicle was used without operating it over a town street located within a residential zone. (1991 Code, § 15-124, modified)
- **15-125.** <u>Violation and penalty</u>. Violations 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.

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.
- 15-205. Violation and penalty.
- **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. (1991 Code, § 15-201)

15-202. Operation of authorized emergency vehicles.¹

- (1) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of the applicable laws of this state, except that an authorized emergency vehicle operated as a police vehicle may be equipped with or display a red light only in combination with a blue light visible from in front of the vehicle.
- (2) The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, subject to the conditions herein stated.
- (3) The driver of an authorized emergency vehicle may park or stand, irrespective of the provisions of this title; proceed past a red or stop signal or stop sign, but only after slowing down to ascertain that the intersection is clear; exceed the maximum speed limit and disregard regulations governing direction of movement or turning in specified directions so long as he does not endanger life or property.
- (4) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others. (1991 Code, § 15-202, modified)

¹Municipal 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 other than one on official business shall follow any authorized emergency vehicle apparently traveling in response to an emergency call closer than five hundred (500) feet or drive or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. (1991 Code, § 15-203)
- **15-204.** Running over fire hoses, etc. It shall be unlawful for any person to drive over any hose lines or other equipment of the fire department except in obedience to the direction of a fireman or policeman. (1991 Code, § 15-204)
- **15-205.** <u>Violation and penalty</u>. Violations 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.

SPEED LIMITS

SECTION

- 15-301. In general.
- 15-302. At intersections.
- 15-303. In school zones.
- 15-304. Violation and penalty.
- **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. (1991 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. (1991 Code, 15-302)
- 15-303. <u>In school zones</u>. Pursuant to <u>Tennessee Code Annotated</u>, § 55-8-152, the town shall have the authority to enact special speed limits in school zones. Such special speed limits shall be enacted based on an engineering investigation; shall not be less than fifteen (15) miles per hour; and shall be in effect only when proper signs are posted with a warning flasher or flashers in operation. It shall be unlawful for any person to violate any such special speed limit enacted and in effect in accordance with this section.

In school zones where the town council 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 careless driving. (1991 Code, § 15-303, modified)

15-304. <u>Violation and penalty</u>. Violations 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.

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.
- 15-406. Violation and penalty.
- **15-401.** Generally. No person operating a motor vehicle shall make any turning movement which might affect any pedestrian or the operation of any other vehicle without first ascertaining that such movement can be made in safety and signaling his intention in accordance with the requirements of the state law. (1991 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. (1991 Code, § 15-402)
- 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 of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection, and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.
- 15-404. <u>Left turns on other than two-way roadways</u>. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left hand lane lawfully available to traffic moving in such direction upon the roadway being entered. (1991 Code, § 15-404)

¹State law reference Tennessee Code Annotated, § 55-8-143.

- **15-405.** <u>U-turns</u>. U-turns are prohibited where so marked. (1991 Code, \S 15-405, modified)
- **15-406.** <u>Violation and penalty</u>. Violations shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 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.
- 15-511. Violation and penalty.

15-501. Upon approach of authorized emergency vehicles. 1 Upon the immediate approach of an authorized emergency vehicle making use of audible and/or visual signals meeting the requirements of the laws of this state, the driver of every other vehicle shall yield the right-of-way and 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. (1991 Code, § 15-501, modified)

15-502. When emerging from alleys, etc. The drivers of all vehicles emerging from alleys, parking lots, driveways, or buildings shall stop such vehicles immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on the roadway. 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. (1991 Code, § 15-502, modified)

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

¹Municipal code reference

Special privileges of emergency vehicles: title 15, chapter 2.

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. (1991 Code, § 15-503)

- **15-504.** At railroad crossings. (1) Any driver of a vehicle approaching a railroad grade crossing shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall not proceed further while any of the following conditions exist:
 - (a) A clearly visible electrical or mechanical signal device gives warning of the approach of a railroad train.
 - (b) A crossing gate is lowered or a human flagman signals the approach of a railroad train.
 - (c) A railroad train is approaching within approximately fifteen hundred (1500) feet of the highway crossing and is emitting an audible signal indicating its approach.
 - (d) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.
- (2) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. (1991 Code, § 15-504, modified)
- 15-505. At "stop" signs. The driver of a vehicle facing a "stop" sign shall stop before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, except when directed to proceed by a police officer or traffic control signal.
- 15-506. At "yield" signs. (1) The driver of a vehicle who is faced with a yield sign at the entrance to a through highway or other public roadway is not necessarily required to stop, but is required to exercise caution in entering the highway or other roadway and to yield the right-of-way to other vehicles which have entered the intersection from the highway or other roadway, or which are approaching so closely on the highway or other roadway as to constitute an immediate hazard, and the driver having so yielded may proceed when the way is clear.
- (2) Where there is provided more than one (1) lane for vehicular traffic entering a through highway or other public roadway, if one (1) or more lanes at such entrance are designated a yield lane by an appropriate marker, this section shall control the movement of traffic in any lane so marked with a yield sign, even though traffic in other lanes may be controlled by an electrical signal device or other signs, signals, markings or controls.

15-507 At traffic control signals generally. Traffic control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, shall show the following colors only and shall apply to drivers of vehicles and pedestrians as follows:

(1) Green alone, or "Go":

- (a) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.
- (b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.
- (2) <u>Yellow alone, or "Caution," when shown following the green or "Go"</u> signal:
 - (a) Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter, and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.
 - (b) Pedestrians facing the signal are thereby advised that there is insufficient time to cross the roadway. Pedestrians facing such signal shall not enter the roadway unless authorized to do so by a pedestrian "Walk" signal. Any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(3) Red alone, or "Stop":

- (a) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone. A right turn on a red signal shall be permitted at all intersections within the town, provided that the prospective turning car comes to a full and complete stop before turning and that the turning car yields the right of way to pedestrians and cross traffic traveling in accordance with their traffic signal. However, such turn will not endanger other traffic lawfully using the intersection. A right turn on red shall be permitted at all intersections except those clearly marked by a "No Turns On Red" sign, which may be erected by the town at intersections which the town decides require no right turns on red in the interest of traffic safety.
- (b) No pedestrian facing such signal shall enter the roadway unless such entry can be made safely and without interfering with any vehicular traffic.
- (c) A left turn on a red or stop signal shall be permitted at all intersections within the city where a one-way street intersects with another one-way street moving in the same direction into which the left

turn would be made from the original one-way street. Before making such a turn, the prospective turning car shall come to a full and complete stop and shall yield the right-of-way to pedestrians and cross traffic traveling in accordance with the traffic signal so as not to endanger traffic lawfully using the intersection. A left turn on red shall be permitted at any applicable intersection except that clearly marked by a "No Turn of Red" sign, which may be erected by the city at intersections which the city decides requires no left turns on red in the interest of traffic safety.

(4) Steady red with green arrow:

- (a) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.
- (b) No pedestrian facing such signal shall enter the roadway unless such entry can be made safely and without interfering with any vehicular traffic.
- (5) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal. (1991 Code, § 15-507, modified)
- 15-508. At flashing traffic control signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal placed or erected in the town it shall require obedience by vehicular traffic as follows:
 - (a) "Flashing red (stop signal)." When a red lens is illuminated with intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
 - (b) "Flashing yellow (caution signal)." When a yellow lens is illuminated with intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.
- (2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules set forth in § 15-504 of this code. (1991 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" are in place, 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. (1991 Code, § 15-509, modified)
- **15-510.** Stops to be signaled. Every driver operating a motor vehicle who intends to stop such vehicle, shall first see that such movement can be made in safety, and whenever the operation of any other vehicle may be affected by such movement, shall give the signal required in <u>Tennessee Code Annotated</u>, § 55-8-143, plainly visible to the driver of such other vehicle of the intention to make such movement.
- **15-511.** <u>Violation and penalty</u>. Violations shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 6

PARKING

SECTION

- 15-601. Generally.
- 15-602. Angle parking.
- 15-603. Occupancy of more than one space.
- 15-604. Where prohibited.
- 15-605. Motorized vehicles and residential property.
- 15-606. Storage and parking of tractor trucks and tractor trailers.
- 15-607. Prohibited parking in alleys.
- 15-608. Prohibited parking overnight.
- 15-609. Prohibited parking on certain surfaces.
- 15-610. Prohibited parking for sales of vehicles and merchandise.
- 15-611. Parking on town property.
- 15-612. Property owners to maintain parking and directional markings.
- 15-613. Property owners subject to violation.
- 15-614. Loading and unloading zones.
- 15-615. Regulation by parking meters.
- 15-616. Lawful parking in parking meter spaces.
- 15-617. Unlawful parking in parking meter spaces.
- 15-618. Unlawful to occupy more than one parking meter space.
- 15-619. Unlawful to deface or tamper with meters.
- 15-620. Unlawful to deposit slugs in meters.
- 15-621. Presumption with respect to illegal parking.
- 15-622. Commercial vehicles.
- 15-623. Trucks and trailers.
- 15-624. Stopping, standing or parking on roadway.
- 15-625. Violation and penalty.

15-601. Generally. No person shall leave any motor vehicle unattended on any street without first setting the brakes thereon, stopping the motor, removing the ignition key, and turning the front wheels of such vehicle toward the nearest curb or gutter of the street. Except as hereinafter provided, every vehicle parked upon a street within this town shall be so parked that its right wheels are approximately parallel to and within eighteen (18) inches of the right edge or curb of the street. On one-way streets where the town has not placed signs prohibiting the same, vehicles may be permitted to park on the left side of the street, and in such cases the left wheels shall be required to be within eighteen (18) inches 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

eight (8) consecutive hours, except in cases of medical emergency, 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. (1991 Code, § 15-601)

- **15-602.** Angle parking. On those streets which have been signed or marked by the town for angle parking, no person shall park or stand a vehicle other than at the angle indicated by such signs or markings. No person shall angle park any vehicle which has a trailer attached thereto or which has a length in excess of twenty-four (24) feet. (1991 Code, § 15-602)
- **15-603.** Occupancy of more than one space. No person shall park a vehicle in any designated parking space so that any part of such vehicle occupies more than one such space or protrudes beyond the official markings on the street or curb designated such space unless the vehicle is too large to be parked within a single designated space. (1991 Code, § 15-603)
- **15-604.** Where prohibited. No person shall park a vehicle in violation of any sign placed or erected by the state or town, nor:
- (1) On a sidewalk; provided, however, a bicycle may be parked on a sidewalk if it does not impede the normal and reasonable movement of pedestrian or other traffic;
 - (2) In front of a public or private driveway;
 - (3) Within an intersection;
 - (4) Within fifteen feet (15') of a fire hydrant;
 - (5) Within a pedestrian crosswalk;
 - (6) Within twenty feet (20') of a crosswalk at an intersection;
- (7) Within thirty feet (30') upon the approach of any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;
 - (8) Within fifty feet (50') of the nearest rail of a railroad crossing;
- (9) Within twenty feet (20') of the driveway entrance to any fire station, and on the side of the street opposite the entrance to any fire station within seventy-five feet (75') of such entrance when properly signposted;
- (10) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
- (11) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- (12) In a parking space clearly identified by an official sign as being reserved for the physically handicapped, unless, however, the person driving the vehicles is:
 - (a) Physically handicapped; or
 - (b) Parking such vehicle for the benefit of a physically handicapped person.

A vehicle parking in such a space shall display a certificate of identification or a disabled veteran's license plate issued under <u>Tennessee Code Annotated</u>, title 55, chapter 21.

- (13) In a parking space clearly identified by an official sign as being reserved for the physically handicapped, unless, however, the person driving the vehicle is:
 - (a) Physically handicapped, or
 - (b) Parking such vehicle for the benefit of a physically handicapped person.

A vehicle parking in such a space shall display a certificate of identification or a disabled veteran's license plate issued under <u>Tennessee Code Annotated</u>, title 55, chapter 21. (1991 Code, § 15-604, modified)

- 15-605. <u>Motorized vehicles and residential property</u>. (1) For purposes of this section, a motorized vehicle is any vehicle which is self-propelled and designed to travel along the ground and shall include, but not be limited to automobiles, buses, motorbikes, motorcycles, motorscooters, trucks, tractors, go-carts, golf carts, campers (self-propelled or towed) and trailers. "Motorized vehicles" shall also include airplanes and self-propelled boats, including watercraft, such as jet skis, designed to travel along the water by motorized means.
- (2) It shall be unlawful to maintain, park or store more than five (5) motorized vehicles as defined above on any property zoned for residential use.
- (3) Motorized vehicles which are regularly stored or maintained in a completely enclosed space, which enclosed space must include a roof, such as a garage, shall not be included in the determination of whether or not a violation has been committed.
- (4) For purposes of subsection (2) vehicles belonging to persons temporarily visiting the residents of a lot shall not be included in the number of vehicles stated, as long as such vehicles are not parked or stored on the lot in excess of one week.
- (5) The provisions of this section shall also apply to residential lots on which properly located and permitted businesses are operated.
- (6) This section shall not apply to parcels of land containing five (5) acres or more.
- (7) The provisions of this section shall be enforced by the codes enforcement and inspection division.

15-606. Storage and parking of tractor trucks and tractor trailers.

(1) It is unlawful to store or park tractor trucks, whether the cab alone or with a trailer attached, tractor trailers, including trailers and semi-trailers, whether empty or loaded, not attached to a truck or tractor truck, on any property zoned for residential use. It shall be an exception during periods in

which the tractor trailer is being actively loaded or unloaded, unless such period of loading or unloading shall exceed twenty-four (24) hours.

- (2) In any commercial zone, tractor trucks, whether the cab alone or with a trailer attached, tractor trailers, including trailers and semi-trailers, whether empty or loaded, not attached to a truck or tractor truck, which are not being used for or engaging in normal loading or unloading purposes, or for activities directly associated with normal trucking operations, shall not be parked or stored on a lot unless they are located in a completely enclosed space, which enclosed space shall include a roof, or are located behind the front setback line created by the building located closest to the street right-of-way and unless such tractor trucks or tractor trailers are located behind a completely opaque fence. For purposes of this section an opaque fence shall not include a chain link fence with any type of panel, fence, or privacy weave. Any existing violations shall be brought into compliance within thirty days after notice. This section is intended to minimize undesirable and unsightly conditions and to ensure compliance with intended advertising regulations.
- (3) The provisions of this section shall not apply to lots which are zoned industrial or which are for an industrial use properly existing under the provisions of the Town of Smyrna Municipal Zoning Ordinance.
- (4) The provisions of this section shall be enforced by the codes enforcement and inspection division.
- **15-607.** Prohibited parking in alleys. It shall be unlawful to park a motorized vehicle within an alley except for the purpose of loading and unloading merchandise and then in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand, or park a vehicle within an alley in such a position as to block the driveway entrance to any abutting property.
- **15-608.** Prohibited parking overnight. It shall be unlawful to park any vehicle on any street between the hours of 1:00 A.M. and 5:00 A.M. unless in a designated and marked parking spot, except that emergency vehicles on emergency calls are hereby exempt from this provision.

15-609. Prohibited parking on certain surfaces.

(1) It shall be unlawful for motorized vehicles as defined in § 15-605 (1) to be parked or stored on property zoned for residential use unless the motorized vehicles are parked on a paved, concreted, rock, or gravel drive-ways or stored in a completely enclosed space, which enclosed space shall include a roof. Parking and storing motorized vehicles on grass or dirt in the side or rear yards on residential lots is allowed if the area is enclosed by an opaque, privacy fence at least six (6) feet in height. In no event shall the parking and storing of motorized vehicles on front yards of residential lots less than one (1) acre occupy

more than fifty percent (50%) of the front yard of a single family dwelling or seventy five percent (75%) of a two family dwelling.

- (2) It shall be unlawful for motorized vehicles as defined in § 15-605(1) to be parked or stored on any property in any zoned area on a surface which is not either paved, concreted, or substantially covered with rock or gravel.
- (3) It shall not be a violation of this section where a motorized vehicle is parked contrary to the provisions of this section upon a site at which construction is taking place and suitable surfaces are not then available.
- (4) The provisions of this section shall be enforced by the codes enforcement and inspection division.

15-610. <u>Prohibited parking for sales of vehicles and merchandise</u>. It shall be unlawful to park any vehicle upon any street for the purpose of displaying it for sale, or to park any vehicle upon any street from which vehicle merchandise is peddled or sold, unless the person selling such goods has a license to make such sales.

- **15-611.** Parking on town property. (1) The town manager or his designee is hereby authorized to establish and enforce policies, rules and regulations for parking at town parks and buildings and all other municipally owned or leased property and to erect signs prohibiting parking at such locations except in accordance with such policies, rules and regulations.
- (2) The policies, rules and regulations established in accordance with this section by the town manager or his designee may include requirements for parking permits in designated areas during certain times.
- (3) Any vehicle parked in violation of such policies, rules or regulations shall be towed away upon the request of the town manager or his designee. The owner of any such vehicle shall be responsible for all towing charges and resulting storage charges. The towing of any such vehicle shall be in addition to the issuance of a citation or other penalty imposed on the owner or driver of the vehicle.
- 15-612. Property owners to maintain parking and directional markings. It shall be unlawful for property owners of any commercially zoned lot to fail to adequately mark and maintain markings related to parking and for directional purposes related to the movement of traffic within the lot. The provisions of this section shall be enforced by the codes enforcement and inspection division.
- **15-613.** Property owners subject to violation. Any property owner who maintains, allows, or permits a condition as prohibited in this chapter shall be guilty of violating this chapter and each separate violation shall constitute a separate offense. The provisions of this section shall be enforced by the codes enforcement and inspection division.

- **15-614.** Loading and unloading zones. No person shall park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers or merchandise in any place marked by the town as a loading and unloading zone. (1991 Code, § 15-605)
- 15-615. Regulation by parking meters. In the absence of an official sign to the contrary which has been installed by the town, between the hours of 8:00 A.M. and 6:00 P.M. on all days except Sundays and holidays declared by the town council, parking shall be regulated by parking meters where the same have been installed by the town. The presumption shall be that all installed parking meters were lawfully installed by the town. (1991 Code, § 15-606)
- **15-616.** <u>Lawful parking in parking meter spaces</u>. Any parking space regulated by a parking meter may be lawfully occupied by a vehicle only after a proper coin has been deposited in the parking meter and the said meter has been activated or placed in operation in accordance with the instructions printed thereon. (1991 Code, § 15-607)
- 15-617. <u>Unlawful parking in parking meter spaces</u>. It shall be unlawful for the owner or operator of any vehicle to park or allow his vehicle to be parked in a parking space regulated by a parking meter for more than the maximum period of time which can be purchased at one time. Insertion of additional coin or coins in the meter to purchase additional time is unlawful.

No owner or operator of any vehicle shall park or allow his vehicle to be parked in such a space when the parking meter therefor indicates no parking time allowed, whether such indication is the result of a failure to deposit a coin or to operate the lever or other actuating device on the meter, or the result of the automatic operation of the meter following the expiration of the lawful parking time subsequent to depositing a coin therein at the time the vehicle was parked. (1991 Code, § 15-608)

- 15-618. <u>Unlawful to occupy more than one parking meter space</u>. It shall be unlawful for the owner or operator of any vehicle to park or allow his vehicle to be parked across any line or marking designating a parking meter space or otherwise so that such vehicle is not entirely within the designated parking meter space; provided, however, that vehicles which are too large to park within one space may be permitted to occupy two adjoining spaces provided proper coins are placed in both meters. (1991 Code, § 15-609)
- **15-619.** <u>Unlawful to deface or tamper with meters</u>. It shall be unlawful for any unauthorized person to open, deface, tamper with, willfully break, destroy, or impair the usefulness of any parking meter. (1991 Code, § 15-610)

- **15-620.** <u>Unlawful to deposit slugs in meters</u>. It shall be unlawful for any person to deposit in a parking meter any slug or other substitute for a coin of the United States. (1991 Code, § 15-611)
- **15-621.** Presumption with respect to illegal parking. When any unoccupied vehicle is found parked in violation of any provision of this chapter, there shall be a prima facie presumption that the registered owner of the vehicle is responsible for such illegal parking. (1991 Code, § 15-612)
- 15-622. Commercial vehicles. (1) No person shall park any motor vehicle licensed or primarily used for commercial purposes and having a gross vehicular rated weight in excess of twelve thousand (12,000) pounds on a public street within a residential zoning district, on any residential lot of less than five acres in size; nor shall any person allow any such motor vehicle to be parked on any such property belonging to him or under his control. Excluded from this provision are emergency service vehicles, refuse collection vehicles subject to the provisions of subsection (2) of this section, and other vehicles actively performing a service between the hours of 7:00 A.M. and 9:00 P.M., including moving vans and vehicles needed for construction purposes. It shall be an exception to this provision that the owner or operator of a school bus shall be allowed to park two school buses on a residential lot owned or occupied by the bus driver, if such school buses are parked in a rear or side yard with no part of the school bus encroaching the front corner of the residence.
- (2) It shall be unlawful to park any vehicle used for refuse collection purposes within two hundred (200) feet of any residential dwelling for more than one (1) hour during a twenty-four (24) hour period. A refuse collection vehicle which has been parked for any length of time at such a location shall be moved at least five hundred (500) feet before parking again. (1991 Code, § 15-613, modified)
- 15-623. <u>Trucks and trailers</u>. No person shall park any truck or motor vehicle of more than twelve thousand (12,000) pounds gross vehicle rated weight, or any trailer or semitrailer, whether or not attached to a tractor, on any street from 6:00 P.M. to 6:00 A.M.; except that this section shall not apply to trucks, trailers or semitrailers so parked while actually engaged in loading or unloading, or in performing a service, including moving vans and vehicles needed for construction purposes. (1991 Code, § 15-614, modified)
- **15-624.** Stopping, standing or parking on roadway. Upon any street or highway no person except in cases of emergency shall stop, park or leave standing any vehicle, whether attended or unattended, upon the roadway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred (200) feet in

each direction upon such highway. No person shall park any vehicle upon a street in such a manner or under such conditions as to leave available less than fourteen feet of the width of the roadway for free movement of vehicular traffic. (1991 Code, § 15-615, modified)

15-625. <u>Violation and penalty</u>. Violations shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 7

ENFORCEMENT

SECTION

- 15-701. Issuance of traffic citations.
- 15-702. Failure to obey citation.
- 15-703. Illegal parking.
- 15-704. Impoundment of vehicles.
- 15-705. Disposal of abandoned motor vehicles.
- 15-706. Deposit of driver license in lieu of bail.
- 15-707. Violation and penalty.

15-701. <u>Issuance of traffic citations</u>.¹ When a police officer halts a traffic violator other than for the purpose of giving a warning, and does not take such person into custody under arrest, he shall take the name, address, and operator's license number of said person, the license number of the motor vehicle involved, and such other pertinent information as may be necessary, and shall issue to him a written traffic citation containing a notice to answer to the charge against him in the town court at a specified time. The officer, upon receiving the written promise of the alleged violator to answer as specified in the citation, shall release such person from custody. It shall be unlawful for any alleged violator to give false or misleading information as to his name or address. (1991 Code, § 15-801)

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. (1991 Code, § 15-802)

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 thirty (30) days during the hours and at a place specified in the citation. (1991 Code, § 15-803, modified)

¹Municipal code reference

Issuance of citations in lieu of arrest and ordinance summonses in traffic related offenses: title 6, chapter 3.

State law reference

Tennessee Code Annotated, § 7-63-101 et seq.

- 15-704. Impoundment of vehicles. Members of the police department are hereby authorized, when reasonably necessary for the security of the vehicle or to prevent obstruction of traffic, to remove from the streets and impound any vehicle whose operator is arrested or any unattended vehicle which is parked so as to constitute an obstruction or hazard to normal traffic, or which has been parked for more than one (1) hour in excess of the time allowed for parking in any place, or which has been involved in two (2) or more violations of this title for which citation tags have been issued and the vehicle not removed. Any impounded vehicle shall be stored until the owner or other person entitled thereto claims it, gives satisfactory evidence of ownership or right to possession, and pays all applicable fees and costs of impoundment and storage, or until it is otherwise lawfully disposed. (1991 Code, § 15-804)
- 15-705. <u>Disposal of abandoned motor vehicles</u>. "Abandoned motor vehicles," as defined in <u>Tennessee Code Annotated</u>, § 55-16-101, <u>et seq</u>. shall be impounded and disposed of by the police department in accordance with the provisions of <u>Tennessee Code Annotated</u>, §§ 55-16-101, <u>et seq</u>.. (1991 Code, § 15-805)
- 15-706. Deposit of driver license in lieu of bail. (1) Deposit allowed. Whenever any person lawfully possessing a chauffeur's or operator's license theretofore issued to him by the Tennessee Department of Safety, or under the driver licensing laws of any other state or territory or the District of Columbia, is issued a citation or arrested and charged with the violation of any town ordinance or state statute regulating traffic, except those ordinances and statutes, the violation of which call for the mandatory revocation of a operator's or chauffeur's license for any period of time, such person shall have the option of depositing his chauffeur's or operator's license with the officer or court demanding bail in lieu of any other security required for his appearance in the town court of this town in answer to such charge before said court.
- (2) Receipt to be issued. Whenever any person deposits his chauffeur's or operator's license as provided, either the officer or the court demanding bail as described above, shall issue the person a receipt for the license upon a form approved or provided by the department of safety, and thereafter the person shall be permitted to operate a motor vehicle upon the public highways of this state during the pendency of the case in which the license was deposited. The receipt shall be valid as a temporary driving permit for a period not less than the time necessary for an appropriate adjudication of the matter in the town court, and shall state such period of validity on its face.
- (3) <u>Failure to appear disposition of license</u>. In the event that any driver who has deposited his chauffeur's or operator's license in lieu of bail fails to appear in answer to the charges filed against him, the clerk or judge of the town court accepting the license shall forward the same to the Tennessee Department of Safety for disposition by said department in accordance with

provisions of <u>Tennessee Code Annotated</u>, § 55-50-801, <u>et seq</u>. (1991 Code, § 15-806)

- **15-707.** <u>Violation and penalty</u>. Any violation of this <u>title</u> shall be a civil offense punishable as follows:
- (1) <u>Traffic citations</u>. Traffic citations shall be punishable by a civil penalty not exceeding state authorized limits. Each day a violation is allowed to continue shall constitute a separate offense.
 - (2) Parking citations. (a) Parking meter. If the offense is a parking meter violation, the offender may, within thirty (30) days, have the charge against him disposed of by paying to the town clerk a fine established by town council provided he waives his right to a judicial hearing. If he appears and waives his right to a judicial hearing after thirty (30) days, his civil penalty shall be established by town council.
 - (b) Other parking violations excluding handicapped parking. For other parking violations, excluding handicapped parking violations, the offender may, within thirty (30) days, have the charge against him disposed of by paying to the town clerk a fine established by town council provided he waives his right to a judicial hearing. If he appears and waives his right to a judicial hearing after thirty (30) days, his civil penalty shall be an amount established by town council.

TITLE 16

STREETS AND SIDEWALKS, ETC¹

CHAPTER

- 1. MISCELLANEOUS.
- 2. EXCAVATIONS.

CHAPTER 1

MISCELLANEOUS

SECTION

- 16-101. Obstructing streets, alleys, or sidewalks prohibited.
- 16-102. Trees projecting over streets, etc., regulated.
- 16-103. Trees, etc., obstructing view at intersections prohibited.
- 16-104. 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, sidewalks, or other public property prohibited.
- 16-108. Obstruction of drainage ditches.
- 16-109. Abutting occupants to keep rights-of-way, easements, and sidewalks clean, etc.
- 16-110. Parades, etc., regulated.
- 16-111. Animals and vehicles on sidewalks.
- 16-112. Fires in streets, etc.
- 16-113. Responsibility for the proper maintenance of streets, drainage areas and other public ways.
- 16-114. Roadblocks.
- 16-115. Violation and penalty.
- **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. (Ord. #02-03, Feb. 2002)
- **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 over any street or alley at a height of less than fourteen (14)

Related motor vehicle and traffic regulations: title 15.

¹Municipal code reference

feet or over any sidewalk at a height of less than eight (8) feet. (Ord. #02-03, Feb. 2002)

- 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 his property any tree, shrub, sign, or other obstruction which prevents persons driving vehicles on public streets or alleys from obtaining a clear view of traffic when approaching an intersection. (Ord. #02-03, Feb. 2002)
- **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.¹ (Ord. #02-03, Feb. 2002)
- **16-105.** Banners and signs across streets and alleys restricted. It shall be unlawful for any person to place or have placed any banner or sign across or above any public street or alley except when expressly authorized by the town council after a finding that no hazard will be created by such banner or sign. (Ord. #02-03, Feb. 2002)
- 16-106. Gates or doors opening over streets, alleys, or sidewalks prohibited. It shall be unlawful for any person owning or occupying property to allow any gate or door to swing open upon or over any street, alley, or sidewalk except when required by law. (Ord. #02-03, Feb. 2002)
- 16-107. <u>Littering streets</u>, <u>alleys</u>, <u>sidewalks</u>, <u>or other public property prohibited</u>. It shall be unlawful for any person to litter, place, throw, track, or allow to fall on any street, alley, sidewalk, or other public property 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. (Ord. #02-03, Feb. 2002, modified)
- **16-108.** Obstruction of drainage ditches. It shall be unlawful for any person to permit or cause the obstruction of any drainage ditch in any public right-of-way or public easement. (Ord. #02-03, Feb. 2002)
- 16-109. Abutting occupants to keep rights-of-way, easements, and sidewalks clean. The occupants of property abutting on a sidewalk are required to keep the sidewalk clean. Also, immediately after a snow or sleet,

Building code: see title 12, chapter 1.

¹Municipal code reference

such occupants are required to remove all accumulated snow and ice from the abutting sidewalk. The occupants of property abutting on a public right-of-way or public easement are required to keep the right-of-way or easement maintained to the edge of the pavement or public way. Public utility and drainage easements are to be maintained by the adjoining property owners in a sufficient manner as to not create a public nuisance or create a blockage to normal drainage flow. (Ord. #02-03, Feb. 2002)

- **16-110.** Parades, etc., regulated. It shall be unlawful for any person, club, organization, or other group to hold any meeting, parade, demonstration, or exhibition on the public streets without some responsible representative first securing a permit from the town clerk. (Ord. #02-03, Feb. 2002, modified)
- **16-111.** Animals and vehicles on sidewalks. It shall be unlawful for any person to ride, lead, or tie any animal, or ride, push, pull, or make any vehicle across or upon any sidewalk in such manner as unreasonably interferes with or inconveniences pedestrians using the sidewalk. It shall also be unlawful for any person knowingly to allow any minor under his control to violate this section. (Ord. #02-03, Feb. 2002)
- **16-112.** <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. (Ord. #02-03, Feb. 2002)
- 16-113. Responsibility for the proper maintenance of street, drainage areas and other public ways. Except as otherwise provided in the Code of the Town of Smyrna, it shall be the responsibility of the director of public works to supervise the proper maintenance of streets, drainage areas and other public ways of the Town of Smyrna; subject to the compliance with the rules and regulations promulgated by the town council and the Code of the Town of Smyrna. In the performance of his duties the director of public works shall prepare for the town manager any studies and/or reports deemed proper and necessary by the town manager for the discharge of the duties of that position. (Ord. #02-03, Feb. 2002, modified)
- 16-114. <u>Roadblocks</u>. It shall be unlawful and a misdemeanor for any person to conduct a roadblock for the purpose of disseminating information or collecting funds inside the town. A roadblock is defined as standing in a public street where funds are sought from motorists on the public street. A roadblock shall be further defined as any person standing in a public street with a sign or poster for the purpose of advertising or informing the public. A roadblock does not include a public parade, which is properly authorized, and traffic stopped or controlled by the police department. (Ord. #02-03, Feb. 2002, modified)

16-115. <u>Violation and penalty</u>. Violations shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 2

EXCAVATIONS1

SECTION

- 16-201. Permit required.
- 16-202. Applications.
- 16-203. Fee.
- 16-204. Deposit or letter of credit.
- 16-205. Safety restrictions on excavations.
- 16-206. Restoration of streets, etc.
- 16-207. Insurance.
- 16-208. Time limits.
- 16-209. Supervision.
- 16-210. Driveway curb cuts.
- 16-211. Violation and penalty.

16-201. Permit required. It shall be unlawful for any person, firm, corporation, association, or others, including utility districts to make any excavation in any street, alley, or public place, or to tunnel under any street, alley, or public place without having first obtained a permit as herein required, and without complying with the provisions of this chapter; and it shall also be unlawful to violate, or vary from, the terms of any such permit; provided, however, any person maintaining pipes, lines, or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately and a permit cannot reasonably and practicably be obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the director of public works is open for business, and the permit shall be retroactive to the date when the work was begun. (Ord. #02-03, Feb. 2002, modified)

¹State law reference

This chapter was patterned substantially after the ordinance upheld by the Tennessee Supreme Court in the case of <u>City of Paris</u>, <u>Tennessee v. Paris-Henry County Public Utility District</u>, 207 Tenn. 388, 340 S.W.2d 885 (1960).

- 16-202. <u>Applications</u>. Applications for such permits shall be made to the director of public works, or such person as he may designate to receive such applications, and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the person, firm, corporation, association, or others doing the actual excavating, the name of the person, firm, corporation, association, or others for whom the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done. (Ord. #02-03, Feb. 2002, modified)
- 16-203. <u>Fee</u>. The fee for all permits required herein shall be a sum set by the town council in the annual fee schedule. (Ord. #02-03, Feb. 2002, modified)
- 16-204. Deposit or letter of credit. No such permit shall be issued unless and until the applicant therefor has deposited with the town a cash deposit. The deposit shall be in the sum set by the town council in the annual fee schedule 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 director of public works 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 town of relaying the surface of the ground or pavement, and of making the refill if this is done by the town or at its expense. The balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored.

In lieu of a deposit the applicant may deposit a letter of credit from a financial institution in Rutherford or Davidson County in such form and amount as the director of public works shall deem adequate to cover the costs to the town if the applicant fails to make proper restoration. (Ord. #02-03, Feb. 2002, modified)

16-205. <u>Safety restrictions on excavations</u>. Any person, firm, corporation, association, or others making any excavation, bore, 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 by the entity making excavation, bore, or tunnel to protect persons and property from injury by or because of the excavation being made and shall be in accordance with all applicable law. If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed and provided which shall be safe for travel and convenient for users. (Ord. #02-03, Feb. 2002, modified)

- 16-206. Restoration of streets, etc. Any person, firm, corporation, association, or others making any excavation, bore, or tunnel in or under any street, alley, or public place within the town shall restore the street, alley, or public place to its original condition, in case of unreasonable delay in restoring the street, alley, or public place, the director of public works 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 town 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 town, 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, bore, or tunnel. (Ord. #02-03, Feb. 2002, modified)
- 16-207. <u>Insurance</u>. 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 director of public works in accordance with the nature of the risk involved; provided, however, that the liability insurance for bodily injury shall not be less than those limitations set forth in the Governmental Tort Liability Act, <u>Tennessee</u> Code Annotated, § 29-20-403. (Ord. #02-03, Feb. 2002, 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 replaced. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the director of public works. (Ord. #02-03, Feb. 2002, modified)
- 16-209. <u>Supervision</u>. The director of public works or his designee shall from time to time inspect all excavations and tunnels being made in or under any public street, alley, or other public place in the town and see to the enforcement of the provisions of this chapter. Notice shall be given to him at least ten (10) hours before the work of refilling any such excavation or tunnel commences. (Ord. #02-03, Feb. 2002, modified)

- 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 director of public works. Such 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 (35) feet 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 (10) feet in width at its outer or street edge shall be provided. Driveway aprons shall not extend out onto the street. The provisions in this chapter related to deposits and letters of credit, safety restrictions, restoration, insurance, time limits, supervision, and permit fees shall also apply to cuts in this section. (Ord. #02-03, Feb. 2002, modified)
- 16-211. <u>Violation and penalty</u>. Violations 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 17

REFUSE AND TRASH DISPOSAL¹

CHAPTER

1. REFUSE.

CHAPTER 1

REFUSE

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 vehicles.
- 17-107. Disposal.
- 17-108. Tree trimmings, etc.; chipper service.
- 17-109. Violation and penalty.
- 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. (1991 Code, § 17-101)
- 17-102. <u>Premises to be kept clean</u>. All persons within the town 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. (1991 Code, § 17-102)
- 17-103. Storage. Each owner, occupant, or other responsible person using or occupying any building or other premises within this town 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 town handles

Property maintenance regulations: title 13. Recyclable materials: title 11, chapter 9.

¹Municipal code references

mechanically. No refuse shall be placed in a refuse container until such refuse has been drained of all free liquids. (1991 Code, § 17-103, modified)

- 17-104. Location of containers. Where alleys are used by the town refuse collectors, containers shall be placed on or within six (6) feet of the alley line in such a position as not to intrude upon the traveled portion of the alley. Containers shall be placed adjacent to and back of the curb, or adjacent to and back of the ditch or street line if there be no curb, at such times as shall be scheduled 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. (1991 Code, § 17-104, modified)
- 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. (1991 Code, § 17-105)
- 17-106. <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. (1991 Code, § 17-107)
- 17-107. <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 town council is expressly prohibited. (1991 Code, § 17-108)
- 17-108. <u>Tree trimmings, etc.</u>; <u>chipper service</u>. (1) The Town of Smyrna provides free chipper service to residential citizens within the corporate limits of the Town of Smyrna.
- (2) Tree trimmings, hedge clippings, and similar materials shall not exceed six inches in diameter or ten feet in length. Piles of brush shall be no larger than three (3) feet by ten (10) feet. The chipper shall not pick up vines, loose leaves, or root balls. Leaves to be picked up by the chipper service shall be placed only in bio-degradable bags.
- (3) All items to be picked up by the chipper service shall be placed within four (4) feet of the edge of the road and shall comply with the size requirements in this provision.

- (4) It shall be unlawful to include in a pile or bag for pick up any building materials, plastic, metal, wire, cardboard, paper, glass, or other trash or refuse.
- 17-109. <u>Violation and penalty</u>. Violations 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 18

WATER AND SEWERS¹

CHAPTER

- 1. WATER AND SEWERS.
- 2. SEWER USE.
- 3. WATER AND WASTEWATER TAP FEE AND RATE SCHEDULE.
- 4. CROSS CONNECTION CONTROL.

CHAPTER 1 WATER AND SEWERS

SECTION

- 18-101. Creation and operation of utilities department.
- 18-102. Application for water.
- 18-103. Service connection and meter setting charges.
- 18-104. Extension of mains.
- 18-105. Meters.
- 18-106. Meter tests.
- 18-107. Private fire lines.
- 18-108. Consumers not to supply water to others.
- 18-109. Supply of steam boilers.
- 18-110. Illegal use of fire hydrants.
- 18-111. No guarantee of pressure and/or supply.
- 18-112. Meter reading and billing.
- 18-113. Meter turn-on.
- 18-114. Meter shut-off.
- 18-115. Failure of consumer to comply with regulations.
- 18-116. Water and sewer rates.
- 18-117. Application for sewer service.
- 18-118. Extension of sewer mains.
- 18-119. Sewer service connections.
- 18-120. Sewer service line stoppage.
- 18-121. Safety precautions.
- 18-122. Penalties.
- 18-123. Unauthorized connections prohibited.

¹Municipal code references

Building, utility and housing codes: title 12.

Refuse: title 17.

Sewer use: title 18, chapter 2

- 18-124. No free services or preferential rates.
- 18-125. Fluoridation of water supply.
- **18-101.** <u>Creation and operation of utilities department</u>. (1) There is created a department to be known as the Town of Smyrna Water and Sewer Department, which is the utilities department.
- (2) The operation of the water and sewer department shall be under the supervision and control of the town manager or his designee, the director of utilities. It shall be the duty of the town manager or his designee to see that the water and sewer department is operated in compliance with the rules and regulations promulgated by the town council, the municipal code of the Town of Smyrna, federal and state regulations and the policies and procedures of the water and sewer department as may be adopted by appropriate ordinance.
- (3) The rates to be charged for services of the water and sewer department shall be such rate schedules as the town may from time to time adopt by appropriate ordinance.
- (4) The town manager or his designee, subject to the rules and regulations proscribed by the town council and the code of the Town of Smyrna, is authorized and empowered to enter into contracts with consumers for the furnishing of water and sewer services.
- (5) Any consumer who fails to comply with the rules and regulations governing the operation of the water and sewer system and the code of the Town of Smyrna may have their water supply or sewer service discontinued.
- (6) It shall be unlawful for any person to interfere with the operation of the water and sewer system. Tampering with meters, mains, or service lines without permission of the director of utilities or doing physical damage to meters or lines or in any manner interfering with the water supply or sewer service shall be unlawful.
- **18-102.** Application for water. Persons, firms, or corporations desiring water connections shall make application to the water department, upon such forms as shall be prescribed and furnished by the water department. The application shall be signed by the owner of the premises, or the tenant or consumer, and shall state the location of the premises to be served, the street number, and the lot.

Within the corporate limits, should the premises to be served be new construction, the applicant shall show that a building permit approved by the building inspector of the Town of Smyrna has been issued for such construction. (1991 Code, § 18-102, modified)

18-103. <u>Service connection and meter setting charges</u>. Water taps and service pipes for new service on existing mains two (2) inches and smaller shall be installed by the water department from the main to the property line unless otherwise approved by the utilities director. The owner or consumer will

install all pipes and fixtures within the property line and keep the same in repair and shall attach to each water line a stop and waste cock. The owner is required to make all taps larger than two (2) inches and shall abide by the Town of Smyrna Standard Water and Sewer Specifications.

The meter settings shall be placed at suitable locations selected by the water department. For such connection and meter setting, the consumer, or property owner, at the time of making application therefor, shall pay to the water department, as the expense thereof, such charge as may be prescribed by the town council.

Such payment will be made promptly upon application for service.

An allowance for leaks occurring downstream of the water meter shall be made upon application for an adjustment. Proof shall be required that the water leak has been repaired. The most recent water bill will be adjusted to the actual cost of treated water as determined by the WTP. The sewer bill will be adjusted to the average usage at the location for the immediately preceding six (6) months. One adjustment per calendar year shall be allowed to include a maximum of two (2) billing cycles.

The size service and meter to be installed shall be within the discretion of the water department, as determined using methods prescribed by the American Water Works Association (AWWA) Manual M22. (1991 Code, § 18-103, modified)

18-104. Extension of mains. All extensions shall be done in accordance with the Town of Smyrna Standard Water and Sewer Specifications. Upon proposal to extend any main, a development agreement shall be executed with the Town of Smyrna, in accordance with the provisions of Title 14, Chapter 6 of the Smyrna Municipal Code. All extensions shall first be approved by the water department and the Tennessee Department of Environment and Conservation as to size and location of water mains. Extension of water mains shall be paid for by the user or promoter of the subdivision or development pursuant to the development agreement. Prior to commencing work on any extension, all permits, bonds, approvals, the required development agreement, and other requirements shall be executed, completed, and all necessary fees paid.

The capacity fee shall be due and payable as a condition of the final plat approval. Payment of said capacity fee is not subject to refund or reimbursement by the Town of Smyrna. (1991 Code, § 18-104, modified)

18-105. <u>Meters</u>. Each consumer will be supplied through a separate meter, except where a building under one ownership has a number of apartments or offices or mobile units, and the owner desires that the water department shall deal directly with the tenants which shall be at the discretion of the water department; in which event the developer will install for each tenant a separate meter setting and meter. The charge for such installation and setting shall be made at the service charge provided for by the town council.

Thereafter, each regular tenant in such building shall be a consumer and shall be subject to all of the applicable rules and regulations hereof.

Meters and meter settings must be accessible at all times and not covered with rubbish, vehicles or material of any kind. No one other than an authorized agent of the water department shall be permitted to repair, adjust, remove, or replace any meter or part thereof.

The consumer shall be responsible for any damage to meters and/or meter settings where such damage is caused by a change in grade of the lot or by carelessness or negligence of the consumer or his agent, or employee, or any member of his family. Such consumer will be billed for the actual cost of repair or replacement, and such bill shall be paid within ten (10) days from the date of mailing thereof. (1991 Code, § 18-105, modified)

18-106. <u>Meter tests</u>. Should any consumer doubt the correctness of the meter registration, he may have the meter tested by making written application to the water department and by making a deposit in accordance with the fees adopted and set forth in the fee schedule adopted in accordance with the annual budget ordinance.

If, in such test, the meter is found to over register in excess of 4%, an allowance shall be made by the water department to the consumer according to such error and covering a period not to exceed the prior billing and the current consumption to date of removal of the meter. If the meter is found to over register in excess of 4%, all the expense incurred in the meter removal and test shall be borne by the water department, and the deposit shall be refunded. If, however, the meter is found to register an amount less than 104 percent, the deposit shall be accepted by the water department in payment of the expense of such removal and test.

The water department may discontinue to furnish water to any consumer who refuses permission to remove a meter in accordance with this section.

If any meter is relocated on application of and to suit the convenience of the consumer, or where relocation of a meter is required because of a change in grade of the lot and/or lot lines, such relocation and setting shall be made by the water department at the expense of the consumer. The bill rendered to the consumer for the expense thereof shall be paid within ten (10) days from the date of the mailing of such bill. (1991 Code, § 18-106, modified)

18-107. <u>Private fire lines</u>. Private fire lines or sprinkler lines will be installed by and at the expense of the consumer pursuant to the Town of Smyrna Standard Water and Sewer Specifications and payment of associated fees; such construction to be made in accordance with the specifications of the water department. Such lines shall be owned and maintained by the consumer. Fees for such shall be paid prior to installation.

Water department employees shall have access to the premises at all reasonable hours for the purpose of inspecting such private fire lines and/or sprinkler system. (1991 Code, § 18-108, modified)

- 18-108. <u>Consumers not to supply water to others</u>. Consumers shall not supply water, or allow water to be carried through a hose or pipe, to any premises other than that described in the application, without the consent of the water department. (1991 Code, § 18-109)
- 18-109. <u>Supply of steam boilers</u>. In no event shall a steam boiler be supplied directly from a water main of the town. In all cases in which water is supplied to steam boilers from the town mains, there shall be a tank or other receptacle located between the boiler and the water main, and such supply shall be taken directly from the water tank or receptacle. (1991 Code, § 18-110)
- 18-110. <u>Illegal use of fire hydrants</u>. No person other than authorized agents of the water department or fire department shall take water from a fire hydrant without the consent of the water department. (1991 Code, § 18-112)
- 18-111. No guarantee of pressure and/or supply. The water department does not guarantee to the consumer any fixed pressure or a continuous supply. In case of breaks in mains, service pipes, pumping machinery, reservoirs, or other equipment of the water department and for the purpose of extending, replacing, or cleaning mains, or any other necessary work in connection with mains, the water may be shut off when necessary without notice and the town shall not be liable for damages which may arise therefrom. (1991 Code, § 18-113)
- **18-112.** <u>Meter reading and billing</u>. Meters will be read monthly. All bills shall be payable at the water department's office or at places designated by the water department.

Town of Smyrna personnel shall have access at all reasonable hours to premises supplied with water, for the purpose of reading, inspecting, repairing, or removing meters.

If a meter is found inoperable at a meter reading period the bill will be figured by computing the average of the six (6) previous monthly billings, but due consideration shall be given for any excessive use of water during such period.

All rates, fees and charges provided for within this chapter shall be billed and collected monthly by the town. All bills shall be due and payable on or before the due date as specified on the bill and a service charge equivalent to 10% of the bill shall be added and collected if such bill is not paid by the due date specified.

If a bill becomes delinquent as aforesaid and is not paid within ten (10) days after the due date, the town may cause the water to be disconnected from the premises and the same shall not again be connected or used until all the delinquent accounts, rates, bills, charges, and services are paid in full, including a fee as prescribed by the town council, for reconnecting said water service.

The non-receipt of a water bill will be no excuse for failure on the part of the consumer to pay the water bill when the same becomes due.

If the owner of the premises being supplied with water from the water department's main desires to be billed rather than the tenant, or consumer, for metered water used, the owner himself must make the application and make a deposit as set forth above. The owner shall be held responsible for any violation of this chapter. (1991 Code, § 18-114, modified)

18-113. <u>Meter turn-on</u>. Water shall not be turned into any water lines for any purpose by anyone except an authorized employee of the water department.

Whenever water service has been discontinued for nonpayment of any bill rendered, or because of a violation of this chapter, a charge as set forth in § 18-112 shall be made to cover the cost of turning the water on again, and this charge shall be paid in advance.

In event the consumer requests that the water be turned an at any time other than during the scheduled working hours, the consumer shall pay an additional charge, as prescribed by the town council, in excess of the charge as set forth above. (1991 Code, § 18-115, modified)

18-114. <u>Meter shut-off</u>. The consumer or property owner shall notify the water department at the time each property becomes vacant. Otherwise, the consumer or property owner shall be responsible for any damage to the property of the water department, and for all water metered to such property up until receipt of such vacancy notice.

The water department will presume service is being rendered from the time water is turned on at the request of the consumer until the consumer or property owner gives notice to discontinue the service and charges will be made accordingly. (1991 Code, § 18-116, modified)

- 18-115. <u>Failure of consumer to comply with regulations</u>. The water department may refuse to furnish water to the premises of any applicant who fails to meet all the applicable conditions and terms of this chapter, or it may discontinue water service in the event the consumer violates or fails to comply with any of the provisions of this chapter. (1991 Code, § 18-117)
- 18-116. <u>Water and sewer rates</u>. All water and sewer service shall be furnished under such rate schedules as the town council may from time to time adopt.

The water and sewer rates in effect at the time of the passage of this code are hereby ratified, but may be changed for future service as the town council may from time to time adopt. (1991 Code, § 18-118, modified)

- 18-117. <u>Application for sewer service</u>. Persons, firms, or corporations desiring sewer service connections shall make application to the water and sewer department in writing, upon such forms as shall be prescribed and furnished by the department. (1991 Code, § 18-119)
- 18-118. Extension of sewer mains. All extensions shall be done in accordance with the Town of Smyrna Standard Water and Sewer Specifications. Upon proposal to extend any main, a development agreement shall be executed with the Town of Smyrna. All extensions shall first be approved by the utilities department and the Tennessee Department of Environment and Conservation as to size and location of sewer mains. Extension of sewer mains shall be paid for by the user or promoter of the subdivision or development pursuant to the development agreement. Prior to commencing work on any extension, all permits, bonds, approvals, the required development agreement, and other requirements shall be executed, completed, and all necessary fees paid. (1991 Code, § 18-120, modified)
- **18-119.** <u>Sewer service connections</u>. A capacity charge as prescribed by the town council will be made for sewer taps.
- (1) An inspection report must also be obtained from the water and sewer department or its designee before any house sewer line may be connected to the Smyrna Sewer System. An inspection fee as adopted by town council shall be paid at the time of application for service in concurrence with the initial service fee. The applicant or property owner assumes all risk of damage from back-flow or flooding from the sewer, back-flow of gas, and any damage resulting to others from the construction of the connection.
- (2) All house sewers shall be laid in accordance with the Town of Smyrna Water and Sewer Specifications and the most recently adopted building code. All costs of running house sewers to the existing public sewers shall be paid for by the property owner.
- (3) A separate sewer line and connection shall be installed for each property to be served. Only sanitary plumbing fixtures such as bathtubs, toilets, sinks, kitchen and laundry fixtures are to be connected to the house sewers.
- (4) The connection of roof drains, yard drainage, or other sources of rain water to the house connection or to the public sewer system is specifically prohibited and any such connection discovered will result in the owner and/or tenant being subject to the penalties herein provided. Drainage from pits or other facilities used for washing automobiles shall not be permitted to be connected to the public sewer or house sewer.

- (5) Inspection by the water and sewer department or its designee shall be made before the trench in which the house sewer line is laid is backfilled and any work not inspected and approved shall subject the owner and/or tenant to the penalties herein provided. A charge, as prescribed by the town council, for each additional inspection trip shall be paid for by the property owner.
- (6) The capacity fee shall be due and payable as a condition of the final plat approval or upon request for service of plat approval is not required. Payment of said capacity fee is not subject to refund or reimbursement by the Town of Smyrna.
- (7) The owner shall maintain the sewer line to prevent infiltration. Failure to properly maintain the line or make repairs upon notification of the water and sewer department may result in loss of water service to the property. (1991 Code, § 18-121, modified)
- 18-120. <u>Sewer service line stoppage</u>. The water and sewer department will unstop sewers outside the property line of the premises at the department's expense if an accessible clean out is available.

It will be the responsibility of the sewer customer to unstop blocked service lines within the property line. In event there is doubt as to whether a stoppage is within or without the property line, and there is reason to believe the stoppage could be either within or without the property line of the premises, the sewer department will unstop the sewer if access is available. However, should the blockage be located within the property line, the applicant shall by written agreement agree to pay for the actual cost of unstopping the line. (1991 Code, § 18-122, modified)

18-121. <u>Safety precautions</u>. All excavations in any street or other public thoroughfare incident to installing any sewer connection shall comply with all applicable laws and regulations and be done in a manner to cause as little inconvenience and danger as possible to the traveling public. All trenches, excavations, and piles of materials shall be prominently marked with warning signs and lights at all times while the work is in progress.

No materials that will clog or stop the sewers, explosive or inflammable substances that might be dangerous to the operation of the sewers or treatment plant, or strong acids or alkali that might damage the sewers shall be discharged into the public sewer system or any connection thereto. (1991 Code, § 18-123)

- **18-122.** Penalties. The water and sewer department shall enforce and collect the following penalties from any person or firm failing to comply with this chapter:
- (1) For starting work on any connection before an application to make such connection is obtained from the water and sewer department, the

inspection fee shall be increased from twenty-five dollars (\$25.00) to seventy five dollars (\$75.00).

- (2) For installing and backfilling any connection before obtaining such application and having said work inspected by the water and sewer department or its designee, the inspection fee shall be increased from twenty-five dollars (\$25.00) to two hundred fifty dollars (\$250.00).
- (3) No permit shall be issued to (directly or indirectly) and no work on any connection to the public sewer system or fixtures attached thereto shall be done by any firm or individual who has in the past made such connections or done such work in violation of the regulations in this chapter.
- (4) For connecting roof drains, yard, or surface drains, or any other source of rain water, or any automobile washing pit drains to the public sewer system, or to any pipe or sewer that is connected to such sewer system, or for any other willful violation of these regulations, the house sewer and the water connection serving the property on which such violation of these regulations occurs shall be disconnected from the sewer system and the water distribution system and remain disconnected until such unauthorized connection is disconnected and other violations properly corrected and until a reconnection charge of five hundred dollars (\$500.00) is paid to the water and sewer department.
- (5) The town attorney is also directed to prosecute for damage to public property any firm or individual that makes any such unauthorized connection to the public sewer system as listed in subsection (4) above or in any other way damages or interferes with the proper operation of the public sewers. (1991 Code, § 18-124, modified)
- 18-123. <u>Unauthorized connections prohibited</u>. No person shall connect to, or turn on, any water service, cut-in, inter-connect, tap, or make any alterations to any main or distribution pipe of the water system or permit any connection or tapping to be made to said water and sewer system on his premises or on the premises occupied by him or knowingly use the water service from connections in violation of any provisions of this chapter or any rules or regulations adopted by the town with respect thereto or in violation of state law. (1991 Code, § 18-125, modified)
- 18-124. <u>No free services or preferential rates</u>. The Town of Smyrna will not render or cause to be rendered any free water or sewer services of any nature, nor will any preferential rates be established for users of the same class. (1991 Code, § 18-126, modified)
- 18-125. <u>Fluoridation of water supply</u>. The water department is hereby authorized and instructed to make plans for the fluoridation of the water supply of the Town of Smyrna, Tennessee; to submit such plans to the Department of Health and Environment of the State of Tennessee for approval;

and, upon approval, to add such chemicals as fluoride to the water supply in accord with such approval as will adequately provide for the fluoridation of said water supply.

The cost of such fluoridation will be borne by the revenues of the water department. (1991 Code, § 18-127)

CHAPTER 2

SEWER USE¹

SECTIONS

- 18-201. General provisions.
- 18-202. Abbreviations.
- 18-203. Definitions.
- 18-204. Use of public sewers required.
- 18-205. Private wastewater disposal.
- 18-206. Additional requirements.
- 18-207. Building sewers, connections and permits.
- 18-208. Contents of industrial discharge permit.
- 18-209. Expiration of industrial discharge permits.
- 18-210. Industrial discharge permits not transferable.
- 18-211. Costs and expenses of installation.
- 18-212. Separate building sewer.
- 18-213. Existing building sewers.
- 18-214. Building code regulations to be followed.
- 18-215. Other requirements.
- 18-216. Applicant shall notify town.
- 18-217. Excavations to be guarded, etc.
- 18-218. Activities must conform to OSHA.
- 18-219. Excluded wastes.
- 18-220. Limited discharges.
- 18-221. Pretreatment and accidental discharge.
- 18-222. Accidental discharge.
- 18-223. Flow and concentration control.
- 18-224. Measurement of flow.
- 18-225. All sources of water discharge and supply must be identified.
- 18-226. Monitoring facilities.
- 18-227. Inspections, monitoring, and reporting.
- 18-228. Authority for inspection.
- 18-229. Protection of equipment.
- 18-230. Reviewing authority and amendment.
- 18-231. Enforcement, penalties, and costs.
- 18-232. Further action may be taken.
- 18-233. Order to show cause.
- 18-234. Hearing procedures.
- 18-235. Hearing shall be of record.

Water and sewers: title 18, chapter 1.

¹Municipal code reference

- 18-236. Order to discontinue.
- 18-237. Revocation of permits.
- 18-238. Failure to comply.
- 18-239. Civil penalty.
- 18-240. Users not connected who fail to comply.
- 18-241. Failure to pay charges.
- 18-242. Commencement of action.
- 18-243. Cost recovery.
- 18-244. Fees and charges shall be published.
- **18-201. General provisions**. This chapter is adopted for the purposes of regulating and controlling the discharge of wastewaters into the Publicly Owned Treatment Works (POTW) of the Town of Smyrna, Tennessee to set forth uniform requirements for contributors into the POTW of the Town of Smyrna, Tennessee and to enable the Town of Smyrna, Tennessee to comply with all applicable state and federal laws, including, but not limited to, the Clean Water Act of 1977, as amended; the General Pretreatment Regulations (40 CFR Part 403); the Solid Waste Disposal Act, as amended; the Clean Air Act, as amended; the Toxic Substances Control Act, as amended; The Tennessee Water Quality Control Act of 1977 as amended (Tennessee Code Title 70, §§ 70-324--70-342, as amended) and rules and regulations of the United States Environmental Protection Agency and the Tennessee Department of Environment and Conservation, Division of Water Quality Control as amended from time to time. This chapter provides for the regulation of direct and indirect contributors to the POTW through the issuance of permits to certain non-domestic users and through enforcement of general requirements for all users, authorizes monitoring and enforcement activities, requires user reporting, assures that existing customers' capacities will not be preempted and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein. This chapter shall apply to all persons who are users of the POTW of the Town of Smyrna, Tennessee. The objectives of this chapter are:
- (1) To prevent the introduction of pollutants into the POTW which will interfere with the operation of the POTW or contaminate the resulting sludge.
- (2) To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the operation of the POTW.
- (3) To improve the opportunity to recycle and reclaim wastewaters and sludges from the wastewater treatment plant.
- (4) To provide for equitable distribution of the costs attributable to the construction, operation and maintenance of the sewerage system. (1991 Code, § 18-201, modified)
- **18-202.** <u>Abbreviations</u>. The following abbreviations shall have the designated meanings:

- (1) BOD Biochemical Oxygen Demand.
- (2) CFR Code of Federal Regulations.
- (3) COD Chemical Oxygen Demand.
- (4) EPA (The) U. S. Environmental Protection Agency.
- (5) l Liter.
- (6) mg Milligrams.
- (7) mg/l Milligrams per Liter.
- (8) NPDES National Pollutant Discharge Elimination System.
- (9) O & M Operation and Maintenance.
- (10) OSHA Occupational Safety and Health Administration.
- (11) P.L. Public Law.
- (12) POTW Publicly Owned Treatment Works.
- (13) SWDA (The) Solid Waste Disposal Act.
- (14) SS Suspended Solids.
- (15) TDWQC (The) Tennessee Department of Environment and Conservation, Division of Water Quality Control. (1991 Code, § 18-202)
- **18-203. Definitions**. The following words, terms, and phrases, wherever used in this chapter, shall have the meanings respectively ascribed to them in this section unless the context plainly indicates otherwise or that a more restricted or extended meaning is intended.
- (1) "Accidental discharge." Any release of wastewater which, for any unforeseen reason, fails to comply with any prohibition or limitation in this chapter.
- (2) "Act" or "the Act." The Federal Water Pollution Control Act, (P. L. 92-500) as amended by the Clean Water Act of 1977 (P. L. 95-217), and as further amended.
- (3) "Approval authority." The Director of the Tennessee Department of Public Environment and Conservation, Division of Water Quality Control (TDWQC).
- (4) "Authorized representative of industrial user." An authorized representative of an industrial user shall be:
 - (a) A principal executive officer of at least the level of vice-president if the industrial user is a corporation.
 - (b) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively.
 - (c) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.
- (5) "Biochemical oxygen demand or BOD." The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at 20°C (68°F) expressed in terns of weight and volume (milligrams per liter).

- (6) "Building sewer or house connection." The connecting pipe from a building to the sanitary sewer.
- (7) "Categorical standard." National Categorical Pretreatment Standard or Pretreatment Standard.
- (8) "Color." Considered to be the true color of the light transmitted by a waste solution after removing suspended material including pseudocolloidal particles.
- (9) "Combined sewer." A sewer receiving both surface runoff and wastewater.
- (10) "Constituents." The specific compounds and components which comprise the wastewater.
- (11) "Control authority." The Town Council of the Town of Smyrna, Tennessee.
- (12) "Cooling water." The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.
- (13) "Direct discharge." The discharge of treated or untreated wastewater directly to the waters of the State of Tennessee.
- (14) "Domestic wastewater." All liquid and waterborne pollutants, exclusive of unpolluted wastewater as defined in § 18-203(60) or wastewater or wastes from processes or operations of industrial users as defined in § 18-203(23).
- (15) "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 said agency.
 - (16) "Flammable." Shall be as defined in § 18-219(3).
- (17) "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 without consideration of time.
- (18) "Holding tank waste." Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, vacuum-pump tank trucks, and septic tank haulers.
- (19) "Indirect discharge." The discharge or introduction of non-domestic pollutants from any source regulated under § 307(b) or (c) of the Act into the POTW (including holding tank waste discharged into the POTW).
- (20) "Industrial user." Any user of the POTW who is a source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to § 402 of the Act. (A user who discharges industrial waste into the POTW.)
- (21) "Industrial waste." The liquid or other wastes resulting from any process of industry, manufacture, trade or business or from the development of natural resources.

- (22) Infiltration." The water entering sewers and building sewer connections from the soil through defective joints, broken or cracked pipe, improper connections, manhole walls, etc. Infiltration does not include, and is distinguished from, inflow.
- (23) "Inflow." The water discharged into sewers from such sources as roof leaders, cellar and yard area drains, foundation drains, commercial and industrial discharges of unpolluted wastewater as defined in § 18-203(60), drains from springs and swampy areas, etc. It does not include and is distinguished from infiltration.
- (24) "Interference." The inhibition or disruption of the wastewater treatment processes or operations, or acts or discharges which may cause damage to any portion of the POTW and/or which contribute to a violation of any requirement of the Smyrna, Tennessee NPDES Permit. The term includes interference with sewage sludge use or disposal in accordance with § 405 of the act or any criteria, guidelines, or regulations developed pursuant to SWDA (P.L. 89-272 as amended), the Clean Air Act, (P.L. 91-604 as amended), or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to title IV of SWDA) applicable to the method of disposal or use employed by the POTW.
- (25) "National Categorical Pretreatment Standard, Categorical Pretreatment Standard or Pretreatment Standard." Any regulation containing pollutant discharge limits promulgated by EPA in accordance with §§ 307(b) and (c) of the act which apply to a specific category of industrial users.
- (26) "National Pollutant Discharge Elimination System or NPDES Permit." A permit to discharge wastewater issued pursuant to § 402 of the act.
- (27) "New source." Any source, the construction of which is commenced after the adoption of this chapter or the publication of proposed regulations prescribing a § 307(c) Categorical Pretreatment Standard which will be applicable to such source, if such standard is thereafter promulgated within one hundred twenty (120) days of proposal in the Federal Register. Where the standard is promulgated later than one hundred twenty (120) days after proposal, a new source means any source, the construction of which in commenced after the date of promulgation of the standard.
- (28) "Normal waste." A waste having average concentrations of three hundred (300) mg/l of suspended solids, or less, as determined by samples taken before entering the POTW.
- (29) "Person." Any individual, firm company, association, corporation, governmental agency, board, commission, or municipal corporation other than the Town of Smyrna, Tennessee.
- (30) "pH." The logarithm of the reciprocal of the concentration of hydrogen ions in moles per liter of solution. Stabilized pH is that determined after a sample of waste has been subjected to natural aeration.
- (31) "Pollution." The man-made or man-induced alteration of the chemical, physical, biological, and/or radiological integrity of water.

- (32) Pollutant." Any solid waste, chemical waste, biological material, radioactive material, thermal waste, or industrial, municipal, or agricultural waste discharged into water.
- (33) "Pretreatment." The reduction of the amounts of pollutants, the elimination of pollutants, or the alteration of the nature of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to discharging or otherwise introducing such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or other means, except as prohibited by 40 CFR§ 403.6(d).
- (34) "Pretreatment requirement." Any substantive or procedural requirement related to pretreatment, other than a National Categorical Pretreatment Standard imposed on an industrial user.
- (35) "Private wastewater disposal system." Any facilities for wastewater treatment and disposal not maintained and operated by the Town of Smyrna, Tennessee.
- (36) "Properly shredded garbage." The organic wastes resulting from the preparation, cooking, and dispensing of foods that have been shredded to such degree that all particles will be carried freely under flow conditions nominally prevailing in public sewers, with no particle being greater than one half (1/2) inch in any dimension.
- (37) "Public sewer." A sewer in which all owners of abutting properties shall have equal rights, and which is controlled by a governmental agency or public utility.
- (38) "Publicly owned treatment works or POTW." Treatment works as defined by § 212 of the act which are owned in this instance by the Town of Smyrna, Tennessee. This definition includes the wastewater treatment plant and any sewers that convey wastewater to the wastewater treatment plant (sewerage system).
- (39) "Receiving stream." That body of water, stream, or watercourse receiving the discharge from a wastewater treatment plant or that body of water, stream, or watercourse formed by the effluent from a wastewater treatment plant.
- (40) "Sanitary sewage." Sewage excluding process wastes from industrial users.
- (41) "Sanitary sewer." A public sewer controlled by a governmental agency or public utility that carries liquid and waterborne wastes from residences, commercial buildings, industrial plants, and institutions, together with minor quantities of ground and surface waters that are not admitted intentionally.
- (42) "Sewage." A combination of water-carried wastes from residences and industrial users (wastewater).
 - (43) "Sewer." A pipe or conduit for carrying wastewater.

- (44) "Sewerage system." All facilities for collecting, pumping, treating and disposing of wastewater (POTW).
 - (45) "Shall" is mandatory; "May" is permissible.
- (46) "Significant Industrial User." Any industrial user of the Smyrna, Tennessee POTW who:
 - (a) Has a discharge flow of twenty-five thousand (25,000) gallons or more per average work day.
 - (b) Has a discharge which is greater than five percent (5%) of the hydraulic flow or organic design capacity of the Smyrna, Tennessee POTW.
 - (c) Has a discharge which contains toxic pollutants or priority pollutants as defined pursuant to § 307 of the act or Tennessee Statutes and Rules and Regulations.
 - (d) Is found by the Town of Smyrna, Tennessee, the approval authority or EPA to have significant impact, either singly or in combination with other contributing industries, on the POTW, the quality of sludge, the system's effluent quality, or air emissions generated by the POTW.
- (47) "Slug." Any discharge of water or wastewater for any duration during which the rate of flow or concentration of any constituent increases to such magnitude so as to adversely affect the operation of the POTW or the ability of the town's wastewater treatment plant to meet applicable water quality objectives.
- (48) "Standard Industrial Classification or SIC." A classification of an industry based on its product or service pursuant to the Standard Industrial Classification Manual, 1972, Office of Management and Budget of the Federal Government, as amended.
- (49) "Standard methods." The analytical procedures set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, or "EPA Methods for Chemical Analysis of Water and Wastes," as per 40 CFR Part 136 and amendments thereto.
 - (50) "State." State of Tennessee.
- (51) "Storm sewer or storm drain." A sewer which carries storm and surface waters and drainage, but which excludes sanitary sewage and polluted industrial wastes.
- (52) "Storm water." Any flow occurring during or following any form of natural precipitation and resulting therefrom.
- (53) "Strength of waste." The concentration of pollutants or substances contained in a liquid waste.
- (54) "Suspended solids." The total solid matter that either floats on the surface of or is suspended in water or liquid waste and which is removable by laboratory filtration.

- (55) "Town." The Town of Smyrna, Tennessee. Activities attributable to the town shall be the responsibility of the town council or any town employee or contractor delegated to act for the town by the town council.
- (56) "Town manager." The administrative officer of the Town of Smyrna, Tennessee who is charged with administrative control of all operations of the POTW as designated by the town council and is responsible directly to the town council. As used herein, it may also include any town employee delegated to act for the town by the town manager or the town council.
- (57) "Town council." The Town Council of the Town of Smyrna, Tennessee is responsible for establishment of policy control of all operations of the POTW. As used herein, it may also include any town employee or contractor delegated to act on specific policy matters for the town by the town council.
- (58) "Toxic pollutant." Any pollutant or combination of pollutants listed as toxic in regulations promulgated by EPA under provisions of § 307(a) of the Act or by the State of Tennessee.
- (59) "Twenty-four hour, flow proportional composite sample or composite sample." A sample consisting of at least eight (8) portions collected during a twenty-four hour period or the total period of waste flow if less than twenty-four hours and in which the sample portions are collected proportionate to the flow and then proportionately combined into a single sample.
- (60) "Unpolluted wastewater." Any wastewater which is substantially free of pollutants and is discharged from the following:
 - (a) Rain downspouts and drains.
 - (b) Footing drains.
 - (c) Storm and surface water drains.
 - (d) Cooling water systems.

Unpolluted wastewater shall contain, by definition, none of the following:

- (a) BOD in excess of 10 mg/l.
- (b) Suspended solids in excess of 10 mg/l.
- (c) Free or emulsified greases or oils.
- (d) Acids or alkalies.
- (e) Phenols or other substances imparting taste or odor to receiving waters.
 - (f) Toxic or poisonous substances.
 - (g) Noxious or odorous gases.
- (h) Any wastewater with a temperature which exceeds 60°C (140°F) at its introduction into a storm sewer or which exceeds 40°C (104°F) at its introduction into a receiving stream.
- (61) "User." Any person who contributes, causes or permits the contribution of wastewater into the POTW.
 - (62) "Wastewater." Sewage.
- (63) "Wastewater treatment plant." The facilities of the Town of Smyrna, Tennessee, for treating and disposing of wastewater (abbreviated as Smyrna WWTP).

- (64) "Watercourse." A channel in which a flow of water occurs, either continuously or intermittently.
- (65) "Waters of the state." All bodies or accumulations of water, surface or underground, within the boundaries of the State of Tennessee. (1991 Code, § 18-203, modified)
- 18-204. <u>Use of public sewers 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 town or in any area under the jurisdiction of the town, any human excrement, garbage, or objectionable waste.
- (2) It shall be unlawful for any person to discharge to any outlet other than a sanitary sewer, within the corporate limits of the town, any domestic or industrial wastes except where suitable treatment has been provided in accordance with subsequent provisions of this chapter and where an appropriate National Pollutant Discharge Elimination System (NPDES) Permit has been obtained from TDWQC pursuant to section 402 of the Act.
- (3) Where a storm sewer, as defined by § 18-203(53), is adjacent to a property, it shall be legal to discharge cooling water, as defined by §18-203(14) and which meets the requirements of § 18-203(60), into said storm sewer in accordance with subsequent provisions of this chapter and where the town determines that sufficient capacity exists in said storm sewer to carry the cooling water without exceeding the design storm drainage capacity of said storm sewer and where an appropriate NPDES Permit has been obtained from TDWQC pursuant to section 402 of the Act.
- (4) The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the town and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the town that discharges to the Smyrna Wastewater Treatment Plant, who has installed suitable toilet and other facilities therein necessary for the discharge of domestic and industrial wastes, is hereby required at the owner(s) expense to connect such facilities directly with the proper public sanitary sewer in accordance with the requirements of the Town of Smyrna, Tennessee, within ninety (90) days after date of official notice to do so, provided that such public sanitary sewer abuts the property.
- (5) All new connections to the Smyrna, Tennessee POTW shall be made in accordance with provisions of § 18-207 of this chapter. (1991 Code, § 18-204)
- 18-205. <u>Private wastewater disposal</u>. (1) Where a public sanitary sewer is not available under the provisions of § 18-204(4), such toilet and other facilities necessary for the discharge of domestic and industrial wastes shall be connected to a private wastewater disposal system complying with the

requirements of the state, Rutherford County, and/or the town, and provisions of the most recently adopted building code of the Town of Smyrna.

- (2) Before commencement of construction of a private wastewater disposal system, the owner(s) shall first obtain a written permit from the appropriate regulatory authority and furnish a copy thereof to the director of public utilities. The copy of the permit shall be accompanied by such supplemental data as deemed necessary by the building official to maintain an accurate file of such private wastewater disposal systems to facilitate the planning of future public sewer service.
- (3) The type, capacity, location, and layout of a private wastewater disposal system, including methods of sludge disposal, shall comply with all requirements of the state and/or the town or other governmental body having jurisdiction.
- (4) At such time as a public sewer is constructed which abuts a property served by a private wastewater disposal system, a direct connection shall be made to the public sewer within ninety (90) days in compliance with this chapter; and septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material at the owners expense.
- (5) The owner(s) shall operate and maintain any private wastewater disposal facilities in a sanitary manner at all times, at no expense to the town.
- (6) Holding tank wastes and septic tank wastes from private systems shall be discharged into the POTW only under the following conditions:
 - No person owning vacuum-pump or septic tank trucks or other liquid waste transport trucks shall discharge directly or indirectly such wastewater into the POTW unless such person shall first have applied for and received a wastewater haulers discharge permit from the Town of Smyrna. All applicants for wastewater haulers discharge permits shall complete such forms as required by the town, pay appropriate fees, and agree in writing to abide by the provisions of this section and any special conditions or regulations established by the town. The owners of such vehicles shall affix and display their permit number on the side of each vehicle used for such purposes. Such permits shall be valid for a maximum period of one (1) year from date of issuance, provided that such permit shall be subject to revocation by the town for violation of any provision of this section or reasonable regulation established by the town. Such permits shall be limited to the discharge of sanitary sewage containing no industrial waste. Pumpage from commercial grease traps is specifically prohibited from discharge into the POTW. The manager of the Smyrna WWTP shall designate the locations and times where such trucks may be discharged, and may refuse to accept any truckload of waste at his absolute discretion where it appears that the waste could interfere with the effective operation of the POTW.

- (b) No person shall discharge any other holding tank waste including industrial process wastes into the POTW unless he shall have applied for and have been issued a permit by the town. Unless otherwise allowed under the terms and conditions of the permit, a separate permit must be secured for each separate discharge. The permit shall state the specific location of discharge, the time of day the discharge is to occur, the volume of the discharge, and shall limit the wastewater constituents and characteristics of the discharge. Such user shall pay any applicable charges or fees therefore, and shall comply with the conditions of the permit issued by the town.
- (c) No person shall operate a dumping station for the discharge of sanitary sewage from recreation vehicles into the POTW unless the user of the dumping station has first applied for and received a recreational vehicle dumping station permit from the town. All applicants for recreational vehicle dumping station permits shall complete such form as required by the town, pay appropriate fees, and agree in writing to abide by the provisions of this section and any special conditions or regulations established by the town. These permits shall be issued only for approved facilities designed to receive sanitary sewage. (1991 Code, § 18-205, modified)
- 18-206. <u>Additional requirements</u>. No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by federal or state agencies.

No waste as regulated under § 18-205(6) originating from outside the town limits of the Town of Smyrna shall be accepted by the Smyrna WWTP. (1991 Code, § 18-206)

- 18-207. <u>Building sewers, connections and permits</u>. (1) <u>Written permit required</u>. No unauthorized person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit in the form of a development agreement or application for service from the town.
 - (2) Classes of permits. There shall be two classes of sewer permits:
 - (a) Building sewer permits for residential, commercial, industrial, or public facilities.
 - (b) Industrial discharge permits for significant industrial users as defined in § 18-203(46).
- (3) <u>Building permits specifically</u>. Building sewer permits for all connections shall be obtained under this chapter and in accordance with the requirements promulgated by the town.
- (4) Permit prior to connecting required. In addition to the requirements of § 18-207(3), any person who, after the effective date of this chapter, proposes to originate the discharge of any industrial waste for the first

time into the POTW or who proposes to make a significant change in the character or volume of any industrial waste theretofore discharged into the POTW, shall make application to the town for an industrial discharge permit and obtain a permit prior to connecting to the POTW or making a significant change in his contribution thereto. The applications shall be supplemented by any information which may have been furnished by the applicant to any other governmental agency and by such other plans or other data as the town may reasonably require for purposes of determining whether the qualifications are met as specified in § 18-207(9).

- or volume of an industrial waste, for purposes of § 18-207(4), shall be deemed to be proposed if substances, compounds, and elements not previously constituting any part of a user's industrial waste are to be introduced into such waste or if the average concentration of any substance, compound, or element in the waste, or average volume proposed to be discharged will cause a violation of any permit limitation. In case of doubt as to whether an intended change constitutes a significant change, it shall be the responsibility of the user intending to make such a change to make the necessary application or obtain a written ruling from the town that an application for an industrial discharge permit is not required.
- (6) Existing significant industrial user. Any user who, on the effective date of this chapter, is operating within the town and is a significant industrial user within the meaning of § 18-203(48) from which industrial waste is discharged into the POTW (hereinafter called "an existing significant industrial user") may continue such discharge until notified by the town in writing that an industrial discharge permit will be required and until an application has been submitted to and denied by the town in accordance with the following provisions:
 - (a) The town shall issue written notices to existing significant industrial users specifying in each such notice the time within which an existing significant industrial user shall file application for an industrial discharge permit.
 - (b) Within the specified time limit, the existing significant industrial user shall file the required application together with any other information, as described in § 18-207(4).
 - (c) An existing significant industrial user may continue to discharge, after complying with the requirement to file an application for an industrial discharge permit, unless and until receipt by the applicant of a written notice specifying the reasons for denial of an industrial discharge permit and specifying what remedial action, if any, must be taken to qualify the applicant for a permit.
- (7) <u>User subject to a new national or state categorical pretreatment standard</u>. Any user subject to a new national or state categorical pretreatment standard shall apply for a new industrial discharge permit within one hundred eighty (180) days after the promulgation of the applicable national or state

categorical pretreatment standard. Industrial discharge permits of users subject to such standards shall be issued or reissued in compliance with such standards within the time frames prescribed by such standards.

- (8) <u>Denial of industrial discharge permit</u>. In any case, where a final determination has been made denying an industrial discharge permit, it shall be unlawful for any person so denied an industrial discharge permit to discharge industrial waste into the POTW.
- (9) Removal of industrial discharge permit. An industrial discharge permit will be issued or renewed by the town only when satisfactory information has been submitted to indicate that:
 - (a) POTW capacity is available for receiving the discharge of industrial waste at the proposed point of discharge.
 - (b) The waste being discharged or proposed to be discharged is amenable to treatment by the processes employed in the wastewater treatment plant and will not impair the ability of the town to comply with water quality standards or effluent standards established by the state or by federal regulatory agencies.
 - (c) The waste being discharged or proposed to be discharged will not cause damage to the POTW including the wastewater treatment facilities, will not constitute a hazard to humans or animals, and will not be capable of creating a public nuisance.
 - (d) The concentrations of substances, compounds, and elements in the waste being discharged or proposed to be discharged do not exceed limits established by the town, state or federal authorities.
 - (e) Where the wastewater contains or may contain any substances, compounds, or elements controlled or limited by this chapter, an adequate program of self-monitoring of flow and wastewater characteristics will be established and maintained by the industry affected by this chapter to assure that the discharge meets the requirements of this chapter and any industrial discharge permit conditions. (1991 Code, § 18-207, modified)
- 18-208. <u>Contents of industrial discharge permit</u>. An industrial discharge permit shall include all appropriate requirements of this chapter and all other applicable regulations, user charges and fees established by the town. Industrial discharge permit may contain the following:
- (1) Limits on the average and maximum wastewater constituents, volume, and characteristics. The town may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations are appropriate.
- (2) Limits on average and maximum rates and time of discharge or requirements for flow regulations and equalization.

- (3) Requirements for installation and maintenance of inspection and/or sampling facilities.
- (4) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
 - (5) Compliance schedules.
- (6) Requirements for submission of technical reports or discharge reports as per § 18-227.
- (7) Requirements for maintaining and retaining plant records relating to wastewater discharges as specified by the town and affording the town access thereto.
- (8) Requirements for notification of the town of any new introduction of wastewater constituents or any substantial changes in the volume or character of the wastewater constituents being introduced into the sewerage system.
- (9) Requirements for notification of slug discharges as per the requirement of §§ 18-221 and 18-222.
- (10) Other conditions as deemed appropriate by the town to insure compliance with the requirements and purposes of this chapter. (1991 Code, § 18-208)
- 18-209. Expiration of industrial discharge permits. An industrial discharge permit shall be issued for a specified time period, not to exceed five (5) years. The user shall apply for industrial discharge permit reissuance a minimum of ninety (90) days prior to the expiration of the user's existing industrial discharge permit. The terms and conditions of the industrial discharge permit may be subject to modification by the town during the term of the industrial discharge permit as limitations or requirements as identified in § 18-219 are modified or other just cause exists. The user shall be informed of any proposed changes in his industrial discharge permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the industrial discharge permit shall include a reasonable time schedule for compliance. (1991 Code, § 18-209)
- 18-210. <u>Industrial discharge permits not transferable</u>. An industrial discharge permit is issued to a specified user for a specific operation. An industrial 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 prior submission of applicable revisions to the application for the existing industrial discharge permit and without the approval of the town. Any succeeding owner or user shall also comply with the terms and conditions of the existing industrial discharge permit. (1991 Code, § 18-210)

- 18-211. <u>Costs and expenses of installation</u>. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the town from any loss or damage that may be directly or indirectly occasioned by the installation of the building sewer. (1991 Code, § 18-211)
- 18-212. Separate building sewer. 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, court, yard, or driveway, the building sewer for the front building may be extended to the rear building and the whole considered as one building sewer, but the town does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned. (1991 Code, § 18-212)
- **18-213.** Existing building sewers. Existing building sewers may be used in connection with new buildings only when they are found on examination and test by the town to meet all the requirements of this chapter. (1991 Code, § 18-213)
- 18-214. Building code regulations to be followed. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and back-filling the trench, shall all conform to the requirements of the most recently adopted building code of the Town of Smyrna or other applicable rules and regulations of the town. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply. (1991 Code, § 18-214, modified)
- **18-215.** Other requirements. (1) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. 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 means and discharged to the building sewer.
- (2) The connection of the building sewer into the public sewer shall conform to the requirements of the most recently adopted building code of the Town of Smyrna or other applicable rules and regulations of the town, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gas tight and water tight and verified by proper testing. Any deviation from the prescribed

procedures and materials must be approved by the town before installation. (1991 Code, § 18-215, modified)

- 18-216. <u>Applicant shall notify town</u>. The applicant for the building sewer permit shall notify the town when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the town. (1991 Code, § 18-216)
- 18-217. Excavations to be guarded, etc. All excavations for building sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazards. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town. (1991 Code, § 18-217)
- 18-218. <u>Activities must conform to OSHA</u>. All construction activities shall conform to all applicable OSHA regulations. (1991 Code, § 18-218)
- 18-219. <u>Excluded wastes</u>. (1) <u>General prohibition</u>. No user shall contribute or cause to be contributed directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all such users of the POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.
- (2) <u>Exception: residential discharges</u>. No user shall discharge or deposit any of the following materials, waste materials, wastes, gases, or liquids into any sewer forming part of the POTW except where these may constitute occasional, intermittent inclusions in the wastewaters discharged from residential premises:
 - (a) Any wastewater having a temperature which will inhibit biological activity in the wastewater treatment plant or resulting in other interference with the treatment processes but, in no case, wastewater with a temperature which exceeds 60°C (140°F) at its introduction into the POTW or which exceeds 40°C (104°F) at its introduction into a wastewater treatment plant.
 - (b) Any water or waste containing more than 50 mg/l of fat, oil, or grease or other substances that will solidify or become viscous at temperatures between 0°C (32°F) and 60°C (140°F).
 - (c) Wastewater from industrial users containing floatable oils, fat or grease.
 - (d) Any garbage that has not been properly shredded so that no particles are any greater than one-half inch (1/2") in any dimension.
 - (e) Any waste capable of causing abnormal corrosion, abnormal deterioration, damage to or creating a hazard to structures, equipment, or personnel of the sewerage system or interfering with proper operation

of the town's wastewater treatment plant. All wastes discharged to the POTW must have a pH value in the range of 6 to 10 standard units. Prohibited materials include but are not limited to concentrated acids or alkalies and high concentrations of compounds of sulfur, chlorine, and fluorine, and substances which may react with water to form strongly acidic or basis products.

- (f) Any waters or wastes having a color which is not removable by existing wastewater treatment processes and which causes plant effluent to exceed color requirements for discharge to the receiving waters.
- (3) <u>Discharges absolutely prohibited</u>. No user shall discharge or deposit any of the following materials, waste materials, waste gases, or liquids into any sewer forming a part of the POTW:
 - (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 POTW or to the operation of the system. At no time shall two successive readings (15 to 30 minutes between readings) on an explosion hazard meter¹ at the point of discharge into the POTW be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (L.E.L.) of the meter. Prohibited materials covered single reading over ten percent (10%) of the Lower Explosive Limit (L.E.L.) of the meter. Prohibited materials covered by this section include, but are not limited to, gasoline, kerosene, naphtha, benzene, fuel oil, motor oil, mineral spirits, commercial solvents, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, and hydrides.
 - (b) Any other solid or viscous substance in quantity or character capable of causing obstruction to flow in sewers or interference with proper operation of wastewater treatment facilities such as, but not limited to, eggshells from egg processors, ashes, cinders, ceramic wastes, sand, mud, straw, shavings, thread, glass, rags, metal, feathers, bones, tar, plastics, wood, paunch manure, insulation materials, fibers of any kind, stock or poultry feeds, processed grains, viscera or other fleshy particles from processing or packing plants, or lime or similar sludges.
 - (c) Any noxious or malodorous solids, liquids, or gases, which, either singly or by interaction with other wastes, are capable of creating a public nuisance or hazard to life or are or may be sufficient to prevent entry into a sewer for its maintenance and repair.

¹Model GX-3 Meter as manufactured by Gas Tech, Inc., Mountain View, California, referenced to establish a standard of quality for a measuring device.

- (d) Any substance which may cause wastewater treatment plant effluent or any other product of the POTW such as residue, sludge, or scum, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the system to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed by town, state or federal authorities.
- (e) Any substance which will cause the POTW to violate its NPDES Permit and/or the quality standards of the receiving stream.
- (f) Any water or wastes which, by interaction with other waters or wastes in the POTW, release obnoxious gases, form suspended solids which interfere with the POTW or create a condition deleterious to structures and treatment processes.
- (g) Any form of inflow as defined by § 18-203(23) including storm drainage and uncontaminated thermal process water.
- (h) Infiltration as defined by § 18-203(22) in excess of two hundred (200) gallons per inch of pipe diameter per mile of pipe per day.
- (i) Any unpolluted wastewater, as defined in § 18-203(60). (1991 Code, § 18-219)
- 18-220. <u>Limited discharges</u>. No user shall discharge into any sewer forming part of the POTW any of the following materials in concentrations exceeding the stated limits:
- (1) Any water or wastes that contain more than ten (10) mg/l of hydrogen sulphide, sulphur dioxide or nitrous oxide.
- (2) Any toxic or poisonous substance or any other materials in sufficient quantity to injure or interfere with the wastewater treatment processes, or to constitute a hazard to humans or animals, or to cause a violation of the water quality standards or effluent standards for the stream or watercourse receiving the effluent from the wastewater treatment plant or to exceed limitations set forth in categorical pretreatment standards.
- (3) Any waters containing suspended solids of such character and quality that unusual provisions, attention or expense is required to handle such materials at the wastewater treatment plant.
- (4) Any waters containing quantities of radium or naturally occurring or artificially produced radioisotopes in excess of presently existing or subsequently accepted limits for drinking water as established by current drinking water regulations promulgated by EPA.
- (5) No person shall discharge wastewater which causes the following limits to be exceeded: The following tables C-1 and C-2, were established to comply with Pass-through Protection Criteria established by the Tennessee Division of Water Quality Control for the Town of Smyrna.

TABLE C-1 Allowable Daily Max influent plant, meet pass-thru limits, and protect from sludge contamination

		<u>1.5 mgd</u>	2.6 mgd	<u>5.2 mgd</u>
[7] +	mg/l	11,	11	11
Element	Influent	lbs	lbs	$\underline{\mathrm{lbs}}$
Arsenic	.01*	1.251	2.168	4.337
Cadmium	0.040**	0.500	0.87	1.73
Chromium, Travalent				
Chromium, Hexavaler	nt 0.4375**	5.47	9.49	18.97
Chromium, Total	10.0***	125.1	216.84	433.68
Copper	0.3938**	4.92	8.54	17.08
Cyanide	0.1368**	1.71	2.97	5.93
Lead	.10*	1.251	2.168	4.337
Manganese	10.00*	125.1	216.84	433.68
Mercury	0.0038**	0.05	0.08	0.16
Nickel	0.25*	3.128	5.421	10.842
Silver	0.0722**	0.90	1.57	3.13
Zinc	0.40*	5.004	8.673	17.247

inhibitory limits pass-thru limits

sludge contamination ***

Allowable monthly average influent plant loadings to protect plant, meet pass-thru limits and protection-from sludge contamination

		at 1.5 mgd	at 2.6 mgd	at 5.2 mgd
Element	mg/l	lbs	lbs	lbs
Arsenic*	0.1	1.25	2.17	4.33
Cadmium**	0.006	0.08	0.13	0.26
Chromium, Travalent				
Chromium, Hexavalent	**0.0063	0.08	0.14	0.27
Chromium, Total***	10.000	125.1	216.84	433.68
Copper**	0.1875	3.35	4.07	8.13
Cyanide**	0.0092	0.12	0.20	0.40
Lead*	0.1000	1.25	2.17	4.33
Manganese*	10.00	125.1	216.84	433.68
Mercury**	0.001	0.01	0.022	0.043
Nickel*	0.2424	3.03	5.26	10.51
Selenium*	0.1	1.25	2.17	4.33
Silver**	0.04	0.5	0.87	1.73
Zinc**	0.2632	3.29	5.71	11.41

- * inhibitory limits
- ** pass-thru limits
- *** sludge contamination
- (6) The admission into the POTW of any waters or wastes having a suspended solids content in excess of five hundred (500) mg/l on a twenty-four (24) hour composite basis, or for any single sample having a suspended solids content greater than fifteen hundred (1500) mg/l will be subject to review by the town. Where necessary in the opinion of the town, the user shall provide and operate, at his own expense, such pretreatment as may be required to reduce the suspended solids content to meet the above requirements.
- (7) The admission into the POTW of any waters or wastes in volumes, or with constituents such that existing dilution conditions in the sewers or at the wastewater treatment plant would be affected to the detriment of the POTW, shall be subject to review and approval of the town. Where necessary in the opinion of the town, pretreatment or equalizing units may be required to bring constituents or volumes of flow within the limits previously prescribed or to an otherwise acceptable level, and to hold or equalize flows such that no peak flow conditions may hamper the operation of any unit of the POTW. Said equalization or holding unit shall have a capacity suitable to serve its intended

purpose and be equipped with acceptable outlet control facilities to provide flexibility in operation and accommodate changing conditions in the waste flow.

- (8) Upon the promulgation of the national categorical pretreatment standards for a particular industrial subcategory, the categorical standards, if more stringent than limitations imposed under this chapter for sources in that subcategory, shall immediately supersede the limitations imposed under this chapter. All affected users shall notify the town of the applicable reporting requirements under 40 CFR, § 403.12.
- (9) State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those of this chapter.
- (10) The town council reserves the right to establish additional regulations containing more stringent limitations or requirements on discharges to the POTW if deemed necessary. (1991 Code, § 18-220)
- 18-221. Pretreatment and accidental discharge. (1) Any person, who is denied a permit to discharge industrial waste, or who is prohibited from discharging any substance as specified in this chapter, or who is required to provide pretreatment or flow, equalization as a significant industrial user under the federal effluent limitation guidelines for the appropriate industrial category, shall have the sole responsibility to devise at his own expense the methods for eliminating the problem so as to make any waste discharge eligible for a permit or for compliance with this chapter or the federal guidelines. Such sole responsibility shall not be affected nor shall any responsibility be assumed by the town, notwithstanding that the town may render any assistance to any person in overcoming such a problem by offering advice or suggestions. Additionally:
- (2) Where pretreatment or equalization of industrial wastewater flows prior to discharge into any part of the POTW are required plans, specifications, and other pertinent data or information relating to such pretreatment or flow control facilities shall first be submitted to the town for review and approval in accordance with this chapter. Satisfactory evidence must be included that the method of disposal of pretreatment sludges has the approval of the appropriate state and/or local solid waste program agency. Such approval shall not exempt the discharge or such facilities from compliance with any applicable code, ordinance, rule, regulation, or order of any governmental authority. Any subsequent alteration or addition to such pretreatment or flow control facilities shall not be made without due notice to and prior approval by the town.
- (3) If pretreatment or control of flows is required, such facilities shall be constructed, maintained in good working order, and properly operated as efficiently as possible by the user at his own cost and expense, subject to the requirements of this chapter and all other applicable codes, ordinances, and laws. (1991 Code, § 18-221)

- **18-222.** <u>Accidental discharge</u>. In the event of an accidental discharge as defined in § 18-203:
- (1) Each industrial user shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this chapter. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the town upon request for review and approval. Review and approval of such plans and operating procedures do not relieve the industrial user from the responsibility to modify his facility as necessary to meet the requirements of this chapter.
- (2) If, after taking action as provided in § 18-222(1), an industrial facility for any unforeseen reason fails to comply with any prohibition or limitation in this chapter, the user responsible for such noncomplying discharge stall immediately notify the pretreatment coordinator or WWTP operator on duty so that any feasible corrective action may be taken to protect the treatment system or to minimize adverse effects thereon. In addition, a written report addressed to the director of utilities detailing the date, time, and cause of the accidental discharge, the quantity and characteristics of the discharge, and corrective action taken to prevent future discharges shall be filed by the responsible industrial facility within five (5) days of the occurrence of the noncomplying discharge.
- (3) 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 an accidental discharge. Employers shall insure that all employees, who observe or who may cause or suffer such an accidental discharge to occur, are advised of the emergency notification procedure. (1991 Code, § 18-222)
- **18-223.** Flow and concentration control. (1) No person shall discharge any wastes or wastewaters in "slugs," as defined in § 18-203(47).
- (2) Any person now discharging or proposing to discharge wastes which may include "slugs," as defined, in § 18-203(47), may be required to provide facilities or adopt procedures for regulating, controlling, or equalizing the concentration of any constituent and/or the rate of waste discharge. (1991 Code, § 18-223)
- **18-224.** <u>Measurement of flow</u>. The volume or quantity of industrial waste discharged by a user into the POTW shall be measured by one or more of the following methods:
- (1) If the volume of water used by any user is substantially the same as the volume secured from the municipal waterworks system, then the volume of water purchased shall be considered to be the volume of waste discharged.

- (2) If a substantial portion of the water secured by a user from the municipal waterworks system is not returned to the POTW, the quantity of wastewater shall be determined as follows:
 - (a) By a meter (or meters) on the water supply line (or lines) to his industrial and/or process operations not discharging to the POTW, or
 - (b) By a meter (or meters) on his waste line (or waste lines) which discharges into the POTW.
 - (c) If meters as required under subsections (a) or (b) above shall not have been installed, an estimate shall be made by the town for that proportion of water purchased which is used for industrial purposes and not returned to the POTW.
- (3) If any user now discharging or proposing to discharge industrial waste into the POTW does not secure his entire water supply requirements from the municipal waterworks system, such user shall install and maintain a meter (or meters) on his waste line (or waste lines) which discharge into the POTW or shall install such additional meters on the private water supply as required to permit determination of the total quantity discharged to the POTW from both sources under procedures comparable to §§ 18-224(1) or 18-224(2) above. (1991 Code, § 18-224)
- 18-225. All sources of water discharge and supply must be identified. All sources of water supply and all discharges of wastewater into the POTW must be identified in accordance with the provisions of § 18-224. Any omission shall be considered as an unauthorized use of the POTW. (1991 Code, § 18-225)
- 18-226. <u>Monitoring facilities</u>. (1) Any user, who is discharging or proposes to discharge industrial waste into the POTW, shall provide, operate and maintain at the user's own expense monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. These monitoring facilities shall be as specified in the user's industrial discharge permit. The monitoring facilities should normally be situated on the user's premises, but the town may, when such a location would be impractical or cause undue hardship on the user, allow the facilities to be constructed in the public street or sidewalk area and located so that they will not be obstructed by landscaping or parked vehicles.
- (2) There shall be ample room in or near such monitoring facilities to allow accurate sampling and preparation of samples for analysis. The facilities shall be maintained at all times in a safe and proper operating condition at the expense of the user.
- (3) When deemed necessary by the town, continuous recording and/or sampling equipment shall be installed and maintained at user expense.
- (4) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with requirements of

the town and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the town. Additional construction time may be granted where so dictated by equipment availability.

- (5) The town shall review monitoring facilities of present users and may require additional monitoring facilities as required for compliance with §§ 18-226(1), (2) and (3) above.
- (6) New users shall provide monitoring facilities as specified in their industrial discharge permits prior to plant start up. (1991 Code, § 18-226)
- 18-227. <u>Inspections, monitoring, reporting</u>. (1) Significant industrial users shall submit self-monitoring data at monthly intervals to the town. These monthly reports will be submitted using copies of monitoring forms available from the town and will be due by the 15th of the month following the reporting period.
- (2) Facilities generating industrial wastes and/or other pollutants which are discharged into the POTW shall be subject to periodic inspection. A determination of character and strength of said wastes may be made annually or more often as may be deemed necessary by the town and as indicated in the industrial discharge permit to ascertain whether the purposes of this chapter are being met, all requirements are being complied with and to determine strengths of wastes for user charge computations.
- (3) Within ninety (90) days following the date for final compliance with applicable pretreatment standards as defined in § 18-203(27) or, in the case of a new source, following commencement of the introduction of wastewater into the POTW; any user, subject to pretreatment standards or who is so required by the town, shall submit to the town a report indicating the nature and concentrations of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and/or limitations established by §§ 18-219 and 18-220 and the average and maximum daily flows for these process units in the user's facility. The report shall state whether the applicable pretreatment standards and/or limitations of this chapter are being met on a consistent basis and, if not, what additional 0 & M and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards and/or the limitations of the chapter. This statement shall be signed by an authorized representative of the industrial user.
- (4) Samples shall be collected manually or mechanically over such periods of time and composited in such a manner as to be representative of the wastes being discharged. The laboratory methods followed in the examination of said wastes shall be those as set forth in the latest edition of "standard methods," as defined in § 18-203(51).
- (5) When so requested by the industrial user, samples collected by the town will be split with the industrial user for verification of analytical results. However, final determination of the character, strength, or quantity of the

wastes as made by the town shall be binding as a basis for computation of charges or for actions by the town. (1991 Code, § 18-227)

- 18-228. <u>Authority for inspection</u>. (1) The director of utilities and other duly authorized employees and contractors of the town, bearing proper credentials and identification, shall be permitted to enter upon all properties for the purpose of inspection, observation, flow measurement, sampling, and testing of industrial wastes and other pollutants, in accordance with this chapter.
- (2) The director of utilities and other duly authorized employees and contractors of the town are authorized to obtain information concerning industrial processes which have a direct bearing on the kinds and sources of discharges to the POTW. As required by federal regulations, industrial users must disclose information on processes; however, the town agrees that trade secret information will not be disclosed and will be held confidential subject however to <u>Tennessee Code Annotated</u>, 10-7-101 et. seq. open Records Act.
- (3) Persons or occupants of premises where wastewater is created or discharged shall allow the director of utilities and other duly authorized employees and contractors of the town ready access at all reasonable times to all points on the premises where wastes are discharged into sewers for the purposes of inspection, sampling, records examination or in the performance of any of their duties.
- (4) The director of utilities and other duly authorized employees and contractors of the town 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.
- (5) Where a user has security measures in force which would require proper identification and clearance before entry into his premises, the user shall make necessary arrangements with his security guards so that, upon presentation of suitable identification, the director of utilities and other duly authorized employees and contractors of the town will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.
- (6) While performing the necessary work on private properties referred to in subsection (1) above, the director of utilities and other duly authorized employees and contractors of the town shall observe all safety rules applicable to the premises established by the user; and the user shall be held harmless for injury or death to town employees or contractors; and the town shall indemnify the company against loss or damage to its property by town employees and against liability claims and demands for personal injury or property damage asserted against the user and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the user to maintain safe conditions as required by § 18-226(2). (1991 Code, § 18-228)
- **18-229. Protection of equipment**. No person shall maliciously, willfully, or negligently break, damage, destroy, deface, tamper with, or remove

any equipment or materials which are a part of the POTW or any equipment or materials used by the town for the purpose of making waste examinations and waste flow measurements and left upon the premises of a user discharging wastes into the POTW. Only persons authorized by the town will be allowed to uncover, adjust, maintain, and remove such equipment and materials. (1991 Code, § 18-229)

- 18-230. Reviewing authority and amendment. (1) The director of utilities of the Town of Smyrna, Tennessee, shall be the reviewing authority for all appeals of actions or administrative determinations made by the town pursuant to the provisions of this chapter. Notice of an intent to appeal and request for a hearing shall be addressed to the director of utilities, Town of Smyrna, Tennessee, in writing and shall detail the nature of the appeal. An early date for such hearing shall be set by the director of utilities and the appellant promptly notified in writing. The decision of the director of utilities after such hearing shall be final and conclusive and shall be conveyed to the persons involved in writing.
 - (a) The decisions and determinations of the director of utilities may be appealed to the town council whose decision shall be final and conclusive. Written request for such appeals shall be made to the town clerk, Town of Smyrna, Tennessee.
- (2) The town council expressly reserves the absolute right to amend, modify, rescind, or supplement this chapter.
- (3) The town council will adopt and modify from time to time separate rate schedules to supplement this chapter.
- (4) Nothing contained in this chapter shall be construed as preventing the execution of a contract, special agreement, or arrangement between the town and any person whereby water or wastewaters of unusual strength, character, or quantity may be admitted into the POTW upon such terms and conditions as the town deems appropriate so long as the objectives of this chapter, limitations established by 40 CFR Part 403 and NPDES Permit requirements of the town and other state laws, regulations and permits are not adversely affected. (1991 Code, § 18-230)
- 18-231. <u>Enforcement, penalties, and costs</u>. If wastewaters containing any substance described in §§ 18-219 and 18-220 are discharged, proposed to be discharged, or accidentally discharged into the POTW, the town will issue orders of enforcement relative to and take any action necessary to effectuate such of the following courses as may be appropriate:
 - (1) Prohibit the discharge of such wastewater.
- (2) Require a discharger to demonstrate that in-plant modifications will reduce or eliminate the discharge of such substances in conformity with this chapter.

- (3) Require pretreatment, including storage facilities or flow equalization, necessary to reduce or eliminate the objectionable characteristics or substances so that the discharge will not violate this chapter.
- (4) Take such other remedial action as may be deemed to be desirable or necessary to achieve the purposes of this chapter.
 - (5) In addition to taking the above remedial action, the town may:
 - (a) Require the person making, causing, or allowing the discharge to pay any cost or expense incurred by the town to include but not be limited to damage to the POTW, damage to the town's wastewater treatment processes, extraordinary monitoring of the wastes, and extraordinary treatment measures or processing imposed on the POTW by said discharge.
 - (b) Require the person making, causing, or allowing the discharge to pay any cost or expense incurred by the town for any fine or penalty imposed on the town by the state or federal government because of a violation of one of the town's national pollutant discharge elimination system permit or damage to the environment that is attributed to the discharge.
 - (c) Require the person making, causing, or allowing the discharge to furnish a bond or other security, with terms specified by the town, to hold harmless the town from any loss or expense that it may incur as a result of such noncompliance or any future non-compliance. (1991 Code, § 18-231)
- **18-232.** <u>Further action may be taken</u>. If the town fails to obtain cooperation and compliance with the orders of enforcement as outlined in § 18-231, further action may be taken by the director of utilities, as hereinafter provided. (1991 Code, § 18-232)
- 18-233. Order to show cause. The director of utilities may order any user who causes or allows an unauthorized discharge to enter the POTW to show cause before the director of utilities why the proposed enforcement action should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the director of utilities regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause before the director of utilities why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation. (1991 Code, § 18-233)
- 18-234. <u>Hearing procedures</u>. The director of utilities may itself conduct the hearing and take the evidence, or may designate any employee of the town to:

- (1) Issue, in the name of the director of utilities, notice of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings.
 - (2) Take the evidence.
- (3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the director of utilities for action thereon. (1991 Code, § 18-234)
- 18-235. <u>Hearing shall be of record</u>. At any hearing held pursuant to this chapter, testimony taken must be under oath and recorded stenographically. The director of utilities, at his/her discretion, may choose to cause minutes of such meetings to be recorded. The detail of such minutes shall be at the discretion of the director of utilities. Any transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges therefor. (1991 Code, § 18-235)
- 18-236. Order to discontinue. After the director of utilities has reviewed the evidence, it may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities, devices or other related appurtenances and properly operated. Further orders and directives as are necessary and appropriate may be issued. (1991 Code, § 18-236)
- 18-237. <u>Revocation of permits</u>. Any user, who violates any conditions of this chapter, or applicable state and federal regulations, is subject to having his permit revoked. Among the conditions which may result in permit revocation are the following:
- (1) Failure of a user to factually report the wastewater constituents and characteristics of his discharge.
- (2) Failure of the user to report significant changes in operations, or wastewater constituents and characteristics.
- (3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring in accordance with provisions of § 18-228.
- (4) Violation of conditions of his industrial discharge permit. (1991 Code, § 18-237)
- 18-238. <u>Failure to comply</u>. It shall be unlawful for any person to violate either willfully or negligently the provisions of this chapter or to fail to comply with same. The director of utilities through its authorized agents, may initiate injunction or abatement proceedings or other appropriate action in accordance with this chapter. (1991 Code, § 18-238)

- 18-239. Civil penalty. A violation for failure to comply with any of the provisions of this chapter, including the willful furnishing of false information relative to same for the use of the POTW shall be and hereby is declared to be a misdemeanor. Upon trial in Chancery or Circuit Court for Rutherford County, Tennessee and conviction, any person or user in violation of or failure to comply with any of the provisions of this chapter or the use by any person of the POTW in violation of this chapter shall be punished by a fine of not more than ten thousand dollars (\$10,000.00) or by imprisonment of not more than sixty (60) days or both for each violation. Each day a violation occurs or continues shall constitute a separate violation hereunder. Every person concerned in the violation of the provisions of this chapter or failure to comply with same, or who furnishes false information relative to his use of the POTW aforesaid, whether he directly commits the acts or aids and abets same, and whether present or absent, shall be proceeded against and held as a principal.
- (1) The town may, at its sole option, choose to proceed with the following compliance procedures in lieu of misdemeanor prosecution under § 18-239.
 - (a) <u>Courses of action</u>. In the event a violation of the sewer use ordinance occurs the violator may:
 - (1) Receive a notice of violation;
 - (2) Be required to appear at a show cause hearing to show cause why it should not be fined;
 - (3) Attend an administrative hearing where either an administrative order or a schedule of compliance may be issued; or
 - $\qquad \qquad \text{(4)} \qquad \text{An administrative civil penalty may be imposed upon the violator.}$
 - (b) <u>Categories of violations</u>. There are three categories of violations of the sewer use ordinance which are subject to the imposition of a civil penalty.
 - (1) Reporting violations.
 - (2) Permit limit violations.
 - (3) Schedule of compliance violations.
 - (c) <u>Reporting violations</u>. A reporting violation of the sewer use ordinance is defined as failure to maintain, submit or provide appropriate documentation regarding sewer use, or other material as required by the sewer use ordinance, when requested to do so by the Town of Smyrna. Each daily occurrence is a separate violation of the Smyrna sewer use ordinance and is subject to a civil penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) per violation.
 - (d) <u>Permit limit violation</u>. A permit limit violation occurs upon the happening of any one of the following events:
 - (1) When a customer's monthly average flow exceeds 100% of limits established in the permit.

- (2)(a) If the flow rate established in the permit is in gallons per minute and the customer's maximum flow rate exceeds 120% of the limits established in the permit for a period of fifteen (15) consecutive minutes.
- (b) If the customer's maximum flow rate is established on a daily or monthly basis, as opposed to a gallons per minute basis, a violation occurs if the maximum flow rate exceeds 100% of the limits established in the permit.
- (3) Any other parameter in excess of 110% of limits established in the permit.

Each violation occurrence is deemed a separate offense hereunder and will be subject to the imposition of a civil penalty in accordance with the schedule adopted by the town council.

- (e) Schedule of compliance violations. A schedule of compliance violation is a failure to comply with the schedule of compliance issued as a result of an administrative hearing. For each day during which the schedule of compliance is not met a separate violation hereunder occurs. Each such violation is subject to the imposition of a civil penalty in the amount of two hundred fifth dollars (\$250) per day.
- (f) Factors determining amount of civil penalty. Although not intended to be an exhaustive list of factors to be considered, in addition to any and all relevant factors, the Town of Smyrna, when imposing a civil penalty, shall consider the number of previous violations of the user, whether the violation occurred after a schedule of compliance was issued, the severity of the violation, the potential environmental damage of the pollutant, and the actual damage occurring to publicly owned facilities.
- (g) Reimbursement for costs incurred. In the event the Town of Smyrna incurs costs for inspection and investigation of the facility in order to determine whether damage to the facility occurred as a result of the violation of the Smyrna sewer use ordinance, then, in that event, in addition to all other rights and remedies the Town of Smyrna has, the town shall also be entitled to receive and be reimbursed for its actual costs incurred in inspection and investigation for possible damage to the facility. Recovery of these costs are in addition to the imposition of the civil penalty provided for herein.
- (h) Additional costs for causing plant to exceed NPDES permit. In the event the industrial users violation of the sewer use ordinance causes the Town of Smyrna waste water treatment plant to exceed its national pollutant discharge elimination system (NPDES) permit and the State of Tennessee or the Environmental Protection Agency, or any other state or federal agency, imposes a civil penalty or fine upon the Town of Smyrna the violator shall likewise be responsible for reimbursing the Town of Smyrna all costs incurred as a result of the action of the State of

Tennessee, the Environmental Protection Agency or any other state or federal agency.

- (i) Actual damage to system facilities. In the event the users violation of the sewer use ordinance causes actual damage to the Town of Smyrna facilities, the user whose violation of the sewer use ordinance proximately causes the damage to the facility shall, in addition to all other obligations hereunder, reimburse the Town of Smyrna its actual costs incurred in repairing or correcting the damage occurring to the public facilities.
 - (j) Administrative hearing guidelines.
 - (1) The following definitions are applicable to this section:
 - (a) "Due process" shall entitle the industrial user to the following safeguards:
 - (i) Adequate notice to the user of the reasons it is believed a violation of the Smyrna sewer use ordinance occurred.
 - (ii) Opportunity for the user to examine all relevant documents, records and regulations of the Town of Smyrna prior to the hearing for the purpose of preparing a defense.
 - (iii) Right of the user to be represented by counsel.
 - (iv) Opportunity for the user to confront and cross-examine any and all witnesses against it and to present any affirmative legal or equitable defense which the user may have.
 - (v) A decision based solely upon the facts presented at the hearing.
 - (b) "Hearing officer" shall mean the Director of Utilities of the Town of Smyrna.
 - (c) Industrial user shall mean any entity possessing an industrial users permit issued by the Town of Smyrna, Tennessee.
 - (2) Procedures governing the hearing.
 - (a) The hearing shall be held before the hearing officer.
 - (b) The industrial users shall be afforded a fair hearing providing the due process safeguards set forth hereinabove.
 - (c) The hearing officer may render a decision without proceeding with the hearing if the officer determines the issues have been previously decided in another proceeding.

- (d) If the industrial user fails to appear at a scheduled hearing the hearing officer may make a determination that the party has waived its right to a hearing or may postpone the hearing for a period of time not to exceed 5 days. The industrial user shall be notified of the determination of the hearing officer in writing.
- (3) At the hearing, the Town of Smyrna shall first make a showing that a violation of the sewer use ordinance occurred and that there is probable cause to believe the user so charged committed the violation of the sewer use ordinance. The Town of Smyrna bears the burden of proving the user charged violated the sewer use ordinance by a preponderance of the evidence.
- (4) The hearing shall be conducted informally and evidence pertinent to the facts and issues raised may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer shall require the Town of Smyrna, the industrial user, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interest of the disorderly party and granting or denying the relief sought, as appropriate.
- (5) The hearing officer shall prepare a written decision, together with the reasons therefore, within fifteen (15) days from the date of the hearing. A copy of the decision shall be forwarded to the industrial user.
- (k) The final decision of the director of utilities in conjunction with this section may be appealed to the town council. Such request for appeal must be requested in writing and addressed to the town clerk, Town of Smyrna, Tennessee. (1991 Code, § 18-239, modified)
- 18-240. <u>Users not connected who fail to comply</u>. In any case which involves a person who fails to comply with this chapter but who is not connected to or is not a user of the POTW, the town shall give notice to such person by certified mail, stating the specifics of the failure of compliance and requiring that the person promptly remedy the failure. At the same time, the town shall report the facts of such case in writing to such other government agency as may have jurisdiction and power to take appropriate enforcement action. (1991 Code, § 18-240)
- **18-241.** Failure to pay charges. In any case involving a person who has failed to pay any applicable and duly prescribed civil penalties within the time limits prescribed for such payment, procedure for enforcement shall be as follows:

- (1) The town clerk shall give notice to such person by certified mail stating the specifics of the non-payment and requiring that the person make full payment within ten (10) calendar days after receipt of notice.
- (2) The town clerk may thereupon, without further notice, cause the water service from the public water system to be discontinued for such person or cause the connection to the sewerage system to be severed for such person.
- (3) In any case where water service is discontinued or the sewer connection is severed by the town for enforcement purposes, the restoration of such service shall be conditioned on full payment of all delinquent user charges and penalties and any expenses incurred in the enforcement proceedings and in the restoration of the service. (1991 Code, § 18-241)
- 18-242. <u>Commencement of action</u>. If any person discharges wastewater, industrial wastes, or other wastes into the POTW contrary to the provisions of this chapter, federal or state pretreatment requirements, or any order of the director of utilities; the town attorney upon request from the director of utilities may commence an action for appropriate civil penalties in the Chancery or Circuit Court of Rutherford County, Tennessee where same is necessary to enforce this chapter or to recover damages caused by the failure of any user to comply with this chapter. (1991 Code, § 18-242, modified)
- 18-243. <u>Cost recovery</u>. It is the purpose of this section to provide for the recovery of costs from users of the Smyrna, Tennessee POTW for the implementation of the program established herein and for the construction, operation and maintenance of said system. The Town of Smyrna, Tennessee, will adopt charges and fees which may include:
 - (1) Service connection charges.
 - (2) User charges.
- (3) Fees for reimbursement of costs of setting up and operating the Smyrna, Tennessee Pretreatment Program.
 - (4) Fees for monitoring, inspections and surveillance procedures.
- (5) Fees for reviewing accidental discharge procedures and construction.
 - (6) Fees for permit applications.
 - (7) Fees for filing appeals.
- (8) Other fees as the town council may deem necessary to carry out the requirements contained herein. (1991 Code, § 18-243)
- 18-244. Fees and charges shall be published. All charges, fees, and other penalties shall be published in a schedule separate from this chapter and may be revised from time to time as the town council finds necessary for maintenance of the purposes described in this chapter. These fees relate solely to the matters covered by this chapter and are separate from all other fees chargeable by the town. (1991 Code, § 18-244)

CHAPTER 3

WATER AND WASTEWATER TAP FEE AND RATE SCHEDULE

SECTION

- 18-301. Water capacity fee schedule.
- 18-302. Wastewater capacity fee schedule.
- 18-303. Special assessment zone fees.
- 18-304. Special assessment zone.
- 18-305. Water and sewer department rate schedule.
- 18-306. Fee schedule to be charged of initiation of utility service.
- 18-307. Tank truck disposal charges.
- 18-308. Fees for private fire hydrants and sprinklers.
- 18-309. Sewer inspection fee.

18-301. <u>Water capacity fee schedule</u>. Each water tap shall be based on the number of residential units demanded to equal the peak day anticipated volume, or part thereof. A residential unit shall be defined as a two hundred (200) gallons per day demand. Water capacity fees shall be set by town council in the fee schedule adopted in accordance with the annual budget ordinance.

The actual cost of labor and material, in addition to the usage demand charge, shall be charged for all meters larger than a $5/8 \times 3/4$ residential style meter.

All road crossing, road repair or service lines in excess of twenty-five (25) feet from existing water main shall be charged at the actual cost of labor and material.

The following schedule shall prevail to establish a guide as to the number of residential units associated with certain type activities:

Single family dwelling (home) 1 Unit
Apartment (each) 1 Unit
Motel room (each)
Restaurant (order from menu) 10 Units
Lounge 5 Units
Fast food restaurant
Laundromat ½ Unit per washer
Convenience store w/cooking 5 Units
Office building 1 Unit
per 3000 S.F. or
portion thereof of
total space
Warehouse 1 Unit
per 10,000 S.F.
or portion

thereof of total warehouse floor space plus 1 unit per 2,000 S.F. or portion thereof of office space

Car wash (full service) 10 Units/bay
Car wash (self service) 2 Units/bay
Service station 5 Units
Manufacturing facility Negotiated
(Based on 1 unit per each 200
G.P.D. peak
demand)

Water tap fees for yard/irrigation meters for new and existing construction and for other secondary meters that are added to existing customers to separate flows for billing purposes shall be set by town council in the fee schedule adopted in accordance with the annual budget ordinance. (Ord. #06-27, June 2006, modified)

18-302. <u>Wastewater capacity fee schedule</u>. Each sewer (wastewater) tap shall be based on the number of residential units demanded to equal the peak day anticipated volume, or part thereof, of potable water demand.

Wastewater capacity fees shall be set by town council in the fee schedule adopted in accordance with the annual budget ordinance.

The number of units will be determined by the number of units applicable to water taps.

This fee is for the availability of sewer service and includes no service or lateral construction by the town.

The capacity fee shall be due and payable as a condition of the final plat approval or upon application for service. Payment of said capacity fee is not subject to refund or reimbursement by the Town of Smyrna. (1991 Code, § 18-302, modified)

18-303. Special assessment zone fees. Applicable to any sewer tap where the town council have determined it is necessary to increase sewer capacity fees to recover expenditures of the town or where the town council, in recognition of the fact that a private developer has been required to expend monies over and above that required to provide service to his development, and these constructed facilities will benefit other development, that the council has seen fit to allow an increased capacity fee be charged with a portion of the proceeds as determined prior to construction being reimbursed to the developer.

These fees shall be levied on an individual project basis and shall be passed by ordinance by the town council. (1991 Code, § 18-303, modified)

- 18-304. <u>Special assessment zone</u>. (1) The Harts Branch drainage basin sanitary sewer. (PROJECT 776). The "unit sewer capacity fee" shall be increased (over the base fee) by one hundred dollars (\$100.00) for each two thousand (2,000) l.f. of sanitary sewer construction which was completed under the Town of Smyrna Project Number 776. The base zone fee shall be one thousand two hundred dollars (\$1,200.00).
- (2) The Stewart Creek drainage basin sanitary sewer. (Project 180). The attached Exhibit "B" indicates the special assessment zones related to the Stewart Creek Drainage basis. The "unit sewer capacity fee "shall be the base zone fee as established in § 18-302 plus one thousand six hundred dollars (\$1,600.00) in Zone A (East of I-24). The "unit sewer capacity fee" shall be the base zone fee as established in § 18-302 plus two thousand four hundred dollars (\$2,400.00) in Zone B (West of I-24). This fee will apply to all branch or extension sewer mains connected to the mains constructed under the "Project 180." (1991 Code, § 18-304, modified)
- 18-305. <u>Water and sewer department rate schedule</u>. (1) <u>Water</u>. Water rate fees shall be set by town council in the fee schedule adopted in accordance with the annual budget ordinance.
 - (a) For any customer whose water requirements are such that the town council authorizes the director of utilities department to enter into service agreements, the rates shall be set with such customer per such service agreement. Minimum billing amounts and sales prices in addition to the cost of water shall be set by the service agreement.
 - (b) State of Tennessee sales tax will be added to each monthly bill unless tax exempted.
- (2) <u>Sewer</u>. Sewer fees shall be set by town council in the fee schedule adopted in accordance with the annual budget ordinance.
 - (a) For any residential customer or builder who is currently engaged in the construction of a structure the service is intended to serve, an application for service has been completed, and the customer has an active and valid building permit in effect, wastewater charges shall not apply.
 - (b) Wastewater charges made on water designated for irrigation and separately metered, shall not apply. An application for such service for any meter so designated must be on file in the utility department. No adjustments for water charges related to leakage shall be allowed for irrigation meters.
 - (c) The policy of allowing the use of un-metered water for the purpose of brick-laying, painting, etc. will continue in return for the customer properly placing the water meter box to grade shall continue.

- (d) The policy of allowing the adjustment of wastewater charges on water to fill swimming pools once each calendar year will continue.
 - (e) The policy of allowing the adjustment of wastewater charges on water, where an affidavit is presented, when a leak has occurred and has been fixed, shall be continued.
- (f) This policy will be changed to allow for more than one billing to be adjusted when the leak has occurred over more than one billing period. (Ord. #06-27, June 2006, modified)

18-306. <u>Fee schedule to be charged of initiation of utility service</u>. There shall be a fee charged for the initiation of new water service as set forth in the fee schedule adopted by the town council in accordance with the annual budget ordinance. There shall be a fee charged for the transfer of water service and for re-connection of water service disconnected as a result of non-payment.

and for re-connection of water service disconnected as a result of non-payment as set forth in the fee schedule adopted by the town council in accordance with the annual budget ordinance.

The above fees will be increased on a per trip basis if the service is performed during times town hall offices are not open for regular business in an amount set forth in the fee schedule adopted by the town council in accordance

with the annual budget ordinance. (1991 Code, § 18-306, modified)

18-307. <u>Tank truck disposal charges</u>. Each load will be tested to guard against toxic or other illegal waste being dumped into the system. Dumping will be restricted to 9:00 A.M. to 4:00 P.M. to insure that the lab is open to perform the tests. The load must originate within Smyrna's town limits.

Charges for dumping septic tank waste a the wastewater treatment plants shall be in an amount set forth in the fee schedule adopted by town council in accordance with the annual budget ordinance. (1991 Code, § 18-307, modified)

- 18-308. <u>Fees for private fire hydrants and sprinklers</u>. The capacity fee for connection of private fire protection lines shall be five hundred dollars (\$500.00) per inch diameter of connection to the town's lines.
- 18-309. <u>Sewer inspection fee</u>. There shall be a fee as adopted by the town council in accordance with the annual budget ordinance for sewer inspections.

CHAPTER 4

CROSS CONNECTION CONTROL

SECTION

- 18-401. Definitions.
- 18-402. Construction, operation, and supervision.
- 18-403. Non-potable supplies.
- 18-404. Provision applicable.
- 18-405. Statement required.
- 18-406. Fees.
- 18-407. Penalty; discontinuance of water supply.
- **18-401. Definitions**. The following definitions and terms shall apply in the interpretation and enforcement of this chapter.
- (1) "Air gap" shall mean a vertical, physical separation between a water supply and the overflow rim of a non-pressurized receiving vessel. An approved air gap separation must be at least twice the inside diameter of the supply line, but not less than two (2) inches. Where a discharge line serves as receiver, the air gap separation shall be at least twice the diameter of the discharge line, but not less than two (2) inches.
- (2) "Approved" shall mean that the device or method is accepted by the Tennessee Department of Environment and Conservation and the director as meeting specifications suitable for the intended purpose.
- (3) "Atmospheric vacuum breaker" shall mean a device which prevents back-siphonage by creating an atmospheric vent when there is either a negative pressure a sub-atmospheric pressure in the water system.
- (4) "Auxiliary" intake shall mean any water supply, on or available to a premise, other than that directly supplied by the public water system.
- (5) "Backflow" shall mean the reversal of the intended direction of flow in a piping system.
- (6) "Backsiphonage" shall mean the flow of water or other liquids, mixtures or substances into the potable water system from any source other than its intended source, caused by the reduction of pressure in the potable water system.
- (7) "By-pass" shall mean any system of piping or other arrangement whereby water from the public water system can be diverted around a backflow prevention device.
- (8) "Cross-connection" shall mean any physical arrangement whereby a public water supply is connected, directly or indirectly, with any other water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, 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

changeover devices through which or because of which, backflow could occur are considered to be cross-connections.

- (9) "Department" shall mean the Smyrna Utilities Department.
- (10) "Director" shall mean the director of utilities for the Town of Smyrna or his authorized deputy, agent or representative.
- (11) "Double check detector assembly" shall mean an assembly of two independently operating spring loaded check valves with a water meter (protected by another check valve or a reduced pressure backflow prevention device, depending upon degree of hazard) connected across the check valves, and with tightly closing shut-off valves on each side of the check valves, plus properly located test cocks for testing each part of the assembly.
- (12) "Double check valve assembly" shall mean an assembly of two independently operating spring loaded check valves with tightly closing shut-off valves on each side of the check valves, plus properly located test cocks for testing each check valve.
 - (13) "Fire protection systems" (a) Class 1 shall be those with direct connections from the public water mains only; no pumps, tanks, or reservoirs; no physical connection from other water supplies; no antifreeze or other additives of any kind, all sprinkler drains discharging to the atmosphere, dry wells or other safe outlets.
 - (b) Class 2 shall be the same as Class 1 except that booster pump may be installed in the connections from the street mains.
 - (c) Class 3 shall be those with direct connection from public water supply mains, and
 - (d) Class 3 shall be those with direct connection from public water supply mains, and in potable condition.
 - (e) Class 4 shall be those with direct connection from the public water mains and having an auxiliary water supply dedicated to fire protection and available to the premises.
 - (f) Class 5 shall be those with direct connection from the public water mains and interconnected with auxiliary supplies, such as pumps taking suction from reservoirs exposed to contamination, or from rivers, ponds, wells, or industrial water systems; or where antifreeze or other additives are used.
 - (g) Class 6 shall be those with combined industrial and fire protection systems supplied from the public water mains only, with or without gravity storage or pump suction tanks.
- (14) "Pressure vacuum breaker" shall mean an assembly consisting of a device containing one or two independently operating spring loaded check valves and an independently operating spring loaded air inlet valve located on the discharge side of the check valve(s), with tightly closing shut-off valves on each side of the check valves and properly located test cocks for the testing of the check valves and relief valve.

- (15) "Potable water" shall mean water that meets the criteria of the Tennessee Department of Environment and Conservation and the Environmental Protection Agency for Human Consumption.
- (16) "Public water supply" shall mean the Smyrna waterworks system, which furnishes water to the town for general use and which is recognized at the public water supply by the Tennessee Department of Environment and Conservation.
- (17) "Reduced pressure principle backflow prevention device" shall mean an assembly consisting of two independently operating approved check valves with an automatically operating differential relief valve located between the two check valves, tightly closing shut-off valves on each side of the check valves plus properly located test cocks for the testing of the check valves and the relief valve. (1991 Code, § 18-401, modified)
- **18-402.** Construction, operation, and supervision. Construction and operation subject to approval of Tennessee Department of Environment and Conservation; under supervision of the director of utilities.
- (1) <u>Compliance with Tennessee Code Annotated</u>. The water department of the Town of Smyrna is to comply with <u>Tennessee Code Annotated</u>, §§ 68-13-701 through 68-13-719 as well as the rules and regulations for public water systems, legally adopted in accordance with this code, which pertain to cross-connections, auxiliary intakes, bypasses, and interconnections, and establish an effective on-going program to control these undesirable water uses.
 - (2) Regulated. (a) 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 interconnections at all times under the direction of the director of utilities for the Town of Smyrna.
 - (b) If, in the judgment of the director or his designated agent, an approved backflow prevention device is required at the town's water service connection to the customers premises, or at points within the premises, to protect the potable water supply, the director shall compel the installation and maintenance of said device at the owner's expense.
 - (c) For new installations, the department shall inspect the site and/or review plans in order to determine the type of backflow prevention device, if any, that will be required, and notify the owners in writing of the required device. All required devices must be installed and operable prior to initiation of water service.
 - (d) For existing premises, the department shall perform evaluations and inspections and shall require correction of violations in accordance with federal, state, and local law.

- (3) <u>Plumbing permit required</u>. No installation, alteration or change shall be made of any backflow prevention device connected to the public water supply for water supply, fire protection, or any other purpose without first securing a suitable plumbing permit from the Smyrna Building Codes Department. A copy of such permit shall be displayed in a conspicuous place at the job site at all times from the time of issuance until the final inspection.
- (4) <u>Inspections</u>. The director shall inspect all properties served by the public water supply where cross-connections with the public water supply are deemed feasible. The frequency of inspections and reinspection based on potential health hazards involved shall be established by the director in accordance with guidelines acceptable to Tennessee Department of Environment and Conservation. The director or authorized representative shall have the right to enter at any reasonable time any property served by a connection to Smyrna Public Water System for the purpose of inspecting the piping system therein for cross-connections, auxiliary intakes, bypasses, or interconnections, or for the testing of backflow prevention devices.

On request, the owner, lessee, or occupant of any property so served shall furnish any pertinent information regarding the piping system on such property. The refusal of such information or refusal of access, when requested shall be deemed evidence of the presence of cross-connections.

- (5) <u>Corrections of violations.</u> (a) Any person found to have 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 time required to complete the work, the director shall designate the amount of time, but in no case shall the time for correction exceed ninety (90) days.
- (b) Where cross-connections, auxiliary intakes, bypasses, or interconnections are found that constitute an extreme hazard of immediate concern of contaminating the public water system, the director of the water system shall require that immediate corrective action be taken to eliminate the threat to the public water system.
- (c) Expeditious steps shall be taken to disconnect the public water system from the on-site piping system unless the imminent hazard is corrected immediately, subject to the right to a due process hearing shall be determined by the director, and upon timely request. The time allowed for preparation for a due process hearing shall be in relationship with the risk of hazard to the public; and may follow disconnection when the risk of public health and safety in the opinion of the director warrants disconnection prior to a due process hearing.
- (d) The failure to correct conditions threatening the safety of the public water system as prohibited by this chapter and the <u>Tennessee Code Annotated</u>, § 68-13-711, within the time limits set by the department shall be grounds for denial of water service. If proper

protection has not been provided after a reasonable time, the director shall give the customer legal notification that water service is to be discontinued, and physically separate the public water system from the customers on-site piping system in such a manner that the two systems cannot again be connected by an unauthorized person, subject to the right of a due process hearing upon timely request. The due process hearing may follow disconnection when the risk of public health and safety in the opinion of the director warrant disconnection prior to a due process hearing.

- (6) Required protective device. (a) Where the nature of use of the water supplied to a premise by the water system is such that it is deemed:
 - (i) Impractical to provide an effective air-gap separation;
 - (ii) The owner and/or occupant of the premises cannot, or is not willing, to demonstrate to director or his designated representative that the water use and protective features of the plumbing are such as to pose no threat to the safety or portability of the water;
 - (iii) The nature and mode of operation within a premises are such that frequent alterations are made to the plumbing; or
 - (iv) The nature of the premises is such that the use of the structure may change to a use wherein backflow prevention is required;
 - (v) There is a likelihood that protective measures may be subverted, altered, or disconnected; or
 - (vi) The plumbing from a private well enters the building served by the public water supply.
- (b) Then the director 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 customers premises is contained therein.
 - (i) The protective devices shall be of the type approved by the Tennessee Department of Environment and Conservation and the director as to manufacture, model, size and application. The director prior to shall approve the method of installation of backflow protective devices installation and shall comply with the criteria set forth by the Tennessee Department of Environment and Conservation and with the installation criteria set forth in subsection (vi) below. The installation shall be at the expense of the owner or occupant of the premises.
 - (ii) Applications requiring backflow prevention devices include, but are not limited to, service and/or fire flow connections for most commercial and educational buildings, construction sites, all industrial, institutional, and medical facilities, all fountains,

lawn irrigation systems, swimming pools, softeners and other point of use treatment systems, and on all fire hydrant connections other than by the fire department in combating fires.

- (A) Class 1, Class 2, and Class 3 fire protection systems generally shall require a double check detector assembly, except a reduced pressure backflow prevention device shall be required where:
 - (1) Underground fire sprinkler pipelines are parallel to and within ten feet horizontally of pipelines carrying sewage or significantly toxic wastes:
 - (2) Premises have unusually complex piping systems;
 - (3) Pumpers connecting to the system have corrosion inhibitors or other chemicals added to the tanks of the fire trucks.
- (B) Class 4, Class 5, and Class 6 fire protection systems shall require reduced pressure backflow prevention devices.
- (C) Wherever the fire sprinkler system piping is not an acceptable potable water system material, or chemicals such as liquid foam concentrates are used, a reduced pressure backflow prevention device shall be required.
- (iii) Plumbing for commercial and educational buildings wherein backflow prevention devices are not immediately required shall be designed to accommodate such devices in conformance with standards for such devices, including the required drains.
- (iv) Additionally, the director may require internal and/or additional backflow prevention devices wherein it is deemed necessary to protect potable water supplies within the premises.
- (v) <u>Installation criteria</u>. Minimum acceptable criteria for the installation of reduced pressure zone type backflow prevention devices, double check valve assemblies, pressure vacuum breakers, or other devices requiring regular inspection and testing shall include the following:
 - (A) All required devices must be installed pursuant to Smyrna Municipal Code and by person certified by the Tennessee Department of Environment and Conservation, Division of Drinking Water, or its successor. Evidence of current certification at the time of installation will be required.
 - (B) All devices shall be installed in accordance with the manufacturer installation instructions, and shall

possess all test cocks and fittings required for testing the device. All fittings shall permit direct connection to department test devices.

- (C) The entire device including test cocks and valves shall be easily accessible for testing and repair.
- (D) Reduced pressure backflow prevention devices shall be located a minimum of twelve (12) inches plus the nominal diameter of the device above the floor surface. Maximum height above the floor surface shall not exceed sixty (60") inches.
- (E) Clearance of device from wall surfaces or other obstructions shall be a minimum of six (6) inches.
- (F) Devices shall be protected from freezing, vandalism, mechanical abuse, and from any corrosive, sticky, greasy, abrasive, or other damaging environment.
- (G) Devices shall be positioned where discharge from relief port will not create undesirable conditions.
- (H) An approved air-gap shall separate the relief port from any drainage system.
- (I) An approved strainer, fitted with a test cock, shall be installed immediately upstream of the backflow device or shut-off valve.
- (J) Devices shall be located in an area free from submergence or flood potential.
- (K) A gravity drainage system is required on all installations. Generally, below ground installations will not be permitted. On certain slopes where installations below ground level may be permitted, a single or multiple gravity drain system may be used provided that the single drain line is at least four (4) times the area of the relief port or that the multiple drain lines are at least two and one-half $(2\frac{1}{2})$ times the area.
- (L) Fire hydrant drains shall not be connected to the sewer, nor shall fire hydrants be installed in such a manner that backsiphonage/backflow through the drain may occur.
- (M) Where jockey (low volume-high pressure) pumps are utilized to maintain elevated pressure, as in a fire protection system, the discharge of the pump must be on the downstream side of any check valve or backflow prevention device. Where the supply for the jockey pump is taken from the upstream side or the check valve or backflow prevention device, as assembly of the same type as required on the main line shall be installed on the supply line.

- (N) High volume fire pumps shall be equipped with a suction limiting control to modulate the pump if the suction pressure approaches 10 psi ideally, such pumps should draw from an in-house reservoir fed by several supply lines. If any of the supply lines have a source other than the public water supply, all supply lines must have airgap discharges into the reservoir.
- (vi) Personnel of the department or the director's designee shall have the right to inspect and test the device on an annual basis or whenever deemed necessary by the director. 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. Where it is found that only one unit has been installed and the continuance of service is critical, the director shall notify, in writing, the occupants of the premises of plans to interrupt water service and arrange for a mutually acceptable time to test or repair the device. In such cases, the director may require the installation of a duplicate unit. The director shall require the occupant of the premises to make all repairs indicated promptly, and to keep any protective device working properly. The expense of such repairs shall bourn by the owner or occupant of the premises. Qualified personnel shall make repairs acceptable to the director. failure to maintain a backflow prevention device in proper working order shall be grounds for discontinuance of water service to Likewise the removal, bypassing, or altering of a protective device or the installation thereof so as to render a device 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 director.
- (viii) <u>Testing of devices</u>. A person possessing valid certification from the Tennessee Department of Environment and Conservation, Division of Drinking Water (or its successor) for the testing of such devices shall test devices at least annually. Records of all tests shall be provided to the department. Personnel of the department shall have the right to inspect and test the devices whenever deemed necessary by the director. Water service shall not be disrupted to test the device without the knowledge of the occupant of the premises. (1991 Code, § 18-402, modified)

- 18-403. <u>Non-potable supplies</u>. (1) The potable water system made available to premises served by the public water system 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
- (2) The minimum acceptable sign shall have black letters at least one inch (1") high located on a red background.
- (3) Color coding of pipelines in accordance with Occupational Safety and Health Act guidelines may be required in locations where, in the judgment of the director, such color-coding is necessary to identify and protect the potable water supply. (1991 Code, § 18-403)
- 18-404. <u>Provision applicable</u>. The requirements contained herein shall apply to all premises served by the Smyrna Public 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 town to provide water services to any premises. This "cross connection" chapter shall be rigidly enforced since it is essential for the protection of the water distribution system against the entrance of contamination. Any person aggrieved by the action of the director is entitled to a due process hearing upon timely request. (1991 Code, § 18-404)
- 18-405. Statement required. Any person whose premises are supplied with water from the public water supply, and who also has on the same premises a well or other separate source of water supply, or who 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 director 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. (1991 Code, § 18-405)
- 18-406. <u>Fees</u>. (1) The water and sewer department's (department) cross-connection control officer, provided the device tests satisfactorily, shall charge no fee for the initial or annual test of a backflow prevention device and there are not deficiencies in the installation. In the event that a backflow prevention device fails the initial or annual test, or there are deficiencies in the installation either from failure to conform to the installation criteria specified within this chapter or from deterioration, then the cross-connection officer shall issue a written notice of failure/deficiency. There shall be no fee for reinspection by the cross-connection control officer, provided the failure/deficiency is corrected within thirty (30) days of the written notice.
- (2) Whenever a failure/deficiency mentioned in subsection (1) is not corrected within thirty (30) days of written notification, a fee shall be charged

for re-testing by the cross-connection control officer. The amount of this fee shall be set and adjusted as necessary by the town council based upon the recommendations of the director of the water and sewer department to reflect the cost of providing cross-connection control and shall be in an amount set forth in the fee schedule adopted in accordance with the annual budget ordinance.

- (3) The fee shall be assessed each time a device is re-tested by the department subsequent to failure/deficiency after the initial thirty (30) day period mentioned in subsection (1). Where repeated re-inspection and/or re-testing are required to correct violations or deficiencies, the fee shall be assessed each time the inspection/test is repeated. (1991 Code, § 18-406, modified)
- 18-407. <u>Penalty; discontinuance of water supply</u>. Any person who neglects or refuses to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and subject to a fine of up to five hundred dollars (\$500.00) on the first offense and one thousand dollars (\$1,000.00) for each offense thereafter within any five (5) year period.

Independent of and in addition to fines and penalties, the director may discontinue the public water supply service at any premises upon which there is found to be a cross connection, auxiliary intake, by-pass or interconnection, and service shall not be restored until such cross connection, auxiliary intake, by-pass or interconnection, has been discontinued. (1991 C ode, § 18-407)

TITLE 19

ELECTRICITY AND GAS¹

CHAPTER

- 1. ELECTRICITY.
- 2. GAS.
- 3. NATURAL GAS TAP FEE AND RATE SCHEDULE.

CHAPTER 1

ELECTRICITY

SECTION

19-101. To be furnished by the Middle Tennessee Electric Membership Cooperative.

19-101. To be furnished by the Middle Tennessee Electric Membership Cooperative. The Middle Tennessee Electric Membership Cooperative shall provide electricity to the Town of Smyrna and its inhabitants. The rights, powers, duties, and obligations of the Town of Smyrna and its inhabitants, are stated in the agreements between the parties. (1991 Code, § 19-101)

Project assistance board: title 2, chapter 4.

¹Municipal code reference

CHAPTER 2

GAS

SECTION

- 19-201. Creation and operation of the gas department.
- 19-202. Application and scope.
- 19-203. Definitions.
- 19-204. Application and contract for service.
- 19-205. Service charges for temporary service.
- 19-206. Connection charges.
- 19-207. Gas main extensions.
- 19-208. Gas main extension variances.
- 19-209. Meters.
- 19-210. Multiple services through a single meter.
- 19-211. Customer billing and payment policy.
- 19-212. Termination or refusal of service.
- 19-213. Termination of service by customer.
- 19-214. Access to customer's premises.
- 19-215. Inspections.
- 19-216. Customer's responsibility for system's property.
- 19-217. Customer's responsibility for violations.
- 19-218. Supply and resale of gas.
- 19-219. Unauthorized use of or interference with gas supply.
- 19-220. Damages to property due to gas pressure.
- 19-221. Liability for cutoff failures.
- 19-222. Restricted use of gas.
- 19-223. Interruption of service.
- 19-224. Schedule of rates.
- 19-225. Gas service to be furnished under franchise.
- 19-226. Gas supply.
- 19-227. Gas code adopted.
- 19-201. <u>Creation and operation of the gas department</u>. (1) There is created a department to be known as the Town of Smyrna Natural Gas System.
- (2) The operation of the gas system shall be under the supervision and control of the town manager or his designee. It shall be the duty of the town manager or his designee to see that the gas department is operated in compliance with the rules and regulations promulgated by the town council, the municipal code of the Town of Smyrna, federal and state regulations and the policies and procedures of the gas department as may be adopted by appropriate ordinance.

- (3) The rates to be charged for services of the gas department shall be such rate schedules as the town may from time to time adopt by appropriate ordinance.
- (4) The town manager or his designee, subject to the rules and regulations proscribed by the town council and the code of the Town of Smyrna, is authorized and empowered to enter into contract with consumers for the furnishing of gas.
- (5) Any consumer who fails to comply with the rules and regulations governing the operation of the gas system and the code of the Town of Smyrna may have their gas supply discontinued.
- (6) It shall be unlawful for any person to interfere with the operation of the gas system. Tampering with gas meters, the tapping of gas mains or service lines without permission of the director of utilities or doing physical damage to meters or lines or in any manner interfering with the gas supply or the free flow of gas shall be unlawful. A tampering fee as set or amended by Tennessee Code Annotated, §§ 65-35-102 through 65-35-105, will be charged for each occurrence. (1991 Code, § 19-201, modified)
- 19-202. <u>Application and scope</u>. The provisions of this chapter are a part of all contracts for receiving gas service from the town and shall apply whether the service is based upon contract, agreement, signed application, or otherwise. The town adheres to the International Fuel Gas Code, as adopted in § 19-227 of this municipal code. (1991 Code, § 19-202, modified)
- **19-203.** <u>Definitions</u>. (1) "Customer" means any person, firm, or corporation who receives gas service from the town under either an express or implied contract.
- (2) "Service line" shall consist of the pipeline extending from any gas main of the town to private property. Where a meter is located on private property, the service line shall be construed to include the pipeline extending from the town's gas main to and including the meter.
- (3) "Dwelling" means any single structure, with auxiliary buildings, occupied by one or more persons or households for residential purposes.
- (4) "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.
- (5) "Gas department" means Town of Smyrna Natural Gas System, engaged in the operation of the natural gas distribution system. The use of the gas department, Town of Smyrna Natural Gas System, and town as titles in this chapter is interchangeable.
- (6) "Residential service" means single private residences, including separate private units of apartment houses and other multiple dwellings, actually used for residential purposes, which are separately metered. A dwelling shall be considered nonresidential which has more than one apartment

- or condo on the same meter. A residential dwelling shall be considered commercial if in the gas department's judgment such dwelling and/or usage is identifiable as being used primarily (more than 50%) for business or professional purposes.
- (7) "Commercial service" means customers engaged in selling, warehousing, or distributing a commodity or service in some business activity or profession or in some other form of economic or social activity. For example, and not by way of limitation, all local, state and federal governmental agencies, any organizations or institutions whether profit or non-profit, with uses other than those involving industrial or residential requirements are classified as commercial customers. Also included are offices, stores, schools, dormitories, hotels, restaurants, apartment houses, religious institutions, orphanages, clubs, boarding and rooming houses, communes, motor courts, camps, and rehabilitation organizations.
- (8) "Industrial service" means customers primarily engaged in a process that creates or changes raw or unfinished materials into another form or product, including the generation of electric power. (1991 Code, § 19-203)
- 19-204. Application and contract for service. Each prospective customer desiring gas service is required to sign a standard form contract and pay a tap fee as determined under the applicable "rate schedule" as approved or amended by the town council before service is supplied. The tap fee shall be refundable if and only if the town 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, the town may require the customer to reimburse the town 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 tap fee shall not obligate the town 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 town to the applicant shall be limited to the return of any tap fee made by such applicant. (1991 Code, § 19-204)
- 19-205. <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. (1991 Code, § 19-205)
- 19-206. <u>Connection charges</u>. Service lines are laid by the town from its mains to the customer pursuant to § 19-224(1) of this chapter. The town will determine the location of such lines. When service line is completed, the town shall be responsible for the maintenance and upkeep of such service line from the main to and including the meter, and such portion of the service line and

meter shall belong to the town. The remaining portion of the service line beyond the meter shall belong to and be the responsibility of the customer. (1991 Code, § 19-206, modified)

- 19-207. Gas main extensions. (1) Persons desiring gas main extensions must pay all of the cost of making such extensions except as otherwise noted. All such extensions shall be installed either by the gas department or by other forces working directly under the supervision of the gas department in accordance with plans and specifications prepared by the gas department or an engineer registered with the State of Tennessee. Upon completion of such extensions and their approval by the town, such gas mains shall become the property of the town. The persons paying the cost of constructing such mains shall execute any written instruments requested by the town to provide evidence of the town's title to such mains. In consideration of such mains being transferred to it, the town shall incorporate the mains as an integral part of the municipal gas system and shall furnish gas service there from in accordance with these rules and regulations.
- (2) The town reserves the right to extend gas mains, as it deems necessary, beneficial, and appropriate to the town. All town-initiated extensions shall be approved as a part of the town's annual budget and/or capital improvement plan. (1991 Code, § 19-207)
- 19-208. Gas main extension variances. Whenever the town council is of the opinion that it is to the best interest of the town 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 required and approved by the town council. The authority to make gas main extensions under the preceding section is permissive only and nothing contained therein shall be construed as requiring the town to make such extensions or to furnish service to any person or persons. (1991 Code, § 19-208)
- 19-209. <u>Meters</u>. All meters shall be installed, tested, repaired, and removed only by the gas department. 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 gas department. 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. (1991 Code, § 19-209, modified)
- 19-210. <u>Multiple services through a single meter</u>. No customer shall supply gas service to more than one dwelling or premise from a single service line and meter without first obtaining the written permission of the town. Where the town allows more than one dwelling or premise to be served through a single service line and master meter, the amount of gas used by all the

dwellings and premises served through a single service line and meter shall be considered a commercial customer. (1991 Code, § 19-210)

- 19-211. Customer billing and payment policy. Gas bills shall be rendered monthly and shall designate a standard net payment period for all customers of not less than 10 days after the date of the bill. Failure to receive a bill does not release a customer from payment obligation. There is established for all customers a late payment charge not to exceed 10% for any portion of the bill paid after the net payment period. Payment must be received in the town hall 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 town reserves the right to render an estimated bill based on the best information available. In the event a customer believes his gas meter is not registering the correct amount of gas flow through the meter, and the customer so requests in writing, Smyrna Natural Gas will replace the meter according to the following: Should the customer request an adjustment to their bill, prior to making any adjustment, Smyrna Natural Gas will send the customer's gas meter to an independent testing facility where the meter will be tested for accuracy. The meter shall be deemed to register correctly if the test indicates the error is within plus or minus two percent and the customer will be responsible for the cost of the test (set by town council). Should the error be greater than plus two percent, the customer's most recent bill will be adjusted according to the percentage indicated by the test and Smyrna Natural Gas will pay for the test. (1991 Code, § 19-211, modified)
- 19-212. <u>Termination or refusal of service</u>. (1) <u>Basis of termination or refusal</u>. The town has 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.
 - (c) The customer's contract for service.
 - (d) Gas leakage or safety violation, including codes.

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 there from, 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 (cutoff) shall be given to the customer at least five (5) days prior to the scheduled date of termination. The cutoff 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) In the case of nonpayment of bills, of the availability of special counseling for emergency and hardship cases, including the necessity of services related to medical conditions.
- (b) In the case of termination for nonpayment of charges due no service shall be terminated when a low temperature of 32° or below is forecast for the next three (3) days.
- (c) Hearings for service termination, including for nonpayment of bills, will be held by appointment at the town hall 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 approved or amended by the town council. (1991 Code, § 19-212, modified)
- 19-213. <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 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 town 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 town 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 town 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 town 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. (1991 Code, § 19-213)
- 19-214. Access to customer's premises. The town'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 town, and for inspecting customers' gas plumbing and premises generally in order to secure compliance with these rules and regulations and any federal or state rules and regulations. (1991 Code, § 19-214, modified)
- 19-215. <u>Inspections</u>. The town 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 town 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 town.

Any failure to inspect or reject a customer's installation or gas plumbing system shall not render the town liable or responsible for any loss or damage, which might have been avoided, had such inspection or rejection been made. (1991 Code, § 19-215)

- 19-216. <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 town shall be and remain the property of the town. Each customer shall provide space for and exercise proper care to protect the property of the town 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 customer shall pay the cost of necessary repairs or replacements. (1991 Code, § 19-216)
- 19-217. <u>Customer's responsibility for violations</u>. Where the town 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. (1991 Code, § 19-217)

- 19-218. <u>Supply and resale of gas</u>. All natural gas shall be suppled within the town exclusively by the town, and no customer shall, directly or indirectly, sell, sublet, assign, or otherwise dispose of the natural gas or any part thereof except with written permission from the town. (1991 Code, § 19-218)
- 19-219. <u>Unauthorized use of or interference with gas supply</u>. No person shall operate, any of the town's gas, valves, or controls without express written permission or authority from the town. (1991 Code, § 19-219, modified)
- 19-220. <u>Damages to property due to gas pressure</u>. The town 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 town's gas mains. (1991 Code, § 19-220)
- **19-221.** <u>Liability for cutoff failure</u>. The town'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 town has failed to cut off such service.
- (2) The town has attempted to cut off a service but such service has not been completely cut off.
- (3) The town 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 town's main.

Except to the extent stated above, the town 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 downstream of the meter and not on the town's cutoff. (1991 Code, § 19-221)

- 19-222. Restricted use of gas. In times of emergencies or in times of gas shortage, the town 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, pursuant to § 3363 of the Natural Gas Policy Act. (1991 Code, § 19-222)
- 19-223. <u>Interruption of service</u>. The town will endeavor to furnish continuous gas service, but does not guarantee to the customer any fixed pressure or continuous service. The town 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 town 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. (1991 Code, § 19-223)

- **19-224.** Schedule of rates and fees. All gas service is furnished under such rate schedules as the town council may adopt or amend. The town council shall set fees and other gas related service charges.
 - (1) Natural gas, tap fee schedule. (a) Residential service is available to any residential customer where the gas distribution mains are of adequate capacity and suitable for supplying the customers prospective requirements in addition to the requirements of others already receiving service from such distribution mains and where new connections must be made to existing distribution mains or where distribution mains must be extended to serve prospective customer. The customer requesting gas service shall pay a "residential tap fee." Said fee to be established by the town council by resolution.
 - (b) The distribution system may be extended as per costs set forth in the fee schedule.
 - (c) Charges for commercial and industrial customers to connect to the gas system will be based on the actual cost of providing the service as calculated by the town natural gas department.
- (2) <u>Deposit required</u>. Prior to receiving service all customers are required to furnish a deposit as described below. All deposits will be held in a non-interest bearing account. Deposit will be applied to final bills. If a customer has his natural gas service disconnected for non-payment and the minimum amount of deposit is not maintained, an additional deposit shall be required.
 - (a) Residential customer. A deposit amount set by the town council will be collected and held by the gas system on all residential natural gas customers as described below. This deposit will be held in a non-interest bearing account for as long as the customer maintains natural gas service. If a customer has their natural gas service disconnected for non-payment and the minimum amount of deposit is not maintained, an additional deposit shall be required.
 - (i) Residential (non property owner). A deposit will be collected and held by the gas system on any existing residential natural gas customer who does not own the home to which gas service is being rendered. If a customer has their natural gas service disconnected for non-payment and the minimum amount of deposit is not maintained, an additional deposit shall be required. This deposit will be held in a non-interest bearing account for as long as the customer maintains natural gas service.
 - (ii) <u>Residential (property owner)</u>. No "residential" natural gas deposit will be collected when the service is listed in the name of the owner of the property. However, if a customer has

- their natural gas service disconnected for non-payment a deposit shall be required. Residential customers that own the dwelling at which gas service has been disconnected for non-payment may request a refund of the deposit after twenty four consecutive months of payments on or before the due date.
- (b) <u>Commercial or industrial</u>. A deposit equal to the largest bill at any commercial or industrial customers address experienced within the past 15 months (with current price of gas adjustment) will be collected and held as long as the customer occupies the premises. This deposit will be held in a non-interest bearing account. If there is no usage history at the premises, an estimate will be made based on the natural gas equipment installed at the premises. This deposit will only be returned after all outstanding Smyrna utility bills have been paid or the deposit has been applied to any outstanding Smyrna utility billings. This policy will not apply to governmental agencies.
- (c) Commercial or industrial customer whose natural gas service has been disconnected for non-payment. A deposit will be charged to any commercial or industrial customer whose natural gas service has been disconnected for non-payment equal to the largest bill at any commercial or industrial customer's address experienced within the past 15 months (with current price of gas adjustment) will be collected and held as long as the customer occupies the premises. This deposit will be held in a non-interest bearing account. If there is no usage history at the premises, an estimate will be based on the natural gas equipment installed at the premises. This deposit will only be returned after all outstanding Smyrna utility bills have been paid or the deposit has been applied to any outstanding Smyrna utility billing. (1991 Code, § 19-224, modified)
- **19-225.** <u>Gas service to be furnished under franchise</u>. (1) Without a franchise granted by the Town Council of the Town Smyrna, no person, firm or corporation ("person") shall have the right or privilege:
 - (a) To erect, construct, operate or maintain or use any natural or artificial gas pipe line, plant or system or gas works within the town in order to sell, distribute or provide non-municipal natural or artificial gas to itself or any other user or consumer within the town; or
 - (b) To use the streets or alleys of the town for such purpose; or
 - (c) To interconnect any building, structure or facility of any kind to any natural or artificial gas pipe line or system, other than to the natural gas system of the Town of Smyrna.
- (2) <u>Terms and conditions</u>. No ordinance for the grant of a franchise for a natural or artificial gas distribution system as set forth in this section shall be granted except under such terms and conditions as shall preserve the financial integrity of the Town of Smyrna and its natural gas system. Such

franchise ordinance shall require that any franchise holder shall pay to the town a maximum franchise fee of twenty-five percent (25%) of gross receipts of said gas distribution system. Gross receipts shall include the cost of operation and the cost of purchased natural gas. If the franchise holder is distributing to its self the gross receipts shall include not only the cost of operation of the distribution system, but also the cost of gas to be distributed. The franchise holder shall be required to make all of its records available to the town for the purpose of determining the franchise fee. If the franchise holder is also the owner of any natural gas facilities, the cost of natural gas for the purpose of computing a franchise fee shall not be less than the average annual cost for the preceding calendar year of such natural gas to the Town of Smyrna.

- (3) Acts unlawful without a franchise. Unless a franchise has been given or granted it shall be unlawful for any person:
 - (a) To erect, construct, operate or maintain or use any natural or artificial gas pipe line, plant, or system or gas works within the town in order to sell or distribute or provide non-municipal natural or artificial gas energy to itself or other consumer within the town; or
 - (b) To use the streets or alleys of the town for such purpose; or
 - (c) To interconnect any building, structure or facility of any kind to any natural or artificial gas pipe line or system other than to the natural gas system of the Town of Smyrna.
- (4) <u>Violation</u>. If any person constructs, operates or maintains any natural or artificial gas pipe line, plant or system or gas works or sells or distributes any natural or artificial gas within the town, or makes any connections with an LDC, interstate pipeline, intrastate pipeline or other entity contrary to the provisions of the foregoing; then, in addition to any other remedies and measures provided by law, the town attorney for the Town of Smyrna may commence an action in the name of and on behalf of the town for suitable and appropriate legal and equitable relief.
- (5) Penalty. Any person violating the provisions of this chapter shall be subject to a fine not exceeding state authorized maximum limits per day for each day that utility construction and/or operations are attempted, maintained or exist in violation of this law. (1991 Code, § 19-226, modified)
- 19-226. <u>Gas supply</u>. The town manager or his designee shall be authorized to enter into financial agreements on behalf of the Town of Smyrna Natural Gas System (gas system), for the express purpose of meeting the natural gas requirements of the gas system, including but not limited to the use of futures contracts, collars, caps and floors, or other price risk management tools. (1991 Code, § 19-227, modified)
- 19-227. <u>Gas code adopted</u>. (1) The <u>International Fuel Gas Code</u>, 2006 edition, and amendments thereto, is hereby adopted and incorporated by

reference as part of this municipal code, and is referred to herein as the gas code, as well as the policies and procedures of the gas department.

(2) <u>Modification of designated officials</u>. The designated officials of the Town of Smyrna who have duties corresponding to the duties of officials named in the <u>International Fuel Gas Code</u>, as adopted by the Town of Smyrna, shall be responsible for the enforcement of the gas code provisions.

CHAPTER 3

NATURAL GAS TAP FEE AND RATE SCHEDULE

SECTION

- 19-301. Natural gas tap fee schedule.
- 19-302. Natural gas system retail rate schedule.
- 19-303. Policies of the Town of Smyrna natural gas system; deposit to insure payment.
- 19-304. Fee schedule to be charged for initiation of utility service.
- 19-301. Natural gas tap fee schedule. Requirements in excess of two hundred fifty (250) cubic feet per hour will be considered "large commercial" or "industrial". Charges for such customers to connect to the Smyrna system will be based on the actual cost of providing the service including the cost of main extensions, service extensions, meters, regulators, pressure correcting devices, labor, and overhead expense, and any other costs incurred by the system to provide service. (1991 Code, § 19-301)
- 19-302. <u>Natural gas system retail rate schedule</u>. The retail rate for natural gas shall be as set forth in the fee schedule adopted by the town council in accordance with the budget. (1991 Code, § 19-302, modified)
- 19-303. Policies of the Town of Smyrna natural gas system; deposit to insure payment. A deposit of an amount set forth in the fee schedule as adopted by the town council in accordance with the budget will be collected and held by the "system" on all new residential natural gas customers who do not own the home gas service is being rendered. This deposit will be held in a non-interest bearing account for as long as the customer maintains natural gas service. It is the responsibility of the potential customer to prove the ownership of the property.

A deposit of an amount set forth in the fee schedule as adopted by the town council in accordance with the budget will be collected and held by the "system" on any existing residential natural gas customer who does not own the home gas service is being rendered if the customer has their natural gas service disconnected for non-payment. This deposit will be held in a non-interest bearing account for as long as the customer maintains natural gas service.

No "residential" natural gas deposit will be collected when the service is listed in the name of the owner of the property.

A deposit equal to the largest bill at any commercial or industrial customers address experienced within the past fifteen (15) months (with current price of gas adjustment) will be collected and held as long as the customer occupies the premises. This deposit will be held in a non-interest bearing account. If there is no usage history at the premises, an estimate will be made

based on the natural gas equipment installed at the premises. This deposit will only be returned after all outstanding Smyrna utility bills have been paid or the deposit has be applied to any outstanding Smyrna utility billings.

This policy will not apply to governmental agencies.

A deposit will be charged to any commercial or industrial customer whose natural gas service has been disconnected for non-payment equal to the largest bill at any commercial or industrial customers address experienced within the past 15 months (with current price of gas adjustment) will be collected and held as long as the customer occupies the premises. This deposit will be held in a non-interest bearing account. If there is no usage history at the premises, an estimate will be based on the natural gas equipment installed at the premises. This deposit will only be returned after all outstanding Smyrna utility bills have been paid or the deposit has been applied to any outstanding Smyrna utility billing. (1991 Code, § 19-303, modified)

19-304. Fee schedule to be charged for initiation of utility service. There shall be a fee for the initiation of natural gas service and a fee for the re-connection of natural gas service disconnected as a result of non-payment, which fee shall be set forth in the fee schedule adopted in accordance with the annual budget ordinance. Additional charges as designated in the fee schedule shall be charged on a per trip basis if the service is performed during times town hall offices are not open for regular business. (1991 Code, § 19-304, modified)

TITLE 20

MISCELLANEOUS

CHAPTER

- 1. MAPLEVIEW CEMETERY.
- 2. PARKS AND RECREATION DEPARTMENT.
- 3. COMMUNITY SERVICES DEPARTMENT.
- 4. SMOKING IN MUNICIPAL FACILITIES.

CHAPTER 1

MAPLEVIEW CEMETERY

SECTION

- 20-101. Price of gravesites
- 20-102. Payment for gravesites
- 20-103. Perpetual care fund
- 20-104. Interments.
- 20-105. Headstones, markers and statutes.
- 20-106. Flowers, bushes and plants.
- 20-107. Trees.
- 20-108. Fencing or ornamental outlining.
- 20-109. Rock and/or unsuitable soils.
- 20-110. Maintenance of cemetery grounds.
- 20-111. Patrol of cemetery.
- 20-112. Benches.
- **20-101.** <u>Price of gravesites</u>. The price for which the Town of Smyrna will charge for each gravesite at Mapleview Cemetery shall be determined by the fee schedule adopted in accordance with the annual budget ordinance. (Ord. #02-20, July 2002, modified)
- **20-102.** Payment for gravesites. No payment plan shall be permitted for the purchase of a gravesite, except in the event where the gravesite will be used immediately. In such cases, the purchaser shall be given a period of up to one hundred twenty (120) days to pay the balance in full and shall be required to execute any agreements and/or documents necessary to evidence such obligations. (Ord. #02-20, July 2002)
- **20-103.** Perpetual care fund. A perpetual care fund for the Mapleview Cemetery was established on July 1, 2000. A portion of the funds from the sale of each gravesite made after July 1, 2000, shall be deposited into said fund. This

- amount shall be determined by the fee schedule adopted in accordance with the annual budget ordinance. (Ord. #02-20, July 2002, modified)
- **20-104.** <u>Interments</u>. For all interments at Mapleview Cemetery, there shall be a permanent outer container for adult interments, said container to be approved by town officials for Mapleview Cemetery. Infant interments shall be exempt from this requirement. (Ord. #02-20, July 2002)
- **20-105.** <u>Headstones, markers and statues</u>. The purchaser and/or owner of any gravesite is allowed to place headstones, markers and/or statues on such gravesite, provided that any such headstones, markers and/or statues are kept within the dimensions of such individual gravesite. The purchaser and/or owner of each gravesite is required to contact the Mapleview Cemetery Office before placing any headstones, markers, and/or statues on any gravesite. The Town of Smyrna and/or its agents shall not be held liable for any damage to, and/or any loss of, any such item. (Ord. #02-20, July 2002, modified)
- **20-106.** Flowers, bushes and plants. The purchaser and/or owner of any gravesite is allowed to plant flowers, bushes and/or plants on such gravesite, provided that any such flowers, bushes and/or plants are kept within the dimensions of such individual gravesite. The Town of Smyrna and/or its agents shall not be held liable for any damage to, and/or any destruction of, any such flowers, bushes and/or plants. All holiday, specialty, faded, broken, or deteriorated items will be removed on a schedule set by the Mapleview Cemetery Office. (Ord. #02-20, July 2002, modified)
- **20-107.** <u>Trees</u>. The planting of trees on any gravesite is prohibited unless approved in advance by the Mapleview Cemetery Office. (Ord. #02-20, July 2002, modified)
- **20-108.** Fencing or ornamental outlining. The placement of fencing on, and/or the ornamental outlining of, any gravesite is prohibited. (Ord. #02-20, July 2002)
- **20-109.** Rock and/or unsuitable soils. The purchaser and/or owner of any gravesite is responsible for all costs involved in the removal of any rock and/or unsuitable soils from such gravesite. (Ord. #02-20, July 2002)
- **20-110.** <u>Maintenance of cemetery grounds</u>. The Town of Smyrna or a contracted service provider shall maintain the grounds at Mapleview Cemetery. (Ord. #02-20, July 2002)
- **20-111.** Patrol of cemetery. The Mapleview Cemetery is patrolled regularly by the Smyrna Police Department. (Ord. #02-20, July 2002)

20-112. <u>Benches</u>. The purchaser and/or owner of any gravesite is allowed to place a bench on such gravesite, provided that any such bench is kept within the dimensions of such individual gravesite and is made of a material which will not deteriorate or rust. The Town of Smyrna and/or its agents shall not be held liable for any damage to, and/or any loss of, any such bench. (Ord. #02-36, Sept. 2002)

CHAPTER 2

PARKS AND RECREATION DEPARTMENT

SECTION

- 20-201. Establishment.
- 20-202. Director.
- 20-203. Qualifications of office.
- 20-204. Park director powers and duties.
- 20-205. Acquisition of land.
- 20-206. Park rules and regulations.
- 20-207. Naming of park facilities.
- 20-208. Violation and penalty.
- **20-201.** Establishment. There is created a parks and recreation department for the purpose of providing for the proper maintenance and operation of public parks, playgrounds, and other recreation facilities belonging to or operated in whole or in part by the Town of Smyrna and providing for the acquisition of land, structures, and other facilities for the parks and recreation programs of the town. (1991 Code, § 20-201)
- **20-202.** <u>Director</u>. The functions of the parks and recreation department are executed under the supervision and control of the park director. Such director shall be appointed by the town manager for an indefinite term. The director shall be subject to the personnel policies established by the town. (1991 Code, § 20-202, modified)
- **20-203. Qualifications of office.** The town manager may prescribe regulations from time to time for determining the qualifications for the office of director, and prescribing additional powers and duties. (1991 Code, § 20-203)
- **20-204.** Park director powers and duties. The park director or his/her designee, as authorized by the town manager and as authorized by the laws of the state and, within the limits of the funds and purposes prescribed by ordinance, shall have the power to implement recreational or cultural programs that will employ the leisure time of the public in a constructive and wholesome manner. Without limiting the generalities of the foregoing powers, the park director or his/her designee shall have the authority:
- (1) To control and supervise all parks, greenways, play and recreation grounds, indoor recreation facilities or other municipally owned recreation facilities:
- (2) To plan, promote, and recommend the acquisition, construction, development, maintenance or operation of such public parks, greenways, recreation grounds and facilities;

- (3) When authorized by the town council, to contract in writing with any adjacent city or town, park district, school district, governmental agency, or any public organization for the purpose of acquiring recreation facilities for conducting recreation programs;
- (4) To exercise control over any monuments, works of art, advertising, or signage to be displayed in public parks or recreational facilities.
- (5) To solicit and receive on behalf of the town council, any gifts or bequests or other personal property to be applied for playgrounds, parks, or recreational purposes;
- (6) To grant concessions and privileges in public parks, under such restrictions and for such compensation as may be prescribed; provided that no concession or privilege shall ever be granted for the sale of intoxicating liquors, beer, or wine in any town park;
- (7) To allocate use of facilities through written annual user agreements with non-profit recreation providers that meet prescribed financial, organizational, scheduling, certification, background, and participation requirements;
- (8) To administer use and scheduling policies of recreational facilities per recommendation of the park advisory board;
- (9) To administer fees and charges for recreational facilities as approved by town council per recommendation of the park advisory board;
- (10) To enforce park rules and regulations as prescribed by town ordinance approved by town council per recommendation of the parks advisory board. (1991 Code, § 20-204, modified)
- **20-205.** Acquisition of land. The department shall have no power to acquire land for park purposes without the approval of town council. This includes acquisition of property through impact fee waivers. (1991 Code, § 20-205)
- **20-206.** Park rules and regulations. (1) The director as prescribed by department's rules and regulations as approved by the town manager shall have the power to limit use of the town's recreational facilities for any user in violation of said rules and regulations and/or established codes of conduct for users, coaches, parents, players, vendors, or groups. Any sanctions issued by the director are subject to approval of the town manager. The parks and recreation department rules and regulations, as provided by Ord. #99-27, may be amended by the town council pursuant to recommendations of the parks and recreation director and the parks advisory board.
- (2) No person shall, without permission from the park's director, in any park:
 - (a) Distribute, display or construct any material for advertising purposes (except for team sponsorship signs approved by the director of parks and recreation);

- (b) Solicit contributions for any purpose or do any vending (without permission of the director of parks and recreation);
- (c) Camp or erect or maintain a tent or shelter or build a campfire;
- (d) Disobey the lawful and reasonable order of a park employee in the discharge of his duties or disobey the notices, prohibitions, instructions, or directions on any park sign;
 - (e) Use threatening, abusive, or insulting language;
 - (f) Do any obscene or indecent act;
 - (g) Throw, cast, or propel stones or other missiles;
- (h) Interfere with, encumber, obstruct, or render dangerous any part of the park;
- (i) Climb or lie upon any well, fence, shelter, monument, or other structure not meant for such;
 - (j) Do any act amounting to a breach of peace;
- (k) Enter or leave any park facility except at established entrance ways or exits or at established times;
- (l) Use or gain admittance to the facilities in the park for the use of which a charge is made without paying the charge;
- (m) Bring in, have possession of, or partake of any alcoholic beverage.
 - (n) Engage in, instigate, or encourage a fight;
- (o) Do, aid, abet, or assist in doing any act injurious to any person, animal, or property within the park;
- (p) Bring into or have in his/her possession in any park any firearms, slingshots, fireworks, explosives, or dangerous weapons;
 - (q) Engage in gambling;
- (r) Deposit any rubbish of any sort except in receptacles provided for refuse;
 - (s) Spit upon any walk, floor, building or structure.
- (t) Throw, cast, drop, or discharge into or leave in the waters in/or adjacent to any park any substance which may result in the pollution of such waters;
- (u) Destroy, injure, disturb, or remove any growing thing, including but not limited to, any plant, flower, shrub, or tree;
- (v) Injure, deface, displace, remove, fill in, raise, destroy, or tamper with any drive, walk, bridge, wall, fence, shelter, seat, monument, building, post, sign, railing, platform, telephone, recreation equipment, pipe, basin, or any property, real or personal, owned by the Town of Smyrna;
- (w) Park or drive in any areas other than designated parking areas;
- (x) Create inappropriate loud noise or music that may disrupt the leisure atmosphere within the parks;

- (y) Violate any other town, state, or federal law or ordinance. (1991 Code, § 20-206, modified)
- **20-207.** Naming of park facilities. Naming or renaming of Town of Smyrna park facilities shall be the responsibility of the Smyrna Town Council upon receiving a recommendation from the parks and recreation advisory board. (1991 Code, § 20-208)
- **20-208.** <u>Violation and penalty.</u> Usage of public parks and participation in leagues sanctioned by the parks and recreation department is not a right, but a privilege subject to the rules and regulations of the Smyrna Parks and Recreation Department. Convicted felons are prohibited from coaching, umpiring, assisting or administering youth league teams.

Violators of the foregoing rules and regulations are subject to ejection from the park by any parks and recreation employee and may be subject to criminal or civil prosecution and a fine not to exceed maximum limits. Each day an offense occurs constitutes a separate violation. (1991 Code, § 11-502, modified)

CHAPTER 3

COMMUNITY SERVICES DEPARTMENT

SECTION

- 20-301. Office established; functions.
- 20-302. Director; appointment; responsibilities.
- 20-303. User fees.
- 20-304. Facility operation hours.
- 20-305. Standard operating procedures.
- 20-306. Pro shop, clubhouse, maintenance department and food and beverage operation.
- 20-307. Banquet facility.
- 20-308. Violation and penalty.
- **20-301.** Office established; functions. There is hereby created and established a community services department, which shall maintain and operate the Smyrna Municipal Golf Course and Town Centre Banquet Facility and provide such other services as may be directed by the town manager. (Ord. #02-29, Aug. 2002, modified)
- 20-302. <u>Director; appointment; responsibilities</u>. The town manager shall appoint a director of community services, who shall report directly to the town manager. The director of community services shall be appointed for an indefinite term and may be removed at any time. The director of community service shall direct the operations of the golf department, including the golf shop, the food and beverage operation and golf course maintenance facility, for the efficient management and operation of the municipal golf course and the promotion of interest in the sport and use of the golf course. In addition he shall direct the operations of the Town Centre for the efficient management and operation of the banquet facility and the promotion of interest in community opportunities. (Ord. #02-29, Aug. 2002, modified)
- **20-303.** <u>User fees</u>. The town manager, upon the recommendation of the director of community services, shall propose to the town council charges for the use of the municipal golf course and Town Centre, including, but not limited to, cart fees, greens fees and annual pass fees, room rental and food charges. (Ord. #02-29, Aug. 2002, modified)
- **20-304.** Facility operation hours. The municipal golf course and Town Centre shall be open to the public during designated hours established by the director of community services. Any section or part of the golf course or club house facility or Town Centre may be declared closed to the public by the director of community services at any time and for any interval of time, either

temporarily or at regular and stated intervals, daily or otherwise, and either entirely or merely to certain uses, as the director of community services may deem necessary or appropriate. (Ord. #02-29, Aug. 2002, modified)

- **20-305.** Standard operating procedures. The director of community services shall create, maintain and enforce standard operating procedures for the efficient operation of the golf department and Town Centre subject to approval by the town manager. These procedures shall include general rules and regulations for the course and for the public use of the course and facilities. Such rules and regulations shall be posted for the general public's viewing and education. (Ord. #02-29, Aug. 2002, modified)
- 20-306. Pro shop, club house, maintenance department and food and beverage operation. The Smyrna Municipal Golf Course operates a pro shop, clubhouse, maintenance department and food and beverage operation for the comfort and convenience of the town's golfing citizens. These facilities are under the management and supervision of the director of community services or his or her designee. (Ord. #02-29, Aug. 2002)
- **20-307.** Banquet facility. The Town of Smyrna operates a banquet facility for the comfort and convenience of its citizens. This facility shall be under the management and supervision of the director of community services or his or her designee. (Ord. #02-29, Aug. 2002)
- **20-308.** <u>Violation and penalty</u>. Violations shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 4

SMOKING IN MUNICIPAL FACILITIES

SECTION

- 20-401. Purpose.
- 20-402. Definitions
- 20-403. Prohibitions.
- 20-404. Designation of Smoking and Non-Smoking Areas.
- 20-405. Posting of Signs.
- 20-406. Violations.
- **20-401.** <u>Purpose</u>. The purpose of this chapter is to prohibit the smoking and use of tobacco, or any weed or plant, in designated non-smoking areas of public facilities. (Ord. #07-11, April 2007)
- **20-402.** <u>**Definitions**</u>. For purposes of this chapter, the following words shall have the meaning as stated:
- (1) "Smoke" or "smoking" means the carrying of a lighted pipe, cigar, cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind.
- (2) "Municipal facility" means any enclosed area and/or facility which is owned, operated, leased, or under the control of the Town of Smyrna to which the public is invited or in which the public is permitted, including, but not limited to, waiting rooms, lobbies and reception areas, education facilities, and areas in which town employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, and conference rooms.
- (3) "Tobacco product" means tobacco in any form, including, but not limited to, snuff, chewing tobacco, cigars, and pipe tobacco. (Ord. #07-11, April 2007)
- **20-403.** <u>Prohibitions</u>. No person shall, in or at a municipal facility, smoke or use tobacco products in any designated non-smoking area. (Ord. #07-11, April 2007)

20-404. Designation of Smoking and Non-Smoking Areas.

- (1) Non-smoking areas may be designated in or at municipal facilities by the town manager. In any area designated as a non-smoking area the use of tobacco in any form is prohibited.
- (2) Smoking areas in or at municipal facilities may be designated by the town manager, except in areas where smoking is prohibited by the state fire marshal or by other law, ordinance, or regulation. In areas where smoking is permitted, existing physical barriers and ventilation systems shall be used to minimize the effect of smoke in adjacent non-smoking areas. It shall be the

responsibility of the town manager to provide smoke-free areas for non-smokers within existing facilities to the maximum extent possible.

- (3) To the maximum extent possible, smoking shall be prohibited in areas where children under the age of eighteen congregate and play. (Ord. #07-11, April 2007)
- **20-405.** <u>Posting of Signs</u>. Signs which designate smoking or non-smoking areas established by this chapter shall be clearly and conspicuously posted in every room, building, or other place covered by this chapter. (Ord. #07-11, April 2007)
- **20-406.** Enforcement; violations. (1) The town manager shall post or cause to be posted all "No Smoking" signs required by this chapter. Employees of the Town of Smyrna shall be required to orally inform persons violating this chapter of the provision thereof. The duty to inform such violator shall arise when such employee becomes aware of such violation.
- (2) It shall be the responsibility of the town manager to disseminate information concerning the provisions of this chapter to employees.
- (3) Any person violating any provision of this chapter shall be guilty of a civil offense and upon conviction shall pay the maximum penalty allowable in accordance with the general penalty provision of this code. Each occurrence shall constitute a separate offense. (Ord. #07-11, April 2007)

APPENDIX [RESERVED FOR FUTURE USE]

ORDINANCE NO.07-36

AN ORDINANCE ADOPTING AND ENACTING A CODIFICATION AND REVISION OF THE ORDINANCES OF THE TOWN OF SMYRNA TENNESSEE.

WHEREAS some of the ordinances of the Town of Smyrna are obsolete, and

WHEREAS some of the other ordinances of the town are inconsistent with each other or are otherwise inadequate, and

WHEREAS the Town Council of the Town of Smyrna, 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 "Smyrna Municipal Code," now, therefore:

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SMYRNA:

Section 1. Ordinances codified. The ordinances of the town 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 "Smyrna Municipal Code," hereinafter referred to as the "municipal code."

Section 2. Ordinances repealed. All ordinances of a general, continuing, and permanent application or of a penal nature not contained in the municipal code are hereby repealed from and after the effective date of said code, except as hereinafter provided in Section 3 below.

Section 3. Ordinances saved from repeal. The repeal provided for in Section 2 of this ordinance shall not affect: Any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of the municipal code; any ordinance or resolution promising or requiring the payment of money by or to the town or authorizing the issuance of any bonds or other evidence of said town's indebtedness; any appropriation ordinance or ordinance providing for the levy of taxes or any budget ordinance; any contract or obligation assumed by or in favor of said town; any ordinance establishing a social security system or 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 town; 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 town.

Section 4. Continuation of existing provisions. Insofar as the provisions of the municipal code are the same as those of ordinances existing and in force on its effective date, said provisions shall be considered to be continuations thereof and not as new enactments.

Section 5. Penalty clause. Unless otherwise specified in a title, chapter or section of the municipal code, including the codes and ordinances adopted by reference, whenever in the municipal code any act is prohibited or is made or declared to be a civil offense, or whenever in the municipal code the doing of any act is required or the failure to do any act is declared to be a civil offense, the violation of any such provision of the municipal code shall be punished by a civil penalty of not more than fifty dollars (\$50.00) and costs for each separate violation; provided, however, that the imposition of a civil penalty under the provisions of this municipal code shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the provisions of the municipal code or other applicable law. In any place in the municipal code the term "it shall be a misdemeanor" or "it shall be an offense" or "it shall be unlawful" or similar terms appears in the context of a penalty provision of this municipal code, it shall mean "it shall be a civil offense." Anytime the word "fine" or similar term appears in the context of a penalty provision of this municipal code, it shall mean "a civil penalty." 1

Each day any violation of the municipal code continues shall constitute a separate civil offense.

Section 6. Severability clause. Each section, subsection, paragraph, sentence, and clause of the municipal code, including the codes and ordinances

¹State law reference

For authority to allow deferred payment of fines, or payment by installments, see <u>Tennessee Code Annotated</u>, § 40-24-101 <u>et seq</u>.

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 town council, by motion or resolution, shall fix, and change from time to time as considered necessary, the prices to be charged for copies of the municipal code and revisions thereto. After adoption of the municipal code, each ordinance affecting the code shall be adopted as amending, adding, or deleting, by numbers, specific chapters or sections of said code. Periodically thereafter all affected pages of the municipal code shall be revised to reflect such amended, added, or deleted material and shall be distributed to town officers and employees having copies of said code and to other persons who have requested and paid for current revisions. Notes shall be inserted at the end of amended or new sections, referring to the numbers of ordinances making the amendments or adding the new provisions, and such references shall be cumulative if a section is amended more than once in order that the current copy of the municipal code will contain references to all ordinances responsible for current provisions. One copy of the municipal code as originally adopted and one copy of each amending ordinance thereafter adopted shall be furnished to the Municipal Technical Advisory Service immediately upon final passage and adoption.

<u>Section 8.</u> 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.

<u>Section 9</u>. <u>Code available for public use</u>. A copy of the municipal code shall be kept available in the recorder's office for public use and inspection at all reasonable times.

Section 10. Date of effect. This ordinance shall take effect from and after its final passage, the public welfare requiring it, and the municipal code, including all the codes and ordinances therein adopted by reference, shall be effective on and after that date.

Passed	1st reading, _	September 11	, 20 <u>07</u> .
Passed	2nd reading,	October 9	, 20 <u>07</u> .

Mayor

Clerk