

**TITLE 5**

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

**CHAPTER**

1. MISCELLANEOUS.
2. REAL PROPERTY TAXES.
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6. ADEQUATE FACILITIES TAX.
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**CHAPTER 1**

**MISCELLANEOUS**

**SECTION**

- 5-101. Restrictions on expenditures by city manager.
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- 5-103. Official depository for city funds; city manager authorized to sign checks.
- 5-104. Competitive bidding; when required; procedure.
- 5-105. Budget amendments require specific appropriation increases or corresponding reduction in expenditures.

**5-101. Restrictions on expenditures by city manager.** The city manager is hereby authorized to expend a maximum amount of ten thousand dollars (\$10,000.00) for materials, supplies, and equipment for the proper conduct of the city's business without specific authorization of the board of commissioners.

Any expenditure by the city manager in excess of ten thousand dollars (\$10,000.00) in any one single transaction shall only be made upon the specific authorization of the board of commissioners. (1973 Code, § 6-101, modified)

**5-102. Fiscal year of the city.** The fiscal year of the City of Fairview, Tennessee, shall begin on July 1 of each year and end on June 30 of the following year. (1973 Code, § 6-102)

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<sup>1</sup>Charter reference

Finance and taxation: title 6, chapter 22.

**5-103. Official depository for city funds; city manager authorized to sign checks.** The official depository for the funds of the City of Fairview, Tennessee, shall be designated by resolution of the board of commissioners of the City of Fairview, Tennessee, as adopted by a vote of the majority of the members of the board of commissioners from time to time for that purpose. Such depository for the funds of the City of Fairview, Tennessee, shall be in a banking institution duly chartered by the State of Tennessee or the United States of America and insured by the Federal Deposit Insurance Corporation (FDIC) or its equivalent. (1973 Code, § 6-103, as replaced by Ord. #583, Aug. 2004)

**5-104. Competitive bidding; when required; procedure.**

(1) No purchase or contract shall be executed on behalf of the City of Fairview, Tennessee, wherein the aggregate amount of the purchase or contract exceeds ten thousand dollars (\$10,000.00), except upon advertisement for bids.

(2) The provisions of § 5-104(1) notwithstanding, advertisement for bids shall not be required when the purchase or contract to be executed on behalf of the City of Fairview, Tennessee, regardless of the amount of the contract is exempt or may be exempt from the requirement for bids under the following statutes of the State of Tennessee.

- (a) Tennessee Code Annotated, § 6-19-104 and its successors.
- (b) Tennessee Code Annotated, § 6-56-302 and its successors.
- (c) Tennessee Code Annotated, § 6-56-304 and its successors.
- (d) Tennessee Code Annotated, § 12-3-1001 and its successors

(2) The advertisement for bids shall be published in a newspaper of general circulation in the City of Fairview, Tennessee. It shall set forth the nature of the purchase or contract, the location of the plans and specifications, if any, and the date, time, and place the bids will be received and opened.

(3) The time specified for the receipt and opening of bids will not be less than ten (10) days following the publication of the advertisement for bids.

(4) The purchase shall be made from, or the contract shall be awarded to, the lowest and best bidder; provided, that the city commission, for good cause shown, may reject any and all bids. (1973 Code, § 6 - 104, modified, as amended by Ord. #514, Jan. 2002, and replaced by Ord. #748, Feb. 2009)

**5-105. Budget amendments require specific appropriation increases or corresponding reduction in expenditures.** Prior to the approval of any amendment to the annual budget that would increase appropriations for the expenditure of city funds, the board of commissioners shall approve a resolution<sup>1</sup> that identifies a corresponding source of funds to cover the proposed additional expenditure, and/or identifies a corresponding reduction in expenditure to compensate for the proposed additional expenditure. (1973 Code, § 6-105)

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<sup>1</sup>A sample form of this resolution is attached to Ord. #296, which is of record in the office of the recorder.

## CHAPTER 2

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

#### SECTION

5-201. Levy.

5-202. When due and payable.

5-203. When delinquent--penalty and interest; payment.

**5-201. Levy.** All real property within the corporate limits of the City of Fairview (except such property as is or shall be exempt by the Laws of the State of Tennessee or of the United States) shall pay a tax in such amount as may be levied by ordinance, from time to time, as provided by the Charter to and for the use of the City of Fairview, on each \$100.00 of assessed valuation of such property, and a proportional amount of each fraction of valuation under \$100.00; all of said taxes to be collected by the proper officers of the City of Fairview for the purposes set forth in the charter. (1973 Code, § 6-401)

**5-202. When due and payable.<sup>2</sup>** Taxes levied by the city against real property shall become due and payable annually on and after October 1 for the year in which assessed. (1973 Code, § 6-402)

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<sup>1</sup>State law references

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

Tennessee Code Annotated, § 67-5-2010(b) provides that if the county trustee collects the municipality's property taxes, a penalty of 1/2 of 1% and interest of 1% shall be added on the first day of March, following the tax due date and on the first day each succeeding month.

<sup>2</sup>Charter references

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

**5-203. When delinquent--penalty and interest; payment.**<sup>1</sup> (1) When delinquent--penalty and interest. All unpaid real property taxes shall become delinquent on March 1 following the year in which same are assessed; and shall thereupon be subject to the same penalty and interest as is prescribed by law for delinquent county taxes.<sup>2</sup>

(2) When paid by mail. All unpaid real property taxes paid by mail shall be processed and shall become delinquent in accordance with Tennessee Code Annotated, § 67-1-107 as it exists on the date of passage of this amended section and as it may be amended from time to time by the legislature of the State of Tennessee.

(3) When due date falls on Saturday or Sunday. All unpaid real property taxes paid in person shall be processed and shall become delinquent in accordance with Tennessee Code Annotated, § 4-1-402 as it exists on the date of passage of this amended section and as it may be amended from time to time by the legislature of the State of Tennessee.

(4) This section shall be retro active to March 1, 2004, and the City Manager of Fairview, Tennessee, is authorized to refund all interest and penalties collected to any and all taxpayers of the City of Fairview, Tennessee whose payments of taxes would have been in compliance with this section as amended. (1973 Code, § 6-403, as amended by Ord. #5-72, May 2004)

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<sup>1</sup>Charter reference

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

<sup>2</sup>Charter reference

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

State law reference

A municipality has the option of collecting delinquent property taxes any one of three ways:

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

## CHAPTER 3

LOCAL SALES TAX<sup>1</sup>

## SECTION

5-301. Levied.

**5-301. Levied.** (1) As authorized by Tennessee Code Annotated, § 67-6-701, as amended, there is levied a tax in the same manner and on the same privileges subject to the Retailers' Sales Tax Act under Tennessee Code Annotated, title 67, chapter 6, as the same may be amended, which are exercised in the City of Fairview, Tennessee. The tax is levied on all such privileges at a rate of one-sixth (1/6) of the present four and one-half (4 1/2%) percent state rate in order to provide for a three-fourths (3/4%) percent tax rate except as that rate may be limited or reduced by statute.

(2) If a majority of those voting in the election required by Tennessee Code Annotated, § 67-6-706, vote for the ordinance, collection of the tax levied by this ordinance shall begin on the first day of the month occurring 30 or more days after the county election commission makes its official canvass of the election returns.<sup>2</sup>

(3) It having been determined by the Department of Revenue of the State of Tennessee that it is feasible for this tax to be collected by that department, said determination being evidenced by Local Option Sales and Use Tax Rules and Regulations heretofore promulgated by the Department of Revenue, the department shall collect such tax concurrently with the collection of the state tax in the same manner as the state tax is collected in accordance with rules and regulations promulgated by said department. The mayor is hereby authorized to contract with the department of revenue for the collection of tax by the department, and to provide in said contract that the department may deduct from the tax collected a reasonable amount or percentage to cover the expense of administration and collection of said tax.

(4) In the event the tax is collected by the department of revenue, suits for the recovery of any tax illegally assessed or collected shall be brought against the mayor.

(5) A certified copy of this ordinance shall be transmitted to the said department of revenue by the city recorder forthwith and shall be published one time in a newspaper of general circulation in the City of Fairview, Tennessee prior to the election called for in (2) hereof. (1973 Code, § 6-501)

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<sup>1</sup>Ordinances and information on the passage of local sales and use taxes are of record in the office of the city recorder.

<sup>2</sup>This ordinance was approved by the voters at an election held on August 20, 1981.

## CHAPTER 4

WHOLESALE BEER TAX

## SECTION

5-401. To be collected.

**5-401. To be collected.** The recorder is hereby directed to take appropriate action to assure payment to the city of the wholesale beer tax levied by the "Wholesale Beer Tax Act," as set out in Tennessee Code Annotated, title 57, chapter 6.<sup>1</sup> (1973 Code, § 6-301)

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<sup>1</sup>State law reference

Tennessee Code Annotated, title 57, chapter 6 provides for a tax of 17% on the sale of beer at wholesale. Every wholesaler is required to remit to each municipality the amount of the net tax on beer wholesale sales to retailers and other persons within the corporate limits of the municipality.

## CHAPTER 5

### BUSINESS TAX

#### SECTION

5-501. Tax levied.

5-502. Recording fee.

5-503. Business license.

**5-501. Tax levied.** The taxes provided for in Pub. Acts 1971, ch. 387, known as the "Business Tax Act," as amended are hereby enacted, ordained, and levied on the businesses, business activities, vocations, or occupations carried on in Fairview, Williamson County, Tennessee at the rates and in the manner prescribed by the said Act. (Ord. #385, Sept. 1995)

**5-502. Recording fee.** A recording fee of five dollars (\$5.00) shall be paid to the City of Fairview at the same time as the minimum tax is paid. (Ord. #385, Sept. 1995)

**5-503. Business license.** It shall be unlawful for any person, corporation, firm, joint-stock company, syndicate, business or association to operate a business within the City of Fairview without a business license. The burden of going forward shall be upon the taxpayer in every case to establish the fact that the taxpayer is not engaged in the business of selling tangible personal property or offering services for profit or monetary gain, as defined in Tennessee Code Annotated, § 64-4-701, etc.

(1) If any court compete jurisdiction shall find any portion of this section to be unconstitutional, that portion of the section shall be severed from the section and the remaining portion(s) shall be enforced.

(2) In addition to any other action the city may take against a violator of this chapter, such violation shall be punishable by a penalty of fifty dollars (\$50.00) for each offense. Each day a violation occurs shall constitute a separate offense. (as added by Ord. #688, Dec. 2007)

## CHAPTER 6

### ADEQUATE FACILITIES TAX

#### SECTION

- 5-601. Definitions.
- 5-602. Tax established.
- 5-603. Collection of tax.
- 5-604. Use of tax.
- 5-605. Exceptions.
- 5-606. Severability.

**5-601.** As used in this chapter, unless a different meaning appears from the context:

(1) "Building" means any structure built for the support, shelter, or enclosure of persons, chattles, or moveable property of any kind; the term includes a mobile home. This will not pertain to buildings used for agricultural purposes.

(2) "Building permit" means a permit for development issued in the municipality.

(3) "Capital improvement program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of the physical assets of the community are included.

(4) "Certificate of occupancy" means a license for occupancy of a building or structure issued in the municipality.

(5) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure of the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area of a residential or non-residential use.

(6) "Dwelling unit" means a room, or rooms, connected together constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly, or longer basis; physically separated from any other room(s) or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(7) "Floor area" means the total of the gross horizontal area of all floors, including usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings or the center lines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding in the case of nonresidential



facilities: arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas.

(8) "General plan" means the official statement of the planning commission which sets forth major policies concerning future development of the jurisdictional area and meeting the provisions set forth in Tennessee Code Annotated, §§ 13-3-301, 13-3-302, and 13-4-102. For purposes of this act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage.

(9) "Governing body" means the city commission of the City of Fairview, Tennessee.

(10) "Major street or road plan" means the plan adopted by the planning commission, pursuant to Tennessee Code Annotated, §§ 13-3-402 and 13-4-302, showing, among other things, "the general location, character, and extent of public ways (and) the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways...".

(11) "Non-residential" means the development of any property for any use other than the residential use, except as may be exempted by this act.

(12) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number.

(13) "Place of worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are intended to be leased, rented, or used by persons who do not have tax-exempt status.

(14) "Public buildings" means a building owned by the State of Tennessee or any agency thereof, a political subdivision of the State of Tennessee, including but not necessarily limited to counties, cities, school districts and special districts, or the federal government or any agency thereof.

(15) "Public facility or facilities" means a physical improvement undertaken by the county or city, including, but not limited to the following: road and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the municipality.

(16) "Residential" means the development of any property for a dwelling unit or units.

(17) "Municipality" means the City of Fairview, Tennessee. (Ord. #437, July 1998)

**5-602. Tax established.** Any person who engages in new development in the City of Fairview shall pay a privilege tax in accordance with the following schedule:

A flat fee of five hundred (\$500.00) dollars per building permit, plus the following fees per square foot of floor area:

| <u>Type</u>                  | <u>Fee per Square foot<br/>of Floor Area</u> |
|------------------------------|--|
| Residential:                 |  |
| Streets                      | 03.50 cents                                  |
| Parks/recreation             | 01.00 cents                                  |
| Fire                         | 01.00 cents                                  |
| Police                       | 01.50 cents                                  |
| Water                        | 04.50 cents                                  |
| Sewer                        | 07.25 cents                                  |
| Municipal land and buildings | 06.25 cents                                  |
| Total residential            | 25.00 cents                                  |
| Non-residential:             |  |
| Streets                      | 07.00 cents                                  |
| Parks/recreation             | 02.00 cents                                  |
| Fire                         | 02.00 cents                                  |
| Police                       | 03.00 cents                                  |
| Water                        | 09.00 cents                                  |
| Sewer                        | 14.50 cents                                  |
| Municipal land and buildings | 12.50 cents                                  |
| Total Non-residential        | 50.00 cents                                  |

(Ord. #437, July 1998)

**5-603. Collection of tax.** The tax established in this chapter shall be collected at the time of application for a building permit for development as herein defined or, if a building permit is not required, at the time of application for a certificate of occupancy. No building permit for development as herein defined, or certificate of occupancy if no building permit is required, shall be issued in the City of Fairview unless the tax has been paid in full to the city or a negotiable instrument approved by the city attorney and payable to the city has been received.

The city building official or other responsible official shall receive payment in full in cash or other negotiable instrument payable to the city as approved by the city attorney. (Ord. #437, July 1998)

**5-604. Use of tax.** All tax funds collected shall be used for the purpose of providing public facilities identified in the City of Fairview Capital Improvement Program, as may be amended from time to time. Until amended, tax funds collected shall be allocated for use in providing certain public facilities as follows:

Per square foot of floor area

|  | <u>Residential</u> | <u>Non-residential</u> |
|--|--------------------|------------------------|
| Municipal land and buildings<br>(Ord. #437, July 1998, as amended by Ord. #505, July 2001) | 25 cents           | 50 cents               |

**5-605. Exceptions.** This chapter shall not apply to development of:

- (1) Public buildings.
- (2) Places of worship.

(Ord. #437, July 1998)

**5-606. Severability.** If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable. (Ord. #437, July 1998)

## CHAPTER 7

### SALE OF CITY PROPERTY

#### SECTION

5-701. Generally.

5-702. Sealed bids.

5-703. Public auction.

**5-701. Generally.** (3) Competitive bidding required – exception. All property including real property, or interest therein owned by the city, may be sold only after competitive bidding to the highest bidder, except as provided in § 5-701(4).

(4) Notice of sale. Before a sale of any property including real property or interest therein is made by competitive bids, the board of commissioners shall provide for the publication of a notice of sale in the official newspaper of the city or at least one (1) newspaper of public circulation within the city for a period of four (4) consecutive weeks. Within two (2) working days of the notice of sale being advertised in the afore referenced newspaper, the city manager shall cause a sign advertising the sale to be placed upon the property for sale in a conspicuous place on the property.

(5) Authority of the board of commissioners to provide by resolution for conduct of sales. The board of commissioners may, from time to time, further provide by resolution for the conduct of sales but failure to comply with such provisions shall not affect the validity of any sale.

(6) Sales not subject to this chapter. (a) The following sales, conveyances and other dispositions of property, including real property, shall not be subject to the provisions of this chapter:

(i) An exchange of real properties or interest therein, which may include the receipt or payment of money as additional consideration incidental to such exchange when the board of commissioners determines by resolution that the exchange is in the best interest of the city.

(ii) A sale of real property or interest therein having a reasonable estimated market value (as estimated by the board of commissioners) of less than the cost to conduct a sale by sealed bids or auction as required by this chapter. Shall be disposed of as directed by the board of commissioners.

(iii) A quitclaim or other release of any real or apparent interest of the city made for the purpose of clearing title to real property owned by others.

(iv) A sale of any property, including real property, or interest therein to the state, the county or to any city, school district, flood control, a redevelopment agency, the housing

authority or any other special district within the county operated by or controlled by the state or county government.

(b) A determination by the board of commissioners by resolution or in an ordinance authorizing execution of a conveyance that a transaction is of the nature described in any of the subdivisions of subsection (a) of this section shall be conclusive for the purposes of this chapter.

(7) Permits and rentals. (a) The board of commissioners may lease on terms and conditions approved by the board of commissioners, any real property owned by the city, the use of which by the city has been temporarily deferred or suspended. All such leases or rental agreements shall be automatically terminated upon motion adopted by the board of commissioners that the use of the demised real property is immediately required by the city, and, provided further, that no such lease or rental agreement shall be for a term of longer than one (1) year.

(b) The board of commissioners may grant permits to use the streets or public property, revocable at any time without notice, when such use serves the public interest or is of such a casual, temporary or occasional nature as not to unduly interfere with the public use thereof. In granting such permits for the use of public streets or places dedicated to the public and serving a public need, due regard shall be given for the extent of interference, the timing of such use so as to minimize interference with public use, and shall require when indicated appropriate insurance coverage protecting the city against liability that might or could arise out of such permitted use. When in the estimation of the board of commissioners such use would require more than ordinary services of the city, a fee to defray city's expenses generated thereby may be charge as prerequisite to the granting of such permit.

(8) Payment of commission. If pursuant to this chapter a sale is consummated as the result of a bid which is subject to payment of a broker's or salesperson's commission by the city, the director of finance and administrative services shall cause the payment of such commission. (as added by Ord. #543, May 2003)

**5-702. Sealed bids.** (1) Sealed bids-terms and conditions generally. Whenever the sale of property, including real property, or an interest therein is required by this chapter or any other city ordinance to be subject to competitive bidding, the board of commissioners may determine that the competitive bidding shall be by sealed bids. The terms and conditions of a sale by sealed bids shall be as set forth in this article and in the notice of sale of such property or interest.

(2) Bidder's deposit required. A deposit of ten (10%) percent of the amount bid shall be required by the notice of sale to qualify the bidder. Such deposit shall be in cash or by cashier's or certified check payable to the city and

drawn or certified by a bank acceptable to the board of commissioners. Such deposit shall be enclosed in the sealed envelope containing the bid. The deposit made by the successful bidder will be applied upon the purchase price, except as provided by § 5-702(3), and deposits made by others will be refunded after acceptance of the successful bid.

(3) Forfeiture of deposit. Unless otherwise stated in the contract for sale, failure of the successful cash bidder to pay the balance of the purchase price, or failure by the successful bidder to pay the balance of the down payment, or failure by the successful bidder to close the transaction within ten (10) business days after notification that all documents are prepared and the city is prepared to close the sale, will result in forfeiture of the bidder's deposit; provide, however, that for good cause shown the board of commissioner may extend such time limitation for closing.

(4) Notation on envelope containing bid. The sealed envelope containing a bid shall bear the notation that it contains a bid and the sale number. Any bid submitted which does not have this notation will be returned to the bidder unopened.

(5) Terms of sale. (a) The sale shall be on the terms set forth in the notice of sale and as provided by this section. Except for the warranties contained in § 5-702(6), all property sold shall be sold as is where is with all faults, no warranty expressed or implied an specifically no warranty of merchantability and fitness for a specific purpose shall be given. All appropriate documents noting the sale of property shall contain this disclaimer.

(6) Title policy – deed, title or bill of sale. In the event of a cash sale for real property, upon receipt of full payment, the city will furnish at its expense a standard owner's policy of title insurance in the amount of the successful bid, showing title vested in the person designated by the successful bidder, subject to any general or special taxes unpaid, and to covenants, conditions, restrictions, reservations, rights, rights-of-way and easements, if any and subject to the normal qualifications and exceptions. The city will not be responsible for recording fees or legal fees incurred by the bidder.

In the event of a cash sale for all property other than real property, upon receipt of full payment, the city will furnish at its expense a certificate of title with all liens having been paid and released or a bill of sale stating that the property sold has no outstanding liens attached to or encumbering the property sold. The city will not be responsible for recording fees or legal fees incurred by the bidder.

(7) Sales upon request. Requests for the purchase of city-owned property or interest therein shall be directed to the city manager by anyone willing to make a bid. The city manager shall fix an estimated market value and submit the request, together with his or her recommendation as to whether or not a sale shall be conducted, to the board of commissioners for further action. Whenever such property or interest shall be offered for sale by the city upon request, the person so requesting shall make a deposit of the amount estimated

by the city manager of the cost of advertising before publication of the notice of sale. Such deposit shall be returned to the depositor if the property or interest is not offered for sale or is sold; otherwise, it shall be forfeited to the city.

(8) Sale void if city unable to convey title. If any property cannot legally be sold by the city, or if the city is unable to convey marketable title thereto within a reasonable time after the date of sale, the sale shall be void and deemed mutually canceled, and the purchase price or any part thereof deposited with the city shall be refunded and no liability will be assumed or incurred by the city.

(9) Submission of bid through licensed broker or salesperson. If a bid is submitted by a licensed real estate broker or a licensed real estate salesperson, or any agent and is to be subject to the payment of a commission, the bid shall so state and the commission is to be paid by the person being represented by the licensed broker, sales person or agent. In no instance will the city be responsible for the licensed broker, salesperson or agent's commission.

(10) Tie bids-highest net bid. In the event two or more equally high, valid bids are submitted, the board of commissioners shall determine the successful bidder by lot. In determining the highest bid or bids, the criterion shall be the highest net bid submitted, exclusive of any and all commissions.

(11) Rejection of bids. The board of commissioners expressly reserves the right to reject any and all bids or to withdraw any property, including real property, or interest therein from sale at any time.

(12) Statements in notice of sale not warranty. No statement in the notice of sale including but not limited to the location, size of parcel or zoning of any real property, model, year of manufacturer, etc. for other property offered for sale shall be considered a warranty. (as added by Ord. #543, May 2003)

**5-703. Public auction.** (1) By public auction when – terms and conditions generally. Whenever the sale of property, including real property, or an interest therein is required by this chapter or any other city ordinance to be subject to competitive bidding, the board of commissioners may determine that the competitive bidding shall be by public auction. The terms and conditions of a sale by public auction shall be as set forth in this chapter and in the notice of sale of such property or interest.

(2) Bidder's deposit required. A deposit of ten percent of the minimum price established by the board of commissioners shall be required by the notice of sale to qualify the bidder. Such deposit shall be in cash, a cashier's or certified check, or irrevocable letter of credit, payable to the city and drawn or certified by a bank acceptable to the board of commissioners, and shall be delivered to the auctioneer at the time of the sale or to the city manager prior to such time. The deposit made by the successful bidder will be applied upon the purchase price, except as provided in this chapter, and deposits made by all others will be refunded after acceptance of the successful bid.

(3) Forfeiture of deposit. Unless otherwise stated in the contract for sale, failure of the successful cash bidder to pay the balance of the purchase price, or failure by the successful bidder to pay the balance of the down payment, or failure of the successful bidder to close the transaction within ten (10) business days after notification that all documents are prepared and the city is prepared to close the sale, will result in forfeiture of the bidder's deposit; provide, however, that for good cause shown the board of commissioner may extend such time limitation for closing.

(4) Method of conducting. Any sale regulated by this chapter shall be held at such time and place as the board of commissioners may designate in the notice of sale and shall be conducted by a license auctioneer retained by the city for the purpose of conducting the sale. If any bid is submitted through an agent the principal shall be liable for any commission. Under no circumstances, will the city be liable for nor will the city pay agents commissions. The auction shall proceed in a professional manner under the terms herein designated. The property shall be sold to the highest bidder and the auctioneer shall declare the sale closed when the highest and best bid has been received.

(5) Terms of sale. All sales shall be for cash, cashier's check, or certified check payable at the time delivery of the sold item(s) is taken by the successful bidder. Except for the warranties contained in § 5-703 (6), all property sold shall be sold as is where is with all faults, no warranty expressed or implied and specifically no warranty of merchantability and fitness for a specific purpose shall be given. All appropriate documents noting the sale of property shall contain this disclaimer.

(6) Title policy – deed, title or bill of sale. In the event of a cash sale for real property, upon receipt of full payment, the city will furnish at its expense a standard owner's policy of title insurance in the amount of the successful bid, showing title vested in the person designated by the successful bidder, subject to any general or special taxes unpaid, and to covenants, conditions, restrictions, reservations, rights, rights-of-way and easements, if any and subject to the normal qualifications and exceptions. The city will not be responsible for recording fees or legal fees incurred by the bidder.

In the event of a cash sale for all property other than real property, upon receipt of full payment, the city will furnish at its expense a certificate of title with all liens having been paid and released or a bill of sale stating that the property sold has no outstanding liens attached to or encumbering the property sold. The city will not be responsible for recording fees or legal fees incurred by the bidder.

(7) Sales upon request. Requests for the purchase of city-owned property or interest therein shall be directed to the city manager by anyone willing to make a bid. The city manager shall fix an estimated market value and submit the request, together with his or her recommendation as to whether or not a sale shall be conducted, to the board of commissioners for further action. Whenever such property or interest shall be offered for sale by the city upon



request, the person so requesting shall make a deposit of the amount estimated by the city manager of the cost of advertising before publication of the notice of sale. Such deposit shall be returned to the depositor if the property or interest is not offered for sale or is sold; otherwise, it shall be forfeited to the city.

(8) Sale void if city unable to convey title. If any property cannot legally be sold by the city, or if the city is unable to convey marketable title thereto within a reasonable time after the date of sale, the sale shall be void and deemed mutually canceled, and the purchase price or any part thereof deposited with the city shall be refunded and no liability will be assumed or incurred by the city.

(9) Rejection of bids. The board of commissioners expressly reserves the right to reject any an all bids or to withdraw any property, including real property, or interest therein from sale at any time.

(10) Statements in notice of sale not warranty. No statement in the notice of sale including but not limited to the location, size of parcel or zoning of any real property offered for sale shall be considered a warranty. (as added by Ord. #543, May 2003)

## CHAPTER 8

### HOTEL/MOTEL TAX

#### SECTION

- 5-801. Definitions.
- 5-802. Privilege tax levied: use.
- 5-803. Payment of the tax.
- 5-804. Interest and penalty for late payment.
- 5-805. Compensation to the hotel.
- 5-806. Records required.

**5-801. Definitions.** As used in this chapter:

(1) "Consideration" means the consideration charged, whether or not received for the occupancy in a hotel valued in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever;

(2) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, 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 use or possession, of any room, lodgings or accommodations in any hotel;

(4) "Operator" means the person operating the hotel whether as owner, lessee or otherwise.

(5) "Persons" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit; and

(6) "Transient" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days. (as added by Ord. #553, Sept. 2003)

**5-802. Privilege tax levied: use.** (1) Pursuant to the provisions of Tennessee Code Annotated, §§ 67-4-1401 through 67-4-1425, § 67-4-1425, as amended by Public Acts of 2003, Chapter No. 370, Senate Bill No. 1665, substituted for House Bill No. 979, passed on May 29, 2003 and signed by the governor on June 17, 2003, there is hereby levied a privilege of occupancy tax in any hotel of each transient, from and after the operative date of this chapter. The rate of the levy shall be two percent (2%) of the consideration charged by the operator. This privilege tax shall be collected pursuant to and subject to the provisions of these statutory provisions. The city manager shall be designated

as the authorized collector to administer and enforce this chapter and these statutory provisions.

(2) The proceeds received from this tax shall be available for the city's general fund. Proceeds of this tax may not be used to provide a subsidy in any form to any hotel or motel. (as added by Ord. #553, Sept. 2003, and amended by Ord. #562, Dec. 2003)

**5-803. Payment of the tax.** The tax levied shall be remitted by all operators who lease, rent or charge for rooms or spaces in hotels within the City of Fairview, Tennessee, to the City Manager of the City of Fairview, Tennessee. The payment of such tax to be remitted not later than the twentieth day of each month for the preceding month. The operator is hereby required to collect the tax from the transient at the time of the presentation of the invoice for occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the City of Fairview, Tennessee, for the amount of tax for which credit was given shall be that of the operator. (as added by Ord. #553, Sept. 2003)

**5-804. Interest and penalty for late payment.** (1) Taxes collected by an operator which are not remitted to the authorized collector on or before the due dates shall be delinquent.

(2) The hotel operator shall be liable for interest on any delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition, for the penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. (as added by Ord. #553, Sept. 2003)

**5-805. Compensation to the hotel.** For the purpose of compensating the operator in accounting for and remitting the tax levied pursuant to this chapter, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the officer in the form of a deduction in submitting the operator's report and paying the amount due by such operator; provided, that the amount due was not delinquent at the time of payment. (as added by Ord. #553, Sept. 2003)

**5-806. Records requirement.** The hotel operator must keep records for three years, with the right of inspection by the city. (as added by Ord. #553, Sept. 2003)