TITLE 20

MISCELLANEOUS

CHAPTER

CHAPTER 1

FAIR HOUSING REGULATIONS

SECTION

20-101. Fair housing adopted. The city council of the City of Portland recognizes the right of all people to have full and equal housing opportunity in every neighborhood of their choice.

The city council of the City of Portland adopted a fair housing resolution on February 2, 1976, and this governing body feels that a fair housing ordinance should be adopted in order to strengthen the purpose of fair housing and to provide for the enforcement of equal housing for all.

The city council recognizes that where segregated housing now exists it shall cease or the perpetrator shall be in violation of this chapter.

This chapter shall, by its enactment, eliminate any discrimination in the sale of or in the renting of property within the City of Portland. (1980 Code, § 4-301)

20-102. Definitions. For the purpose of this section, the following words and terms shall have the meaning ascribed to them in this section;

(1) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction of location thereon of any such building.

(2) "Family" includes a single individual.

(3) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(4) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(5) "Hearing board" means that body of citizens duly appointed by the city council to hear, make determinations, and issue findings in all cases of discriminatory practices in housing results from conciliation failure.

(6) "Conciliation agreement" means a written agreement or statement setting forth the terms of the agreement mutually signed and subscribed to by both complainant(s) and respondent(s) and witnessed by a duly authorized enforcing agent.

(7) "Conciliation failure" means any failure to obtain a conciliation agreement between the parties to the discrimination charge or a breach thereof.

(8) "Discrimination" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, color, religion, national origin or sex, or the aiding, abetting, inciting, coercing, or compelling thereof.

(9) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporal and incorporal, or any interest in the above. (1980 Code, § 4-302)

20-103. General purposes. The general purposes of this ordinance are:

(1) To provide for execution within the City of Portland of the policies embodied in Title VIII of the Federal Civil Rights Act of 1968 as amended.

(2) To safeguard all individuals within the city from discrimination in housing opportunities because of race, color, religion, national origin, or sex; thereby to protect their interest in personal dignity and freedom from humiliation; to secure the city against domestic strife. (1980 Code, § 4-303)

20-104. Prohibited acts. Subject to the exceptions hereinafter set out it shall be unlawful for any person to do any of the following acts:

(1) To refuse to sell or rent after the making of a bona fide offer to do so or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, or national origin or sex.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, national origin or sex.

(3) To make, print, or publish or cause to make, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination.

(4) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion or national origin or sex. (1980 Code, § 4-304)

20-105. Exceptions. Nothing in the preceding subsection except paragraph (c) is intended to apply to:

(1) Any single family house sold or rented by an owner; provided that such private individual owner does not own more than three such single family houses at any one time; provided further, that in the case of the sale of any such single family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period; provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single family houses covered by this subsection shall be excepted from the application of subsection only if such house is sold or rented without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person. Nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title. For the purposes of this subsection, a person shall be deemed to be in the business of selling or renting dwellings if:

(a) He has, within the preceding twelve months participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(b) He has, within the preceding twelve months participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental of any dwellings or any interest therein, or

(c) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence. (1980 Code, § 4-305)

20-106. Applicability. Nothing in this section shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, sex, or national origin. Nor shall anything in this section prohibit a private club not in fact open to the public which as an incident to its primary purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members. (1980 Code, § 4-306)

20-107. Access. It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access membership or participation on account of race, color, religion, or national origin or sex. (1980 Code, § 4-307)

20-108. Findings of hearing board; nature of affirmative action.

(1) If the hearing board determines that the respondent has not engaged in an unlawful practice, the board shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint. A copy of the order shall be delivered to the complainant, the respondent, the city attorney, and such other public officers and persons as the board deems proper.

(2) If the hearing board determines that the respondent has engaged in an unlawful practice, it shall state its findings of fact and conclusions of law and shall negotiate such affirmative action as in its judgment will carry out the purposes of this chapter. A copy of the findings shall be delivered to the respondent, the complainant, the city attorney and such other public officials, officers and persons as the board deems proper.

(3) Affirmative action negotiated under this section may include, but not be limited to:

(a) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent;

(b) Reporting as to the manner of compliance;

(c) Posting notices in conspicuous places in the respondent's place of business in a form prescribed by the hearing board;

(d) Sale, exchange, lease, rental, assignment, or sublease of real property to an individual;

(e) Payment to the complainant of damages for injury caused by an unlawful practice including compensation for humiliation and embarrassment, and expenses incurred by the complainant in obtaining alternative housing accommodation and for other costs actually incurred by the complainant as a direct result of such unlawful practice.

(4) The provisions for conciliation and affirmative action shall not preclude or in any way impair the enforcement provisions of this chapter. (1980 Code, § 4-308)

20-109. Investigations, powers, records. (1) In connection with an investigation of a complaint filed under this ordinance, the enforcing agent shall have access to records and documents relevant to the complaint and may request the right to examine, photograph and copy evidence.

(2) Every person subject to this ordinance shall make, keep and preserve records relevant to the determination of whether unlawful practices have been or are being committed, such records being maintained and preserved in a manner and to the extent required under the Civil Rights Act of 1968 and any regulations promulgated thereunder.

(3) A person who believes that the application to it of a regulation or order issued under this section would result in undue hardship may apply to the hearing board for an exemption from the application of the regulational order. If the board finds what the application of the regulation or order to the person in question would impose an undue hardship, it may consider appropriate relief. (1980 Code, § 4-309)

20-110. Conspiracy to violate unlawful. It shall be an unlawful practice for a person, or for two or more persons to conspire:

(1) To retaliate or discriminate in any manner against a person because he or she has opposed a practice declared unlawful by this ordinance, or because he or she has made a charge, filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, or hearing under this ordinance; or

(2) To aid, abet, incite, compel or coerce a person to engage in any of the acts or practices declared unlawful by this ordinance; or

(3) To obstruct or prevent a person from complying with the provisions of this ordinance or any order issued thereunder; or

(4) To resist, prevent, impede, or interfere with the enforcing agent(s), hearing board, or any of its members or representatives in the lawful performance of duty under this chapter. (1980 Code, § 4-310)

20-111. Establishment of procedures for conciliation. (1) The city shall designate an agent(s) to investigate, make determinations of probable cause, and seek to conciliate apparent violations of this ordinance. Conciliation

efforts may be initiated by any person(s) said to be subject to discrimination as defined in this ordinance.

(2) The city council shall establish a hearing board which in turn shall adopt formal rules and procedures to hear complaints and make appropriate finding. Such procedures shall be made known to all parties of a given charge of discrimination. Hearings by the board shall commence whenever the agent(s) acting on behalf of the city decides a conciliation failure has occurred and the hearing board proceedings. Hearing open to the public may be initiated by the responding party at any time during the conciliation process. (1980 Code, § 4-311)

20-112. Enforcement and penalties. Any person violating this ordinance shall be guilty of a misdemeanor and subject to a fine of not more than five hundred dollars ($500.00) or imprisonment in accordance with the authority granted the city by Tennessee Code Annotated. (1980 Code, § 4-313)

CHAPTER 2

IMPACT FEES

SECTION

20-201. Short title and applicability. (1) Short title. This chapter may be known and cited as Portland's "Impact fee ordinance," and is referred to herein as "this chapter."

(2) Applicability. The provisions of this chapter shall apply to all of the territory within the corporate limits of the City of Portland. (1980 Code, § 1-1201, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May)

20-202. Intent. (1) The intent of this chapter is to ensure that impact-generating development bears a share of the cost of improvements to the city's parks and public safety facilities; to ensure that the share does not exceed the cost of providing such facilities; and to ensure that funds collected from impact-generating development are actually used to construct improvements that serve new development.

(2) It is not the intent of this chapter to collect any money from any impact-generating development in excess of the actual amount necessary to offset demands generated by that development for the type of facilities for which the fee was paid. (1980 Code, § 1-1202, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006)

20-203. Definitions. For the purpose of interpreting this chapter, certain words used herein are defined as follows:

(1) "Applicant" means the applicant for a building permit for which an impact fee is due pursuant to the provisions of this chapter.

(2) "Equivalent dwelling units (EDUs)" means a common unit of measure that represents the impact of a typical single-family dwelling on the

park system. A typical single-family unit represents, on average, one EDU. Other types of units each represent a fraction of an EDU, based on their relative average household sizes.

(3) "Functional population" means a common unit of measure that represents the impact of a development on the city's public safety facilities.

(4) "Impact fee administrator" means the City of Portland employee who shall be primarily responsible for administering the provisions of this chapter, or his or her designee.

(5) "Impact fee study" means the impact fee study prepared for the City of Portland by Duncan Associates in December 2005, or a subsequent similar report.

(6) "Impact-generating development" means any land development or water or wastewater connection designed or intended to permit an increase the number of service units.

(7) "Industrial" means any industrial including manufacturing and warehousing of goods for the purpose of distribution.

(8) "lnstitutional" means buildings of religious institutions including but not limited to churches and synagogues; schools, colleges, nursing homes, hospitals and other institutional uses.

(9) "Retail/commercial" means shopping centers and other nonresidential land uses not classified as office/institutional, industrial or warehouse.

(10) "Service units" means common units of measure of the demand placed on the infrastructure and facilities of the city, including parks EDUs and public safety functional population.

(11) "Square feet" means gross floor area, defined as the total area of all floors of a primary building and all associated accessory buildings, measured from the external surface of the outside walls, but excluding covered walkways, open roofed-over areas, porches and similar spaces, exterior terraces or steps, chimneys, roof overhangs, and similar features. Excluded areas include basements or attic spaces of less than seven (7) feet in height and vehicular parking and maneuvering areas. (1980 Code, § 1-1203 as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006)

20-204. <u>Fee determination</u>. (1) <u>Fee schedule</u>. Any person who applies for a building permit or a water or wastewater connection for an impact-generating development, except those exempted or preparing an independent fee calculation study, shall pay a park and public safety impact fee in accordance with the following fee schedule prior to the issuance of a building permit. If any credit is due pursuant to § 20-209, the amount of such credit shall be deducted from the amount of the fee to be paid.

		Public Safety	Parks
Single-family			
less than 1,500 sq. ft.	Dwelling	$391.00	$1,098.00
1,501 sq. ft. to 2,999 sq. ft	Dwelling	$437.00	$1,228.00
3,000 sq. ft. and above	Dwelling	$522.00	$1,416.00
Multi-family	Dwelling	$324.00	$907.00
Commercial		$0.00	$0.00
Hotel/motel		$0.00	$0.00
Office		$0.00	$0.00
Industrial	Per 1,000 sq. ft.	$144.00	$0.00
Institutional			
Churches/synagogue		$0.00	$0.00
Other	Per 1,000 sq. ft.	$558.00	$0.00

(2) Uses not listed. If the type of impact-generating development for which a building permit is requested is not specified on the above schedule, the impact fee administrator shall determine the fee on the basis of the fee applicable to the most nearly comparable type of land use on the fee schedule. If the impact fee administrator determines the impact fee administratively and the applicant does not agree with the determination, the applicant may prepare an independent fee calculation study.

(3) Fee assessed on primary use. In many instances, a particular structure may include auxiliary uses associated with the primary land use. The impact fees are assessed based on the primary land use.

(4) Net impact of redevelopment. If the type of impact-generating development for which a building permit is requested is for a change of land use type or for the expansion, redevelopment, or modification of an existing development, the fee shall be based on the net increase in the fee for the new land use type as compared to the previous land use type.

(5) No refund for channel of use. In the event that the proposed change of land use type, redevelopment, or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there shall be no refund of impact fees previously paid. (1980 Code, § 1-1204, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006)

20-205. Exemptions. The following shall be exempt from the terms of this chapter. An exemption must be claimed at the time of application for a building permit.

(1) Residential alternations. Alterations of an existing dwelling unit where no additional dwelling units are created.

(2) Residential replacement. Replacement of a destroyed, partially-destroyed or moved residential building or structure with a new building or structure of the same use, and with the same number of dwelling

units. In the case of a single-family detached dwelling unit, if the replacement structure is larger than the original structure, a fee shall be charged based on the increase in square footage.

(3) Nonresidential replacement. Replacement of destroyed, partially-destroyed or moved non residential building or structure with a new building or structure of the same gross floor area and use.

(4) Pre-ordinance permit application. Any development for which a completed application for a building permit was submitted prior to the effective date of this chapter, provided that the construction proceeds according to the provisions of the permit and the permit does not expire prior to the completion of the construction.

(5) No waivers; payment or fees by city. Impact fees shall not be waived. In order to promote the economic development of the city or the public health, safety, and general welfare of its residents, the city council may agree to pay some of the impact fees imposed on a proposed development or redevelopment from other funds of the city that are not restricted to other uses. Any such decision to pay impact fees on behalf of an applicant shall be at the discretion of the city council and shall be made pursuant to goals and objectives articulated by the city council. (1980 Code, § 1-1205, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006)

20-206. Independent fee calculation. The impact fee may be computed by the use of an independent fee calculation study at the election of the applicant, or upon the request of the impact fee administrator, for any proposed land development activity interpreted as not one of those types listed on the fee schedule or as one that is not comparable to any land use on the fee schedule, and for any proposed land development activity for which the impact fee administrator concludes the nature, timing or location of the proposed development makes it likely to generate impacts costing substantially more to mitigate than the amount of the fee that would be generated by the use of the fee schedule.

(1) Cost of study; fee. The preparation of the independent fee calculation study shall be the sole responsibility and cost of the applicant. Any person who requests to perform an independent fee calculation study shall pay an application fee for administrative costs associated with the review and decision on such study.

(2) Content of study. The independent fee calculation study shall be based on the same formulas, level of service standards and unit costs for facilities used in the impact fee study, and shall document the methodologies and assumptions used. The scope of the study shall be approved in advance by the impact fee administrator.

(3) Park impact fee formula. The park impact fees shall be calculated according to the following formula.

FEE	=	EDUs x NET COST/EDU
Where:		
EDUs	=	UNITS X EDUs/UNIT
UNITS	=	Number of dwelling units of each housing type in the development
EDUs/UNIT	=	Number of equivalent dwelling units represented by one dwelling unit of a given housing type
NET COST/EDU	=	NET COST + TOTAL EDUs
NET COST	=	Total replacement cost of existing park facilities less outstanding debt
TOTAL EDUs	=	Total existing housing units in the city, expressed in terms of equivalent dwelling units

(4) Public safety impact fee formula. The public safety impact fees shall be calculated according to the following formula.

FEE	=	FPOP x NET COST/FPOP
Where:		
FPOP	=	UNITS X FPOP/UNIT
UNITS	=	Number of dwelling units of each housing type in the development
FPOPIUNIT	=	Functional population represented by one dwelling unit of a given housing type or 1,000 square feet of nonresidential floor area of a given land use type
NET COST/FPOP	=	NET COST + TOTAL FPOP
NET COST	=	Total replacement cost of existing public safety facilities and equipment less outstanding debt
TOTAL FPOP	=	Total existing residential and nonresidential development in the city, expressed in terms of functional population (1980 Code, § 12-1206, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006)

20-207. Use of fees. (1) Segregation of funds. An impact fee fund that is distinct from the general fund of the city is hereby created, and the impact fees received will be deposited in the following interest-bearing accounts of the impact fee fund.

(a) Park impact fee account. The park impact fee account shall contain only those park impact fees collected pursuant to this chapter plus any interest which may accrue from time to time on such amounts.

(b) Public safety impact fee account. The public safety impact fee account shall contain only those public safety impact fees collected pursuant to this chapter plus any interest which may accrue from time to time on such amounts.

(2) FIFO accounting. Monies in each impact fee account shall be considered to be spent in the order collected, on a first-in/first-out basis.

(3) Eligible expenditures. The monies in each impact fee account shall be used only for the following:

(a) To acquire or construct system improvements of the type reflected in the title of the account;

(b) To pay debt service on any portion of any current or future general obligation bond or revenue bond used to finance facilities or capital equipment of the type reflected in the title of the account, provided that the facilities financed by that portion of the debt have not been included in the calculation of the existing level of service on which the impact fees were based in the most recent impact fee study;

(c) As described in § 20-208, refunds; or

(d) As described in § 20-209, credits.

(4) Ineligible expenditures. The monies in each impact fee account shall not be used for the following:

(a) Rehabilitation, reconstruction, replacement or maintenance of existing facilities and capital equipment except to the extent that the projects increase the capacity to serve new development; or

(b) Ongoing operational costs. (as added by Ord. #06-10, May 2006)

20-208. Refunds. (1) Any monies in the impact fee fund that have not been spent within seven (7) years after the date on which such fee was paid shall be returned to the current owners with earned interest since the date of payment.

(2) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property within thirty (30) days of the date the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

(3) The refund shall be made on a pro rata basis, and shall be paid in full within ninety (90) days of the date certain upon which the refund becomes due.

(4) If an applicant has paid an impact fee required by this chapter and the building permit later expires without the possibility of further extension,

and the development activity for which the impact fee was imposed did not occur and no impact has resulted, then the applicant who paid such fee shall be entitled to a refund of the fee paid, without interest. In order to be eligible to receive such refund, the applicant who paid such fee shall be required to submit an application for such refund within thirty (30) days alter the expiration of the permit or extension for which the fee was paid.

(5) At the time of payment of any impact fee under this chapter, the impact fee administrator shall provide the applicant paying such fee with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this chapter.

(6) The city shall be entitled to retain two percent (2%) of the amount of any refund to cover the administrative costs of processing refunds. (as added by Ord. #06-10, May 2006)

20-209. Credits. Credit against the park and public safety impact fees shall be provided for contributions toward the cost of park and public safety facilities, respectively.

(1) Effective upon acceptance. Approved credits shall generally become effective when the improvements have been completed and have been accepted by the city council under the provisions of a prior agreement.

(2) Land valuation. Credit for dedication of land for parks or public safety facilities shall be based on the value of the land to be dedicated. The value of any land required to be dedicated during the subdivision process shall be based upon the "fair market value" of the land at the time of filing the final plat. The value of any land required to be dedicated as part of a rezoning or other approval shall be based on the value of the land at the time of the application for the approval. The value shall be determined by a certified appraiser who is selected and paid for by the applicant, and who uses generally accepted appraisal techniques. If the city disagrees with the appraised value, the city may engage another appraiser at the city'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 borne by the party rejecting the average. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties. Approved credits for dedicated land shall become effective when the land has been conveyed to the city and has been accepted by the city.

(3) Construction costs. In order to receive credit for park or public safety improvements, the developer shall submit complete engineering drawings, specifications, and construction cost estimates to the impact fee administrator. The impact fee administrator shall determine the amount of credit due based on the information submitted, or where such information is

inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the impact fee administrator.

(4) Developer agreement. To qualify for an impact fee credit, the developer must enter into an agreement with the city as approved by the city council. The developer agreement shall specify the amount of the credit, how the credit will be allocated within the development, and whether and how the developer will be reimbursed for any excess credit beyond the impact fees that would otherwise be due from the development.

(5) Allocation of credits within a development. Unless otherwise specified in a developer agreement, in the event that the impact-generating development for which credits have been issued is sold to different owners, the credits usable by each new owner shall be calculated in terms of a percentage of the impact fees that would otherwise be due from the entire development. If the total amount of development is not known, the maximum potential development under existing development regulations shall be assumed. This percentage reduction will be applied to all impact fees assessed within the development until the total amount of the credits is exhausted or the development is completed, whichever occurs first.

(6) Credits run with the land. Unless otherwise specified in a developer agreement, the right to claim credits shall run with the land and may be claimed only by owners of property within the development for which the land was dedicated or the improvement was made. Credits issued for a particular development shall not be transferable to another development.

(7) Expiration of credits. Credits provided pursuant to this chapter shall be valid from the effective date of such credits until ten (10) years after such date or until the last date of construction within the development or project for which the credits were issued, whichever occurs first.

(8) Pre-ordinance credits. Applicants may also obtain credits for improvements completed prior to the effective date of this chapter, and may use such credits to reduce the impact fees due after the effective date of this chapter within the same impact-generating development for which the credits were issued. Application for such credits must be made, on forms provided by the city, within one (1) year after the effective date of this chapter. In the event that the impact-generating development for which the credits are claimed is partially completed, the amount of the credits shall be reduced by the amount of the impact fees that would have been charged for the completed portion of the development had this chapter been in effect. In the event that the entire impact-generating development project has been completed, no credits shall be issued.

(9) Must be claimed. The use of credits must be claimed at the time of application for a building permit. Any right to credit not so claimed shall be deemed to be waived. (as added by Ord. #06-10, May 2006)

20-201. Miscellaneous provisions. (1) Developer exactions. Nothing in this chapter shall restrict the city from requiring the construction of reasonable improvements required to serve the development project, whether or not such improvement are of a type for which credits are available under § 20-209, credits.

(2) Record-keeping. The impact fee administrator shall maintain accurate records of the impact fees paid, including the name of the person paying such fees, the project for which the fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and any other matters that the city deems appropriate or necessary to the accurate accounting of such fees. Records shall be available for review by the public during normal business hours and with reasonable advance notice.

(3) Programming of funds. The city's capital improvements program shall assign monies from each impact fee fund to specific projects and related expenses for eligible improvements of the type for which the fees in that fund were paid. Any monies, including any accrued interest, not assigned to specific projects within such capital improvements program and not expended pursuant to § 20-208, refunds, or § 20-209, credits, shall be retained in the same impact fee fund until the next fiscal year.

(4) Administrative charges. The city shall assess a surcharge of two percent (2%) of each impact fee collected to cover the expenses of collecting the fee and administering this chapter. The administrative charge may not be paid with impact fee credits.

(5) Correction of errors. If a impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the impact fee administrator to the applicant within thirty (30) days after the acceptance of the recalculated amount, with interest since the date of such overpayment. Any amounts underpaid by the applicant shall be paid to the impact fee administrator within thirty (30) days after the acceptance of the recalculated amount, with interest since the date of such underpayment. In the case of an underpayment to the impact fee administrator, the city shall not issue any additional permits or approvals for the project for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the city are not paid within such thirty (30) day period, the city may also rescind any permits issued in reliance on the previous payment of such impact fee.

(6) Periodic updates. The impact fee schedules and the administrative procedures established by this chapter shall be reviewed at least once every three (3) years. (as added by Ord. #06-10, May 2006)

20-211. Appeals. Any determination made by the impact fee administrator charged with the administration of any part of this chapter may be appealed to the city council within thirty (30) days from the date of the decision to be appealed. (as added by Ord. #06-10, May 2006

20-212. Violation. Furnishing false information on any matter relating to the administration of this chapter, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this chapter. (as added by Ord. #06-10, May 2006)

CHAPTER 3

AIRPORT AUTHORITY

SECTION

20-301. Creation. Pursuant to the provisions of the Airport Authorities Act, Tennessee Code Annotated, title 42, chapter 3 an authority to be known as the City of Portland Airport Authority [is hereby created] for the purpose of developing, building and operating an airport in or near the City of Portland, Tennessee, to be known as the Portland Airport. (1980 Code, § 1-1301, as amended by Ord. #527, Nov. 1996)

20-302. Previous ordinance incorporated. To the extent not inconsistent herewith, the provisions of Ordinance No. 122, as adopted on May 15, 1968, are incorporated here and by reference and made a part hereof. (Ord. #527, Nov. 1996)

20-303. Commissioners. The number of airport authority commissioners is hereby increased from seven (7) to nine (9). The new commissioners shall be appointed by the mayor and approved by the city council and their term of office shall be for a period of five (5) years or for a lesser period of time to allow for staggered terms by the board of commissioners of the Portland Airport Authority. (as replaced by Ord. #597, March 1999, and amended by Ord. #05-13, July 2005, and Ord. #13-25, Aug. 2013)

20-304. Location of office. The location of the principal office of the Portland Airport Authority shall be the same as that of the City of Portland, that being 100 South Russell Street, Portland, Tennessee 37148. The Portland Airport Authority shall have authority to meet at such other places as the authorities shall deem appropriate from time to time. (Ord. #527, Nov. 1996)

20-305. Powers and authorities. The Portland Airport Authority shall have such powers and authority as set forth in Tennessee Code Annotated, § 42-3-101 et seq. (Ord. #527, Nov. 1996)

20-306. Previous actions and transactions ratified and approved. The actions and transactions heretofore performed and approved by the Portland Airport Authority as presently constituted are hereby ratified and approved and shall be the responsibility and obligations of the new Airport Authority as hereby recreated. (Ord. #527, Nov. 1996)

20-307. Applications. All necessary applications shall be filed with the Secretary of State of Tennessee and with the Tennessee Department of Transportation, if required. (Ord. #527, Nov. 1996)

CHAPTER 4

CIVIL DEFENSE REGULATIONS

SECTION

20-401. Local agency established, etc. Be it ordained that we do hereby establish a local agency for civil defense in accordance with the authority contained in Tennessee Code Annotated, title 58, chapter 2, §§ 58-2-101 through 58-2-129, to provide for the appointment of a director of civil defense, to define the words "enemy-caused" and "natural emergencies," and to provide the means whereby such emergencies would be declared to exist, to define the duties of the mayor, to provide for penalties for violations. (1980 Code, § 1-1401)

20-402. Title of chapter. This chapter shall be known as the Civil Defense Ordinance for the City of Portland, Tennessee. (1980 Code, § 1-1402)

20-403. Definitions. (1) "Civil defense" shall mean the preparation for the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile actions.

(2) "Natural disaster" shall mean any condition seriously affecting or threatening the public health, the welfare or property of the citizens or similar natural or accidental causes which are beyond the control of public or private agencies ordinarily responsible for the control or relief of such conditions. Riots, strikes, insurrections, or other civil disaster shall not be included in the meaning of "natural disaster," but includes rescue, engineering services, air raid warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare

service, emergency transportation, plant protection, and all other activities necessary or incidental to the preparation for the carrying out of the foregoing emergency functions.

(3) "Emergencies" shall mean a condition resulting from an enemy attack or natural disaster which cannot be handled by normal operating personnel and facilities.

(4) "Civil defense volunteer" shall mean any person who serves without compensation in the civil defense organization.

(5) "Enemy caused emergencies" shall mean any state of emergency caused by actual or impending attack, sabotage or other hostile actions involving the imminent peril to life and property in the city. Such emergency shall be deemed to exist only when the mayor shall so declare by public proclamation. Such emergencies shall be deemed to continue to exist until the aforesaid mayor shall declare it terminated by resolution.

(6) "Natural emergency" shall mean any state of emergency caused by an actual or impending flood, drought, fire, hurricane, earthquake, storm or other catastrophe within the city, and involving immediate peril to life and property within the city. Such emergency shall be deemed to exist only when the mayor shall so declare and shall be terminated by resolution of aforesaid mayor. (1980 Code, § 1-1403)

20-404. Authority. (1) The mayor shall have the authority to exercise emergency powers provided in existing state and federal codes.

(2) To provide for the rendering of mutual aid to the surrounding community.

(3) The mayor is hereby authorized to create a city civil defense department and to appoint a director of civil defense. (1980 Code, § 1-1404)

20-405. Duties and responsibilities of director. The director of civil defense shall have general direction and control of the office of civil defense and shall be subject to the direction and control of the mayor and shall have the following functions and duties:

(1) To prepare a civil defense operating plan for the city conforming to the state and federal civil defense agencies' plan and program to be integrated and coordinated so as to control and cooperate with civil defense organizations of the County of Sumner for the accomplishments of the purposes of this chapter.

(2) To direct, coordinate and cooperate between departments, services and staff of the civil defense organization of the city.

(3) To represent the civil defense organization in all activities, which include public and private agencies operating in the field of civil defense and disaster. (1980 Code, § 1-1405)

20-406. Powers of director. Prior to an emergency as defined in this chapter and subject to the direction and control of the mayor, the director of civil defense shall have the following powers:

(1) To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him herein, with due consideration to be given to the plans and powers of the federal government, the government of Tennessee, and other public and private agencies and organizations empowered to act in either enemy-caused emergencies or natural emergencies or both.

(2) To prepare comprehensive plans for the civil defense of the city in both enemy-caused and natural emergencies, such plans and programs to be integrated and coordinated with the plans and programs of the federal government, of the government of Tennessee, and of other public and private agencies and organizations empowered to act in either enemy-caused or natural emergencies or both.

(3) To establish, within the limits of funds available, a public warning system composed of sirens, horns, or other acceptable warning devices.

(4) To establish and carry out recruitment and training programs as may be necessary to develop an adequate, qualified civil defense volunteer corps.

(5) To conduct drills, exercises, and similar programs as may be necessary to develop a well trained, alert, fully prepared civil defense organization.

(6) To make such studies and surveys of the industries, resources and facilities of the City of Portland as he deems necessary to ascertain its capabilities for civil defense and plan for the most efficient emergency use therefor.

(7) On behalf of the City of Portland to enter into mutual-aid arrangements with surrounding communities subject to the approval of the governing bodies affected.

(8) To delegate any administrative authority vested in him under the chapter, and to provide for the sub-delegations of any such authority.

(9) To take any other action proper and lawful under his authority to prepare for either an enemy-caused or a natural emergency. (1980 Code, § 1-1406)

20-407. Enemy-caused emergencies. In the event of any actual enemy-caused emergency proclaimed, as provided in this chapter, the director of civil defense, with the approval of the mayor, may take control of all means of transportation and communications, all stocks of fuel, food, clothing, medicines and supplies, and all facilities, including buildings and plants, and exercise all power necessary to secure the safety and protection of the civilian population. In exercising such powers, he shall be guided by regulations and orders issued by the federal government and Governor of Tennessee relating to civil defense and shall take no action contrary to orders which may be issued by

the governor under the powers conferred upon him by Tennessee Code Annotated, § 58-2-101 et seq. (1980 Code, § 1-1407)

20-408. Natural emergencies. In the event of any natural emergency proclaimed, as provided in this chapter, the director of civil defense, with the approval of the mayor and acting under his instructions, shall coordinate in every way the activities of the civil defense organization. He is specifically charged in such emergency with the collection, evacuation and dissemination of information to all agencies participating in the city's civil defense organization or cooperating in such emergency. As director, he shall have the power to recommend appropriate action, but he shall not otherwise exercise control over the participating agency. He shall also recommend to the mayor the allocation of any source to alleviate the distress and to aid in restoring normal conditions. (1980 Code, § 1-1408)

20-409. Emergency powers of city. In carrying out the provisions of this chapter, the city, upon the happening of any disaster as described herein, shall have the power to enter into contract and incur obligations necessary to combat such disaster, protecting the health and safety of person and property and providing emergency assistance to the victims of such disaster. The city is authorized to exercise the powers vested under this section and elsewhere in this chapter in the light of exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by chapter or statute (except mandatory constitutional requirements) pertaining to the performance of public work entering into contract, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, and levying of taxes and the appropriations and expenditures of public funds. (1980 Code, § 1-1409)

20-410. Liabilities. As provided in Tennessee Code Annotated, § 58-2-129, and in accordance herewith, agents or representatives of the city shall not be liable for personal injury or property damage sustained by any person appointed or acting as a civil defense worker. The right of any person to receive benefits of compensation to which he might otherwise be entitled to under workmen's compensation law or any pension law or any act of congress, shall not be affected by this section. (1980 Code, § 1-1410)

20-411. Acceptance of services, equipment, etc., from federal or state governments, etc. Whenever the federal government or the State of Tennessee on any person, firm or corporation shall offer to the city any services, equipment, supplies, materials, or any funds by way of gift, grant or loan for purposes of civil defense, the mayor may accept such offer and may authorize the receipt of same subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. (1980 Code, § 1-1411)

20-412. Absence, incapacity, etc. of mayor. In the event of the absence, incapacity or inability to act on the part of the mayor under the provisions of this civil defense chapter, the actions or declarations authorized or required on the part of the mayor may be taken or declared by the mayor pro-tem. (1980 Code, § 1-1412)

20-413. Interference with civil defense organization, etc. It shall be unlawful for any person willfully to obstruct, hinder, or delay the civil defense organization in the enforcement of any rule or regulation issued pursuant to this chapter, or to do any act forbidden by any rule or regulation issued pursuant to the authority contained in this chapter. It shall likewise be unlawful for any person to wear, carry or display any emblem, insignia or any other means of identification as a member of the Civil Defense Organization of the City of Portland, Tennessee, unless authorization has been granted to such person by the proper officials. Upon conviction for violation of the provisions of this chapter, violation shall be punishable by a fine of not more than $50.00. (1980 Code, § 1-1413)

CHAPTER 5

CREATION OF THE DEPARTMENT OF PUBLIC SAFETY[1]

SECTION

20-501. Department of public safety. There is hereby created a department of the City of Portland, Tennessee, known as the Department of Public Safety. (1980 Code, § 1-1501)

20-502. Functions of the department. It shall be the responsibility of this department to provide for the overall direction of the division of police protection (formerly police department) and the division of fire protection (formerly fire department), the supporting records and communication services and departmental training activities. It shall determine plans and policies to assure the protection of lives and property in the City of Portland. It shall further coordinate related activities with other governmental units, such as law enforcement agencies and fire protection agencies. (1980 Code, § 1-1502)

20-503. Establishment of the police division and the fire protection division. There is hereby established within the department of safety two (2) divisions to be known as the police division and the fire protection division each headed respectively by the police chief and the fire chief employed by the city. The persons selected to these positions must meet the qualifications established from time to time by the city council and each position has complete internal control over their assigned division. These persons shall report directly to the mayor of the city and shall prepare annual departmental budget requests and such reports as may be required to anticipate departmental personnel and equipment needs. The police chief and the fire chief shall attend city council meetings and other meetings determined by the mayor. The persons occupying these positions shall keep abreast of professional development in their respective fields of endeavor. (1980 Code, § 1-1503, as replaced by Ord. #11-23, June 2011)

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[1]Municipal code references
Fire department: title 7, chapter 3.
Police and arrest: title 6.

20-504. [<u>Deleted</u>.] (1980 Code, § 1-1504, as deleted by Ord. #11-23, June 2011)

CHAPTER 6

DELETED

(Ord. #524, Oct. 1996, as deleted by Ord. #03-18, Oct. 2003)

CHAPTER 7

DELETED

(as added by Ord. #99-4, Nov. 1999, and deleted by Ord. #04-19, July 2004)

CHAPTER 8

REGULATIONS FOR TELECOMMUNICATIONS TOWERS AND FACILITIES

SECTION

20-801. Findings. The Communication Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act") grants the Federal Communications Commission (FCC) exclusive jurisdiction over:

(1) The regulation of the environmental effects of radio frequency (RF) emissions from telecommunications facilities, and

(2) The regulation of radio signal interference among users of the RF spectrum.

The city's regulation of towers and telecommunications facilities in the city will not have the effect of prohibiting any person from providing wireless telecommunications services in violation of the Act. (as added by Ord. #02-31, Oct. 2002)

20-802. Purposes. The general purpose of this chapter is to regulate the placement, construction, and modification of towers and telecommunications facilities in order to protect the health, safety, and welfare of the public, while at the same time not reasonably interfering with the development of the competitive wireless telecommunications marketplace in the city.

Specifically, the purposes of this chapter are:

(1) To regulate the location of towers and telecommunications facilities in the city;

(2) To protect residential areas and land uses from potential adverse impact of towers and telecommunications facilities;

(3) To minimize adverse visual impact of towers and telecommunication facilities through careful design, sitting, landscaping, and innovative camouflaging techniques;

(4) To promote and encourage shared use/collocation of towers and antenna support structures as a primary option rather than construction of additional single-use towers;

(5) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new tower structures to support antenna and telecommunications facilities;

(6) To avoid potential damage to property caused by towers and telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and

(7) To ensure that towers and telecommunications facilities are compatible with surrounding land uses. (as added by Ord. #02-31, Oct. 2002)

20-803. Definitions. The following words, terms, and phrases, when used in this section, shall have the meaning indicated:

(1) "Antenna support structure" means any building or structure other than a tower that can be used for location of telecommunications facilities.

(2) "Applicant" means any person that applies for a tower development permit.

(3) "Application" means the process by which the owner of a parcel of land within the city submits a request to develop, construct, build, modify, or erect a tower upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the city concerning such a request.

(4) "Engineer" means any engineer licensed by the State of Tennessee.

(5) "Owner" means any person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the city who desires to develop, or construct, build, modify, or erect a tower upon such parcel of land.

(6) "Person" is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

(7) "Stealth" means any tower or telecommunications facility which is designed to enhance compatibility with adjacent land uses, including but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than like a tower such as light poles, power poles, and trees. The term stealth does not

necessarily exclude the use of uncamouflaged lattice, guyed, or monopole tower designs.

(8) "Telecommunications facilities" means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities association with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

(a) Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or

(b) Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

(9) "Tower" means a self-supporting lattice, guyed, or monopole structure constructed from grade that supports telecommunications facilities. The term tower shall not include amateur radio operators' equipment, as licensed by the FCC. (as added by Ord. #02-31, Oct. 2002)

20-804. <u>Special provisions for amateur radio stations</u>. Amateur radio stations (Hams) licensed under FCC regulations shall be exempt from the general requirements of this chapter. However, amateur radio stations shall adhere to the following regulations:

(1) No tower shall be placed within any required front, side, or rear setback area.

(2) Towers shall be placed behind the rear building line of the principal structure on the lot.

(3) All towers shall be properly grounded as per National Electric Code 810, Section C.

(4) Amateur towers greater than one hundred (100) feet in height are subject to the following additional provisions: At no time shall the fall radius of the tower include any habitable structure not owned by the amateur. The applicant shall provide documentation of ownership, lease, or permanent easement rights for the entire fall radius of the tower. The tower shall be equipped with guards or other devices to prevent it from being climbed without authorization of the amateur. The applicant shall submit documentation to the codes department sufficient to show that all provisions of this section have been met.

(5) Amateur towers located at a site other than the primary residence of a licensed ham operator shall meet the requirements for setbacks, fencing, screening, and parking/access as detailed in this chapter. However, amateur towers without ground mounted equipment or buildings need only meet the requirements for access/parking and be designed so that they are not accessible to unauthorized climbing.

(6) Temporary towers may be erected for a maximum of forty-eight (48) hours for special events or emergencies upon approval by the codes department. (as added by Ord. #02-31, Oct. 2002)

20-805. Development of towers. (1) No person shall build, erect, or construct a tower upon any parcel of land within any zoning district set forth above unless a site plan is approved and a development permit shall have been issued by the city.

(2) A tower shall be a permitted use of land in the following zoning districts:

Commercial Districts
Central Business District
General Commercial Services
Interchange Service District

Industrial Districts
All Industrial Districts

(3) A tower shall be conditional use of land in the following zoning districts:

Commercial Districts
Medical-professional Office
Neighborhood Service Districts
Office Professional Service

(4) Towers are exempt from the maximum height restrictions of the zoning districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with § 20-818 "Criteria for site plan development modifications."

(5) No new tower shall be built, constructed, or erected in the city unless the tower is capable of supporting another person's operating telecommunications facilities comparable in weight, size, and surface area to the telecommunications facilities installed by the applicant on the tower within six (6) months of the completion of the tower construction. (as added by Ord. #02-31, Oct. 2002)

20-806. Application. An application to develop a telecommunications tower containing the information indicated within this section shall be required of all such proposed facilities. The city may require an applicant to supplement any information that it considers inadequate or that the applicant has failed to supply. The city may deny an application on the basis that the applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the city in a prompt manner and all decisions shall be supported in writing, setting forth the reasons for approval or denial.

As a minimum, an application to develop a tower shall include:

(1) The name, address, and telephone number of the owner and lessee of the parcel of land upon which the tower is situated.

(2) The legal description, map parcel number, and address of the parcel of land upon which tower is situated.

(3) The names, addresses, and telephone numbers of all owners of other towers or usable antenna support structures within a one-half (½) mile radius of the proposed new tower site, including city-owned property.

(4) A description of the design plan proposed by the applicant in the city. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The applicant must demonstrate the need for towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the applicant's telecommunications services.

(5) An affidavit attesting to the fact that applicant made diligent, but unsuccessful, efforts to install or collocate the applicant's telecommunications facilities on city-owned facilities (including water tanks), on city-owned towers or usable antenna support structures located within a one-half (½) mile radius of the proposed tower site.

(6) An affidavit attesting to the fact that the applicant made diligent, buy unsuccessful, efforts to install or collocate the applicant's telecommunications facilities on towers of usable antenna support structures owned by the other persons located within one-half (½) mile radius of the proposed tower site.

(7) Written technical evidence from an engineer(s) that the proposed tower or telecommunications facilities cannot be installed or collocated on another person's tower or usable antenna support structures owned by other persons located within one-half (½) mile radius of the proposed tower site.

(8) A written statement from an engineer(s) that the construction and placement of the tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.

(9) Written, technical evidence from an engineer(s) that the proposed structure meets the standards set forth in § 20-808, "Structural requirements," of this chapter.

(10) Written, technical evidence from qualified engineer(s) acceptable to the fire marshal and the building official that the proposed site of the tower or telecommunications facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.

(11) In order to assist city staff and the planning commission in evaluating visual impact, the applicant shall submit color photo simulations

showing the proposed site of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the closest residential property and from adjacent roadways.

(12) The Act gives the FCC sole jurisdiction of the field of regulation of RF emissions and does not allow the city to condition or deny on the basis of RF impacts the approval of any telecommunication facilities which meet FCC standards. In order to provide information to its citizens, the city shall make available upon request copies of ongoing FCC information and RF emission standards for telecommunications facilities transmitting from towers or antenna support structures. Applicants shall be required to submit information on the proposed power destiny of their proposed telecommunications facilities and demonstrate how this meets FCC standards. (as added by Ord. #02-31, Oct. 2002)

20-807. Setbacks. (1) All towers up to one-hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of one hundred (100) feet in height shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.

(2) Setback requirements for towers shall be measured from the base of the tower to the property line of the parcel of land on which it is located.

(3) Setback requirements may be modified, as provided in § 20-818(2)(a), when placement of a tower in location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually may hide the tower. (as added by Ord. #02-31, Oct. 2002)

20-808. Structural requirements. All towers must be designed and certified by an engineer to be structurally sound and as a minimum in conformance with the adopted building code and any other standards outlined in this chapter. All towers in operation shall be fixed to land. (as added by Ord. #02-31, Oct. 2002)

20-809. Separation of towers. For the purpose of this section, the separation distances between towers shall be measured by following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed tower. Tower separation distances from residentially zoned lands shall be measured from the base of a tower to the closest point of residentially zoned property. The minimum tower separation distances from residentially zoned land and from other towers shall be calculated and applied irrespective of city jurisdiction boundaries.

(1) Towers shall be separated from all residentially zoned lands by a minimum of two hundred (200) feet or two hundred (200) percent of the height of the proposed tower, whichever is greater.

(2) Proposed towers must meet the following minimum separation requirements from existing towers or towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this chapter:

(a) Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.

(b) Self-supporting lattice or guyed tower structures shall be separated from all other self-supporting or guyed towers by a minimum of fifteen hundred (1,500) feet.

(c) Self-supporting lattice or guyed tower structures shall be separated from all monopole towers by a minimum of seven hundred and fifty (750) feet. (as added by Ord. #02-31, Oct. 2002)

20-810. Method of determining tower height. Measurement of tower height for the purpose of determining compliance with all requirements of this section shall include the tower structure itself, the base pad, and any other telecommunications facilities attached thereto which extend more than twenty (20) feet over the top of the tower structure itself. Tower height shall be measured from grade. (as added by Ord. #02-31, Oct. 2002)

20-811. Illumination. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the tower from the tower and when required by federal law, dual mode lighting shall be requested from the FAA. (as added by Ord. #02-31, Oct. 2002)

20-812. Exterior finish. Towers not requiring FAA painting or marking shall have an exterior finish that enhances compatibility with the natural environment. (as added by Ord. #02-31, Oct. 2002)

20-813. Landscaping and screening. All landscaping on a parcel of land containing towers, antenna support structures, or telecommunications facilities shall be in accordance with the applicable landscaping requirements in the zoning district where such facilities are located. In order to enhance compatibility with adjacent land uses, the city may require landscaping in excess of the requirements in the zoning ordinance. (as added by Ord. #02-31, Oct. 2002)

20-814. Telecommunications facilities on antenna support structures. Any telecommunications facilities which are not attached to a tower may be permitted on any antenna support structure at least fifty (50) feet tall, regardless of the zoning restrictions applicable to the zoning district where

the structure is located. Telecommunications facilities are prohibited on all other structures. The owner of such structure shall, by written certification to the zoning administrator, establish the following at the time plans are submitted for a building permit:

(1) That the height from grade of the telecommunications facilities shall not exceed the height from grade of the antenna support structure by more than twenty (20) feet.

(2) That any telecommunications facilities and their appurtenances, located above the primary roof of an antenna support structure, are set back one (1) foot form the edge of the primary roof for each one (1) foot in height above the primary roof of the telecommunications facilities. This setback requirement shall not apply to telecommunication facilities and their appurtenances, located above the primary roof of an antenna support structure, if such facilities are appropriately screened from view through the use of panels, walls, fences, or other screening techniques approved by the city. Setback requirements shall not apply to stealth antennas which are mounted to the exterior of antenna support structures below the primary roof, but which do not protrude more than eighteen (18) inches from the side of such an antenna support structure. (as added by Ord. #02-31, Oct. 2002)

20-815. Modification of towers. A tower existing prior to the effective date of this chapter, which was in compliance with the city's zoning regulations immediately prior to the effective date of this chapter, may continue in existence as a non-conforming structure. Such nonconforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this section, except for §§ 20-809, "Separation of towers"; 20-813 "Landscaping and screening"; 20-816 "Certification and inspections"; and 20-817 "Maintenance," provided:

(1) The tower is being modified or demolished and rebuilt for the sole purpose of accommodating additional telecommunications facilities comparable in weight, size, and surface area to the discrete operating telecommunications facilities of any person currently installed on the tower.

(2) An application for a development permit is made pursuant to this section allowing the modification or demolition and rebuild of an existing non-conforming tower. The grant of a permit made pursuant to this section shall not be considered a determination that the modified or demolished and rebuilt tower is conforming.

(3) The height of the modified or rebuilt tower and telecommunications facilities attached, thereto, do not exceed the maximum height allowed under this chapter.

This provision shall not be interpreted to legalize any structure or use existing at the time this chapter is adopted which structure or use is in violation of the code prior to enactment of this chapter. (as added by Ord. #02-31, Oct. 2002)

20-816. Certifications and inspections. (1) All towers shall be certified by an engineer to be structurally sound and in conformance with the requirements of the standards set forth by the city's building code and federal and state law. For new monopole towers, such certification shall be submitted with an application pursuant to § 20-804 of this chapter, and every five (5) years, thereafter. For existing monopole towers, certifications shall be submitted within sixty (60) days of the effective date of this chapter and then every five (5) years, thereafter. For new lattice or guyed towers, such certification shall be submitted with an application pursuant to § 20-804 of this chapter, and every two (2) years, thereafter. For existing lattice or guyed towers, certification shall be submitted within sixty (60) days of the effective date of this chapter and then every two (2) years thereafter. The tower owner may be required by the city to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the tower is jeopardized.

(2) The city or its agents shall have authority to enter onto the property upon which a tower is located, between the inspection and certification required above, to inspect the tower for the purpose of determining whether it complies with the building code and all other construction standards provided by the city code and federal and state law.

(3) The city reserves the right to conduct such inspections at any time, upon reasonable notice to the tower owner. All expenses related to such inspections by the city shall be borne by the tower owner. (as added by Ord. #02-31, Oct. 2002)

20-817. Maintenance. (1) Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures an accidents which are likely to cause damage, injuries, or nuisances to the public.

(2) Tower owners shall install and maintain towers, telecommunications facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

(3) All towers, telecommunications facilities, and antenna support structures shall at all times be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of any person.

(4) All maintenance or construction of towers, telecommunications facilities, or antenna support structures shall be performed by licensed maintenance and construction personnel.

(5) All towers shall maintain compliance with current RF emission standards of the FCC.

(6) In the event that the use of a tower is discontinued by the tower owner, the tower owner shall provide written notice to the city of its intent to discontinue use and the date when the use shall be discontinued. (as added by Ord. #02-31, Oct. 2002)

20-818. Criteria for site plan development modifications.

(1) Notwithstanding the tower requirements provided in this chapter, a modification to the requirements may be approved by the zoning board of appeals as a variance in accordance with the following:

(a) In addition to the requirements for a tower application for modification shall include the following:

(i) A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.

(ii) A description of off-site or on-site factors that mitigate any adverse impacts which might occur as a result of the modification.

(iii) A technical study that documents and supports the criteria submitted by the applicant upon which the request for modification is based. The technical study shall be certified by an engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.

(iv) For a modification of the setback requirement, the application shall identify all parcels of land where the proposed tower could be located, attempts by the applicant to contract and negotiate an agreement for collocation, and the result of such attempts.

(v) The board may require the application to be reviewed by an independent engineer under contract to the city to determination whether the antenna study supports the basis for the modification requested. The applicant shall reimburse the city for the cost of the review.

(b) The board of appeals shall consider the application for modification based on the following criteria:

(i) That the tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.

(ii) Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.

(iii) In addition, the board may include conditions on the site where the tower is to be located if such conditions are necessary to preserve the character an integrity of the neighborhoods affected by the proposed tower and mitigate any

adverse impacts which arise in connection with the approval of the modification.

(2) In addition to the requirements of subparagraph (1) of this section, in the following cases, the applicant must also demonstrate, with written evidence, the following:

(a) In the case of a requested modification to the setback requirement established in § 20-807 "Setbacks," that the setback requirement cannot be met on the parcel of land upon which the tower is proposed to be located and the alternative for the person is to locate the tower at another site which is closer in proximity to a residentially zoned land.

(b) In the case of a request for modification to the separation and buffer requirements from other towers of § 20-809, "Separation," or § 20-813 "Landscaping and buffer requirements," that the proposed site is zoned "industrial" and the proposed site is at least double the minimum standard for separation from residentially zoned lands as provided for in § 20-809.

(c) In the case of a request for modification of the separation and buffer requirements from residentially zoned land of §§ 20-809 and 20-813, if the person provides written technical evidence from an engineer(s) that the proposed tower and telecommunications facilities must be located at the proposed site in order to meet the coverage requirements of the applicant's wireless communications system and if the person is willing to create approved landscaping and other buffers to screen the tower from being visible to residentially zoned property.

(d) In the case of a request for modification of the height limit for towers and telecommunications facilities or to the minimum height requirements for antenna support structures, that the modification is necessary to:

(i) Facilitate collocation of telecommunications facilities in order to avoid construction of a new tower; or

(ii) To meet the coverage requirements of the applicant's wireless communication system, which requirements must be documented with written, technical evidence from an engineer(s) that demonstrates that the height of the proposed tower is the minimum height required to function satisfactorily, and no tower that is taller than such minimum height shall be approved. (as added by Ord. #02-31, Oct. 2002)

20-819. <u>Abandonment</u>. (1) If any tower shall cease to be used for a period of three hundred-sixty-five (365) consecutive days, the board of aldermen shall notify the owner, with a copy to the applicant, that the site has been abandoned. The owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the tower has been in use or

under repair during the period. If the owner fails to show that the tower has been in use or under repair during the period, the board of aldermen shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the owner shall, within seventy-five (75) days, dismantle and remove the tower.

(2) To secure the obligation set forth in this section, the applicant [and/or owner] shall post a bond in the amount of ten thousand dollars ($10,000.00). Such amount shall be determined by the board of aldermen based on the anticipated cost of removal of the tower. (as added by Ord. #02-31, Oct. 2002)

CHAPTER 9

TITLE SIX (VI) POLICY AND COMPLAINT PROCEDURE

SECTION

20-901. Purpose. Title Six (VI) is intended to prohibit discrimination on the basis of race, color, or national origin in federally assisted programs. (as added by Ord. #03-03, Feb. 2003)

20-902. Policy and procedure. A violation may occur if a recipient of federal funds:

(1) Denies an individual service or provides only inferior or discriminatory service, aid or benefits because of an individual's race, color, or national origin;

(2) Subjects a person to segregation or treats person differently in regards to eligibility for and participation in services because of race, color, or national origin;

(3) Restricts or discourages individuals in their enjoyment of facilities because of race, color, or national origin;

(4) Discriminates in any way against an individual in any program or activity that is conducted using federal funds.

Title VI applies to employment only if the federal program is intended to provide employment. Employment issues are covered by Title Seven (VII) and its appropriate complaint procedures.

Complaints filed under Title Six (VI) shall be processed with the following steps:

Step 1

The complainant and/or his representative shall present the complaint to the manager of the service facility where the discrimination has allegedly occurred. The complainant will be encouraged to complete a Complainant Form, but it may also be reduced to writing by a staff member, and should contain the following information:

1. Name, address and telephone number of the complainant.
2. The location and name of the entity delivering the service.
3. The nature of the incident that led the complainant to feel that discrimination was a factor.
4. The basis of the complaint (race, color or national origin).

5. Names, addresses and phone numbers of people who may have knowledge of this event.

6. The date or dates of which the alleged discriminatory event or events occurred.

The manager shall, within ten workdays after receiving the complaint, reach a decision and communicate the decision to the complainant. The complainant has the right of representation and may bring a witness and present evidence if desired. The manager shall also inform the complainant that he may appeal to the Title VI Coordinator who will proceed with Step 2. The complaint along with the findings of the investigation of the manager is to be submitted to the Title VI Coordinator for the City of Portland, Tennessee.

Step 2

If the complaint is not resolved in Step 1, the written complaint shall be filed with the Title Six (VI) Coordinator for the City of Portland, Tennessee. The coordinator shall notify the manager of the service or facility where the discrimination allegedly occurred that an appeal has been made. The coordinator shall conduct an independent investigation. The investigation shall be completed within twenty workdays of receipt of the complaint, at which time the coordinator will inform the complainant and the manager of his findings of fact and actions recommended.

Step 3

If the complaint is not resolved at Step 2, the complainant may appeal to the Tennessee Title Six (VI) Program Director. The Coordinator for the City of Portland will send copies of the following to the Tennessee Title Six (VI) Program Director:

1. The signed complaint.

2. The report from the manager where the alleged discrimination occurred.

3. The requested appeal from the complainant.

4. The coordinator's findings and recommendations.

The Title Six (VI) Program Director will send a written notification of his investigation and action steps to be taken to all parties. (as added by Ord. #03-03, Feb. 2003)

20-903. General provisions. (1) If for some reason the complainant feels that the complaint cannot be resolved at the early stages, he/she may advance directly to Step 2 or 3.

(2) A record of action taken on each request or complaint must be maintained as a part of the records of each level of the complaint process.

(3) A complainant's right to a prompt and equitable resolution of the complaint will not be impaired by his/her pursuit of other remedies. Use of this complaint procedure is not a prerequisite to the pursuit of other remedies. The

Title Six (VI) Coordinator maintains a list of Title Six (VI) Coordinators for state agencies and can provide contact information upon request. (as added by Ord. #03-03, Feb. 2003)

CHAPTER 10

RACIAL PROFILING POLICY

SECTION

20-1001. Purpose. The purpose of this policy is to provide Portland Police Department members with constitutional policing principles that protect citizens from racial profiling and send clear direction to officers that racial profiling is never permitted. (as added by Ord. #16-23, July 2016)

20-1002. Policy. This policy is established in accordance with Tennessee Code Annotated, § 38-1-501 through 503, governing racial profiling. The Portland Police Department prohibits racial profiling by any employee. The Portland Police Department requires officers to investigate and detect crime in a proactive manner. This requirement is fulfilled through actively investigating suspicious persons and circumstances, and enforcing criminal and motor vehicle laws. At a minimum, reasonable suspicion must exist that someone is committing, has committed or is about to commit an offense before any stop or detention is attempted or initiated. No law enforcement action shall ever commence solely on the basis of the individual's actual or perceived race, color, ethnicity, national origin. Portland Police Department personnel shall not engage in racial profiling and shall respect the dignity of all persons while accomplishing the mission of the Portland Police Department. (as added by Ord. #16-23, July 2016)

20-1003. Definitions. (1) "Racial profiling." The detention or interdiction of an individual in traffic contacts, field contacts, or asset seizure and forfeiture efforts solely on the basis of the individual's actual or perceived race, color, ethnicity, or national origin as defined by Tennessee Code Annotated, § 38-1-502.

(2) Law enforcement agency." A lawfully established state or local public agency that is responsible for preventing and detecting crime and enforcing laws or local ordinances; and has employees who are authorized to make arrests for crimes while acting within the scope of their authority; and includes an institution considered a "law enforcement agency" pursuant to Tennessee Code Annotated, § 49-7-118 (which addresses public and private higher educational institutions). (as added by Ord. #16-23, July 2016)

CHAPTER 11

SEXUALLY ORIENTED CRIMES POLICY

SECTION

20-1101. Purpose. To outline a protocol for coordinated preliminary and continued investigations of sexually oriented crimes and other related offenses. (as added by Ord. #16-24, July 2016)

20-1102. Policy. Sexually oriented crimes (see § 20-1003, definitions) are personal violent crimes that have great psychological or physical effects on the victims. It is the policy of this department to assist victims of sexually oriented crimes in a supportive manner, using appropriate crisis intervention skills. Because of the special considerations involved in investigations of sexually oriented crimes, this policy encourages a multidisciplinary, coordinated community response. Public confidence in the reporting and investigative process will encourage all victims of sexually oriented crimes to report the crime. Reducing recidivism through the apprehension and prosecution of the assailants is a department priority. (as added by Ord. #16-24, July 2016)

20-1103. Definitions. (1) "Forensic medical examination." An examination by any healthcare provider who provides medical care and gathers evidence of a sexually oriented crime in a manner suitable for use in a court of law, provided to a victim reporting a sexually oriented crime to a healthcare provider, as defined in Tennessee Code Annotated, § 39-13- 519(a)(1), P.C. 253 (2015).

(2) "Hold kit." A sexual assault evidence collection kit of an adult victim that is coded with a number rather than a name pending the victim's decision to report the crime to law enforcement authorities, and has not been submitted to the state crime lab or similar qualified laboratory, as defined in Tennessee Code Annotated, § 39-13-519(a)(2), P.C. 253 (2015).

(3) "Law enforcement agency." An established state or local agency that is responsible and has the duty to prevent and detect crime and enforce laws or local ordinances; and has employees who are authorized to make arrests for crimes while acting within the scope of their authority; and a campus security force created by an institution of higher education pursuant to

§ 49-7-118, as defined in Tennessee Code Annotated, § 39-13- 519(a)(3), P.C 253 (2015).

(4) "Sexual assault evidence collection kit." Evidence collected from the victim of a sexually oriented crime with a sexual assault evidence collection kit provided by the State of Tennessee, as defined in Tennessee Code Annotated, § 39-13-519(a)(4), P.C. 253 (2015).

(5) "Sexually oriented crime." Crimes listed in Tennessee Code Annotated, § 29-13-118(b) and as referenced in Tennessee Code Annotated, § 39-13-519(a)(5), P.C. 253 (2015).

(6) "Victim." A victim of a sexually oriented crime as defined in § 29-13-118(b) and as defined in Tennessee Code Annotated,§ 39-13-519(a)(6), P.C. 253 (2015).

(7) "Victim advocate." This term applies to service providers trained to assess and address the needs of the victim as well as provide counseling, advocacy, resources and information, and ongoing support. Depending on the primary functions of the advocate, the level of confidentiality and privilege they have will vary and should be communicated to those involved. (as added by Ord. #16-24, July 2016)

20-1104. Procedures. (1) Training and personnel selection: Training is necessary for all personnel who have contact with victims of sexually oriented crimes, including dispatch/communications and initial responders, as well as those who investigate these crimes. All officers should receive ongoing training that specifically addresses the realities, dynamics and investigations of these crimes, and legal developments pertaining to sexually oriented crimes. Responders at every level need to recognize that they are accountable to the victim.

When an agency has a dedicated unit for sexually oriented crimes, careful consideration should be taken when selecting personnel to staff it.

(2) General responsibilities. (a) Department personnel shall be aware of community services available to victims of sexually oriented crimes.

(b) Department personnel shall be trained and knowledgeable about investigation of sexually oriented crimes and its impact on victims.

(c) Department personnel shall use appropriate communication skills when interacting with victims of sexually oriented crimes.

(3) Communications officer (communications center) responsibilities: Communication officers or dispatch personnel may be the first to whom the victim will speak following a sexually oriented crime. In general, communications personnel should address two (2) primary goals: collecting information and dispatching assistance.

(4) Patrol officer/deputy responsibilities. Officers/deputies should be mindful of the impact of trauma on memory, especially when contact with the victim is within a short time after the sexually oriented crime occurred. Victims of any trauma, including but not limited to sexually oriented crimes, may

experience difficulty with memory storage and recall. As a result, victims may be inconsistent or unclear in their descriptions. These symptoms may be indications of a traumatic experience rather than fabrication. This fact should be considered by the investigator to assure a more accurate follow-up interview after appropriate time has passed from the traumatic event.

(a) The patrol officer/deputy has certain immediate responsibilities, as follows:

(i) The first priority is the victim's physical well-being. Give attention to the victim's emergency medical needs. Ensure safety.

(ii) Preserve the crime scene. Call an investigator, additional officers/deputies, or a supervisor when necessary.

(iii) Be alert to any suspect in the vicinity. If applicable, give crime broadcast.

(iv) Contact a victim advocate as soon as possible to provide assistance throughout the reporting and investigative process.

(v) Explain to the victim the officer/deputy role and what will be done at the scene and through follow-up.

(b) The patrol officer/deputy shall obtain detailed information essential to determine what occurred.

(c) The patrol officer/deputy shall obtain preliminary statements from victim and witnesses to obtain information in an effort to identify and locate the suspect.

(d) The patrol officer/deputy shall inform the victim of the sexual assault center and other community-coordinated response agencies and resources available to support the victim. The patrol officer/deputy should ask if the victim would prefer to have a support person present and offer to contact the person if necessary.

(e) The patrol officer/deputy shall arrange transportation or transport the victim to the hospital for a forensic medical examination. The officer/deputy should explain the medical and investigative purposes of this exam and advise the victim to bring a change of clothing.

(5) Investigator responsibilities. (a) The investigator shall obtain a complete report from the patrol officer assigned to the case.

(b) The initial contact with the victim may happen in different ways:

(i) At the crime scene: The officer/deputy shall protect the crime scene and begin the preliminary investigation. The investigator should establish rapport with the victim and offer to transport the victim to the hospital.

(ii) At the hospital: The investigator should collaborate with medical staff to arrange for the collection of evidence needed for prosecution. Ensure the victim understands the exam

procedures and establish rapport for further interviews. Assist in arranging for clothing the victim may need after the examination. The investigator should never be in the examination room during the sexual assault exam but shall have the victim sign a consent form in order to obtain a copy of the medical report. The sexual assault evidence collection kit shall be received from medical staff after it has been properly sealed and labeled. The sexual assault evidence collection kit will be stored and/or submitted for testing in accordance with state law. See subsection (7), collection and storage of evidence.

(iii) At the department: Before interviewing the victim, the investigator should review the officer/deputy's report and establish rapport with the victim by allowing the victim to ask preliminary questions and voice initial concerns.

(c) The investigator shall be trained in sexual assault procedures:

(i) The investigator shall allow the victim advocate to be with the victim for support during the interview(s), if the victim desires.

(ii) If the victim prefers a gender specific investigator, every attempt to provide one should be made. If one is not available, the investigator shall nevertheless encourage the victim's cooperation.

(iii) The investigator shall prepare the victim for each phase of the investigation. The investigator will encourage the victim's cooperation by explaining investigative procedures.

(d) Victim interviews:

(i) Privacy is a necessity for follow-up interviews. Choose a quiet room at the department or go to the victim's home. Recording is encouraged. A victim advocate may be helpful to the investigation. Ask the advocate not to interfere with questioning. The patrol officer/deputy shall obtain detailed information essential to determine what occurred.

(ii) Polygraph test: Tennessee Code Annotated, § 38-3-123.

(A) No law enforcement officer shall require any victim of a sexual offense, as defined in Tennessee Code Annotated, § 40-39-202, or violent sexual offense, as defined in Tennessee Code Annotated, § 40-39-202, to submit to a polygraph examination or any other test designed to detect deception or verify the truth of statements through instrumentation or by means of a mechanical device, as a condition of the officer proceeding with the investigation of the offense.

(B) A violation of this section shall subject the officer to appropriate departmental disciplinary action.

(iii) The investigators should determine if there were any witnesses and interview them. Investigators should also determine if the incident was reported to someone else.

(iv) Questions that must be addressed include, but are not limited to, the following:

(A) Assault circumstances: Where approached? How? Where occurred? When?

(B) Suspect information: Name, if known? Age? Race? Hair color? Clothing? Height? Weight? Identifying marks? Relationship to victim, if any?

(C) Multiple crimes: Did multiple assaults occur? Were other crimes committed?

(D) Assault details: What happened during the assault? Were weapons used? Describe them. Were threats made? What were they? Was there a fight or struggle? Were injuries sustained by the victim and/or suspect? Were drugs/alcohol involved? Was the victim incapacitated in any way?

(E) Details of sexual acts: What did the suspect do? If a male suspect, did he ejaculate? If so, where? Was a condom used? Was a lubricant used, and if so, what type?

(F) Duration: How long was the suspect with the victim?

(G) After the assault: What did the victim or suspect do immediately after the assault?

(H) Prosecution: Does the victim have concerns about prosecuting?

(vi) At the conclusion of the interview, the investigator should ask about any additional assistance needed by the victim and refer the victim to appropriate services.

(vii) Inform the victim that it is common to remember additional details later. Encourage the victim to contact the investigator with additional details or to ask questions. Provide contact information to the victim.

(viii)Interviewing child sexual assault victims under the age of eighteen (18) requires special guidelines set forth by established statutory child sexual abuse investigative protocols, as described in Tennessee Code Annotated, § 37-1-601 et seq. (2015).

(6) Supervisor responsibilities. Effective supervision plays a key role in ensuring comprehensive responses to and investigation of sexually oriented crimes. Though this is important for victims, it is also important for ensuring compliance with department policy and accountability. Supervisors shall

demonstrate a thorough understanding of victim issues and proper response by subordinates.

(7) Collection and storage of evidence. The sexual assault evidence collection kit or hold kit shall be received from the medical staff after it has been properly sealed and labeled. A chain of custody for the sexual assault evidence kit or hold kit shall be established and the kit will be prepared for DNA testing or storage in accordance with established protocols. See, Tennessee Code Annotated, § 39-13-519(b), P.C. 253 (2015).

Collection and storage procedures for sexual assault evidence kits and hold kits are stated below.

(a) Sexual assault evidence kit, explained in Tennessee Code Annotated, § 39-13-519(c)(2) and (d)(1), P.C. 253 (2015).

(i) If an adult victim reports the alleged offense to the police, or if the victim is a minor, the health care provider shall attach the victim's name to the sexual assault evidence collection kit, and it shall be released to the appropriate law enforcement agency.

(ii) The law enforcement agency shall, within sixty (60) days of taking possession of the sexual assault evidence collection kit with the victim's name affixed to it, submit the kit to the Tennessee bureau of investigation or similar qualified laboratory for either serology or deoxyribonucleic (DNA) testing.

(b) Hold kit, explained in Tennessee Code Annotated, § 39-13-519(c)(1) and (d)(2), P.C. 253 (2015).

(i) If an adult victim elects not to report the alleged offense to police at the time of the forensic medical examination, the sexual assault evidence collection kit becomes a hold kit, and the healthcare provider shall assign a number to identify the kit rather than use the victim's name. The healthcare provider shall provide the victim with the identifying number placed on the victim's hold kit, information about where and how long the kit will be stored, and the procedures for making a police report.

(ii) Upon receipt of a hold kit with only an identification number attached to it, the law enforcement agency shall store the hold kit for a minimum of three (3) years or until the victim makes a police report, whichever event occurs first. Once the victim makes a police report, the law enforcement agency shall have sixty (60) days from the date of the police report to send the sexual assault evidence collection kit to the state crime lab or other similar qualified laboratory for either serology or deoxyribonucleic acid (DNA) testing. However, no hold kit shall be submitted to the state crime lab or similar laboratory for testing until the victim has made a police report. (as added by Ord. #16-24, July 2016)

20-1105. Compliance. Violations of this policy, or portions thereof, may result in disciplinary action. All members shall comply with this policy. (as added by Ord. #16-24, July 2016)

20-1106. Application. This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this policy, if proven, can only form a basis of a complaint by this department, and then only in a non-judicial administrative setting. (as added by Ord. #16-24, July 2016)