THE

**BAXTER** 

**MUNICIPAL** 

CODE

#### Prepared by the



November 2011

#### CITY OF BAXTER, TENNESSEE

#### **MAYOR**

Jeff Wilhite

#### **ALDERMEN**

Willie Allison Jeff Herald Harmon Garris Greg Phillips

#### **RECORDER**

Stacey Austin

#### **PREFACE**

This code is the result of a comprehensive codification of the ordinances of the City of Baxter, Tennessee.

The attention of the user is directed to the arrangement of the code into titles, chapters, and sections. Related matter is kept together, so far as possible, within the same title. Each section number is complete within itself, containing the title number, the chapter number, and the section of the chapter of which it is a part. Specifically, the first number is the title number followed by a hyphen, then the chapter number with the last two numbers showing the section number within the chapter, so that, for example, title 2, chapter 1, section 6, is designated as section 2-106.

By utilizing the table of contents preceding each title and chapter of the code, together with the cross references and explanations included as footnotes, the user should readily find all provisions in the code relating to any question that might arise.

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

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

- (1) That all ordinances relating to subjects treated in the code or which should be added to the code are adopted as amending, adding, or deleting specific chapters or sections of the code (see section 8 of the adopting ordinance for the code).
- (2) That one copy of every ordinance adopted by the City is furnished to MTAS immediately after its adoption (see section 8 of the adopting ordinance).
- (3) That the City agrees to reimburse MTAS for the actual costs of reproducing replacement pages for the code (no charge is made for the consultant's work, and reproduction costs are usually nominal).

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

However, the way MTAS does municipal codes and code updates is under review; therefore, this procedure is subject to change in the near future.

The abl	e assistance of	fthe codes team,	Emily Keyser,	Linda Winstea	ıd, and
Nancy Gibson	i, is gratefully	acknowledged.			

Stephanie Allen Codification Consultant

### ORDINANCE ADOPTION PROCEDURES PRESCRIBED BY THE CITY CHARTER

The Baxter city charter says only the following about ordinances:

- 1. A majority of aldermen shall constitute a quorum. (Sec. 9)
- 2. The mayor shall not vote except in case of a tie but shall have the right to veto, in writing, an ordinance or resolution passed by the aldermen.

  (Sec. 9)
- 3. At a subsequent meeting, a three-fourths (3/4) vote of the aldermen is required to pass any ordinance or resolution over the mayor's veto. (Sec. 10)
- 4. All ordinances shall be signed by the mayor and recorder. (Sec. 10)
- 5. The ordinance will be placed in the minutes of the board of mayor and aldermen and shall be filed and preserved among the records of the city. (Sec. 10)
- 6. The records of ordinances shall be open to the public. (Sec. 10)

The Baxter city charter prescribes no ordinance adoption procedures. However, the Baxter Municipal Code, Section 1-104 prescribes certain ordinance and resolution adoption procedures.

#### TITLE 1

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

#### **CHAPTER**

- 1. BOARD OF MAYOR AND ALDERMEN.
- 2. MAYOR.
- 3. RECORDER.
- 4. CODE OF ETHICS.

#### CHAPTER 1

#### **BOARD OF MAYOR AND ALDERMEN**

#### **SECTION**

- 1-101. Time and place of regular meetings.
- 1-102. Order of business.
- 1-103. General rules of order.
- 1-104. Procedure governing passage of resolutions and ordinances.
- **1-101.** Time and place of regular meetings. The board of mayor and aldermen shall hold regular monthly meetings at 6:00 P.M. on the first Thursday of each month at the city hall. (1987 Code § 1-101, as amended by Ord. #2011-12, June 2011)
- **1-102.** Order of business. At each meeting of the board of mayor and aldermen, the following regular order of business shall be observed unless dispensed with by a majority vote of the members present:
  - Call to order by the mayor. (1)
  - **(2)** Roll call by the recorder.
- Reading of minutes of the previous meeting by the recorder, and (3) approval or correction.
  - Grievances from citizens. (4)

<sup>1</sup>Charter references

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

#### Municipal code references

Building, plumbing, electrical and gas inspectors: title 12.

Fire department: title 7. Utilities: titles 18 and 19.

Wastewater treatment: title 18.

Zoning: title 14.

- (5) Communications from the mayor.
- (6) Reports from committees, members of the board of mayor and aldermen, and other officers.
  - (7) Old business.
  - (8) New business.
  - (9) Adjournment. (1987 Code, § 1-102)
- 1-103. <u>General rules of order</u>. The rules of order and parliamentary procedure contained in <u>Robert's Rules of Order</u>, <u>Newly Revised</u>, shall govern the transaction of business by and before the board of mayor and aldermen at its meetings in all cases to which they are applicable and in which they are not inconsistent with provisions of the charter or this code. (1987 Code, § 1-103, modified)

## 1-104. <u>Procedure governing passage of resolutions and ordinances.</u> (1) <u>Resolutions and ordinances defined.</u>

- (a) Ordinances are general laws to be applied alike to all persons, circumstances, and relationships coming under the jurisdiction of the City of Baxter.
- (b) Resolutions are those matters of business which may be brought before the board of mayor and aldermen of an administrative nature having a "one-time" effect and not having the effect of a general law. Example: Resolutions would cover such matters as salaries or bonuses for employees, purchase of office or equipment or furnishings, further study of a proposal that might become a general law.
- (2) A resolution shall take effect upon its being clearly stated for the record and upon its approval by a majority vote of the board of mayor and aldermen.
- (3) An ordinance shall become law and take effect and remain in effect from the date of its passage. Passage of an ordinance shall be by yea vote of a majority of the board of mayor and aldermen on a first and second reading. (1987 Code, § 1-104, as amended by Ord. #2011-7, April 2011)

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

#### **SECTION**

- 1-201. Generally supervises city's affairs.
- 1-202. Executes city's contracts.
- **1-201.** Generally supervises city's affairs. The mayor shall have general supervision of all city affairs and may require such reports from the officers and employees as he may reasonably deem necessary to carry out his executive responsibilities. (1987 Code, § 1-201)
- **1-202.** Executes city's contracts. The mayor shall execute all contracts as authorized by the board of mayor and aldermen. (1987 Code, § 1-202)

<sup>1</sup>Charter reference Duties and powers: art. IV.

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

#### **SECTION**

- 1-301. To be bonded.
- 1-302. To keep minutes, etc.
- 1-303. To perform general administrative duties, etc.
- **1-301.** <u>To be bonded</u>. The recorder shall be bonded in such sum as may be fixed by, and with such surety as may be acceptable to, the board of mayor and aldermen. (1987 Code, § 1-301)
- **1-302.** To keep minutes, etc. The recorder shall keep the minutes of all meetings of the board of mayor and aldermen and shall preserve the original copy of all ordinances in a separate ordinance book. (1987 Code, § 1-302)
- 1-303. To perform general administrative duties, etc. The recorder shall perform all administrative duties for the board of mayor and aldermen and for the city which are not assigned by the charter, this code, or the board of mayor and aldermen to another corporate officer. The recorder shall also have custody of and be responsible for maintaining all corporate bonds, records, and papers. (1987 Code, § 1-303)

Duties and compensation: art. 5.

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

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

#### **SECTION**

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

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

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

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

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

Consulting fee prohibition for elected municipal officials: <u>Tennessee Code Annotated</u>, §§ 2-10-122, 124.

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

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

Ouster law: <u>Tennessee Code Annotated</u>,§ 8-47-101 and the following sections.

A brief synopsis of each of these laws appears in Appendix A of this municipal code.

- 1-410. Ethics complaints.
- 1-411. Violations.
- **1-401. Applicability**. This chapter is the code of ethics for personnel of the municipality. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the municipality. The words "municipal" and "municipality" include these separate entities. (Ord. #2006-14, Feb. 2007)
- **1-402. Definition of "personal interest**." (1) For purposes of §§ 1-403 and 1-404, "personal interest" means:
  - (a) Any financial, ownership, or employment interest in the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests; or
  - (b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or
  - (c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s), step parent(s), grandparent(s), sibling(s), child(ren), or step child(ren).
- (2) The words "employment interest" include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.
- (3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter. (Ord. #2006-14, Feb. 2007)
- 1-403. <u>Disclosure of personal interest by official with vote</u>. An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's vote on the measure. In addition, the official may recuse himself<sup>1</sup> from voting on the measure. (Ord. #2006-14, Feb. 2007)
- **1-404.** <u>Disclosure of personal interest in non-voting matters</u>. An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects

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

or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the recorder. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter. (Ord. #2006-14, Feb. 2007)

- **1-405.** <u>Acceptance of gratuities, etc</u>. An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the municipality:
- (1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or
- (2) That might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing municipal business. (Ord. #2006-14, Feb. 2007)
- **1-406.** <u>Use of information</u>. (1) An official or employee may not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law.
- (2) An official or employee may not use or disclose information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity. (Ord. #2006-14, Feb. 2007)
- 1-407. <u>Use of municipal time, facilities, etc.</u> (1) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself.
- (2) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality. (Ord. #2006-14, Feb. 2007)
- **1-408.** <u>Use of position or authority</u>. (1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.
- (2) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. (Ord. #2006-14, Feb. 2007)
- **1-409. Outside employment**. An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the

performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy. (Ord. #2006-14, Feb. 2007)

- 1-410. <u>Ethics complaints</u>. (1) The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.
  - (2) (a) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his own initiative when he acquires information indicating a possible violation, and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.
  - (b) The city attorney may request the governing body to hire another attorney, individual, or entity to act as ethics officer when he has or will have a conflict of interests in a particular matter.
  - (c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body, the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or another individual or entity chosen by the governing body.
- (3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.
- (4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation or a civil service policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics. (Ord. #2006-14, Feb. 2007)
- 1-411. <u>Violations</u>. An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law, and in addition is subject to censure by the governing body. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action. (Ord. #2006-14, Feb. 2007)

## TITLE 2 $\frac{\text{BOARDS AND COMMISSIONS, ETC.}}{\text{[RESERVED FOR FUTURE USE]}}$

#### TITLE 3

#### **MUNICIPAL COURT**

#### **CHAPTER**

- 1. CITY JUDGE.
- 2. COURT ADMINISTRATION.
- 3. WARRANTS, SUMMONSES AND SUBPOENAS.
- 4. BONDS AND APPEALS.

#### **CHAPTER 1**

#### CITY JUDGE<sup>1</sup>

#### **SECTION**

3-101. City judge.

**3-101.** City judge. The officer designated by the board of mayor and aldermen to handle judicial matters within the city shall preside over the city court and shall be known as the city judge. (1987 Code, § 1-501)

Appointment and compensation: art. 5, § 5.

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

#### **COURT ADMINISTRATION**

#### SECTION

- 3-201. Maintenance of docket.
- 3-202. Fines and court costs.
- 3-203. Imposition of fines, penalties, and costs.
- 3-204. Disposition and report of fines, penalties, and costs.
- 3-205. Disturbance of proceedings.
- **3-201.** Maintenance of docket. The city judge shall keep a complete docket of all matters coming before him in his judicial capacity. The docket shall include for each defendant such information as his name; warrant and/or summons numbers; alleged offense; disposition; fines, penalties, and costs imposed and whether collected; whether committed to workhouse; and all other information which may be relevant. (1987 Code, § 1-502)
- **3-202.** Fines and court costs. (1) Fines imposed by Baxter City Court which are punitive in nature shall be limited to fifty dollars (\$50.00), or such lesser amount as set by state law, subject to the judge's discretion. Fines which are remedial in nature may exceed fifty dollars (\$50.00), if consistent with state law, in the judge's discretion.
- (2) Court costs for Baxter City Court shall be eighty dollars (\$80.00). (Ord. #2007-2, March 2007)
- **3-203.** <u>Imposition of fines, penalties, and costs</u>. All fines, penalties and costs shall be imposed and recorded by the city judge on the city court docket in open court. (1987 Code, § 1-507 modified)
- **3-204.** Disposition and report of fines, penalties, and costs. All funds coming into the hands of the city judge in the form of fines, penalties, costs, and forfeitures shall be recorded by him and paid over daily to the city. At the end of each month he shall submit to the board of mayor and aldermen a report accounting for the collection or non-collection of all fines, penalties, and costs imposed by his court during the current month and to date for the current fiscal year. (1987 Code, § 1-510)
- **3-205.** <u>Disturbance of proceedings</u>. It shall be unlawful for any person to create any disturbance of any trial before the city court by making loud or unusual noises, by using indecorous, profane, or blasphemous language, or by any distracting conduct whatsoever. (1987 Code, § 1-511)

#### WARRANTS, SUMMONSES AND SUBPOENAS

#### **SECTION**

- 3-301. Issuance of arrest warrants.
- 3-302. Issuance of summonses.
- 3-303. Issuance of subpoenas.
- **3-301.** <u>Issuance of arrest warrants</u>.<sup>1</sup> The city judge shall have the power to issue warrants for the arrest of persons charged with violating municipal ordinances. (1987 Code, § 1-503)
- 3-302. <u>Issuance of summonses</u>. When a complaint of an alleged ordinance violation is made to the city judge, the judge may in his discretion, in lieu of issuing an arrest warrant, issue a summons ordering the alleged offender to personally appear before the city court at a time specified therein to answer to the charges against him. The summons shall contain a brief description of the offense charged but need not set out verbatim the provisions of the municipal code alleged to have been violated. Upon failure of any person to appear before the city court as commanded in a summons lawfully served on him, the cause may be proceeded with ex parte, and the judgment of the court shall be valid and binding subject to the defendant's right of appeal. (1987 Code, § 1-504)
- **3-303.** <u>Issuance of subpoenas</u>. The city judge may subpoena as witnesses all persons whose testimony he believes will be relevant and material to matters coming before his court, and it shall be unlawful for any person lawfully served with such a subpoena to fail or neglect to comply therewith. (1987 Code, § 1-505)

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

For authority to issue warrants, see <u>Tennessee Code Annotated</u>, title 40, chapter 6.

#### BONDS AND APPEALS

#### SECTION

- 3-401. Appearance bonds authorized.
- 3-402. Appeals.
- 3-403. Bond amounts, conditions and forms.
- **3-401.** Appearance bonds authorized. When the city judge is not available or when an alleged offender requests and has reasonable grounds for a delay in the trial of his case, he may, in lieu of remaining in jail pending disposition of his case, be allowed to post an appearance bond with the city judge or, in the absence of the judge, with the ranking police officer on duty at the time, provided such alleged offender is not under the influence of alcohol or drugs. (1987 Code, § 1-506)
- **3-402. Appeals**. Any defendant who is dissatisfied with any judgment of the city court against him may, within ten (10) days next after such judgment is rendered, Sundays exclusive, appeal to the next term of the circuit court upon posting a proper appeal bond.<sup>1</sup> (1987 Code, § 1-508)
- **3-403.** Bond amounts, conditions and forms. An appearance bond in any case before the city court shall be in such amount as the city judge shall prescribe and shall be conditioned that the defendant shall appear for trial before the city court at the stated time and place.

An appeal bond in any case shall be in the sum of two hundred fifty dollars (\$250.00) and shall be conditioned that if the circuit court shall find against the appellant the fine and all costs of the trial and appeal shall be promptly paid by the defendant and/or his sureties. An appearance or appeal bond in any case may be made in the form of a cash deposit or by any corporate surety company authorized to do business in Tennessee or by two (2) private persons who individually own real property located within the county. No other type bond shall be acceptable. (1987 Code, § 1-509, modified)

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

Tennessee Code Annotated, § 16-18-307.

#### TITLE 4

#### **MUNICIPAL PERSONNEL**

#### **CHAPTER**

- 1. SOCIAL SECURITY.
- 2. VACATION AND SICK LEAVE.
- 3. PERSONNEL REGULATIONS.
- 4. OCCUPATIONAL SAFETY AND HEALTH PROGRAM.
- 5. INFECTIOUS DISEASE CONTROL POLICY.
- 6. TRAVEL REIMBURSEMENT REGULATIONS.
- 7. CONFINED SPACE ENTRY AND RESCUE PROCEDURES.

#### CHAPTER 1

#### SOCIAL SECURITY

#### **SECTION**

- 4-101. Policy and purpose as to coverage.
- 4-102. Necessary agreements to be executed.
- 4-103. Withholdings from salaries or wages.
- 4-104. Appropriations for employer's contributions.
- 4-105. Records and reports to be made.
- 4-106. Exemptions from coverage.
- **4-101.** Policy and purpose as to coverage. It is hereby declared to be the policy and purpose of this city to provide for all eligible employees and officials of the city, whether employed in connection with a governmental or proprietary function, the benefits of the system of federal old age and survivors insurance. In pursuance of said policy, and for that purpose, the city shall take such action as may be required by applicable state and federal laws or regulations. (1987 Code, § 1-601)
- **4-102.** Necessary agreements to be executed. The mayor is hereby authorized and directed to execute all the necessary agreements and amendments thereto with the state executive director of old age insurance, as agent or agency, to secure coverage of employees and officials as provided in the preceding section. (1987 Code, § 1-602)
- **4-103.** <u>Withholdings from salaries or wages</u>. Withholdings from the salaries or wages of employees and officials for the purpose provided in the first section of this chapter are hereby authorized to be made in the amounts and at such times as may be required by applicable state or federal laws or regulations,

and shall be paid over to the state or federal agency designated by said laws or regulations. (1987 Code, § 1-603)

- **4-104.** Appropriations for employer's contributions. There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations for employer's contributions, and the same shall be paid over to the state or federal agency designated by said laws or regulations. (1987 Code, § 1-604)
- **4-105.** Records and reports to be made. The recorder shall keep such records and make such reports as may be required by applicable state and federal laws or regulations. (1987 Code, § 1-605)
- **4-106.** Exemptions from coverage. There is hereby exempted from this chapter any authority to make any agreement with respect to any position, any employee or official not authorized to be covered by applicable state and federal laws or regulations. (1987 Code, § 1-606)

<sup>&</sup>lt;sup>1</sup>See Ord. No. 95-3 (April 1995) of record in the office of the recorder for amendments to the Social Security Agreement by and between the City of Baxter and the State Old Age and Survivors Insurance Agency.

#### VACATION AND SICK LEAVE

#### **SECTION**

- 4-201. Applicability of chapter.
- 4-202. Vacation leave.
- 4-203. Sick leave.
- 4-204. Holidays.
- 4-205. Absence without leave.
- 4-206. Absence without pay.
- 4-207. Leave without pay.
- 4-208. Funeral leave.
- 4-209. Christmas pay.
- 4-210. Work attendance.
- **4-201. Applicability of chapter**. This chapter shall apply to all full-time municipal officers and employees except those operating under the jurisdiction of a school, utility, or other separate board or commission. (1987 Code, § 1-701)
- **4-202.** <u>Vacation leave</u>. (1) All regular and full-time employees of the city who have been employed by the city for one (1) full year of continuous service shall be allowed vacation leave time with pay according to the following schedule:

Annual Vacation				
Years of Service	Leave Time			
1 year	5 working days			
2 years and over	10 working days			

For vacation leave purposes the term "working day" as it applies herein shall be computed on an eight (8) hours basis.

- (2) Vacation leave compensation shall be computed at the employee's regular straight time pay rate in effect as of the date that the vacation leave time is earned.
- (3) The date of service to be used in determining vacation leave time accrual rate is the beginning date of the employee's current period of continuous service or the date on which the employee was initially employed or appointed, whichever is more recent.
- (4) An employee shall not be eligible to take vacation leave until he or she has had one (1) year continuous employment.

- (5) Vacation leave may not be taken before it is earned.
- (6) Temporary, casual or part-time employees are not eligible for accrual of vacation leave.
- (7) For vacation purposes, any reinstated employee shall be considered as a new employee regardless of the reason for separation.
- (8) Earned vacation leave may be taken in whole or in part throughout the year at such times as may be approved by the head of the department for which such employee works. No less than one (1) day may be taken at any one time. In the case of employees who handle receipt of payments of taxes, water bills, court fines, or other funds being paid over to the city, such employees shall not take any vacation time of less than five (5) days at one (1) period.
- (9) No more than thirty (30) days vacation leave may be accumulated by any employee.
- (10) Any official holiday falling within a period of vacation leave shall be charged as holiday leave rather than vacation leave.
- (11) Any regular, full-time employee who is separated from employment with the city for any reason, including retirement, may receive terminal vacation leave pay for any unused portion of his or her accumulated vacation leave up to the limit of vacation leave allowed to be accumulated under this chapter. (1987 Code, § 1-704)
- 4-203. Sick leave. (1) All full-time employees of the city shall be allowed to accumulate sick leave with pay at the rate of one (1) working day for each full calendar month of service completed up to an unused maximum of thirty (30) working days. Sick leave shall be considered a benefit and privilege and not a right for employees to use at their discretion. Employees shall, therefore, utilize their accumulated sick leave allowance for absences due to personal illness or physical incapacity, personal illness or physical incapacity within the immediate family of the employee (as defined in paragraph (3) below), enforced quarantine of the employee in accordance with community health regulations, disability resulting from pregnancy, childbirth or related medical conditions, or so as to keep an appointment with a licensed medical doctor, dentist or other recognized health care practitioner.
- (2) The board of mayor and aldermen may, in its discretion, prescribe regulations requiring that a health care practitioner's certificate or other satisfactory evidence be filed with the city supporting the absence before it may be properly chargeable as sick leave.
- (3) For sick leave purposes the term "working day" as it applies in this section shall be computed on an eight (8) hour basis. The term "immediate family" shall be defined as spouse, children, parents, brothers and sisters, and grandparents, both of the employee and spouse of the employee.
- (4) Sick leave compensation shall be figured at the employee's straight time pay rate in effect at the date it is used by the employee.

- (5) The date of service to be used in determining sick leave time accrual rate is the beginning date of the employee's current period of continuous service or the date on which the employee was initially employed or appointed, whichever is more recent.
- (6) Sick leave shall begin to accrue on the first day of the month next following the first full calendar month of employment.
- (7) Temporary, casual or part-time employees are not eligible for accrual of sick leave.
- (8) For sick leave purposes any reinstated employee shall be considered as a new employee regardless of the reason for his or her separation.
- (9) Any employee who abuses these sick leave provisions or who deliberately makes or causes to be made any false or misleading statement or claim concerning the same, shall be subject to the loss of any such benefits, dismissal from his or her employment with the city or other disciplinary action.
- (10) Any employee of the city who is injured when engaging in his employment for the city may be carried on sick leave for any accumulated sick leave that he or she has to his or her credit, but in no case shall any employee be allowed to receive sick leave pay while drawing any worker's compensation or other disability payments resulting from any benefit provided by the city. (1987 Code, § 1-705)
- **4-204.** <u>Holidays</u>. (1) Except and in addition to such other holidays as may be from time-to-time declared by the board of mayor and aldermen, the following days shall be official holidays for employees of the City of Baxter:

<u>Holiday Name</u>	Holiday Date		
New Year's Day	January 1st of each year		
Memorial Day	Last Monday of May of each year		
Independence Day	July 4th of each year		
Labor Day	First Monday in September of each year		
Veterans Day	November 11th of each year		
Thanksgiving Day	Fourth Thursday in November of each year		
Christmas Eve	December 24th of each year		
Christmas Day	December 25th of each year		

- (2) When a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday, and when a holiday falls on a Sunday, the following Monday shall be observed as the holiday.
- (3) All full-time employees of the city shall be compensated for any holiday granted in this chapter or otherwise designated by the board of mayor and aldermen by receiving eight (8) hours off with pay on the date of the holiday. However, in the interest of continuing essential municipal services, any city employee may be required to work on any holiday. Working on any holiday is a condition of employment for all city employees. Employees who are required to work on any holiday will receive their holiday pay plus one and one-half (1 1/2) times their regular hourly pay for each hour they work on that holiday.
- (4) No employee shall be authorized to work on a holiday without the prior command or approval of the head of the department for whom the employee works. However, the board of mayor and aldermen may from time to time prescribe such other rules, regulations and limitations on overtime work as it desires.
- (5) Any employee who is absent without leave on any working day immediately preceding or immediately following any holiday shall not be entitled to be paid for such holiday. (1987 Code, § 1-703)
- 4-205. <u>Absence without leave</u>. An absence without leave is an absence from duty which was not authorized or approved and for which either a request for leave was not made by the employee, or when made such request was denied. Under such circumstances any employee may be subject to such disciplinary action, including termination from employment with the city, as the board of mayor and aldermen deems necessary or appropriate. (1987 Code, § 1-706)
- 4-206. Absence without pay. An absence without pay is an absence which may or may not have been known and which has resulted from suspension, abandonment of position, or leave without pay granted by the city. The heads of all departments shall be responsible for maintaining accurate records of any employee who is absent from duty for any reason and shall promptly report the same to the mayor. (1987 Code, § 1-707)
- **4-207.** Leave without pay. A regular or part-time employee who is in good standing may be granted a leave without pay for a period not to exceed ninety (90) calendar days in any one (1) calendar year upon the approval of the board of mayor and aldermen.
- **4-208. Funeral leave**. A full time employee of the city will be granted and paid his/her regular rate of pay for any or all of three (3) regularly scheduled work days, during the period beginning with the death and ending with the day of the funeral of his/her immediate family. A member of the

immediate family is defined as and limited to the following: spouse, father, mother, step-father, step-mother, son, daughter, step-daughter, step-son, father-in-law, mother-in-law, brother or sister. (1987 Code, § 1-709)

- **4-209.** Christmas pay. The full time employees of the city will be granted up to as much as five (5) days sick leave or for number of days accumulated, up to five (5) days, for a Christmas bonus. (1987 Code, § 1-710)
- **4-210.** Work attendance. All full-time employees of the city shall be in attendance at their regular work and at their regular place of work as may be designated by the department head under whose supervision such employees shall work. The head of every city department shall keep a daily attendance record of the employees working under such supervisor and shall report the same to the mayor. (1987 Code, § 1-702)

#### PERSONNEL REGULATIONS

#### **SECTION**

- 4-301. Applicability of chapter.
- 4-302. Political activity.
- 4-303. Strikes.
- 4-304. Principle of merit.
- 4-305. Hiring procedures.
- 4-306. Types of separations.
- 4-307. Disciplinary actions.
- 4-308. Appeals process.
- 4-309. Use of internet and electronic mail.
- 4-310. Sexual harassment.
- 4-311. Substance abuse policy and drug free workplace program.
- 4-312. Employee safety handbook adopted.
- **4-301.** <u>Applicability of chapter</u>. This chapter shall apply to all full-time city officers and employees except those operating under the jurisdiction of a school, utility, or other separate board or commission. (1987 Code, § 1-801)
- **4-302.** <u>Political activity</u>. Employees shall enjoy the same rights as other citizens of Tennessee to be a candidate for any state or local political office (except for membership on the municipal governing body), the right to participate in political activities by supporting or opposing political parties, political candidates, and petitions to governmental entities. Provided, however, no employee may campaign on municipal time or in municipal uniform nor use municipal equipment or supplies in any campaign or election.
- **4-303.** Strikes. No city officer or employee shall participate in any strike against the city. (1987 Code, § 1-812)
- 4-304. Principle of merit. Appointing and promoting employees of the City of Baxter shall be based on merit. Due consideration shall be given to technical knowledge required to perform the work; satisfactory experience in the particular or similar line of work; and administrative or supervisory qualifications without regard to race, color, gender, age, creed, national origin, ancestry, or disability. (1987 Code, § 1-802)
- **4-305.** <u>Hiring procedures</u>. The primary objective of this hiring policy is to ensure compliance with the law and to obtain qualified personnel, without nepotism (nepotism-favoritism, especially governmental patronage extended

toward relatives), to serve the citizens of the city. No person shall be employed, promoted, demoted, discharged or in any way favored or discriminated against because of race, gender, age, color, religion, creed, ancestry, disability, or national origin. Nothing in the personnel rules and regulations shall be deemed to give employees any more property rights in their jobs than may already be given by the city charter. The city reserves the right to alter or change any or all these rules without prior notice to employees.

The city will employ only capable and responsible personnel who are of good character and reputation. When a vacancy occurs, the city recorder will prepare and post the appropriate position description at various locations in city. The city recorder will also provide notice of vacancies in alternate media to ensure effective communication to people with disabilities.

All people seeking appointment or employment with the city shall complete a standard application form as provided by the municipal government. Employment applications shall be accepted in the recorder's office during regular office hours only. The recorder will make reasonable accommodations in the application process to applicants with disabilities making a request for such accommodations.

All appointments are subject to an interview with the mayor and board of alderman or appropriate department head. The mayor and board of aldermen and department head will make reasonable accommodations in the interview process to applicants with disabilities making a request for such accommodations.

All appointments to positions in the City of Baxter shall be made by the mayor and board of aldermen. Following a conditional offer to employment, every prospective employee, when required, may be given a medical examination and a general physical exam by a licensed physician designated by the municipal government to ensure they can perform the essential functions of the position they have been offered. The cost of this medical exam shall be borne by the city. Any perspective employee who is unable to successfully perform the essential functions tested for in the medical examination shall have the offer of employment by the city withdrawn only if they:

- (1) Cannot perform the essential functions due to a disability that cannot reasonably be accommodated;
  - (2) Pose a direct threat to themselves and/or others;
- (3) Are unable to perform the essential functions due to a temporary condition or disability not protected by ADA.

For new personnel in the police department, the police chief hires employees for the police department subject to ratification by the mayor and board of aldermen. (1987 Code, § 1-803, as amended by Ord. #2005-17, Feb. 2006)

**4-306.** Types of separations. All separations of employees from city positions shall be designated as one of the following types and shall be

accomplished as indicated: resignation, layoff, death, retirement, dismissal and the inability to perform the essential job functions with or without a reasonable accommodation due to a disability. At the time of separation and before final payment, all records, assets, and other items of city property in the employee's custody must be transferred to the department. Any amount due because of shortages shall be withheld from the employee's final compensation.

- (1) Resignation. In the event an employee decides to leave the municipal government's employ, a (2) week notice shall be given to his/her supervisor so that arrangements for a replacement can be made. In such a case, employees will be expected to return any or all municipal government equipment assigned. An unauthorized absence from work for a period of three (3) consecutive working days may be considered by the department head as a resignation. If a former employee returns to municipal government employment, his/her status of seniority, pay leave, etc. will be the same as any new employee beginning work for the first time.
- (2) <u>Layoff</u>. The department head, upon approval from the board of mayor and aldermen, may lay off an employee in the municipal government service when he/she deems it necessary by reason of shortage of funds, the abolition of a position, or for related reasons that are outside the employer's control and that do not reflect discredit upon the employee's service. The police chief shall have authority to layoff police personnel when he/she deems it necessary by reason of shortage of funds, the abolition of a position, or for related reasons that are outside the employer's control and that do not reflect discredit upon the employee's service. Temporary employees shall be laid off before probationary or regular employees. The order of layoff shall be in reverse order to total continuous time served upon the date established for the layoff to become effective.
- (3) <u>Disability</u>. An employee may be separated for disability when he/she/cannot perform the essential functions of the job because of physical or mental impairment that cannot be accommodated without undue hardship or because the disability poses a direct threat to the health and safety of others. A reasonable accommodation may include transfer to a comparable position for which the individual is qualified. Action may be initiated by the employee or the municipality, but in all cases it must be supported by medical evidence acceptable to the board of mayor and aldermen, and the disability must prevent the employee from performing the essential functions of the job. The board may require an examination at its expense to be performed by a licensed physician of its choice.
- (4) <u>Retirement</u>. Whenever an employee meets the conditions set forth in the retirement system's regulations, he/she may elect to retire and receive all benefits earned under the appropriate retirement system.
- (5) <u>Death</u>. Separation shall be effective as of the date of death of an employee. All compensation due in accordance with these rules shall be paid to

the estate of the employee, except for such sums as by law must be paid to the surviving spouse.

(6) <u>Dismissal</u>. The mayor and board of aldermen may dismiss an employee for just cause that is for the good of the city service. The police chief shall have authority to dismiss police personnel. These employees shall be afforded the opportunity for due process described herein.

Reasons for dismissal may include, but shall not be limited to; misconduct, negligence, incompetence, insubordination, unauthorized absences, falsification of records, violation of any of the provisions of the charter, ordinances, or these rules.

When the decision to dismiss an employee has been reached, the employee shall be furnished an advance written notice from the city recorder containing the nature of the proposed action, the reason therefore, and the right to appeal the charges orally or in writing before the board of mayor and aldermen. The notice shall be furnished at least one (1) calendar week prior to the proposed effective date of the action, when possible. During this period, the employee may be retained on duty status, placed on leave, or suspended with or without pay at the discretion of the mayor and board of aldermen. If the employee fails to respond to the advance notice, the proposed action shall be effective on the date specified with no need for further action.

If the employee requests a hearing on the proposed action, the board shall promptly set a date and time for the hearing and shall carefully consider all evidence presented before making a decision. The decision of the board shall be final. (1987 Code, as amended by Ord. #2005-17, Feb. 2006)

- **4-307. Disciplinary actions**. When an employee's performance, attitude, work habits or personal conduct fall below a desirable level, supervision shall inform the employee promptly and specifically of such lapses and shall give him/her counsel and assistance. If appropriate and justified, a reasonable period of time for improvement may be allowed before initiating disciplinary action. In some instances, a specific incident in and of itself may justify severe initial disciplinary action, however, the action to be taken depends on the seriousness of the incident and the whole pattern of the employee's past performance and conduct. The types of disciplinary actions are:
- (1) Oral reprimand. Whenever an employee's performance, attitude, habits, or personal conduct fall below a desirable level, the supervisor shall inform the employee promptly and specifically of such lapses and shall give him/her counsel and assistance. If appropriate and justified, a reasonable period of time for improvement may be allowed before initiating disciplinary action. The supervisor will place a memo in the employee's file stating the date of the oral reprimand, what was said to the employee, and the employee's response.
- (2) <u>Written reprimand</u>. In situations where an oral warning has not resulted in the expected improvement, or when more severe initial action is warranted, a written registered reprimand may be sent to the employee, and a

copy placed in the employee's personnel folder. The supervisor administering the reprimand shall advise the employee that the action is a written reprimand and emphasize the seriousness of the problem; cite previous corrective actions and/or informal discussions relating to the offense; identify the problem and/or explain the offense; informing the employee of consequences of continued undesirable behavior; detail corrective actions and identify dates by which the corrective actions shall be taken.

At the conclusion of a conference with the employee, a copy of the written reprimand shall be placed in the employee's personnel folder. The affected employee must sign and date the written reprimand to indicate that he/she has seen the document and to acknowledge receipt of the employee's copy. Should the employee refuse to sign the written reprimand, the supervisor will obtain a witness to sign and date the form and so indicate the employee's refusal to sign.

- by his/her department head with the approval of the mayor and board of aldermen, not to exceed a total of three (3) days in any twelve (12) month period. Pursuant to the appeals procedures, a written statement of the reason for suspension shall be submitted to the employee affected at least twenty-four (24) hours prior to the effective date of suspension. This is providing that, during the advance notice period, the employee may be retained in active duty status, placed on leave, or suspended with or without pay at the discretion of the mayor and board of aldermen. The employee will be granted a hearing before the board, upon request, pursuant to the appeals process. An employee determined to be innocent of the charges shall be returned to duty with full pay for the period of suspension. All records associated with a suspension shall become a permanent part of the employee's personnel file. Under certain circumstances, an employee may be suspended without twenty-four (24) hour notice, if in the best interest of the city. (1987 Code, § 1-805)
- 4-308. Appeals process. Any city employee reprimanded, suspended, or dismissed may submit a request in writing to the board of mayor and alderman, asking them to review the action. An employee must submit the request for an appeal within ten (10) calendar days of receiving notification of the disciplinary action and must also state his/her intent to have representation and to name the representatives. The recorder, shall schedule a hearing within three (3) days of receiving the employee's request for appeal. The action of the board shall be final and binding on all parties involved, unless suspend to chancery court by the employee. (1987 Code, § 1-806)
- **4-309.** <u>Use of internet and electronic mail</u>. (1) <u>Policy</u>. It is the policy of the City of Baxter that all employees having global internet access and e-mail privileges shall use such access only for official work in full compliance with this policy and the policies of the city. Each user must be aware of the risks related

to internet access and e-mail which cannot be eliminated but may only be managed through the exercise of prudence and caution.

- (2) <u>Procedures</u>. (a) Use of the internet e-mail. Employees must be individually authorized to use the internet and/or e-mail before doing so during working hours or while using any city equipment. No employee will be so authorized by the city until the employee has signed the internet use form. (See attachment at end of chapter.)
- (b) No e-mail messages sent or received on the city's computers is personal or private; each is the property of the City of Baxter. E-mail messages can be copied, distributed, discovered in litigation and used in disciplinary proceedings even if deleted by the recipient. Users have no expectation of privacy as to any e-mail message at any time.
  - (c) Principles of acceptable internet and computer system use.
  - (i) Use must be for legitimate work-related purposes only.
  - (ii) Users shall respect the legal protections afforded by copyright and license laws for programs and date.
  - (iii) Users shall identify themselves as employees of their department and the city when sending any e-mail message via the internet.
- (d) Unacceptable use of the internet, e-mail, and the city's computer system.
  - (i) Users shall respect the integrity of the city's computing system and shall not use it for unacceptable purposes or in an unacceptable manner as described below. It is unacceptable for a user to use, submit, publish, display, or transmit on the internet, or any part of the city's computer system, any information which;
    - (A) Uses the system for any illegal purpose;
    - (B) Contains defamatory, false, inaccurate, abusive, obscene, pornographic, profane, sexually oriented, threatening, racially offensive, or otherwise biased, discriminatory, or illegal material, whether in the form of a "joke" or otherwise;
    - (C) Violates or infringes on the rights of any other person, including the right to privacy; or,
    - (D) Modify files or data belonging to other users without explicit permission to do so.
  - (ii) No user, other than the mayor or the various department directors shall have authority to subscribe to any service for which a fee is charged.
  - (iii) Users shall not use or develop programs that harass other users or infiltrate a computer or computing system or which

seek to alter or damage the software components of a computer or computing system.

- (e) Personal use: The prohibitions in this policy shall also not be construed to prohibit infrequent and brief use of the system for incidental personal matters by an employee during a meal or other personal break time. This is similar to an employee's limited ability to make a personal telephone call on personal time. For example, an employee may spend a minute or two looking at the weather radar online provided, however, in no event shall any such limited personal use include any activity otherwise prohibited by this policy, e.g., visiting a sexually explicit site.
  - (f) No right of privacy monitoring.
  - (i) Pursuant to the Electronic Communications Act of 1986, 18 USC 2510, et seq., notice is hereby given that there are no facilities provided by the city and its system for sending or receiving private or confidential electronic communications.
  - (ii) Electronic mail, whether sent via the internet or internally, may be a public record subject to public disclosure under the Tennessee Public Records Law and may be inspected by the public (Tennessee Code Annotated, § 10-7-512). (Ord. #2004-3, May 2004)
- **4-310. Sexual harassment**. (1) <u>Purpose</u>. The City of Baxter will not tolerate sexual harassment of its employees. The city has adopted this policy on sexual harassment to try to prevent sexual harassment from occurring in the workplace.

The municipality may be held liable for the actions of all employees with regard to sexual harassment and will not tolerate sexual harassment of its employees. The city will take immediate, positive steps to stop such harassment when it occurs. The municipality may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the municipal government (or its agents or supervisory employees) knows or should have known of the conduct and failed to take immediate and appropriate corrective action.

This policy applies to all officers and employees of the City of Baxter, including but not limited to full- and part-time employees, elected officials, permanent and temporary employees, employees covered or exempt from the personnel rules or regulations of the municipal government, and employees working under contract for the municipality. The following rules shall be strictly enforced.

(2) <u>Definitions</u>. The following actions constitute an unlawful employment practice and are absolutely prohibited by the municipal government when they affect employment decisions, create a hostile job environment, cause distractions, or unreasonably interfere with work performance:

- (a) Sexual advances;
- (b) Requests for sexual favors;
- (c) Verbal or physical conduct of a sexual nature in the form of pinching, grabbing, patting, or propositioning;
- (d) Explicit or implied job threats or promises in return for submission to sexual favors:
  - (e) Sex-oriented comments on appearance;
- (f) Sex-oriented stories, jokes or other communication, whether spoken or written, verbal or non-verbal;
- (g) Displaying sexually explicit or pornographic material, no matter how the material is displayed; and/or
  - (h) Sexual assault.

Sexual harassment includes conduct directed by men toward women, conduct directed by men toward men, conduct directed by women toward men, and conduct directed by women toward women.

- (3) <u>Making sexual harassment complaints</u>. An employee who feels he/she is subjected to sexual harassment should immediately contact a person (listed below) with whom the employee feels the most comfortable. (Any number of individuals may be chosen. The object is to give several options to a harassment victim in the event the harasser is the immediate supervisor.) Complaints may be made orally or in writing to:
  - (a) The employee's immediate supervisor;
  - (b) The employee's department head;
  - (c) The recorder;
  - (d) The mayor; and/or
  - (e) The board of mayor and aldermen.

Employees have the right to circumvent the employee chain-of-command when selecting the person to complain to about sexual harassment. The employee should be prepared to provide the following information:

- (a) His/her name, department, and position title;
- (b) The name of the alleged perpetrator sexual harassment, including their title(s), if known;
- (c) The specific nature of the sexual harassment, how long it has gone on, any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against the employee as a result of the harassment, or any other threats made against the employee as a result of the harassment;
  - (d) Witnesses to the harassment; and
- (e) Whether the employee has previously reported the harassment and, if so, when and to whom.
- (4) Reporting and investigating sexual harassment complaints. The mayor is the person the municipal government designates as the investigator of sexual harassment complaints against employees. In the event the sexual

harassment complaint is against the mayor, the investigator shall be a municipal employee appointed by the board.

When an allegation of sexual harassment is made by any employee, the investigator shall:

- (a) Immediately prepare a report of the complaint according to the preceding section and submit it to the board.
- (b) Make and keep a written record of the investigation at the time the verbal interview is in progress, including notes on:
  - (i) Verbal responses made to the investigator by the person complaining of sexual harassment;
    - (ii) Witnesses interviewed during the investigation;
  - (iii) The person against whom the complaint of sexual harassment was made; and
  - (iv) Any other person contacted by the investigator in connection with the investigation.
- (c) Within ten (10) days of receiving the complaint, prepare and present the findings to the board in a report, which will include:
  - (i) The written statement of the person complaining of sexual harassment;
    - (ii) The written statements of witnesses;
  - (iii) The written statement of the person against whom the complaint of sexual harassment was made; and
  - (iv) All the investigator's notes connected to the investigation.
- (5) Action on complaints of sexual harassment. Upon receiving an investigation report of a sexual harassment complaint, the board shall immediately review the report. If the board determines that the report is not complete in some respect, it may question the person complaining of sexual harassment, the person against whom the complaint has been made, witnesses to the conduct in question, or any other person who may have knowledge about the harassment.

Based upon the report and its own investigation (where a separate investigation is made), the board shall, within a reasonable time, determine whether the conduct in question constitutes sexual harassment. In making that determination, the board shall look at the record as a whole and at the totality of circumstances, including the nature of the conduct, the context in which the alleged actions occurred, and the behavior of the person complaining. Whether not sexual harassment took place will be determined on a case-by-case basis.

If the board determines that the harassment complaint is founded, he/she shall take immediate and appropriate disciplinary action against the guilty employee, consistent with its authority under the municipal charter, ordinances, resolutions, or rules governing its authority to discipline employees. If the governing body determines that the sexual harassment complaint is founded,

it may discipline the employee consistent with its authority under the municipal charter, code, ordinances, resolutions, or rules governing employee discipline.

The disciplinary action shall be consistent with the nature and severity of the offense, the employee's rank, and any other factors the governing body believes relate to fair and efficient administration of the municipal government. This includes, but is not limited to, the effect of the offense on employee morale, public perception of the offense, and the light in which it casts the municipality. The disciplinary action may include demotion, suspension, dismissal, warning, or reprimand. Determining the level of disciplinary action shall also be made on a case-by-case basis. A written record shall be kept of imposed disciplinary actions, including verbal reprimands.

In all events, an employee found guilty of sexual harassment shall be warned not to retaliate in any way against the person making the complaint, witnesses, or any other person connected with the investigation.

In cases where sexual harassment is committed by a non-employee against a municipal government employee in the workplace, the board shall take whatever lawful action is necessary against the non-employee to bring the sexual harassment to an immediate end.

(6) Obligation of employees. Employees are not only encouraged to report instances of sexual harassment; they are obligated to report them. Employees are also obligated to cooperate in every harassment investigation. The obligation includes, but is not necessarily limited to, coming forward with evidence (both favorable and unfavorable) about a person accused of such conduct, fully and truthfully making written reports, or verbally answering questions when required to do so by an investigator. Employees are also obligated to refrain from making bad faith accusations of sexual harassment.

Disciplinary action may be taken against employees who fail to report instances of sexual harassment, fail or refuse to cooperate in the sexual harassment investigation, or file a complaint of sexual harassment in bad faith. (Ord. #2007-12, Oct. 2007)

# 4-311. <u>Substance abuse policy and drug free workplace program</u>. The substance abuse policy and drug free workplace program is included as Appendix B of the Baxter Municipal Code. The city recorder is authorized to develop or obtain consent forms, acknowledgment forms, and other documentation as reasonably necessary for compliance with this policy and the Tennessee Drug Free Workplace Act.

**4-312.** Employee safety handbook adopted. The City of Baxter Employee Safety Handbook is included as Appendix C of the Baxter Municipal Code. The city recorder is to provide all employees with a copy of the City of Baxter Employee Safety Handbook upon final passage, and obtain acknowledgment forms. (Ord. #2007-13, Oct. 2007)

#### ATTACHMENT:

#### ACKNOWLEDGMENT

I hereby acknowledge that I have received and read a copy of the City of Baxter's Policy for the Use of Internet and Electronic Mail. I understand that all e-mail communications systems are the property of the city, as is the information received from, transmitted by, or stored in these systems. I understand that, except with respect to certain content deemed confidential by state and federal law, I have no expectation of privacy in connection with any e-mail messages, the use of city equipment, or the transmission, receipt, or storage of information in this equipment.

I acknowledge and consent to the city's monitoring my use of both Internet and Internet e-mail at any time the city deems it necessary in accordance with its policy. Monitoring may include reading and printing out all electronic mail entering, stored in, or disseminated by the City of Baxter's system and equipment. I agree not to use a code, access a file, or retrieve any stored information unless authorized to do so. I understand that this consent is a condition of my employment and/or continued association with the city. I understand all the provisions specified in this policy. Further, I recognize that a violation of this policy may result in disciplinary action, including possible termination.

EMPLOYEE SIGNATURE CITY OF BAXTER, TENNESSEE
DATE
DEPARTMENT HEAD

# OCCUPATIONAL SAFETY AND HEALTH PROGRAM

#### **SECTION**

- 4-401. Title.
- 4-402. Purpose.
- 4-403. Coverage.
- 4-404. Standards authorized.
- 4-405. Variances from standards authorized.
- 4-406. Administration.
- 4-407. Funding the program.
- **4-401.** Title. This section shall provide authority for establishing and administering the Occupational Safety and Health Program Plan for the employees of City of Baxter. (Ord. #2003-6, Oct. 2003)
- **4-402.** Purpose. The City of Baxter, in electing to update their established program plan will maintain an effective occupational safety and health program for its employees and shall:
- (1) Provide a safe and healthful place and condition of employment that includes:
  - (a) Top management commitment and employee involvement;
  - (b) Continually analyze the worksite to identify all hazards and potential hazards;
  - (c) Develop and maintain methods for preventing or controlling existing or potential hazards; and
  - (d) Train managers, supervisors, and employees to understand and deal with worksite hazards.
- (2) Acquire, maintain and require the use of safety equipment, personal protective equipment and devices reasonably necessary to protect employees.
- (3) Make, keep, preserve, and make available to the Commissioner of Labor and Workforce Development of the State of Tennessee, his designated representatives, or persons within the Tennessee Department of Labor and Workforce Development to whom such responsibilities have been delegated, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.
- (4) Consult with the State Commissioner of Labor and Workforce Development with regard to the adequacy of the form and content of records.
- (5) Consult with the State Commissioner of Labor and Workforce Development, as appropriate, regarding safety and health problems which are

considered to be unusual or peculiar and are such that they cannot be achieved under a standard promulgated by the state.

- (6) Provide reasonable opportunity for the participation of employees in the effectuation of the objectives of this program, including the opportunity to make anonymous complaints concerning conditions or practices injurious to employee safety and health.
- (7) Provide for education and training of personnel for the fair and efficient administration of occupational safety and health standards, and provide for education and notification of all employees of the existence of this program. (Ord. #2003-6, Oct. 2003)
- **4-403.** Coverage. The provisions of the Occupational Safety and Health Program Plan for the employees of City of Baxter shall apply to all employees of each administrative department, commission, board, division, or other agency of the City of Baxter whether part-time or full-time, seasonal or permanent. (Ord. #2003-6, Oct., 2003)
- **4-404.** Standards authorized. The occupational safety and health standards adopted by the City of Baxter are the same as, but not limited to, the State of Tennessee Occupational and Health Standards promulgated, or which may be promulgated, in accordance with section 6 of the Tennessee Occupational Safety and Health Act of 1972 (Tennessee Code Annotated, title 50, chapter 3). (Ord. #2003-6, Oct. 2003)
- 4-405. <u>Variances from standards authorized</u>. The City of Baxter may, upon written application to the Commissioner of Labor and Workforce Development of the State of Tennessee, request an order granting a temporary variance from any approved standards. Applications for variances shall be in accordance with Rules of Tennessee Department of Labor and Workforce Development, Occupational Safety, chapter 0800-1-2, as authorized by <u>Tennessee Code Annotated</u>, title 50. Prior to requesting such temporary variance, the City of Baxter shall notify or serve notice to employees, their designated representatives, or interested parties and present them with an opportunity for a hearing. The posting of notice on the main bulletin board as designated by the City of Baxter shall be deemed sufficient notice to employees. (Ord. #2003-6, Oct. 2003)
- **4-406.** Administration. For the purposes of this chapter, the city recorder is designated as the director of occupational safety and health to perform duties and to exercise powers assigned so as to plan, develop, and administer said plan. The director shall develop a plan of operation for the program and said plan shall become a part of this chapter when it satisfies all applicable sections of the Tennessee Occupational Safety and Health Act of 1972

and part IV of the Tennessee Occupational Safety and Health Plan. (Ord. #2003-6, Oct. 2003)

**4-407. Funding the program**. Sufficient funds for administering and staffing the program pursuant to this chapter shall be made available as authorized by the City of Baxter. (Ord. #2003-6, Oct. 2003)

### INFECTIOUS DISEASE CONTROL POLICY

#### **SECTION**

- 4-501. General information.
- 4-502. General policies and procedures.
- 4-503. Vaccinations, testing and post-exposure management.
- 4-504. Training.
- 4-505. Records and reports.
- 4-506. Legal rights of victims of communicable diseases.
- 4-501. General information. (1) Purpose. It is the responsibility of the City of Baxter to provide employees a place of employment which is free from recognized hazards that may cause death or serious physical harm. In providing services to the citizens of the City of Baxter, employees may come in contact with life-threatening infectious diseases which can be transmitted through job related activities. It is important that both citizens and employees are protected from the transmission of diseases just as it is equally important that neither is discriminated against because of basic misconceptions about various diseases and illnesses.

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

- (2) <u>Coverage</u>. Occupational exposures may occur in many ways, including needle sticks, cut injuries or blood spills. Several classes of employees are assumed to be at high risk for blood borne infections due to their routinely increased exposure to infectious materials from potentially infected individuals. Those high risk occupations include but are not limited to:
  - (a) Paramedics and emergency medical technicians;
  - (b) Occupational nurses:
  - (c) Housekeeping and laundry workers;
  - (d) Police and security personnel;
  - (e) Firefighters;
  - (f) Sanitation and landfill workers; and
  - (g) Any other employee deemed to at high risk per this policy and an exposure determination.
- (3) <u>Administration</u>. This infection control policy shall be administered by the city recorder who shall have the following duties and responsibility:
  - (a) Exercise leadership in implementation and maintenance of an effective infection control policy subject to the provisions of this chapter, other ordinances, the city charter, and federal and state law relating to OSHA regulations;

- (b) Make an exposure determination for all employee positions to determine a possible exposure to blood or other potentially infectious materials;
- (c) Maintain records of all employees and incidents subject to the provisions of the chapter;
- (d) Conduct periodic inspections to determine compliance with the infection control policy by municipal employees;
- (e) Coordinate and document all relevant training activities in support of the infection control policy;
- (f) Prepare and recommend to the board of mayor and aldermen any amendments or changes to the infection control policy;
- (g) Identify any and all housekeeping operations involving substantial risk of direct exposure to potentially infectious materials and shall address the proper precautions to be taken while cleaning rooms and blood spills; and
- (h) Perform such other duties and exercise such other authority as my be prescribed by the board of mayor and aldermen.
- (4) <u>Definitions</u>. (a) "Body fluid." Fluids that have been recognized by the Centers for Disease Control as directly linked to the transmission of HIV and/or HBV and/or to which universal precautions apply: blood, semen, blood products, vaginal secretions, cerebrospinal fluid, synovial fluid, pericardial fluid, amniotic fluid, and concentrated HIV or HBV viruses.
- (b) "Exposure." The contact with blood or other potentially infectious materials to which universal precautions apply through contact with open wounds, non-intact skin, or mucous membranes during the performance of an individuals normal job duties.
- (c) "Hepatitis B Virus (HBV)." A serious blood-borne virus with the potential for life-threatening complications. Possible complications include: massive hepatic necrosis, cirrhosis of the liver, chronic active hepatitis, and hepatocellular carcinoma.
- (d) "Human Immunodeficiency Virus (HIV)." The virus that causes Acquired Immunodeficiency Syndrome (AIDS). HIV is transmitted through sexual contact and exposure to infected blood or blood components and perinatally from mother to neonate.
- (e) "Tuberculosis (TB)." An acute or chronic communicable disease that usually affects the respiratory system, but may involve any system in the body.
- (f) "Universal precautions." Refers to a system of infectious disease control which assumes that every direct contact with body fluid is infectious and requires every employee exposed to direct contact with potentially infectious materials to be protected as though such potentially infectious materials to be protected as though such body fluids were HBV or HIV infected. (1987 Code, § 1-1001)

4-502. General policies and procedures. (1) Policy statement. All blood and other potentially infectious materials are infectious for several blood-borne pathogens and some other potentially infectious materials can transmit infections. For this reason, the Centers for Disease Control developed the strategy that everyone should always take particular care when there is a potential exposure. These precautions have been termed "universal precautions."

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

- (2) <u>General guidelines</u>. General guidelines which shall be used by everyone include:
  - (a) Think when responding to emergency calls and exercise common sense when there is potential exposure to blood or other potentially infectious materials which require universal precautions.
  - (b) Keep all open cuts and abrasions covered with adhesive bandages which repel liquids.
  - (c) Soap and water kill many bacteria and viruses on contact. If hands are contaminated with blood or other potentially infectious materials to which universal precautions apply, then wash immediately and thoroughly. Hands shall also be washed after gloves are removed even if the gloves appear to be intact. When soap and water or handwashing facilities are not available, then use a waterless antiseptic hand cleaner according to the manufacturers recommendation for the product.
  - (d) All workers shall take precautions to prevent injuries caused by needles, scalpel blades, and other sharp instruments. To prevent needle stick injuries, needles shall not be recapped, purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand. After they are used, disposable syringes and needles, scalpel blades and other sharp items shall be placed in puncture resistant containers for disposal. The puncture resistant container shall be located as close as practical to the use area.
  - (e) The city will provide gloves of appropriate material, quality and size for each affected employee. The gloves are to be worn when there is contact (or when there is a potential contact) with blood or other potentially infectious materials to which universal precautions apply:
    - (i) While handling an individual where exposure is possible;

- (ii) While cleaning or handling contaminated items or equipment;
- (iii) While cleaning up an area that has been contaminated with one (1) of the above;

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

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

ordinary, unexpected or not readily apparent. Tags shall be used until such time as the identified hazard is eliminated or the hazardous operation is completed.

All required tags shall meet the following criteria:

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

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

(n) Whenever possible, disposable equipment shall be used to minimize and contain clean-up. (1987 Code, § 1-1002)

### 4-503. Vaccinations, testing and post-exposure management.

- (1) <u>Hepatitis B vaccinations</u>. The City of Baxter shall offer the appropriate hepatitis B vaccination to employees at risk of exposure free of charge and in amounts at times prescribed by standard medical practices. The vaccination shall be voluntarily administered. High risk employees who wish to take the HBV vaccination should notify their department head who shall make the appropriate arrangements through the infectious disease control coordinator.
- (2) <u>Reporting potential exposure</u>. City employees shall observe the following procedures for reporting a job exposure incident that may put them at risk for HIV or HBV infections (i.e., needle sticks, blood contact on broken skin, body fluid contact with eyes or mouth, etc.):
  - (a) Notify the infectious disease control coordinator of the contact incident and details thereof.

- (b) Complete the appropriate accident reports and any other specific form required.
- (c) Arrangements will be made for the person to be seen by a physician as with any job-related injury.

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

- (3) <u>Disability benefits</u>. Entitlement to disability benefits and any other benefits available for employees who suffer from on-the-job injuries will be determined by the Tennessee Workers' Compensations Bureau in accordance with the provisions of <u>Tennessee Code Annotated</u>, § 50-6-303. (1987 Code, § 1-1003)
- **4-504.** Training. (1) Regular employees. On an annual basis all employees shall receive training and education on precautionary measures, epidemiology, modes of transmission and prevention of HIV/HBV infection and procedures to be used if they are exposed to needle sticks or potentially infectious materials. They shall also be counseled regarding possible risks to the fetus from HIV/HBV and other associated infectious agents.
- (2) <u>High risk employees</u>. In addition to the above, high risk employees shall also receive training regarding the location and proper use of personal protective equipment. They shall be trained concerning proper work practices and understand the concept of "universal precautions" as it applies to their work situation. They shall also be trained about the meaning of color coding and other methods used to designate contaminated material. Where tags are used, training shall cover precautions to be used in handling contaminated as per this policy.
- (3) New employees. During the new employee's orientation to his/her job, all new employees will be trained on the effects of infectious disease prior to putting them to work. (1987 Code, § 1-1004)
- **4-505.** Records and reports. (1) Reports. Occupational injury and illness records shall be maintained by the infectious disease control coordinator. Statistics shall be maintain on the OSHA-200 report. Only those work-related injuries that involve loss of consciousness, transfer to another job, restriction of work or motion, or medical treatment are required to be put on the OSHA-200.
- (2) <u>Needle sticks</u>. Needle sticks, like any other puncture wound, are considered injuries for recordkeeping purposes due to the instantaneous nature of the event. Therefore, any needle stick requiring medical treatment (i.e. gama

globulin, hepatitis B immune globulin, hepatitis B vaccine, etc.) shall be recorded.

- (3) <u>Prescription medication</u>. Likewise, the use of prescription medication (beyond a single dose for minor injury or discomfort) is considered medical treatment. Since these types of treatment are considered necessary, and must be administered by physician or licensed medical personnel, such injuries cannot be considered minor and must be reported.
- (4) <u>Employee interviews</u>. Should the city be inspected by the U.S. Department of Labor Office of Health Compliance, the compliance safety and health officer may wish to interview employees. Employees are expected to cooperate fully with the compliance officers. (1987 Code, § 1-1005)
- **4-506.** <u>Legal rights of victims of communicable diseases</u>. Victims of communicable diseases have the legal right to expect, and municipal employees, including police and emergency service officers are duty bound to provide, the same level of service and enforcement as any other individual would receive.
- (1) Officers assume that a certain degree of risk exists in law enforcement and emergency service work and accept those risks with their individual appointments. This holds true with any potential risks of contacting a communicable disease as surely as it does with the risks of confronting an armed criminal.
- (2) Any officers who refuse to take proper action in regard to victims of a communicable disease, when appropriate protective equipment is available, shall be subject to disciplinary measures along with civil and, or criminal prosecution.
- (3) Whenever an officer mentions in a report that an individual has or may have a communicable disease, he shall write "contains confidential medical information" across the top margin of the first page of the report.
- (4) The officer's supervisor shall ensure that the above statement is on all reports requiring that statement at the time the report is reviewed and initialed by the supervisor.
- (5) The supervisor disseminating newspaper releases shall make certain the confidential information is not given out to the news media.
- (6) All requests (including subpoenas) for copies of reports marked "contains confidential medical information" shall be referred to the city attorney when the incident involves an indictable or juvenile offense.
- (7) Prior approval shall be obtained from the city attorney before advising a victim of sexual assault that the suspect has, or is suspected of having a communicable disease.
- (8) All circumstances not covered in this policy, that may arise concerning releasing confidential information regarding a victim, or suspected victim, of a communicable disease shall be referred directly to the appropriate department head or city attorney.

- (9) Victims of a communicable disease and their families have a right to conduct their lives without fear of discrimination. An employee shall not make public, directly or indirectly, the identity of a victim or suspected victim of a communicable disease.
- (10) Whenever an employee finds it necessary to notify another employee, police officer, firefighter, emergency service officer, or health care provider that a victim has or is suspected of having a communicable disease, that information shall be conveyed in a dignified, discrete and confidential manner. The person to whom the information is being conveyed should be reminded that the information is confidential and that it should not be treated as public information.
- (11) Any employee who disseminates confidential information in regard to a victim, or suspected victim of a communicable disease in violation of this policy shall be subject to serious disciplinary action and/or civil and/or criminal prosecution. (1987 Code, § 1-1006)

### TRAVEL REIMBURSEMENT REGULATIONS

#### SECTION

- 4-601. Purpose.
- 4-602. Enforcement.
- 4-603. Travel policy.
- 4-604. Travel reimbursement rate schedules.
- 4-605. Administrative procedures.
- **4-601.** Purpose. To provide consistent travel regulations and reimbursement, this chapter covers the mayor and board of aldermen, any other elected or appointed officials and regular city employees. It is the intent of this policy to assure fair and equitable treatment to all individuals traveling on city business at city expense. (1987 Code, § 1-1101, modified)
- **4-602.** Enforcement. The Chief Administrative Officer (CAO) of the city or his or her designee shall be responsible for the enforcement of these travel regulations. (1987 Code, § 1-1102)
- 4-603. <u>Travel policy</u>. (1) In the interpretation and application of this chapter, the term "traveler" or "authorized traveler" means any elected or appointed municipal officer or employee, including members of municipal boards and committees appointed by the mayor or the municipal governing body, and the employees of such boards and committees who are traveling on official municipal business and whose travel was authorized in accordance with this chapter. "Authorized traveler" shall not include the spouse, children, other relatives, friends, or companions accompanying the authorized traveler on city business, unless the person(s) otherwise qualifies as an authorized traveler under this chapter.
- (2) Authorized travelers are entitled to reimbursement of certain expenditures incurred while traveling on official business for the city. Reimbursement expenses shall include expenses for transportation; lodging; meals; registration fees for conferences, conventions, and seminars; and other actual and necessary expenses related to official business as determined by the CAO. Under certain conditions, entertainment expenses may be eligible for reimbursement.
- (3) Authorized travelers can request either a travel advance for the projected cost of authorized travel, or advance billing directly to the city for registration fees, air fares, meals, lodging, conferences, and similar expenses.

Travel advance requests are not considered documentation of travel expenses. If travel advances exceed documented expenses, the traveler must

immediately reimburse the city. It will be the responsibility of the CAO to initiate action to recover any undocumented travel advances.

- (4) Travel advances are available only for special travel and only after completion and approval of the travel authorization form.
- (5) The travel expense reimbursement form will be used to document all expense claims.
  - (6) To qualify for reimbursement, travel expenses must be:
  - (a) Directly related to the conduct of the city business for which travel was authorized; and
- (b) Actual, reasonable, and necessary under the circumstances. The CAO may make exceptions for unusual circumstances. Expenses considered excessive won't be allowed.
- (7) Claims of five dollars (\$5.00) or more for travel expense reimbursement must be supported by the original paid receipt for lodging, vehicle rental, phone call, public carrier travel, conference fee, and other reimbursement costs.
- (8) Any person attempting to defraud the city or misuse city travel funds is subject to legal action for recovery of fraudulent travel claims and/or advances.
- (9) Mileage and motel expenses incurred within the city are not ordinarily considered eligible expenses for reimbursement. (1987 Code, § 1-1103)
- **4-604.** <u>Travel reimbursement rate schedules</u>. Authorized travelers shall be reimbursed according to the State of Tennessee travel regulation rates. The city's travel reimbursement rates will automatically change when the state rates are adjusted.

The municipality may pay directly to the provider for expenses such as meals, lodging, and registration fees for conferences, conventions, seminars, and other education programs. (1987 Code, § 1-1104)

**4-605.** Administrative procedures. The city adopts and incorporates by reference, as if fully set out herein the administrative procedures submitted by MTAS to, and approved by letter by, the Comptroller of the Treasury, State of Tennessee, in June, 1993. A copy of the administrative procedures is on file in the office of the city recorder. (1987 Code, § 1-1105)

## CONFINED SPACE ENTRY AND RESCUE PROCEDURES

### **SECTION**

4-701. Confined space entry and rescue procedures established.

4-701. Confined space entry and rescue procedures established. The City of Baxter establishes minimum standards and procedures that shall be mandatory for the adequate protection of employees and other persons who may be required to enter dangerous confined spaces. The City of Baxter "Confined Space Entry and Rescue Procedures" is contained in Ord. #2000-5, July 2000, and is attached to this code as Appendix E.

### TITLE 5

# MUNICIPAL FINANCE AND TAXATION1

### **CHAPTER**

- 1. REAL AND PERSONAL PROPERTY TAXES.
- 2. WHOLESALE BEER TAX.
- 3. MUNICIPAL PURCHASING.

### CHAPTER 1

# REAL AND PERSONAL PROPERTY TAXES

### **SECTION**

- 5-101. When due and payable.
- 5-102. When delinquent--penalty and interest.
- **5-101.** When due and payable. Taxes levied by the city against real and personal property shall become due and payable annually on the first Monday of October of the year for which levied. (1987 Code, § 6-101)
- **5-102.** When delinquent—penalty and interest. All real property taxes shall become delinquent on and after the first day of March next after they become due and payable and shall thereupon be subject to such penalty and interest as is authorized and prescribed by the state law for delinquent county real property taxes. (1987 Code, § 6-102)

Assessment; rate; etc.: art. 6.

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

## WHOLESALE BEER TAX

### **SECTION**

5-201. To be collected.

**5-201.** <u>To be collected</u>. The city recorder is hereby directed to take appropriate action to assure payment to the city of the wholesale beer tax levied by the "Wholesale Beer Tax Act," as set out in <u>Tennessee Code Annotated</u>, title 57, chapter 6.<sup>1</sup> (1987 Code, § 6-201)

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

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

## MUNICIPAL PURCHASING

#### SECTION

- 5-301. Definitions.
- 5-302. Purchasing agent.
- 5-303. General procedures.
- 5-304. Rejection of bids.
- 5-305. Conflict of interest.
- 5-306. Purchasing from employee.
- 5-307. Sealed bid requirements: ten thousand dollars (\$10,000.00) or greater.
- 5-308. Competitive bidding: five hundred dollars (\$500.00) to ten thousand dollars (\$10,000.00)
- 5-309. Purchases and contracts costing from one hundred dollars (\$100.00) to five hundred dollars (\$500.00).
- 5-310. Bid deposit.
- 5-311. Performance bond.
- 5-312. Record of bids.
- 5-313. Considerations in determining bid awards.
- 5-314. Award splitting.
- 5-315. Statement when award not given to low bidder.
- 5-316. Award in case of tie bids.
- 5-317. Back orders.
- 5-318. Emergency purchases.
- 5-319. Waiver of the competitive bidding process.
- 5-320. Goods and services exempt from competitive bidding.
- 5-321. Procedures upon taking delivery of purchased items.
- 5-322. Property control.
- 5-323. Disposal of surplus property.
- 5-324. Surplus property: items consumed in the course of work thought to be worthless.
- 5-325. Surplus property: items estimated to have monetary value.
- 5-326. Surplus property: city identification removed prior to sale.
- 5-327. Liability for excess purchases.
- 5-328. Additional forms and procedures.
- **5-301. Definitions**. For the purpose of implementing this chapter, the following definitions shall apply.
  - (1) "Accept." To receive with approval or satisfaction.
- (2) "Acknowledgment." Written confirmation from the vendor to the purchaser of an order implying obligation or incurring responsibility.
- (3) "Agreement." A coming together in opinion or determination; understanding and agreement between two (2) or more parties.

- (4) "All or none." In procurement, the city reserves the right to award each item individually or to award all items on an all or none basis.
  - (5) "Annual." Recurring, done, or performed every year.
- (6) "Appropriations." Public funds set aside for a specific purpose or purposes.
- (7) "Approved." To be satisfied with; admit the propriety or excellence of; to be pleased with; to confirm or ratify.
- (8) "Approved equal." Alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount or rights."
- (9) "Attest." To certify to the verity of a public document formally by signature; to affirm to be true or genuine.
- (10) "Award." The presentation of a contract to a vendor; to grant, to enter into with all required legal formalities.
- (11) "Awarded bidder." Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the city.
- (12) "Back order." The portion of a customer (s) order undelivered due to temporary unavailability of a particular product or material.
- (13) "Bid." A vendor(s) response to an invitation for bids or request for proposal; the information concerning the price or cost of materials or services offered by a vendor.
- (14) "Bidder." Any individual, company, firm, corporation, partnership or other organization or entity bidding on solicitations issued by the city and offering to enter into contracts with the city.
- (15) "Bid bond." An insurance agreement in which a third party agrees to be liable to pay a certain amount of money should a specific vendor(s) bid be accepted and the vendor falls to sign the contract as bid.
- (16) "Bid file." A folder containing all of the documentation concerning a particular bid. This documentation includes the names of all vendors to whom the invitation to bid was mailed, the responses of the vendors, the bid tabulation forms and any other information as may be necessary.
- (17) "Bid opening." The opening and reading of the bids, conducted at the time and place specified in the invitation for bids and in the presence of anyone who wishes to attend.
  - (18) "Bid solicitation." Invitations for bids.
- (19) "Blanket bid order." A type of bid used by buyers to purchase repetitive products. The city establishes its need for a product for a specified period of time. The vendor is then informed of the city's expected usage during the duration of the proposed contract. The city may then order small quantities of these items from the vendor, at the bid price, over the term of the contract.
- (20) "Business." Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or legal entity through which business is conducted.
  - (21) "Cancel." To revoke a contract or bid.

- (22) "Capital items." Equipment which has a life expectancy of one (1) year or longer and a value in excess of one thousand dollars (\$1,000.00). Additionally, real estate shall be considered a capital item.
- (23) "Cash discount." A discount from the purchase price allowed to the purchaser if payment is made within a specified period of time.
- (24) "Caveat emptor." Let the buyer beware; used in proposals or contracts to caution a buyer to avoid misrepresentation.
- (25) "Certify." To testify in writing; to make known or establish as a fact.
  - (26) "City." The City/Town of Baxter, Tennessee.
- (27) Competitive bidding." Bidding on the same undertaking or material items by more than one (1) vendor.
- (28) "Conspicuously." To be prominent or obvious; located, positioned, or designed to be noticed.
- (29) "Construction." The building, alteration, demolition, or repair of public buildings, structures, highways and other improvements or additions to real property.
- (30) "Contract." An agreement, grant, or order for the procurement, use, or disposal of supplies, services, construction, insurance, real property or any other item.
  - (31) "Date." Recorded information, regardless of form or characteristic.
- (32) "Delivery schedule." The required or agreed upon rate of delivery of goods or services.
- (33) "Discount for prompt payment." A predetermined discount offered by a vendor for prompt payment.
- (34) "Encumber." To reserve funds against a budgeted line item; to charge against an account.
- (35) "Evaluation of bid." The process of examining a bid to determine a bidder's responsibility, responsiveness to requirements, qualifications, or other characteristics of the bid that determine the eventual selection of a winning bid.
- (36) "Fiscal year." An accounting period of twelve (12) months, July 1 through June 30.
- (37) "FOB destination." An abbreviation for free on board that refers to the point of delivery of goods. The seller absorbs the transportation charges and retains title to and responsibility for the goods until the City of Baxter, Tennessee has received and signed for the goods.
  - (38) "Goods." All materials, equipment, supplies, and printing.
  - (39) "Invitation for bid." All documents utilized for soliciting bids.
- (40) "Invoice." A written account of merchandise and process, delivered to the purchaser; a bill.
- (41) "Lead time." The period of time from the date of ordering to the date of delivery which the buyer must reasonably allow the vendor to prepare goods for shipment.

- (42) "Life cycle costing." A procurement technique that considers the total cost of purchasing, maintaining, operating, and disposal of a piece of equipment when determining the low bid.
- (43) "Local bidder." A bidder who has and maintains a business office located within the corporate city limits of Baxter, Tennessee.
- (44) "Material receiving report." A form used by the department head or supervisor to inform others of the receipt of good purchased.
- (45) "Performance bond." A bond given to the purchaser by a vendor or contractor guaranteeing the performance of certain services or delivery of goods within a specified period of time. The purpose is to protect the purchaser against a cash loss which might result if the vendor did not deliver as promised.
- (46) "Pre-bid conference." A meeting held with potential vendors a few days after an invitation for bids has been issued to promote uniform interpretation of work statements and specifications by all prospective contractors.
- (47) "Procurement or purchasing." Buying, renting, leasing, or otherwise obtaining supplies, services, construction, insurance or any other item. It also includes functions that pertain to the acquisition of such supplies, services, construction, insurance and other items, including descriptions of requirements, selection and solicitation of sources, preparation and award of contracts, contract administration, and all phases of warehousing and disposal.
  - (48) "Public." Open to all.
- (49) "Public purchasing unit." Means the State of Tennessee, any county, city, town, governmental entity and other subdivision of the State of Tennessee, or any public agency, or any other public authority.
- (50) "Purchasing order." A legal document used to authorize a purchase from a vendor. A purchase order, when given to a vendor, should contain statements about the quantity, description, and price of goods or services ordered, agreed terms of payment, discounts, date of performance, transportation terms, and all other agreements pertinent to the purchase and its execution by the vendor.
- (51) "Reject." Refuse to accept, recognize, or make use of; repudiate, to refuse to consider or grant.
- (52) "Responsive bidder." One who has submitted a bid which conforms in all materials respects to the invitation for bids.
- (53) "Sealed." Secured in any manner so as to be closed against the inspection of contents.
- (54) "Sole source procurement." An award for a commodity which can only be purchased from one (1) supplier, usually because of its technological, specialized, or unique character.
- (55) "Specifications." Any description of the physical or functional characteristics of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

- (56) "Standardization." The making, causing, or adapting of items to conform to recognized qualifications.
- (57) "Telephone bids." Contacting at least two (2) vendors to obtain verbal quotes for items of a value of less than five hundred dollars (\$500.00).
  - (58) "Town." The Town of Baxter, Tennessee.
- (59) "Using department." The city department seeking to purchase goods and services or which will be the ultimate user of the purchased goods and services.
- (60) "Vendor." The person who transfers property, goods, or services by sale. (Ord. #2005-4, June 2005, modified)
- **5-302.** Purchasing agent. The city recorder shall be the purchasing agent for the general fund purchases of the municipality. The water clerk shall be the purchasing agent for purchases in the enterprise fund. Except as otherwise provided in this policy, all supplies, materials, equipment, and services of any nature shall be approved and acquired by the purchasing agent or his/her representative. (Ord. #2005-4, June 2005)
- **5-303.** <u>General procedures</u>. The following procedures shall be followed by all city employees when purchasing goods or services on behalf of the city.
- (1) Items expected to cost between five hundred dollars (\$500.00) and five thousand dollars (\$5,000.00):
  - (a) The department head of the using department shall deliver to the purchasing agent a written purchase order request for the item(s) to be purchased. Such request shall include a brief description of the item(s) to be purchased, specifications for the item being purchased, the estimated cost of the items, and shall indicate whether the item(s) have been approved in the annual budget.
  - (b) The purchasing review shall review the purchase order request for completeness, accuracy and within budget. The request shall then be forwarded to the board of mayor and aldermen for final review and approval. The board shall have the authority to adjust or eliminate various specifications for goods and services, or may disapprove the purchase request, to comply with city policy, the annual budget, or for any other reason it deems in the public interest.
  - (c) All approved purchase requests shall be signed by the mayor and returned to the purchasing agent who shall issue a purchase order number to the department head who shall proceed with procurement in compliance with this ordinance.
- (2) Items expected to cost one hundred dollars (\$100.00) to five hundred dollars (\$500.00):
  - (a) The department head of the using department shall deliver to the purchasing agent a written purchase request for the item(s) to be purchased. Such request shall include a brief description of the item(s) to

be purchased, specifications for the item(s) being purchased, the estimated cost of the item(s), and shall indicate whether the item(s) have been approved in the annual budget.

- (b) The purchasing agent shall review the purchase request for completeness, accuracy and within budget. The request shall then be forwarded to the mayor for final review and approval. The mayor shall not approve the purchase of any item not approved in the annual budget or for which there are not sufficient funds in the city treasury. The mayor shall have the authority to adjust or eliminate various specifications for goods or services to comply with city policy, the annual budget, or to avoid depletion of the city treasury.
- (c) All approved purchase requests shall be signed by the mayor and returned to the purchasing agent who shall proceed with issuing a purchase order number to the department head who shall proceed with procurement in compliance with this ordinance.
- (3) Items expected to cost up to one hundred dollars (\$100.00):
- (a) Department head obtains purchase order from purchasing agent. (Ord. #2005-4, June 2005)
- **5-304.** Rejection of bids. The purchasing agent shall have the authority to reject any and all bids, parts of bid, or all bids for any one (1) or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby. The purchasing agent shall not accept the bid of a vendor or contractor who is in default on the payment of taxes, licenses, fees or other monies of whatever nature that may be due the city by said vendor or contractor. (Ord. #2005-4, June 2005)
- **5-305.** Conflict of interest. All employees who participate in any phase of the purchasing function are to be free of interests or relationships which are actually or potentially hostile or detrimental to the best interests of the City of Baxter and shall not engage in or participate in any commercial transaction involving the city, in which they have a significant interest. (Ord. #2005-4, June 2005)
- **5-306.** Purchasing from employee. It shall be the policy of the city not to purchase any goods or services from any employee or close relative of any city employee without the prior approval of the board of mayor and aldermen. (Ord. #2005-4, June 2005)
- **5-307.** Sealed bid requirements: ten thousand dollars (\$10,000.00) or greater. (1) On all purchases and contracts estimated to be in excess of ten thousand dollars (\$10,000.00), except as otherwise provided in this chapter, formal sealed bids shall be submitted at a specified time and place to the purchasing agent. The purchasing agent shall submit all such bids for award by

the board of mayor and aldermen at the next regularly scheduled board meeting or special-called meeting together with the recommendation as to the lowest responsive bidder.

- (2) Notice inviting bids shall be published at least once in a newspaper of general circulation in Putnam County, and at least five (5) days preceding the last day to receive bids. The newspaper notice shall contain a general description of the article(s) to be secured, and the date, time, and place for opening bids.
- (3) In addition to publication in a newspaper, the purchasing agent may take other actions deemed appropriate to notify all prospective bidders of the invitation to bid, including, but not limited to, advertisement in community bulletin boards, metropolitan newspapers, professional journals, and electronic media. (Ord. #2005-4, June 2005, as amended by Ord. #2011-8, May 2011)
- 5-308. <u>Competitive bidding: five hundred dollars (\$500.00) to ten thousand dollars (\$10,000.00)</u>. (1) All purchases of supplies, equipment, services, and contracts estimated to be in excess of five hundred dollars (\$500.00) but less than ten thousand dollars (\$10,000.00), shall be by competitive bidding and may be awarded to the lowest responsive bidder.
- (2) A written record shall be required and available for public inspection showing that competitive bids were obtained by one of the following methods:
  - (a) Direct mail advertisement.
  - (b) Telephone bids.
  - (c) Public notice.
- (3) The purchasing agent shall verify account balances, prior to issuing approval to purchase, for all purchases over five hundred dollars (\$500.00).
- (4) In the purchasing agent's absence, the mayor shall designate a suitable substitute to perform the purchasing agent's duties. (Ord. #2005-4, June 2005, as amended by Ord. #2011-8, May 2011)
- 5-309. Purchases and contracts costing from one hundred dollars (\$100.00) to five hundred dollars (\$500.00). The purchasing agent is expected to obtain the best prices and services available for purchases and contracts estimated to be less than five hundred dollars (\$500.00), but is exempted from the formal bid requirements specified in §§ 5-307 and 5-308. (Ord. #2005-4, June 2005)
- **5-310.** <u>Bid deposit</u>. When deemed necessary, bid deposits may be prescribed and noted in the public notices inviting bids. The deposit shall be in such amount as the purchasing agent shall determine and unsuccessful bidders shall be entitled to a return of such deposits within ten (10) calendar days of the bid opening. A successful bidder shall forfeit any required deposit upon failure

on his/her part to enter a contract within ten (10) days after the award. (Ord. #2005-4, June 2005)

- **5-311.** <u>Performance bond</u>. The purchasing agent may require a performance bond before entering into a contract, in such amount as he/she shall find reasonably necessary to protect the best interests of the city and furnishers of labor and materials in the penalty of not less than the amount provided by <u>Tennessee Code Annotated</u>. (Ord. #2005-4, June 2005)
- **5-312.** Record of bids. The purchasing agent shall keep a record of all open market orders and bids submitted in competition thereon, including a list of the bidders, the amount bid by each, and the method of solicitation and bidding, and such records shall be open to public inspection and maintained in the city recorder's office. As a minimum, the bid file shall contain the following information:
  - (1) Request to start bid procedures.
  - (2) A copy of the bid advertisement.
  - (3) A copy of the bid specifications.
  - (4) A list of bidders and their responses.
  - (5) A copy of the purchase order.
  - (6) A copy of the invoice. (Ord. #2005-4, June 2005)
- **5-313.** <u>Considerations in determining bid awards</u>. The following criteria shall be considered in determining all bid awards:
- (1) The ability of the bidder to perform the contract or provide the material or service required.
- (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- (4) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.
- (5) The quality of performance of previous contracts or services, including the quality of such contracts or services in other municipalities, or performed for private sector contractors.
- (6) The sufficiency of financial resources and the ability of the bidder to perform the contract or provide the service.
- (7) The ability of the bidder to provide future maintenance and service for the use of the supplies or contractual service contracted.
  - (8) Compliance with all specifications in the solicitation for bids.
- (9) The ability to deliver and maintain any requisite bid bonds or performance bonds.
- (10) Total cost of the bid, including life expectancy of the commodity, maintenance costs, and performance. (Ord. #2005-4, June 2005)

- **5-314.** <u>Award splitting</u>. If total savings generated is less than two hundred dollars (\$200.00) bids awards shall not be split among two (2) or more bidders. (Ord. #2005-4, June 2005)
- **5-315.** Statement when award not given to low bidder. When the award for purchases and contracts in excess of five hundred dollars (\$500.00) is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the purchasing agent or department head and filed with all the other papers relating to the transaction. (Ord. #2005-4, June 2005)
- **5-316.** <u>Award in case of tie bids</u>. When two (2) or more vendors have submitted the low bid, the following criteria shall be used to award the bid:
- (1) If all bids received are for the same amount, quality of service being equal, the purchase contract shall be awarded to the local bidder.
- (2) If two (2) or more local bidders have submitted the low bid, quality of service being equal, the purchase contract shall be awarded by a coin toss or drawing lots.
- (3) If no local bids are received and two (2) or more out-of-town bidders have submitted the low bid, quality of service being equal, the purchase contract shall be awarded by a coin toss or drawing lots.
- (4) When the award is to be decided by coin toss or drawing lots, representatives of the bidders still be invited to observe. In no event shall such coin toss or drawing lots be performed with less than three (3) witnesses. (Ord. #2005-4, June 2005)
- **5-317.** Back orders. All orders must be completed, whether through complete fulfillment of the purchase order or through closing the purchase order with items not received. The nondelivered items shall be cancelled from the purchase order and the check will be issued to the equal amount of the amended purchase order. (Ord. #2005-4, June 2005)
- **5-318.** Emergency purchases. When in the judgment of the purchasing agent an emergency exists, the provisions of this chapter may be waived; provided, however, the purchasing agent shall report the purchases and/or contracts to the board of mayor and aldermen at the next regular board meeting stating the item(s) purchased, the amount(s) paid, from whom the purchase(s) was made, and the nature of the emergency. (Ord. #2005-4, June 2005)
- 5-319. Waiver of the competitive bidding process. Upon the recommendation of the mayor, and the subsequent approval of the board of mayor and aldermen, that it is clearly to the advantage of the city not to contract by competitive bidding, the requirements of competitive bidding may

be waived provided that the following criteria are met and documented in a written report to the board of mayor and aldermen:

- (1) <u>Single source of supply</u>. The availability of only one (1) vendor of a product or service within a reasonable distance of the city as determined after a complete and thorough search by the using department and the purchasing agent.
- (2) State department of general services. A thorough effort was made to purchase the product or service through or in conjunction with the State Department of General Services or via a state contract, such effort being unsuccessful.
- (3) <u>Purchase from other governmental entities</u>. A thorough effort was made to purchase the product or service through or in conjunction with other municipalities or from any federal or state agency. These purchases may be made without competitive bidding and public advertisement.
- (4) <u>Purchases from non-profit organizations</u>. A thorough effort was made to purchase the goods or services from any non-profit organization whose sole purpose is to provide goods and services specifically to municipalities.
- (5) <u>Purchases from Tennessee state industries</u>. A thorough effort was made to purchase the goods or services from Tennessee state industries (prison industries).
- (6) <u>Purchases from instrumentalities created by two (2) or more co-operating governments</u>. An effort was made to purchase the goods or services from a co-op or group of governments which was formed to purchase goods and services for their members. (Ord. #2005-4, June 2005)
- **5-320.** Goods and services exempt from competitive bidding. The following goods and services need not be awarded on the basis of competitive bidding; provided, however, that the purchasing agent and/or the department head shall make a reasonable effort to assure that such purchases are made efficiently and in the best interest of the city.
- (1) <u>Certain insurance</u>. The city may purchase tort liability insurance, without competitive bidding, from the Tennessee Municipal League or any other plan offered by a governmental entity representing cities and counties. All other insurance plans, however, are to be awarded on the basis of competitive bidding.
- (2) <u>Certain investments</u>. The city may make investments of municipal funds in, or purchases from, the pooled investment fund established pursuant to <u>Tennessee Code Annotated</u>, § 9-17-105.
  - (3) Such commodities may be purchased without competitive bidding.
- (4) <u>Professional service contracts</u>. Any services of a professional person or firm, including attorneys, accountants, physicians, architects, engineers, and other consultants required by the city, whose fee is less than five hundred dollars (\$500.00), may be hired without competitive bidding. In those instances where such professional service fees are expected to exceed five hundred dollars (\$500.00), a written contract shall be developed and approved by the board of

mayor and aldermen prior to the provision of any goods or services. Contracts for professional services shall not be awarded on the basis of competitive bidding; rather, professional service contracts shall be awarded on the basis of recognized competence and integrity. (Ord. #2005-4, June 2005)

- 5-321. <u>Procedures upon taking delivery of purchased items</u>. Before accepting delivery of purchased equipment, supplies, materials and other tangible goods, the department head of the using department shall:
  - (1) Inspect the goods to verify that they are in acceptable condition.
- (2) Verify that all operating manuals and warranty cards are included in the delivery of the goods, if applicable.
- (3) Verify that the number of items purchased have been delivered, making special note when part or all of a particular purchase has been back ordered.
- (4) Record serial numbers for all capital items, notifying the city recorder of same.
- (5) Complete and return to the purchasing agent a material receiving report form. (Ord. #2005-4, June 2005)
- **5-322. Property control**. A physical inventory of the city's fixed assets shall be taken annually. The goals of the annual inventory shall be as follows:
  - (1) To note transfers of surplus property.
- (2) To aid in the establishment of replacement schedules for equipment.
  - (3) To deter the incidence of theft and negligence.
  - (4) To provide a basis for insurance claims, if necessary.

To be classified as a fixed asset, an item must be tangible, have an expected life longer than the current fiscal year, and have a value of at least one hundred dollars (\$100.00). Any property or equipment that meets this criteria shall be assigned an asset number (affixed with a property sticker), have a completed property card, and be inventoried annually. Such records shall be controlled and maintained by the city recorder. (Ord. #2005-4, June 2005)

- **5-323.** Disposal of surplus property. The purchasing agent shall be in charge of the disposal of surplus property and shall make a full report to the board of mayor and aldermen after the items are disposed of. When a department head determines there is surplus equipment or materials within the department, he/she shall notify the purchasing agent in writing of any such equipment. The purchasing agent may transfer surplus equipment or materials from one department to another. (Ord. #2005-4, June 2005)
- 5-324. <u>Surplus property: items consumed in the course of work thought to be worthless</u>. City property which may be consumed in the course of normal city business and items thought to be worthless shall be disposed of

in a like manner as any other refuse. For accounting purposes, such items shall be charged off as a routine cost of doing business. (Ord. #2005-4, June 2005)

- **5-325.** Surplus property: items estimated to have monetary value. When disposing of surplus property estimated to have monetary value, the purchasing agent shall comply with the following procedures:
- (1) Obtain from the board of mayor and aldermen a resolution declaring said items to be surplus property and fixing the date, time and location for the purchasing agent to receive bids.
- (2) A copy of the resolution shall be posted in at least three (3) locations in the community.
- (3) Such equipment or materials shall be sold to the highest bidder. In the event the highest bidder is unable to pay within twenty-four (24) hours, the item shall be awarded to the second highest bidder.
- (4) All pertinent information concerning the sale shall be noted in the fixed asset records of the city.
- (5) The advertisement, bids, and property cards shall be retained for a minimum period of five (5) years. (Ord. #2005-4, June 2005)
- 5-326. <u>Surplus property: city identification removed prior to sale</u>. No surplus city property shall be sold unless and until all decals, emblems, lettering, or coloring which identifies the item as belonging to the City of Baxter have been removed or repainted (Ord. #2005-4, June 2005)
- 5-327. <u>Liability for excess purchases</u>. This chapter shall authorize only the purchase of materials and supplies and the procurement of contracts for which funds have been appropriated and are within the limits of the funds estimated for each department in the annual budget or which have been authorized and lawfully funded by the board of mayor and aldermen. The city shall have no liability for any purchase made in violation of this chapter. (Ord. #2005-4, June 2005)
- **5-328.** Additional forms and procedures. The purchasing agent is hereby authorized and directed to develop such forms and procedures as are necessary to comply with this chapter. (Ord. #2005-4, June 2005)

#### TITLE 6

### LAW ENFORCEMENT

### **CHAPTER**

1. POLICE AND ARREST.

### **CHAPTER 1**

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

### **SECTION**

- 6-101. Policemen subject to chief's orders.
- 6-102. Policemen to preserve law and order, etc.
- 6-103. When policemen to make arrests.
- 6-104. Disposition of persons arrested.
- 6-105. Citations in lieu of arrest in non-traffic cases.
- 6-106. Summonses in lieu of arrest.
- 6-107. Police department records.
- **6-101.** Policemen subject to chief's orders. All policemen shall obey and comply with such orders and administrative rules and regulations as the police chief may officially issue. (1987 Code, § 1-401)
- **6-102.** Policemen to preserve law and order, etc. Policemen shall preserve law and order within the city. They shall patrol the city and shall assist the city court during the trial of cases. Policemen shall also promptly serve any legal process issued by the city court. (1987 Code, § 1-402)
- **6-103.** When policemen to make arrests. Unless otherwise authorized or directed in this code or other applicable law, an arrest of the person shall be made by a policeman in the following cases:
- (1) Whenever he is in possession of a warrant for the arrest of the person.
- (2) Whenever an offense is committed or a breach of the peace is threatened in the officer's presence by the person.
- (3) Whenever a felony has in fact been committed and the officer has reasonable cause to believe the person has committed it. (1987 Code, § 1-403)

Motor vehicles, traffic and parking: title 15, chapter 1.

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

- 6-104. Disposition of persons arrested. (1) For code or ordinance violations. Unless otherwise provided by law, a person arrested for a violation of this code or other city ordinances shall be brought before the city court. However, if the city court is not in session, the arrested person shall be allowed to post bond with the city court clerk, or, if the city court clerk is not available, with the ranking police officer on duty. If the arrested person fails or refuses to post bond, he shall be confined pending his release by the city judge. In addition, if the arrested person is under the influence of alcohol or drugs when arrested, even if he is arrested for an offense unrelated to the consumption of alcohol or drugs, the person shall be confined until he does not pose a danger to himself or to any other person.
- (2) <u>Felonies or misdemeanors</u>. A person arrested for a felony or a misdemeanor shall be disposed of in accordance with applicable federal and state law and the rules of the court which has jurisdiction over the offender. (1987 Code, § 1-404)
- **6-105.** Citations in lieu of arrest in non-traffic cases. Pursuant to Tennessee Code Annotated, § 7-63-101, et seq., the board of mayor and aldermen appoints the fire chief in the fire department and the city recorder in the building department special police officers having the authority to issue citations in lieu of arrest. The fire chief in the fire department shall have the authority to issue citations in lieu of arrest for violations of the fire code adopted in title 7, chapter 2 of this municipal code of ordinances. The city recorder in the building department shall have the authority to issue citations in lieu of arrest for violations of the building and utility codes adopted in title 4 of this municipal code of ordinances.

The citation in lieu of arrest shall contain the name and address of the person being cited and such other information necessary to identify and give the person cited notice of the charges against him, and state a specific date and place for the offender to appear and answer the charges against him. The citation shall also contain an agreement to appear, which shall be signed by the offender. If the offender refuses to sign the agreement to appear, the special officer in whose presence the offense was committed shall immediately arrest the offender and dispose of him in accordance with <u>Tennessee Code Annotated</u>, § 7-63-104.

It shall be unlawful for any person to violate his agreement to appear in court, regardless of the disposition of the charge for which the citation in lieu of arrest was issued. (1987 Code, § 1-405)

6-106. <u>Summonses in lieu of arrest</u>. Pursuant to <u>Tennessee Code Annotated</u>, § 7-63-201, <u>et seq.</u>, which authorizes the board of mayor and aldermen to designate certain city enforcement officers the authority to issue ordinance summonses in the areas of sanitation, litter control and animal control, the board designates the fire chief in the fire department and the city

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

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

- (1) Have a summons issued by the clerk of the city court, or
- (2) May seek the assistance of a police officer to witness the violation.

The police officer who witnesses the violation may issue a citation in lieu of arrest for the violation, or arrest the offender for failure to sign the citation in lieu of arrest. If the police officer makes an arrest, he shall dispose of the person arrested as provided in § 6-105 above.

It shall be unlawful for any person to violate his agreement to appear in court, regardless of the disposition of the charge for which the ordinance summons was issued. (1987 Code, § 1-406)

- **6-107.** Police department records. The police department shall keep a comprehensive and detailed daily record on permanent form, showing:
- (1) All known or reported offenses and/or crimes committed within the corporate limits.
  - (2) All arrests made by policemen.
- (3) All police investigations made, funerals convoyed, fire calls answered, and other miscellaneous activities of the police department. (1987 Code, § 1-407)

## TITLE 7

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

## **CHAPTER**

- 1. FIRE DISTRICT.
- 2. FIRE CODE.
- 3. VOLUNTEER FIRE DEPARTMENT.
- 4. FIRE SERVICE OUTSIDE CITY LIMITS.
- 5. FIREWORKS.

### CHAPTER 1

# **FIRE DISTRICT**

### **SECTION**

7-101. Fire limits described.

**7-101.** <u>Fire limits described</u>. The corporate fire limits shall be and include all the property within the corporate limits which is zoned for business use.

<sup>1</sup>Municipal code reference

Building, utility and housing codes: title 12.

Fires in streets: § 16-112.

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

### **SECTION**

- 7-201. Fire code adopted.
- 7-202. Available in recorder's office.
- 7-203. Enforcement.
- 7-204. Definition of "municipality."
- 7-205. Storage of explosives, flammable liquids, etc.
- 7-206. Gasoline trucks.
- 7-207. Variances.
- 7-208. Violations and penalties.
- 7-209. Burning permits required.
- 7-210. Key lock box system.
- 7-211. Required keys for the lock box key system.
- 7-212. Penalties for failure to comply with key lock box system code.
- **7-201.** Fire code adopted. Pursuant to authority granted by Tennessee Code Annotated, §§ 6-54-501 through 6-54-506, and for the purpose of providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures, and premises, and to provide safety to fire fighters and emergency responders during emergency operations, the <u>International Fire Code</u>,<sup>2</sup> 2006 edition, as recommended by the International Code Council, is hereby adopted by reference and included as a part of this code. Said international fire code is adopted and incorporated as fully as if set out at length herein and shall be controlling within the corporate limits.
- **7-202.** Available in recorder's office. Pursuant to the requirements of the <u>Tennessee Code Annotated</u>, § 6-54-502, one (1) copy of the fire code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.
- **7-203.** Enforcement. The fire code herein adopted by reference shall be enforced by the chief of the fire department. He shall have the same powers as the state fire marshal. (1987 Code, § 7-102)

Building, utility and housing codes: title 12.

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

<sup>&</sup>lt;sup>2</sup>Copies of this code are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213-1206.

- **7-204.** <u>Definition of "municipality</u>." Whenever the word "municipality" is used in the fire code herein adopted, it shall be held to mean the City of Baxter, Tennessee. (1987 Code, § 7-103)
- **7-205.** Storage of explosives, flammable liquids, etc. (1) The limits referred to in the fire code, in which storage of explosive materials is prohibited, are hereby declared to be the fire district as set out in § 7-101 of this code.
- (2) The limits referred to in the fire code, in which storage of flammable or combustible liquids in outside above ground tanks is prohibited, are hereby declared to be the fire district as set out in § 7-101 of this code.
- (3) The limits referred to in the fire code, in which new bulk plants for flammable or combustible liquids are prohibited, are hereby declared to be the fire district as set out in § 7-101 of this code.
- (4) The limits referred to in the fire code, in which bulk storage of liquefied petroleum gas is restricted, are hereby declared to be the fire district as set out in § 7-101 of this code. (1987 Code, § 7-104, modified)
- **7-206.** <u>Gasoline trucks</u>. No person shall operate or park any gasoline tank truck within the central business district or within any residential area at any time except for the purpose of and while actually engaged in the expeditious delivery of gasoline. (1987 Code, § 7-105)
- **7-207.** <u>Variances</u>. The chief of the fire department may recommend to the board of mayor and aldermen variances from the provisions of the fire code upon application in writing by any property owner or lessee, or the duly authorized agent of either, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such variances when granted or allowed shall be contained in a resolution of the board of mayor and aldermen. (1987 Code, § 7-106)
- 7-208. <u>Violations and penalties</u>. It shall be unlawful for any person to violate any of the provisions of this chapter or the fire code herein adopted, or fail to comply therewith, or violate or fail to comply with any order made thereunder; or build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken; or fail to comply with such an order as affirmed or modified by the board of mayor and aldermen or by a court of competent jurisdiction, within the time fixed herein. The application of a penalty under the general penalty clause for the municipal code shall not be held to prevent the enforced removal of prohibited conditions. (1987 Code, § 7-107)

- **7-209.** Burning permits required. Burning permits will be issued on a daily basis only under the following conditions:
- (1) Wind speed cannot be projected at ten miles per hour (10 mph), or at more than ten miles per hour (10 mph);
  - (2) The burning will be under constant supervision;
- (3) Fire must be extinguished by dusk and a water hose able to reach the fire at all times;
  - (4) Fire could not be less than fifty feet (50') from any unclear land;
  - (5) Fire could not be any closer than fifty feet (50') from any structure;
  - (6) Only one (1) fire is allowed at a time;
- (7) The fire must be on the property that is owned or rented by the person requesting the permit;
- (8) Burning shall not hinder with attainment or maintenance of air quality standards;
- (9) The burning of paper and rubbish shall be done only in an approved incinerator;
  - (10) Fire should not contain any chemically treated lumber;
- (11) Use of fires to clear land consisting solely of vegetation grown on that land;
- (12) No rubber or other material that creates an offensive odor will be burned and
- (13) Under Tennessee law the only items that my be burned are wood products and vegetation. (Ord. #2007-18, Feb. 2008)
- **7-210.** <u>Key lock box system</u>. (1) The following structures shall be equipped with a key lock box at or near the main entrance or such other location required by the fire chief:
  - (a) All commercial or industrial structures:
  - (b) Multi-family residential structures that have restricted access through locked doors and have a common corridor for access to the living units;
  - (c) Governmental structures, medical facilities, and nursing care/retirement facilities;
    - (d) Multi-occupancies located within the same building;
  - (e) Multi-tenant commercial within the same structure but with different address;
  - (f) Occupancies that store or use reportable hazardous materials.
- (2) All newly constructed structures subject to this section shall have the key lock box installed and operational prior to the issuance of occupancy permit. All structures in existence shall confirm with this ordinance when a change in ownership or occupancy occurs.

- (3) The fire chief shall designate the type of key lock box system to be implemented within the city and shall have the authority to require all structures to use the designated system.
- (4) The owner or operator of a structure required to have a key lock box shall, at all times, keep a key in the lock box that will allow for access to the structure.
- (5) The fire chief shall be authorized to implement rules and regulations for the installation and use of the lock box system, including the right to review the plans of all structures subject to this section.
- (6) Any person who owns or operates a structure subject to this section shall be subject to the penalties set forth in § 7-212 of this code for any violation of this section or section. (Ord. #2008-5, March 2008)
- **7-211.** Required keys for the lock box key system. The following keys are required for the lock box key system:
- (1) The main door entrance. Mixed occupancies and strip shopping centers keys shall be provided for all business.
  - (2) Alarm room.
  - (3) Mechanical rooms and sprinkler control rooms.
  - (4) Fire alarm control panel.
  - (5) Any room where a sprinkler head or smoke detector is located.
  - (6) Electrical rooms.
  - (7) Special keys to rest pull-stations or other fire protection devices.
- (8) Elevator keys if not required by state law to be mounted beside elevators.
- (9) All other rooms as specified during the plans review process. (Ord. #2008-5, March 2008)
- 7-212. Penalties for failure to comply with key lock box system code. The penalties for failure to have a key lock box system and required keys that are listed in §§ 7-210 and 7-211 will be a minimum fine of fifty dollars (\$50.00) for conviction of a violation. (Ord. #2008-5, March 2008)

### VOLUNTEER FIRE DEPARTMENT

#### SECTION

- 7-301. Establishment, equipment, and membership.
- 7-302. Objectives.
- 7-303. Organization, rules, and regulations.
- 7-304. Records and reports.
- 7-305. Tenure and compensation of members.
- 7-306. Chief responsible for training and maintenance.
- 7-307. Chief to be assistant to state officer.
- 7-308. Substance abuse policy.
- **7-301.** Establishment, equipment, and membership. There is hereby established a volunteer fire department to be supported and equipped from appropriations by the board of mayor and aldermen. Any funds raised by the volunteer fire department as a whole, or by any individual or group of volunteer firemen in the name of the volunteer fire department, shall be turned over to and become the property of, the city and the city shall use such funds in the equipping of the fire department. Any and all gifts to the volunteer fire department shall be turned over to, and become the property of, the city. All other apparatus, equipment, and supplies of the volunteer fire department shall be purchased by or through the city and shall be and remain the property of the city. The volunteer fire department shall be composed of a chief appointed by the board of mayor and aldermen, and such number of physically-fit subordinate officers and firemen as the fire chief shall appoint. (1987 Code, § 7-201)
- **7-302. Objectives**. The volunteer fire department shall have as its objectives:
  - (1) To prevent uncontrolled fires from starting.
  - (2) To prevent the loss of life and property because of fires.
  - (3) To confine fires to their places of origin.
  - (4) To extinguish uncontrolled fires.
  - (5) To prevent loss of life from asphyxiation or drowning.
- (6) To perform such rescue work as its equipment and/or the training of its personnel makes practicable. (1987 Code, § 7-202)
- **7-303.** Organization, rules, and regulations. The chief of the volunteer fire department shall set up the organization of the department, make definite assignments to individuals, and formulate and enforce such rules and regulations as shall be necessary for the orderly and efficient operation of the volunteer fire department. (1987 Code, § 7-203)

- **7-304.** Records and reports. The chief of the volunteer fire department shall keep adequate records of all fires, inspections, apparatus, equipment, personnel, and work of the department. He shall submit such written reports on these matters to the mayor as the mayor requires. The mayor shall submit reports to the board of mayor and aldermen, as the board of mayor and aldermen requires. (1987 Code, § 7-204)
- **7-305.** Tenure and compensation of members. The fire chief shall have the authority to suspend or discharge any other member of the volunteer fire department when he deems such action to be necessary for the good of the department. The fire chief may be suspended up to thirty (30) days by the mayor, but may be dismissed only by the board of mayor and aldermen.

All personnel of the fire department shall receive such compensation for their services as the board of mayor and aldermen may from time to time prescribe. (1987 Code, § 7-205)

- **7-306.** Chief responsible for training and maintenance. The chief of the fire department, shall be fully responsible for the training of the firemen and for maintenance of all property and equipment of the fire department, under the direction and subject to the requirements of the board of mayor and aldermen. (1987 Code, § 7-206)
- 7-307. Chief to be assistant to state officer. Pursuant to requirements of Tennessee Code Annotated, § 68-102-108, the chief of the fire department is designated as an assistant to the state commissioner of commerce and insurance and is subject to all the duties and obligations imposed by Tennessee Code Annotated, title 68, chapter 102, and shall be subject to the directions of the fire prevention commissioner in the execution of the provisions thereof. (1987 Code, § 7-207, modified)
- **7-308.** Substance abuse policy. The City of Baxter adopts by reference as if fully set out herein a substance abuse policy for fire department volunteers. A copy of this policy (and any amendments) is available in the recorder's

office. (Ord. #2010-17, Oct. 2010)

### FIRE SERVICE OUTSIDE CITY LIMITS

### **SECTION**

7-401. Restrictions on fire service outside city limits.

**7-401.** <u>Restrictions on fire service outside city limits</u>.<sup>1</sup> No personnel or equipment of the fire department shall be used for fighting any fire outside the city limits unless the fire is on city property or, in the opinion of the fire chief, is in such hazardous proximity to property owned or located within

<sup>1</sup>State law reference

The Local Government Emergency Assistance Act of 1987, Chapter 155, Public Acts of 1987 authorizes any municipality or other local governmental entity to go outside of its boundaries in response to a request for emergency assistance by another local government. It does not create a duty to respond to or to stay at the scene of an emergency outside its jurisdiction.

This act does not require written agreements between the requesting or responding local governments. However, it does require that each local government establish policies and procedures to be followed in requesting and responding to requests for emergency assistance. The policies and procedures must be approved by the boards of mayor and aldermen before they go into effect. The policies and procedures may cover only one service, several services, or all of the services named in the Act. They may also include a provision for compensation for emergency assistance.

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

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

the city as to endanger the city property, or unless the board of mayor and aldermen has developed policies for providing emergency services outside of the city limits or entered into a contract or mutual aid agreement pursuant to the authority of:

- (1) Tennessee Code Annotated, § 12-9-101, et seq.<sup>1</sup>
- (2) <u>Tennessee Code Annotated</u>, § 6-54-601. (1987 Code, § 7-301)<sup>2</sup>

<sup>1</sup>State law reference

Tennessee Code Annotated, § 6-54-601 authorizes municipalities (1) To enter into mutual aid agreements with other municipalities, counties, privately incorporated fire departments, utility districts and metropolitan airport authorities which provide for firefighting service, and with individual fire departments to furnish one another with fire fighting assistance. (2) Enter into contracts with organizations of residents and property owners of unincorporated communities to provide the latter with firefighting assistance. (3) Provide fire protection outside their city limits to either areas or citizens on an individual contractual basis whenever an agreement has first been entered into between the municipality providing the fire service and the county or counties in which the fire protection is to be provided.

<sup>2</sup>Tennessee Code Annotated, § 12-9-101, et seq. is the Interlocal Governmental Cooperation Act which authorizes municipalities and other governments to enter into mutual aid agreements of various kinds.

## **FIREWORKS**

#### **SECTION**

- 7-501. Rules and regulations of state to apply.
- 7-502. Districts where permissible.
- 7-503. Definitions of fireworks sales.
- 7-504. General rules and regulations.
- 7-505. Permits required and procedures.
- 7-506. Fees.
- 7-507. Discharge of fireworks.
- 7-501. Rules and regulations of state to apply. Tennessee Code Annotated, §§ 66-222-101 through 66-222-116, grants to the Tennessee Department of Commerce and Insurance, Division of Fire Prevention, the statutory authority to regulate the sale of fireworks within the State of Tennessee. Said rules and regulations shall apply to the sale of fireworks in the City of Baxter, proof of compliance with these rules and regulations shall be furnished to the Fire Chief of the City of Baxter (or designated representative) upon request. (Ord. #2002-3, March 2002)
- **7-502.** <u>Districts where permissible</u>. The sale of fireworks shall be permitted only between Main and Broad Street and local businesses that are zoned commercial and must meet all the requirements to sell fireworks, but not within three hundred feet (300') of any school. The sale of fireworks along any other street is expressly prohibited. (Ord. #2002-3, March 2002)
- 7-503. <u>Definitions of fireworks sales</u>. <u>Seasonal sale</u>. The seasonal sale of fireworks shall be permitted from June 20 until July 5 and December 10 until January 2 of any given year. Seasonal sales of fireworks shall be defined as taking place within a tent or other structure approved by the fire chief (or designated representative). (Ord. #2002-3, March 2002)
- **7-504.** General rules and regulations. (1) All tents used for the sale of fireworks shall be of fire retardant material and display proof of same.
- (2) All tents of other temporary structures used for the sale of fireworks shall be located a minimum of fifteen feet (15') from any other structure.
- (3) All tents or other temporary structures used for the sale of fireworks shall be located a minimum of fifteen feet (15') from any public street or right-of-way.

- (4) All lighting and other electrical facilities used in association with tents or temporary structures shall be approved by the state electrical inspector or city codes inspector.
- (5) All locations used for the sale of fireworks shall maintain on premises a fire extinguisher in operative status.
- (6) Parking shall not be permitted on public streets or in such a way as to interfere with the visibility of vehicles using said streets. (Ord. #2002-3, March 2002, modified)
- 7-505. Permits required and procedures. Any individual or firm wanting to sell fireworks within the corporate limits of the City of Baxter shall purchase a Baxter business license from the city clerk and a fireworks permit from the Baxter Fire Chief (or designated representative). The sale of fireworks requires a permit from the Tennessee state marshal. The forms necessary to obtain such permits are available at the office of the Baxter Fire Chief. Upon obtaining the permit from the office of the state fire marshal, the applicant shall present the approved application and Baxter business license to the fire chief (or designated representative), who shall then inspect the site of the proposed fireworks sale. If the site is in conformance with all applicable rules and regulations, the fire chief (or designated representative) shall approve it for such use. (Ord. #2002-3, March 2002)
- **7-506.** <u>Fees</u>. Prior to issuance of a fireworks permit by the Baxter Fire Chief (or designated representative), the applicant shall have paid a fee of one hundred dollars (\$100.00) for the seasonal sale of fireworks. A separate permit for seasonal sales and appropriate fees shall be paid for each of the periods listed above. (Ord. #2002-3, March 2002, modified)
- **7-507.** Discharge of fireworks. It shall be unlawful for anyone to fire, set off or otherwise discharge fireworks within the City of Baxter limits, except in cooperation with an established organization and in celebration of a special event or holiday and with not less than ten (10) days notice, to the city coordinator, police and fire chief and the securing of a properly issued burn permit.

Other exceptions are as follows: five (5) days prior to, and three (3) days after the 4th of July, Christmas, and New Years Day. Fireworks shall not be set off after 11:00 P.M. on any day. Fireworks can be banned on any day due to, but not limited to, weather conditions, and special events, at the fire chief's discretion. No fireworks shall be set off that would disrupt the peace or cause damage to property. (Ord. #2002-3, March 2002, modified)

#### TITLE 8

# ALCOHOLIC BEVERAGES<sup>1</sup>

### **CHAPTER**

- 1. INTOXICATING LIQUORS: ON PREMISES CONSUMPTION.
- 2. INTOXICATING LIQUORS: RETAIL PACKAGE STORES.
- 3. BEER.

### CHAPTER 1

# **INTOXICATING LIQUORS: ON PREMISES CONSUMPTION**

### **SECTION**

- 8-101. Definition of alcoholic beverages.
- 8-102. Consumption of alcoholic beverages on premises.
- 8-103. Privilege tax on retail sale of alcoholic beverages for consumption on the premises.
- 8-104. Annual privilege tax to be paid to the city recorder.
- 8-105. Concurrent sales of liquor by the drink and beer.
- 8-106. Advertisement of alcoholic beverages.
- **8-101.** Definition of alcoholic beverages. As used in this chapter, unless the context indicated otherwise: "Alcoholic beverages" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer, where the latter contains an alcoholic content of five percent (5%) by weight, or less. (Ord. #2004-12, April 2005)
- 8-102. <u>Consumption of alcoholic beverages on premises</u>. <u>Tennessee Code Annotated</u>, title 57, chapter 4, inclusive, is hereby adopted so as to be applicable to all sales of alcoholic beverages for on premises consumption which are regulated by the said code when such sales are conducted within the corporate limits of Baxter, Tennessee. It is the intent of the board of mayor and aldermen that the said <u>Tennessee Code Annotated</u>, title 57, chapter 4, inclusive, shall be effective in Baxter, Tennessee, the same as if said code section were copied herein verbatim. (Ord. #2004-12, April 2005)
- 8-103. Privilege tax on retail sale of alcoholic beverages for consumption on the premises. Pursuant to the authority contained in

<sup>&</sup>lt;sup>1</sup>State law reference Tennessee Code Annotated, title 57.

Tennessee Code Annotated, § 57-4-301, there is hereby levied a privilege tax (in the same amounts levied by Tennessee Code Annotated, title 57, chapter 4, section 301, for the City of Baxter general fund to be paid annually as provided in this chapter) upon any person, firm corporation, joint stock company, syndicate, or association engaging in the business of selling at retail in the City of Baxter on alcoholic beverages for consumption on the premises where sold. (Ord. #2004-12, April 2005)

- 8-104. Annual privilege tax to be paid to the city recorder. Any person, firm, corporation, joint stock company, syndicate or association exercising the privilege of selling alcoholic beverages for consumption on the premises in the City of Baxter shall remit annually to the city recorder the appropriate tax described in § 8-103. Such payments shall be remitted not less than thirty (30) days following the end of each twelve (12) month period from the original date of the license. Upon the transfer of ownership of such business or the discontinuance of such business, said tax shall be filed within thirty (30) days following such event. Any person, firm, corporation, joint stock company, syndicate, or association failing to make payment of the appropriate tax when due shall be subject to the penalty provided by law. (Ord. #2004-12, April 2005)
- 8-105. <u>Concurrent sales of liquor by the drink and beer</u>. Any person, firm, corporation, joint stock company, syndicate or association which has received a license to sell alcoholic beverages in the City of Baxter, pursuant to <u>Tennessee Code Annotated</u>, title 57, chapter 4, shall, notwithstanding the provisions of title 8, chapter 3 of this code, qualify to receive a beer permit from the city. (Ord. #2004-12, April 2005)
- 8-106. <u>Advertisement of alcoholic beverages</u>. All advertisement of the availability of liquor for sale by those licenced pursuant to <u>Tennessee Code Annotated</u>, title 57, chapter 4, shall be in accordance with the rules and regulations of the Tennessee Alcoholic Beverage Commission. (Ord. #2004-12, April 2005)

# INTOXICATING LIQUORS: RETAIL PACKAGE STORES<sup>1</sup>

### **SECTION**

- 8-201. Generally.
- 8-202. Chapter not applicable to beer.
- 8-203. Certificate of compliance.
- 8-204. Restrictions on buildings and locations of retail stores.
- 8-205. Retail liquor license.
- 8-206. Inspection fee.
- 8-207. Operational rules and regulations.
- 8-208. Advertising.
- 8-209. Violations.
- 8-210. Alcoholic beverage control board.
- **8-201.** Generally. (1) <u>Definitions</u>. Whenever used in this chapter the following terms shall have the following meanings unless the context necessarily requires otherwise:
  - (a) "Alcoholic beverage." Alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits or wine capable of being consumed by a human being, other than patented medicine, beer or wine, where either of the latter has an alcoholic content of five (5%) percent by weight, or less.
  - (b) "Applicant." The party applying for a certificate of compliance or a license which shall include each person to have any interest, direct or indirect, in the license as owner or partner or in the case of a corporation as officer, director, or stockholder. (See additional definition under "corporation.")
  - (c) "Application." The form or forms an applicant is required to file in order to obtain a certificate of compliance or a license.
  - (d) "Certificate of compliance." The certificate provided for in <u>Tennessee Code Annotated</u>, title 57, chapter 3, in connection with the prescribed procedure for obtaining a state liquor retailer's license.
  - (e) "Corporation." All certificated entity forms recognized in the State of Tennessee, including, without limitation, limited liability companies, and "stockholder" and "officer" shall be deemed to include

For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in <u>Watkins v. Naifeh</u>, 635 S.W.2d 104 (1982).

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

members, limited partners, managers, principals and equity holders in said entities.

- (f) "Inspection fee." The monthly fee a licensee is required by this chapter to pay the amount of which is determined by a percentage of the gross sales of a licensee.
- (g) "License." A license issued by the state under the provisions of this chapter for the purpose of authorizing the holder thereof to engage in the business of selling alcoholic beverages at retail in the city.
  - (h) "Licensee." The holder of a license.
- (i) "Liquor store." The building or the part of a building where a licensee conducts any of the business authorized by this license.
- (j) "Retail sale or sale at retail." A sale to a consumer or to any person for any purpose other than for resale.
- (k) "Retailer." Any person who sells at retail any beverage for the sale of which a license is required under the provisions herein.
- (l) "State Alcoholic Beverage Commission." The Tennessee Alcoholic Beverage Commission, provision for which is made in the state statutes, including without limitation the provisions of <u>Tennessee Code</u> Annotated, title 57, chapter 3.
- (m) "State liquor retailer's license." A license issued under the state statutes (including the provisions contained in <u>Tennessee Code Annotated</u>, title 57, chapter 1) for the purpose authorizing the holder thereof to engage in the business of selling alcoholic beverages at retail.
- (n) "State rules and regulations." All applicable rules and regulations of the state applicable to alcoholic beverages as now in effect or as they may hereafter be changed, including without limitation the local option liquor rules and regulations of the state alcoholic beverage commission.
- (o) "State statutes." The statutes of the state now in effect or as they may hereafter be changed.
- (p) "Wholesale sale or sale at wholesale." A sale to any person for purposes of resale.
- (q) "Wholesaler." Any person who sells at wholesale any beverage for the sale of which a license is required under the provisions of <u>Tennessee Code Annotated</u>, §§ 57-3-101 through 57-3-110.
- (r) "Wine." The product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climate, saccharine, and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominately produced, or an artificial or imitation wine.

- (2) <u>Compliance with all applicable laws and ordinances required</u>. It shall be unlawful for any person either to engage in the business of selling, storing, transporting, or distributing any alcoholic beverage, or to sell, store, transport, distribute, purchase or possess any alcoholic beverage, except as provided by the state statutes, by the state rules and regulations, by the federal statutes and by this chapter.
- (3) Wholesalers. Unless hereafter authorized by ordinance, no wholesaler's license shall be granted to any person for the operation of any business for the sale at wholesale of any alcoholic beverage. Any wholesaler, whose business is located outside the city and who holds a valid state license and who has paid to the city all privilege taxes and fees applicable to such wholesale business, may sell at wholesale any alcoholic beverage to a licensee in the city and such licensee may purchase any alcoholic beverage from such wholesaler, but only as provided by the state statutes, the state rules and regulations, the federal statutes, and by this chapter.
- (4) <u>Sale legalized</u>. It shall be lawful for a licensee to sell any alcoholic beverage at retail in a liquor store, within the corporate limits, provided such sales are made in compliance with applicable federal statutes, state statutes, state rules and regulations, and the provisions of this chapter.
- (5) <u>Liability of licensee for acts of others</u>. Each licensee shall be responsible for all acts of such licensee's officers, stockholders, directors, employees, agents and representatives, so that any violation of this chapter by any officer, stockholder, director, employee, agent or representative of a licensee shall constitute a violation of this chapter by such licensee.
- (6) <u>Contraband beverages</u>. Police officers shall take possession of any alcoholic beverages which have been received by, or are in the possession of, or are being transported by any person in violation of state statutes or regulations, federal statutes or this chapter. All beverages shall be turned over to the Tennessee Alcoholic Beverage Commission in accordance with <u>Tennessee Code Annotated</u>, title 57, chapter 9. (Ord. #2008-21, Feb. 2009)
- 8-202. <u>Chapter not applicable to beer</u>. No provision of this chapter shall be considered or construed as in any way modifying, changing or restricting the rules and regulations governing the sale, storage, transportation, etc., or tax upon beer or other liquids with an alcoholic content of five (5%) percent or less. (Ord. #2008-21, Feb. 2009)
- 8-203. <u>Certificate of compliance</u>. (1) <u>Certificate of good moral character</u>. When application is made for the certificate of good moral character required by <u>Tennessee Code Annotated</u>, § 57-3-208 as a condition to the issuance or renewal of a state alcoholic beverage license, such certificate shall be signed by the mayor, upon direction of a majority of the board of mayor and aldermen following an investigation by the chief of police and review of the city attorney, each of whom shall submit their findings to the board of mayor and aldermen

within sixty (60) days of the date each application was filed with the city recorder.

The certificate shall become invalid if an application has not been filed with the Tennessee Alcoholic Beverage Commission within sixty (60) days of issuance.

- (2) Application filing; contents. For the first applications submitted after the effective date, each application shall be accompanied with non-refundable certified funds of two hundred fifty dollars (\$250.00) and those applications selected for the first two (2) certificates issued, said selected applications must be accompanied with non-refundable certified funds in the amount of seven hundred fifty dollars (\$750.00). Thereafter, each applicant for a certificate of compliance shall file with the city recorder a non-refundable application fee of one thousand dollars (\$1,000.00), a completed form of application, on a form to be provided by the city recorder, and which shall contain all of the following information:
  - (a) The name and street address of each person to have any interest, direct or indirect, in the license as owner, partner, or in the case of a corporation as officer, director or stockholder or otherwise;
    - (b) A statement of applicant's prior business experience;
  - (c) The proposed name of the liquor store to be operated under the license;
  - (d) The address of the liquor store to be operated under the license;
  - (e) The statement that each applicant has been a resident of Tennessee for at least two (2) years immediately prior to the time the application is filed. If the applicant is a partnership or a corporation, each of the partners or stockholders must have been a bona fide resident of Tennessee not less than two (2) years at the time the application is filed;
  - (f) The agreement of each applicant to comply with the state, federal and city laws and ordinances and with the rules and regulations of the state alcoholic beverage commission with reference to the sale of alcoholic beverages, and the agreement of each applicant to the validity of and the reasonableness of the regulations, inspection fees and taxes provided in this chapter with reference to the sale of alcoholic beverages.
  - (g) The financial interest of the owners, partners, stockholders or directors, whether the same is a firm, partnership or corporation.

The application form shall be accompanied by a questionnaire form completed by each person having interest in the business and five (5) copies of a scale plan drawn to a scale of not less than one inch equals fifty feet (1" = 50'), giving the following information:

(i) The shape, size and location of the lot upon which the liquor store is to be operated under the license;

- (ii) The shape, size, height and location of all buildings, whether they are to be erected, altered, moved or existing, upon the lot:
- (iii) The off-street parking space and off-street loading and unloading space to be provided including the vehicular access to be provided from these areas to a public street; and
- (iv) The identification of every parcel of land within five hundred feet (500') of the lot upon which the liquor store is to be operated indicating ownership thereof and the locations of any structures situated thereon, and the use being made of every such parcel. The application form shall be signed and verified by each person to have any interest in the license either as owner or partner or in the case of a corporation, as officer, director or stockholder or otherwise.
- (3) <u>Misrepresentation or concealment of material fact</u>. If any applicant misrepresents any material fact or conceals any material fact in any application form filed for the purpose of complying with the requirements contained in § 8-203(1), such applicant shall be deemed to have violated the provisions of this chapter.
  - (4) Restrictions upon issuance. (a) No certificate of compliance shall be issued unless a license issued on the basis thereof can be exercised without violating any provision of this chapter.
  - (b) The mayor shall not sign any certificate of compliance for any applicant until:
    - (i) Such applicant's application has been filed with the city recorder;
    - (ii) The location stated in the certificate has been approved by the council as a suitable location for the operation of a liquor store, and considering geography of the area to be served;
    - (iii) The application has been considered at a meeting of the council and approved by the vote of at least three (3) members thereof.
- (5) <u>Restrictions upon corporate licenses</u>. If a licensee is a corporation, then in addition to the other provisions of this chapter:
  - (a) No person owning stock in or who is an officer or director in such corporate licenses shall have any interest as an owner, stockholder, officer, director or otherwise in any business licensed to engage in the sale at wholesale or retail of alcoholic beverage in the state.
  - (b) No stock of such corporate licensee shall be transferred by sale, gift, pledge, operation of law or otherwise to any person who has not been a resident of the Tennessee for the two (2) consecutive years immediately preceding the date of any such transfer; nor shall any of said stock be so transferred to any person who would not be otherwise

qualified as an original stockholder of an initial corporate applicant for a license hereunder.

(6) <u>Term, renewal</u>. Certificates of compliance shall be valid for two (2) years from issuance. Certificate renewals shall follow all guidelines and requirements as if they were an original application. Renewals shall be subject to compliance with all applicable state statutes, all applicable state rules and regulations and provisions of this chapter. (Ord. #2008-21, Feb. 2009)

## 8-204. Restrictions on buildings and locations of retail store.

- (1) Liquor store must be located no more than three thousand feet (3,000') from I-40 or no more than three thousand feet (3,000') of an intersection of two (2) major arterial highways. The distance between liquor stores must be not less than one (1) mile.
- (2) It shall be unlawful for any person to operate or maintain any retail establishment for the sales, storage, or distribution of alcoholic beverages except at locations zoned for that purpose as set forth by the valid, current Baxter Zoning Ordinance in effect.
- (3) All retail sales shall be confined to the premises of the licensee. No curb service is permitted nor shall there be permitted drive-in windows.
- (4) No liquor store shall be located in the city on any premises above the ground floor. Each such store shall have only one (1) main entrance for use by the public as a means of ingress and egress for the purpose of purchasing alcoholic beverages at retail; provided, that any liquor store adjoining the lobby of a hotel or motel may maintain an additional entrance into such lobby as long as such lobby is open to the public. Liquor sales room shall consist of an area of not less than one thousand five hundred (1,500) square feet.
- (5) No retail stores shall be in closer proximity to any school (public or private), any community center, any church or religious building, any public library, any hospital, any funeral parlor, or any public recreation area, than two hundred fifty feet (250') as measured in a straight line from the main entrance of said retail store to the main entrance of said aforementioned institutions or facilities.
- (6) To the fullest extent consistent with the nature of the establishment, full, free, and unobstructed vision shall be afforded from the street and public highway to the interior of the place of sale or dispensing of alcoholic beverages there sold or dispensed.
- (7) No form of entertainment, including pin ball machines, music machines, or similar devices, shall be permitted to operate upon any premises from which alcoholic beverages are sold. (Ord. #2008-21, Feb. 2009)

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

Tennessee Code Annotated, § 57-3-404(f).

- 8-205. Retail liquor license. (1) Qualifications of applicant. To be eligible to apply for or to receive a retail liquor license in the City of Baxter, an application must satisfy all of the requirements of the state statutes and of the state rules and regulations for a holder of a state liquor retailer's license and must have been a resident of Tennessee, at least two (2) years immediately preceding the date when the application is filed with the city recorder. Applicant must have secured a location which complies with all restrictions of the laws, ordinances, and resolutions and have initial investment capital of not less than three hundred thousand dollars (\$300,000.00).
- (2) Only one (1) establishment to be operated by retailer. No retailer shall operate, directly or indirectly, more than one (1) place of business for the sale of alcoholic beverages in the city. The word "indirectly," as used in this section, shall include and mean any kind of interest in another place of business by way of stock, ownership, loan, partner's interest or otherwise.
- (3) <u>Nature of license</u>; <u>suspension or revocation</u>. The issuance of a license does not vest a property right in the license but is a privilege subject to revocation or suspension by the Tennessee Alcoholic Beverage Commission. The mayor shall have the authority to report to the commission any violation of this chapter by the licensee or by any person for whose acts the licensee is responsible.
- (4) <u>Display</u>. The licensee shall display and post, and keep displayed and posted his license in a conspicuous place in the licensee's liquor store at all times when any activity or business authorized hereunder is being done by the licensee.
- (5) <u>Number of licenses</u>. There shall be a limit of two (2) licenses issued and outstanding in the city.
- (6) <u>Transfer</u>. A licensee shall not sell, assign, or transfer his license or any interest therein to any other person without a certificate of compliance by the board. Provided, however, licensees who are serving in the military forces of the United States in time of war may appoint an agent to operate under the

<sup>&</sup>lt;sup>1</sup>State law references for §§ 8-205(2), (4), (6), (7)(a), (7)(b), (7)(c), (7)(d), (7)(e), (7)(f), 7(g) are listed below:

Tennessee Code Annotated, § 57-3-406.

Tennessee Code Annotated, § 57-3-211.

Tennessee Code Annotated, § 57-3-212.

Tennessee Code Annotated, § 57-3-210(b).

Tennessee Code Annotated, § 57-3-210(c).

Tennessee Code Annotated, § 57-3-210(d).

Tennessee Code Annotated, § 57-3-210(e).

<sup>&</sup>lt;u>Tennessee Code Annotated</u>, § 57-3-210(f). Tennessee Code Annotated, § 57-3-210(h).

Tennessee Code Annotated, § 57-3-210(i).

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license of the licensee during the absence of the licensee. In such instances, the license shall continue to be carried and renewed in the name of the owner. The agent of the licensee shall conform to all the requirements of a licensee. No person who is ineligible to obtain a license shall be eligible to serve as the agent of a licensee under this section. In any case where a licensee is an individual and the individual dies or becomes incapacitated during the term of the license, upon proper application to the board and upon compliance with all regulations hereunder and all applicable laws of the state or regulations of the alcoholic beverage commission of the state, the widow or duly qualified and appointed personal representative or guardian or conservator of said licensee may be issued a license for said retail establishment for the duration for the term of the original licensee's license. If a partnership, the surviving partner may do likewise, having said license issued to him as an individual.

## (7) <u>Miscellaneous restrictions upon licensees and their employees.</u>

- (a) No retailer's license shall be issued to a person who is a holder of a public office, either appointive or elective, or who is a public employee, either national, state, city or county. It shall be unlawful for any such person to have any interest in such retail business, directly or indirectly, either proprietary or by means of any loan, mortgage or lien, or to participate in the profits of any such business. The foregoing shall not apply to uncompensated appointees to municipal boards and commissions where the boards or commission on which such appointees serve have no duty to vote for, overlook, or in any manner superintend the sale of alcoholic beverages.
- (b) No retailer shall be a person who has been convicted of a felony involving moral turpitude within ten (10) years prior to the time he or the legal entity which he is connected shall receive a license; provided, that this provision shall not apply to any person who has been so convicted, but whose rights of citizenship have been restored or judgment of infamy has been, removed by a court of competent jurisdiction; and in the case of any such conviction occurring after a license has been issued and received, the license shall immediately be revoked, if such convicted felon be an individual licensee, and if not, the partnership, corporation or association with which he is connected shall immediately discharge him.
- (c) No license shall, under any condition, be issued to any person who within ten (10) years preceding application for such license or permit shall have been convicted of any offense under the laws of the state or of any other state or of the United States prohibiting or regulating the sale, possession, transportation, storing, manufacturing or otherwise handling intoxicating liquors or who has, during such period, been engaged in business alone or with others, in violation of any such laws or rules and regulations promulgated pursuant thereto, or as they existed or may exist thereafter.

- (d) No manufacturer, brewer or wholesaler shall have any interest in the licensee's rental, occupancy or revenues.
- (e) It shall be unlawful for any person to have ownership or to participate, either directly or indirectly, in the profits of any retail business licensed, unless his interest in such business and the nature, extent and character thereof shall appear on the application; or if the interest is acquired after the issuance of a license, unless it shall be fully disclosed to the city recorder and approved by the mayor. Where such interest is owned by such person on or before the application for any license, the burden shall be upon such person to see that this section is fully complied with, whether he, himself, signed or prepared the application or whether the same is prepared by another; of if such interest is acquired after the issuance of the license, the burden of such disclosure of the acquisition of such interest shall be upon the seller and the purchaser.
- (f) No retailer or any employee thereof engaged in the sale of alcoholic beverages shall be a person under the age of eighteen (18) years and it shall be unlawful for any retailer to employ any person under eighteen (18) years of age for the physical storage, sale or distribution of alcoholic beverages, or to permit any such person under such age in its place of business to engage in the storage, sale or distribution of alcoholic beverages.
- (g) No retailer shall employ in the storage, sale or distribution of alcoholic beverages, any person who, within ten (10) years prior to the date of his employment, shall have been convicted of a felony involving moral turpitude, and in case an employee should be convicted he shall immediately be discharged; provided that this provision shall not apply to any person who has been so convicted, but whose rights of citizenship have been restored or judgment of infamy has been removed by a court of competent jurisdiction.
- (h) No licensee shall employ any canvasser, agent, solicitor or representative otherwise for the purpose of receiving an order from a consumer of any alcoholic beverages at the residences or places of business of such consumer, nor shall any such licensee receive or accept any such order which shall have been solicited or received at the residence or place of business of such consumer. This paragraph shall not be construed so as to prohibit the solicitation by a state licensed wholesaler of any order from any licensed retailer at the licensed premises.
- (i) The issuance of a license does not vest a property right in the licensee, but is a privilege subject to revocation or suspension under this chapter. (Ord. #2008-21, Feb. 2009)

- **8-206.** <u>Inspection fee</u>. (1) <u>Levied</u>. The City of Baxter hereby imposes an inspection fee in the maximum amount allowed by <u>Tennessee Code Annotated</u>, § 57-3-501 on all licensed retailers of alcoholic beverages located within the corporate limits of the city.
  - (2) <u>Invoices</u>. (a) It shall be unlawful for any wholesaler to supply, ship or otherwise deliver any alcoholic beverage to a licensee, and it shall be unlawful for any licensee to receive any alcoholic beverage, unless there shall be issued and delivered to the licensee by the wholesaler, currently with each such shipment or delivery, an invoice showing:
    - (i) The date of the transaction:
    - (ii) The name and address of the wholesaler and of the licensee:
    - (iii) The brand name and quantity of alcoholic beverage covered by the invoice; and
    - (iv) The unit wholesale price and the gross wholesale price for each item listed thereon.
  - (b) The wholesaler's invoice shall be issued and delivered to the licensee as hereinabove provided without regard to the terms of payment of the invoice so as to include all such transactions whether for cash or on credit or partly for cash and partly on credit.
- (3) Form for reports; rules and regulations. The city recorder shall prepare and make available to each wholesaler or other source vending alcoholic beverages to licensees sufficient forms for the monthly report of inspection fees payable by each licensee making purchases from such wholesaler or other source; and the city recorder is authorized to promulgate reasonable rules and regulations to facilitate the reporting and collection of inspection fees and to specify the records of such sales and fees to be kept by each wholesaler or other vending source.
- (4) <u>Collection</u>. Collection of the inspection fee levied herein shall be made by the wholesaler or other source, vending to the licensee at the time the sale is made to the licensee, and in such case payment of the inspection fee by such collecting wholesaler or other source shall be made to the city recorder on or before the fifteenth day of each calendar month. Nothing herein shall relieve the licensee of the obligation of the payment of the inspection fee, and it shall be the licensee's duty to see that the payment of the inspection fee is made to the city recorder on or before the fifteenth day of each calendar month.
- (5) <u>Effect of failure to report and pay</u>. The failure to pay the inspection fee and to make the required reports accurately and within the time prescribed in this chapter shall be reported by the mayor to the Tennessee Alcoholic Beverage Commission as a violation of this chapter.
- (6) <u>Use of funds</u>. All funds derived from the inspection fees imposed herein shall be paid into the general fund of the city. The city shall defray all expenses in connection with the enforcement of this chapter, including particularly the payment of the compensation of officers, employees or other

representatives of the city in investigating and inspecting licensees and applicants and in seeing that all provisions of this chapter are observed; the board finds and declares that the amount of those inspection fees is reasonable and that the funds expected to be derived from these inspection fees will be reasonably required for said purposes.

- (7) <u>Supplemental nature</u>. The inspection fee levied herein shall be in addition to any general gross receipts, sales or other general taxes applicable to the sale of alcoholic beverages and shall not be a substitute for such taxes.
- (8) <u>Inspections</u>. The mayor, the city recorder, or the authorized representative of either of them, are authorized to examine the books, papers, and records of any licensee at any and all reasonable times for the purpose of determining whether the provisions of this chapter are being observed. The mayor, the city recorder, the chief of police and any other police officer of the city is authorized to enter and inspect the premises of a liquor store at any time the liquor store is open for business. Any refusal to permit the examination of the books, papers and records of a licensee, or the inspection and examination of the premises of a liquor store shall be unlawful. The mayor shall forthwith report such violation to the state alcoholic beverage commission with the request that appropriate action be taken to revoke the license of the offending licensee. (Ord. #2008-21, Feb. 2009)
- **8-207.** Operational rules and regulations. <sup>1</sup> (1) Records to be kept by licensee. In addition to any records specified in the rules and regulations promulgated by the city recorder pursuant to this chapter, each licensee shall keep on file at such licensee's liquor store the following records:
  - (a) Original invoices required herein for all alcoholic beverages bought by or otherwise supplied to the licensee;
  - (b) The original receipts for any alcoholic beverages returned by such licensee to any wholesaler; and
  - (c) An accurate record of all alcoholic beverages lost, stolen, damaged, given away, or disposed of other than by sale, and showing for each such transaction the date thereof, the quantity and brands of alcoholic beverages involved, and, where known, the name of the person or person receiving the same. All such records shall be preserved for a period of at least two (2) years unless the city recorder gives the licensee written permission to dispose of such records at an earlier time.
- (2) <u>Hours and days of operation</u>. No liquor store shall be open and no licensee shall sell or give away any alcoholic beverage on Christmas Day, on

<sup>&</sup>lt;sup>1</sup>State law references for §§ 8-207(2), (4) and (5) are listed below:

Tennessee Code Annotated, § 57-3-406(e).

Tennessee Code Annotated, § 57-3-406(c).

Tennessee Code Annotated, § 57-3-406(d).

Thanksgiving Day, on New Years Day, on Labor Day, on the 4th of July or on any Sunday. On other days, no liquor store shall be open and no licensee shall sell or give away any alcoholic beverage before 8:00 A.M. or after 11:00 P.M.

- (3) <u>Management</u>. Each liquor store licensed hereunder shall be personally and actively managed by the holder of the license, if the licensee is an individual, or by a partner or corporate officer, if the licensee is a partnership or corporation. In every case where alcoholic beverage is sold by a licensee that is either a partnership or a corporation, the name and address of the managing partner or the corporate officer who will be in active control and management of the liquor store shall be designated in the application, and any future changes in such manager shall be reported forthwith in writing to the city recorder.
- (4) No retailer shall sell, lend, or give away any alcoholic beverages to any person who is drunk, nor shall any retailer selling alcoholic beverages sell, lend, or give away such beverages to any person accompanied by a person who is drunk.
- (5) No retailer shall sell, lend, or give away any alcoholic beverages to a person under twenty-one (21) years of age. It shall be the responsibility of the retailer, or his agents or employees, for ascertaining the age of any persons hereunder and, in the absence of false representations by any person under the age of twenty-one (21) years, reasonably relied upon by said retailer, his agent or employees, and any selling, lending, or giving away to persons under twenty-one (21) years of age shall be a violation of this section.
- 8-208. Advertising. No outdoor sign, advertisement or display that advertises alcoholic beverages may be erected or maintained on the property on which an establishment holding a valid retail liquor license from the State of Tennessee and the City of Baxter is located other than one (1) sign, advertisement or display which makes reference to the fact that the establishment sells alcoholic beverages but does not use brand names, pictures, numbers, prices, or diagrams relating to alcoholic beverages. Any other advertising shall be confined to the interior of the premises for which the permit applies and permittees shall not place signs in the window which are visible to any persons outside of the premises. (Ord. #2008-21, Feb. 2009)
- 8-209. <u>Violations</u>. Any person violating any provision of this chapter shall be guilty of an offense, and shall be fined a minimum of fifty dollars (\$50.00) and a maximum of one hundred dollars (\$100.00) for each such violation. Any licensee violating any provision of this chapter shall be subject to having his license suspended or revoked for such violation as provided in this chapter, or by the state statutes, or by the state rules and regulations. Whenever any person licensed hereunder fails to account for or pay over to the city recorder any license fee or inspection fee, the city recorder shall report the same to the city attorney who shall immediately institute the necessary action for the recovery of any such license or inspection fee. (Ord. #2008-21, Feb. 2009)

**8-210.** Alcoholic beverage control board. The board of mayor and aldermen shall serve as the alcoholic beverage control board. (Ord. #2008-21, Feb. 2009)

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

### **SECTION**

- 8-301. Authority to grant, revoke, etc., beer permits.
- 8-302. Permit required for engaging in beer business.
- 8-303. Privilege tax.
- 8-304. Applicant shall file written application containing certain specific requirements.
- 8-305. Permits issued for sale of beer within corporate limits for off-premises and on-premises consumption.
- 8-306. Permits limited.
- 8-307. Sales to minors or intoxicated persons unlawful.
- 8-308. Hours and days of sale, etc., regulated.
- 8-309. Permittees not to allow minors to loiter about premises.
- 8-310. Unlawful for minor to misrepresent age.
- 8-311. The board of mayor and aldermen vested with the authority to conduct hearings on revocation or suspension of beer permits issued under this chapter.
- 8-312. Revocation or suspension of beer permits.
- 8-313. Civil penalty in lieu of revocation or suspension.
- 8-314. Loss of clerk's certification for sale to minor.
- 8-315. Violations.
- **8-301.** Authority to grant, revoke, etc., beer permits. The board of mayor and aldermen is designated, appointed, and given authority for the purpose of granting, refusing, rescinding, or revoking permits for sale, storage and warehousing of beer or other alcoholic beverage with an alcoholic content not exceeding five percent (5%) of weight within the corporate limits of Baxter, Tennessee. (1987 Code, § 2-201)
- **8-302.** Permit required for engaging in beer business. It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture

Open container law; minors in beer places: title 11, chapter 1.

Tax provisions: title 6.

### State law reference

For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in <u>Watkins v. Naifeh</u>, 635 S.W.2d 104 (1982).

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

beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to <u>Tennessee Code Annotated</u>, § 57-5-101(b), and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of Baxter. Each applicant must be a person of good moral character and certify that he has read and is familiar with the provisions of this chapter. (1987 Code, § 2-202)

- 8-303. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer and annual privilege tax of one hundred dollars (\$100.00). Any person, firm, corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax on January 1, 1994, and each successive January 1, to the City of Baxter, Tennessee. At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date. (1987 Code, § 2-203)
- 8-304. <u>Applicant shall file written application containing certain specific requirements</u>. Before any permit is issued by the board of mayor and aldermen, the applicant therefore shall file with the board of mayor and aldermen a sworn petition in writing and shall establish the following:
  - (1) The name and residence of the applicant.
- (2) The location of the premises at which the business shall be conducted.
  - (3) The owner or owners of such premises.
- (4) That the applicant shall not engage in the sale of such beverages except at the place or places for which the board of mayor and aldermen has issued permits or permit, to such applicant.
- (5) That no sale of such beverages will be made except in accordance with the permit granted.
- (6) The applicant shall state as to whether the permit for the sale of beer is sought for consumption on the premises or for sale to be carried off the premises with no consumption on the premises.
- (7) The application, if for a Class A off-premises consumption permit, is for a grocery store/convenience store; if for a Class A on-premises consumption permit is for a restaurant; if for Class B on-premises consumption permit (Tennessee Motor Speedway Track). All applicants shall state how many years that they have been in business at the premises to be licensed, and the straight-line distances to the closest school, the closest church, and to any other nearby place of public gathering.
- (8) That neither the applicant nor any persons employed, or to be employed by him in such distribution or sale of such beverage, has ever been

convicted of any violation of the law against prohibition, sale, possession, manufacture, or transportation of intoxicating liquor, or of any crime involving moral turpitude within the past ten (10) years.

- (9) That the applicant has not had a license for the sale of legalized beer or other beverages of like alcoholic content revoked.
- (10) The application shall state whether the person applying will conduct the business in person, or whether he is acting as agent for any other person.
- (11) That no brewer or distiller of legalized beer or any other beverage of like alcoholic content has any interest, financial or otherwise, in the premises upon or in which the business to be licensed is carried on.
- (12) That no brewer or distiller of legalized beer or any other beverages of like alcoholic content has any interest, financial or otherwise, in the business which is licensed, or requested to be licensed.
- (13) That the applicant will not thereafter convey or grant any brewer or distiller of legalized beer of any other beverage of like alcoholic content any interest in either the business which is licensed to be carried on, or in any other property at which such business may thereafter be carried on.
- (14) That the applicant has, at the time of making such application, no indebtedness or other financial obligation to any brewer or distiller of legalized beer or other beverage of like alcoholic content, and will not, during the period such license shall be in force, contract any financial obligation to any brewer or distiller of legalized beer or other beverage of like alcoholic content other than for the purchase of such beer or other beverage of like alcoholic content.
- (15) This application shall be verified by the affidavit of the applicant, made before a notary public or the city recorder, and if any false statement is made in any part of such application the permit or license granted or issued to the applicant shall be revoked by the board of mayor and aldermen. (1987 code, § 2-205, as modified by Ord. #2002-9, Sept. 2002, modified)
- 8-305. Permits issued for sale of beer within corporate limits for off-premises and on-premises consumption. No permit for the sale of beer shall be issued to any person, persons, firm, corporation, joint stock company, syndicate, partnership, or association for the sale of beer or other alcoholic beverage with an alcohol content not exceeding five percent (5%) by weight within the corporate limits of Baxter, Tennessee, except as defined by the following classes of businesses:
- (1) <u>Class A off-premises consumption</u>. To qualify for a Class A off-premises permit, an establishment must, in addition to meeting the other regulations in this chapter:
  - (a) Be a grocery store or a convenience type market; and
  - (b) In either case, be primarily engaged in the sale of grocery and personal and home care and cleaning articles, but may also sell gasoline.

- (c) The business privilege sales, and ad valorem taxes are maintained in a paid status at all times, and the majority of the gross sales of said businesses are derived from the retail sales of groceries, and which is not located within two hundred feet (200') of a church or other public gathering place, and which is not located within five hundred feet (500') of a school. No beer will be sold, warehoused, or distributed from any building other than the one to which the permit is for sale in the said grocery store shall be permitted. Any beer or alcoholic beverage sold by Class A permit holder shall not be opened or consumed on the licensed premises.
- (2) <u>Class A on-premises consumption</u>. To qualify for a Class A on-premises consumption permit, an establishment must, in addition to meeting other regulations and restrictions in this chapter:
  - (a) Be primarily a restaurant or an eating place; and
  - (b) Be able to seat a minimum of thirty (30) people, including children, in booths and at tables, in addition to any other seating it may have:
  - (c) Have all seating in the interior of the building under a permanent roof; and
  - (d) In addition, the monthly beer sales of any establishment which holds a Class A on-premises consumption permit shall not exceed fifty percent (50%) of the gross sales of the establishment. Any such establishment which for two (2) consecutive months or for any three (3) months in any calendar has beer sales exceeding fifty percent (50%) of its gross sales, shall have its beer permit revoked. The business privilege sales, and ad valorem taxes are maintained in a paid status at all times, and the majority of the gross sales of said businesses are derived from the retail sales of groceries, and which is not located within two hundred feet (200') of a church or other public gathering place, and which is not located within five hundred feet (500') of a school.
- Oitty Road, Baxter, Tennessee, known as Tennessee Motor Speedway, is not located within one thousand feet (1,000') of a church or other public gathering place, and which is not within one thousand five hundred feet (1,500') of a school. No outside advertising of beer, or of various brands of beer, for sale on the said licensed premises shall be permitted. Any beer or alcoholic beverage sold by the permit holder shall not be removed from the premises, or left on the premises when the purchaser exits the facility. All sales and consumption of beer or alcoholic beverage on the licensed premises shall occur only inside the paid entrance gate of the facility, and shall be subject to such other rules and regulations as the operator of the facility deems necessary. Should Tennessee Motor Speedway be operated as a business other than primarily as a racetrack, such Class B on-premises consumption permit shall be null and void. (Ord. #2002-9, Sept. 2002)

- 8-306. <u>Permits limited</u>. No more than one (1) permit for the retail sale of beer or other alcoholic beverage with an alcoholic content not exceeding five percent (5%) of weight shall be issued and outstanding for each one thousand (1,000) persons residing in the City of Baxter, Tennessee, according to the 1970 Federal Census, or any subsequent Federal Census. (1987 Code, § 2-208)
- **8-307.** Sales to minors or intoxicated persons unlawful. It shall be unlawful to sell or offer for sale any beverage falling within the provisions of this chapter to a person under the age of twenty-one (21) years or to a person in an intoxicated or partially intoxicated condition. (1987 Code, § 2-209)
- 8-308. <u>Hours and days of sale, etc., regulated</u>. It shall be unlawful for any person, firm, corporation, joint stock company, syndicate, or association to offer for sale or sell beer or other alcoholic beverage with an alcoholic content not exceeding five percent (5%) by weight within the corporate limits of Baxter, Tennessee, between the hours of 3:00 A.M. and 8:00 A.M. on weekdays, or between the hours of 3:00 A.M. and 8:00 A.M. on Sundays. (1987 Code, § 2-210, as amended by Ord. #2005-10, Sept. 2005)
- 8-309. Permittees not to allow minors to loiter about premises. It shall be unlawful for the management of any place where any beer or other beverage of like alcoholic content is sold within the corporate limits of Baxter, Tennessee, to allow any minor to loiter about such place or business and the burden of ascertaining the age of minor customers shall be upon the owner or operator of such place of business. (1987 Code, § 2-211)
- 8-310. <u>Unlawful for minor to misrepresent age</u>. It shall be unlawful and a misdemeanor for any person under twenty-one (21) years of age to knowingly misrepresent his age in order to obtain or purchase beer within the corporate limits of the City of Baxter, Tennessee, or to remain in a location where beer is legally being sold under the provisions of this chapter and where minors are not allowed. (1987 Code, § 2-212)
- 8-311. The board of mayor and aldermen vested with the authority to conduct hearings on revocation or suspension of beer permits issued under this chapter. The board of mayor and aldermen of the City of Baxter, Tennessee is vested with full and complete power to investigate charges against any permit holder who is cited to appear and show cause why his and/or its permit should not be suspended or revoked for the violation of the provisions of this chapter or the provisions of the state beer laws of the State of Tennessee. Complaints filed against any permit holder for the purpose of suspending or revoking such permits shall be made in writing and filed with the board of mayor and aldermen. When the board of mayor and aldermen shall have reason to believe that any permit holder shall have violated any of the

provisions of this chapter or any of the provisions of the state beer act, the board of mayor and aldermen is authorized, in its discretion, to notify the permittee of said violations and to cite said permittee by written notice to appear and show cause why his permit should not be suspended or revoked for such violations. Said notice to appear and show cause shall state the alleged violations charged and shall be served upon permittee either by register mail or by a member of the police department of the City of Baxter. The notice shall be served upon the permittee at least ten (10) days before the date of the hearing. At the hearing the board of mayor and aldermen shall publicly hear the evidence both in support of the charges and on behalf of the permittee. After such hearing, if the charges are sustained by the evidence, the board of mayor and aldermen, in it discretion, may suspend or revoke said permit. The action of the board of mayor and aldermen in all such hearings shall be final, subject only to review by the court as provided in the state beer act. When a permit is revoked, no new permit shall be issued hereunder for the sale of beer at the same location, until the expiration of one (1) year from the date said revocation becomes final. In the event any person or persons, firm, corporation, joint stock company, syndicate, or association has its beer permit revoked for the second time for the violation of the provisions of this chapter or the state beer act of the State of Tennessee, then that person or persons, firm, corporation, joint stock company, syndicate, or association shall not be granted a new permit for a period of three (3) years. In the event any person or persons, firm corporation, joint stock company, syndicate, or association has its beer permit revoked for a third violation of the provisions of this chapter or the provisions of the state beer act of the State of Tennessee, then that person or persons, firm, corporation, joint stock company, syndicate, or association shall never be granted a beer permit under the provisions of this chapter. (Ord. #2008-15, Aug. 2008)

8-312. Revocation or suspension of beer permits. The beer board shall have the power to revoke or suspend any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. However, no beer permit shall be revoked or suspended until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation or suspension proceedings may be initiated by the police chief or by any member of the beer board.

Pursuant to <u>Tennessee Code Annotated</u>, § 57-5-608, the beer board shall not revoke or suspend the permit of a "responsible vendor" qualified under the requirements of <u>Tennessee Code Annotated</u>, § 67-5-606 for a clerk's illegal sale of beer to a minor if the clerk is properly certified and has attended annual meetings since the clerk's original certification, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. If the responsible vendor's certification has been revoked, the vendor shall be punished by the beer board as if the vendor were not certified

aa a responsible vendor. "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premises consumption. Under <u>Tennessee Code Annotated</u>, § 57-6-608, the alcoholic beverage commission shall revoke a vendor's status as a responsible vendor upon notification by the beer board that the board has made a final determination that the vendor has sold beer to a minor for the second time in a consecutive twelve (12) month period. The revocation shall be for three (3) years.

## 8-313. Civil penalty in lieu of revocation or suspension.

- (1) <u>Definition</u>. "Responsible vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006," <u>Tennessee Code Annotated</u>, § 57-5-601, <u>et seq</u>.
- (2) <u>Penalty, revocation or suspension</u>. The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that is not a responsible vendor the alternative of paying a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense.

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

If a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn.

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

- 8-314. Loss of clerk's certification for sale to minor. If the beer board determines that a clerk of an off-premises beer permit holder certified under Tennessee Code Annotated, § 57-5-606, sold beer to a minor, the beer board shall report the name of the clerk to the alcoholic beverage commission within fifteen (15) days of determination of the sale. The certification of the clerk shall be invalid and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination.
- **8-315.** <u>Violations</u>. Except as provided in § 8-314, any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty provision of this code. Each day a violation shall be allowed to continue shall constitute a separate offense.

### TITLE 9

# BUSINESSES, PEDDLERS, SOLICITORS, ETC.1

### **CHAPTER**

- 1. PEDDLERS, SOLICITORS, ETC.
- 2. MISCELLANEOUS.

### CHAPTER 1

# PEDDLERS, SOLICITORS, ETC.2

### **SECTION**

- 9-101. Definitions.
- 9-102. Exemptions.
- 9-103. Permit required.
- 9-104. Permit procedure.
- 9-105. Restriction on peddlers, street barkers and solicitors.
- 9-106. Restrictions on transient vendors.
- 9-107. Display of permit.
- 9-108. Suspension or revocation of permit.
- 9-109. Expiration and renewal of permit.
- 9-110. Violation and penalty.
- **9-101. Definitions**. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:
- (1) "Peddler," means any person, firm or corporation, either a resident or a nonresident of the city, who has no permanent regular place of business and who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

<sup>1</sup>Municipal code references

Building and residential codes: title 12.

Junkyards: title 13, ch. 2.

Liquor and beer regulations: title 8.

Noise reductions: title 11. ch. 4.

Parades regulated: § 16-110.

Zoning: title 14.

<sup>2</sup>Municipal code references

Trespassing: title 11, ch. 7.

Wholesale beer tax: title 5, ch. 2.

- (2) "Solicitor," means any person, firm or corporation who goes from dwelling to dwelling, business to business, place to place, or from street to street, taking or attempting to take orders for any goods, wares or merchandise, or personal property of any nature whatever for future delivery, except that the term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.
- (3) "Solicitor for charitable or religious purposes," means any person, firm, corporation or organization who or which solicits contributions from the public, either on the streets of the city or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who does not sell or offer to sell any single item at a cost to the purchaser in excess of ten dollars (\$10.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets one (1) of the following conditions:
  - (a) Has a current exemption certificate from the Internal Revenue Service issued under § 501(c)(3) of the Internal Revenue Service Code of 1954, as amended.
  - (b) Is a member of United Way, Community Chest or similar "umbrella" organization for charitable or religious organizations.
  - (c) Has been in continued existence as a charitable or religious organization in Putnam County for a period of two (2) years prior to the date of its application for registration under this chapter.
- (4) "Solicitor for subscriptions," means any person who solicits subscriptions from the public, either on the streets of the city, or from door to door, business to business, place to place, or from street to street, and who offers for sale subscriptions to magazines or other materials protected by provisions of the Constitution of the United States.
- (5) "Transient vendor," means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does

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

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

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

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

- (6) "Street barker," means any peddler who does business during recognized festival or parade days in the city and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade. (1987 Code, § 5-101)
- **9-102.** Exemptions. The terms of this chapter shall not apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to persons selling agricultural products, who, in fact, themselves produced the products being sold. (1987 Code, § 5-102)
- **9-103.** Permit required. No person, firm or corporation shall operate a business as a peddler, transient vendor, solicitor or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the city unless the same has obtained a permit from the city in accordance with the provisions of this chapter. (1987 Code, § 5-103)
- **9-104.** Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the city recorder by each applicant for a permit as a peddler, transient vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:
  - (a) The complete name and permanent address of the business or organization the applicant represents.
  - (b) A brief description of the type of business and the goods to be sold.
  - (c) The dates for which the applicant intends to do business or make solicitations.
  - (d) The names and permanent addresses of each person who will make sales or solicitations within the city.
  - (e) The make, model, complete description, and license tag number and state of issue, of each vehicle to be used to make sales or solicitation, whether or not such vehicle is owned individually by the

person making sales or solicitations, by the business or organization itself, or rented or borrowed from another business or person.

- (f) Tennessee state sales tax number, if applicable.
- (2) Permit fee. Each applicant for a permit as a peddler, transient vendor, solicitor or street barker shall submit with his application a nonrefundable fee of twenty dollars (\$20.00). There shall be no fee for an application for a permit as a solicitor for charitable purposes or as a solicitor for subscriptions.
- (3) <u>Permit issued</u>. Upon the completion of the application form and the payment of the permit fee, where required, the recorder shall issue a permit and provide a copy of the same to the applicant.
- (4) <u>Submission of application form to chief of police</u>. Immediately after the applicant obtains a permit from the city recorder, the city recorder shall submit to the chief of police a copy of the application form and the permit. (1987 Code, § 5-104)
- **9-105.** Restrictions on peddlers, street barkers and solicitors. No peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions shall:
- (1) Be permitted to set up and operate a booth or stand on any street or sidewalk, or in any other public area within the city.
- (2) Stand or sit in or near the entrance to any dwelling or place of business, or in any other place which may disrupt or impede pedestrian or vehicular traffic.
- (3) Offer to sell goods or services or solicit in vehicular traffic lanes, or operate a "road block" of any kind.
- (4) Call attention to his business or merchandise or to his solicitation efforts by crying out, by blowing a horn, by ringing a bell, or creating other noise, except that the street barker shall be allowed to cry out to call attention to his business or merchandise during recognized parade or festival days of the city.
- (5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located. (1987 Code, § 5-105)
- 9-106. Restrictions on transient vendors. A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, canceled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth. (1987 Code, § 5-106)

- **9-107.** Display of permit. Each peddler, street barker, solicitor, solicitor for charitable purposes or solicitor for subscriptions is required to have in his possession a valid permit while making sales or solicitations, and shall be required to display the same to any police officer upon demand. (1987 Code, § 5-107)
- **9-108.** Suspension or revocation of permit. (1) Suspension by the recorder. The permit issued to any person or organization under this chapter may be suspended by the city recorder for any of the following causes:
  - (a) Any false statement, material omission, or untrue or misleading information which is contained in or left out of the application; or
    - (b) Any violation of this chapter.
- (2) <u>Suspension or revocation by the board of mayor and aldermen</u>. The permit issued to any person or organization under this chapter may be suspended or revoked by the board of mayor and aldermen, after notice and hearing, for the same causes set out in subsection (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1987 Code, § 5-108)
- **9-109.** Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days. (1987 Code, § 5-109)
- **9-110.** <u>Violation and penalty</u>. In addition to any other action the city may take against a permit holder in violation of this chapter, such violation shall be punishable according to the general penalty provision of this municipal code of ordinances. (1987 Code, § 5-110)

### **MISCELLANEOUS**

#### SECTION

- 9-201. Registration of businesses required.
- 9-202. Open air sales.
- 9-203. Sales of ephedrine and ephedrine-related products.
- **9-201.** Registration of businesses required. (1) The owner or operator of each and every business operating within the corporate limits of the city is required to register with the city recorder. On a form provided for that purpose, the owner or operator of the business, and in descending order of importance, the full name, addresses and telephone numbers of three (3) persons, if that many who can be contacted in the event of an emergency involving the business premises. Persons who can be contacted in the event of an emergency should generally be those persons, who have keys or other quick access to the business premises, and who can be quickly and easily contacted.

The recorder shall compile and maintain and up-to-date file of businesses and the information pertaining to them required to be kept under this chapter, and shall provide the police, fire and public works departments with the same. However, the business file required to be kept under this chapter may be kept in a central file to which the police, fire and public works and utility departments have immediate and convenient access.

- (2) The owner or operator of businesses required to notify the city recorder of any change of information contained on the registration form within five (5) weekdays after such changes. The recorder shall immediately enter such change on the registration form, along with the name of the person who provided the information relative to the change, and shall immediately communicate that change to the police, fire, and public works and utility departments, unless such information is maintained in a central file as provided for in subsection (1).
- (3) The conduct of a business or businesses at two (2) or more locations, or the conduct or two (2) or more separate businesses at the same location (such as, but not limited to situations where part of the premises is leased, under concession to, or owned wholly or in part by a different person or person on the same premises) shall, for the purposes of this chapter be deemed to be separate businesses, and each shall be subject of the registration and all other provisions of this chapter, including payment of the registration fee.
- (4) The registration period shall be within ten (10) days after this chapter and the owner and operator is notified. New businesses shall have a maximum of five (5) weekdays after they open their doors for business the first time in which to register. Any change in ownership of a business shall be considered a new business.

- (5) The registration fee for business shall be fifteen dollars (\$15.00). The registration fee is due and payable in full at the time of registration, and is nonrefundable. Business which fail to register within the time required by this chapter shall pay the registration fee from the time they were to register rather than the time they actually registered.
- (6) The intent of this chapter is exclusively regulatory, and is in no way intended to be a tax on businesses operating within the City of Baxter.
- (7) Any owner or operator of a business who fails or refuses to comply with this shall be subject to a minimum fine of fifty dollars (\$50.00). (1987 Code, § 5-301)
- **9-202.** Open air sales. This section regulates open air sales and activities whereby sales of merchandise occur under tents, in booths, and other such portable shelters within the corporate city limits of Baxter, Tennessee.
- (1) <u>Permit</u>. An application for a permit shall be submitted to the board of mayor and aldermen at a stated monthly meeting for approval. Permits shall be considered on a "first come" basis. No more than one (1) permit per quarter shall be issued to any one (1) applicant or his/her cause.
- (2) <u>Fee</u>. A fee of fifty dollars (\$50.00) shall be required for the issuance of a permit.
- (3) <u>Duration</u>. Approved permits shall be valid for a period of seven (7) days, which shall include the beginning and end date. The activity (to include the tents, booths or any portable shelter) must be removed no later than the end day of the approved permit.
  - (4) <u>Requirements</u>.
    - (a) Activity shall not violate city ordinances.
  - (b) Temporary structures must be in compliance with all applicable fire, electrical and safety codes.
  - (c) The permit applicant shall provide portable toilet facilities adequate for the seating provided.
    - (d) The permit applicant shall provide trash/refuse receptacles.
  - (e) Grounds maintenance shall be the responsibility of the permit applicant. (Ord. #2004-5, May 2004)
- 9-203. Sales of ephedrine and ephedrine-related products. No person shall sell or deliver, or attempt to sell or deliver in any single retail sale, a package that contains more than one hundred (100) tablets of any product that contains any quantity of ephedrine, pseudoephedrine or phenylpropanolamine, or any number of packages that contain a combined total of three (3) or more grams of ephedrine, pseudoephedrine, or phenylpropanolamine whether as the sole active ingredient or in combination products that have less than therapeutically significant quantities of other active ingredients.
  - (1) The following definitions apply to this section:

- (a) The use of the terms "ephedrine," "pseudoephedrine," "phenylpropanolamine" in this section all include the salts, optical isomers, or salts of optical isomers of ephedrine, pseudoephedrine and phenylpropanolamine.
- (b) The use of the term "retail establishment" in this section shall include any business entity and individual person who sells, offers for sale or attempts to sell any product containing ephedrine, pseudoephedrine or phenylpropanolamine at retail.
- (c) The use of the term "consumer accessible shelving" in this shall mean any area of a retail establishment other than product display area behind a counter where the public is not permitted, or within a locked display case or within six feet (6') of a register located on a checkout counter.
- (2) All packages of any product containing ephedrine, pseudoephedrine or phenylpropanolamine, whether as the sole active ingredient or in combination products that have less than therapeutically significant quantities of other active ingredients, shall not be displayed or offered for sale in any retail establishment on consumer-accessible shelving.
  - (3) This section shall not apply as follows:
  - (a) To any product labeled pursuant to federal regulations for use only in children under twelve (12) years of age;
  - (b) To any products that the state department of health, upon application of a manufacturer, determines has been formulated in such a way as to effectively prevent its use in the illicit manufacture of methamphetamine;
  - (c) To any animal feed products containing ephedrine, or naturally occurring or herbal ephedra or extract of ephedra, pseudoephedrine, or phenylpropanolamine; and
  - (d) To the sale or delivery of any product containing ephedrine, pseudoephedrine, or phenylpropanolamine pursuant to the lawful prescription of a person authorized by state law to prescribe such products.
- (4) Any person who is considered the operator of a retail establishment where products containing ephedrine, pseudoephedrine, or phenylpropanolamine are available for sale who violates subsections (2) or (3) shall not be penalized pursuant to this chapter if such a person documents that an employee training program was in place to provide the employees with information on the local, state and federal regulations regarding ephedrine, pseudoephedrine and phenylpropanolamine, and that the employees had completed the training program.
  - (5) Register required for sales:
  - (a) Any retail establishment that sells or delivers, or attempts to sell or deliver, to a person any product containing ephedrine, pseudoephedrine, or phenylpropanolamine whether as the sole active

ingredient or in combination products that have less than therapeutically significant quantities of other active ingredients, shall require such person to show proper identification and to sign a register.

- (b) The register described in subsection (a) shall be created by any retail establishment that sells a product or products described in subsection (a) and shall require at least the following information:
  - (i) The specific quantity of ephedrine, pseudoephedrine or phenylpropanolamine purchased;
    - (ii) The signature of the purchaser;
  - (iii) The name and residential or mailing address of the purchaser, other than a post office box number;
  - (iv) The number of the purchaser's motor vehicle operator's license or other proper identification at the time of the purchase;
    - (v) The date of such purchase; and
  - (vi) The signature of an employee of the retail establishment as witness to the purchase and identification of the purchaser.
- (c) The retail establishment shall retain each original register for three (3) years in a readily presentable and readable manner, and present the register upon demand by any law enforcement officer or authorized representative of the district attorney general's office.
- (d) As used in this section, "proper identification" means a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser.
- (e) This section shall not apply to the sale or delivery of any product containing ephedrine, pseudoephedrine, or phenylpropanolamine by a licensed pharmacy upon a pharmacist making a good faith determination that the purchase of the product is for a legitimate medical purpose.
- (6) It is a civil offense to fail to comply with the foregoing regulations. Any violation of this section is punishable by civil penalty of up to fifty dollars (\$50.00). Each day a violation continues under this section shall constitute a separate offense. (Ord. #2003-11, Jan. 2004)

#### TITLE 10

### ANIMAL CONTROL

### **CHAPTER**

- 1. IN GENERAL.
- 2. DOGS.

### CHAPTER 1

### **IN GENERAL**

### **SECTION**

- 10-101. Running at large prohibited.
- 10-102. Keeping near a residence or business restricted.
- 10-103. Pen or enclosure to be kept clean.
- 10-104. Storage of food.
- 10-105. Keeping in such manner as to become a nuisance prohibited.
- 10-106. Seizure and disposition of animals.
- **10-101.** Running at large prohibited. It shall be unlawful for any person owning or being in charge of any cows, sheep, horses, mules, goats, or any chickens, ducks, geese, turkeys, or other domestic fowl, cattle, or livestock, knowingly or negligently to permit any of them to run at large in any street, alley, or unenclosed lot within the corporate limits.

Any person, including its owner, knowingly or negligently permitting an animal to run at large may be prosecuted under this section even if the animal is picked up and disposed of under other provisions of this chapter, whether or not the disposition includes returning the animal to its owner. (1987 Code, § 3-101)

- **10-102.** <u>Keeping near a residence or business restricted</u>. Swine are prohibited within the corporate limits. No person shall keep or allow any other animal or fowl enumerated in the preceding section to come within one thousand feet (1,000') of any residence, place of business, or public street, as measured in a straight line. (1987 Code, § 3-102)
- **10-103.** Pen or enclosure to be kept clean. When animals or fowls are kept within the corporate limits, the building, structure, corral, pen, or enclosure in which they are kept shall at all times be maintained in a clean and sanitary condition. (1987 Code, § 3-103)
- **10-104.** Storage of food. All feed shall be stored and kept in a rat-proof and fly-tight building, box, or receptacle. (1987 Code, § 3-104, modified)

10-105. <u>Keeping in such manner as to become a nuisance</u> prohibited. No animal or fowl shall be kept in such a place or condition as to become a nuisance because of either noise, odor, contagious disease, or other reason. (1987 Code, § 3-105)

10-106. Seizure and disposition of animals. Any animal or fowl found running at large or otherwise being kept in violation of this chapter may be seized by the health officer or by any police officer and confined in a pound provided or designated by the board of mayor and aldermen. If the owner is known he shall be given notice in person, by telephone, or by a postcard addressed to his last-known mailing address. If the owner is not known or cannot be located, a notice describing the impounded animal or fowl will be posted in at least three (3) public places within the corporate limits. In either case the notice shall state that the impounded animal or fowl must be claimed within five (5) days by paying the pound costs or the same will be humanely destroyed or sold. If not claimed by the owner, the animal or fowl shall be sold or humanely destroyed, or it may otherwise be disposed of as authorized by the board of mayor and aldermen.

The pound keeper shall collect from each person claiming an impounded animal or fowl reasonable fees, in accordance with a schedule approved by the board of mayor and aldermen, to cover the costs of impoundment and maintenance. (1987 Code, § 3-107)

### **DOGS**

### **SECTION**

- 10-201. Rabies vaccination and registration required.
- 10-202. Dogs to wear tags.
- 10-203. Running at large prohibited.
- 10-204. Vicious dogs to be securely restrained.
- 10-205. Noisy dogs prohibited.
- 10-206. Confinement of dogs suspected of being rabid.
- 10-207. Seizure and disposition of dogs.
- 10-208. Destruction of vicious or infected dogs running at large.
- **10-201.** Rabies vaccination and registration required. It shall be unlawful for any person to own, keep, or harbor any dog without having the same duly vaccinated against rabies and registered in accordance with the provisions of the "Tennessee Anti-Rabies Law." (1987 Code, § 3-201)
- 10-202. <u>Dogs to wear tags</u>. It shall be unlawful for any person to own, keep, or harbor any dog which does not wear a tag evidencing the vaccination and registration required by the preceding section. (1987 Code, § 3-202)
- **10-203.** Running at large prohibited. It shall be unlawful for any person knowingly to permit any dog owned by him or under his control to run at large within the corporate limits.

Any person knowingly permitting a dog to run at large, including the owner of the dog, may be prosecuted under this section even if the dog is picked up and disposed of under the provisions of this chapter, whether or not the disposition includes returning the animal to its owner. (1987 Code, § 3-203)

- **10-204.** <u>Vicious dogs to be securely restrained</u>. It shall be unlawful for any person to own or keep any dog known to be vicious or dangerous unless such dog is so confined and/or otherwise securely restrained as to provide reasonably for the protection of other animals and persons. (1987 Code, § 3-204)
- **10-205.** Noisy dogs prohibited. No person shall own, keep, or harbor any dog which, by loud and frequent barking, whining, or howling, annoys, or disturbs the peace and quiet of any neighborhood. (1987 Code, § 3-205)

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

<sup>&</sup>lt;u>Tennessee Code Annotated</u>, §§ 68-8-101 through 68-8-114 or other applicable law.

10-206. <u>Confinement of dogs suspected of being rabid</u>. If any dog has bitten any person or is suspected of having bitten any person or is for any reason suspected of being infected with rabies, the health officer or chief of police or any other properly designated officer or official may cause such dog to be confined or isolated for such time as he deems reasonably necessary to determine if such dog is rabid. (1987 Code, § 3-206)

10-207. Seizure and disposition of dogs. Any dog found running at large may be seized by any police officer or other properly designated officer or official and placed in a pound provided or designated by the board of mayor and aldermen. If said dog is wearing a tag the owner shall be notified in person, by telephone, or by a postcard addressed to his last-known mailing address to appear within five (5) days and redeem his dog by paying a reasonable pound fee, in accordance with a schedule approved by the board of mayor and aldermen, or the dog will be humanely destroyed or sold. If said dog is not wearing a tag it shall be humanely destroyed or sold unless legally claimed by the owner within five (5) days. No dog shall be released in any event from the pound unless or until such dog has been vaccinated and had a tag evidencing such vaccination placed on its collar. (1987 Code, § 3-207)

**10-208.** Destruction of vicious or infected dogs running at large. When, because of its viciousness or apparent infection with rabies, a dog found running at large cannot be safely impounded it may be summarily destroyed by the health officer or any policeman. (1987 Code, § 3-208)

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

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

### TITLE 11

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

### **CHAPTER**

- 1. ALCOHOL.
- 2. GAMBLING, FORTUNE TELLING, ETC.
- 3. OFFENSES AGAINST THE PERSON.
- 4. OFFENSES AGAINST THE PEACE AND QUIET.
- 5. INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL.
- 6. FIRE ARMS, WEAPONS AND MISSILES.
- 7. TRESPASSING AND INTERFERENCE WITH TRAFFIC.

### CHAPTER 1

## ALCOHOL<sup>2</sup>

### **SECTION**

- 11-101. Open container law.
- 11-102. Minors in beer places.
  - 11-101. <u>Open container law</u>. (1) (a) "Open container" means any container containing alcoholic beverages or beer, the contents of which are immediately capable of being consumed or the seal of which has been broken:
  - (b) An open container is in the possession of the driver or passenger when it is not located in a closed glove compartment, trunk or other nonpassenger area of the vehicle; and
  - (c) A motor vehicle is in operation if its engine is operating, whether or not the motor vehicle is moving.
- (2) It is unlawful for any driver or passenger to consume any alcoholic beverage or beer or possess an open container of alcoholic beverage or beer while operating a motor vehicle in the City of Baxter.

<sup>1</sup>Municipal code references

Animal control: title 10.

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

Traffic offenses: title 15.

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

<sup>2</sup>Municipal code reference

Sale of alcoholic beverages, including beer: title 8.

- (3) It is unlawful for any person to drink, consume or have an open container of beer or intoxicating liquor in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground or other public place. (Ord. #2005-14, Nov. 2005)
- 11-102. <u>Minors in beer places</u>. No person under the age of twenty-one (21) shall loiter in or around or otherwise frequent any place where beer is sold at retail for consumption on the premises. (1987 Code, § 10-203)

### GAMBLING, FORTUNE TELLING, ETC.

- 11-201. Gambling prohibited.
- 11-202. Promotion of gambling.
- 11-203. Fortune telling, etc.
- **11-201.** <u>Gambling prohibited</u>. It shall be unlawful for any person to play at any game of hazard or chance for money or other valuable thing or to make or accept any bet or wager for money or other valuable thing. (1987 Code, § 10-301)
- 11-202. <u>Promotion of gambling</u>. It shall be unlawful for any person to encourage, promote, aid, or assist the playing at any game, or the making of any bet or wager, for money or other valuable thing, or to possess, keep, or exhibit for the purpose of gambling, any gaming table, device, ticket, or any other gambling paraphernalia. (1987 Code, § 10-302)
- **11-203. Fortune telling, etc**. It shall be unlawful for any person to hold himself forth to the public as a fortune teller, clairvoyant, hypnotist, spiritualist, palmist, phrenologist, or other mystic endowed with supernatural powers. (1987 Code, § 10-303)

# OFFENSES AGAINST THE PERSON

# **SECTION**

11-301. Assault and battery.

**11-301.** <u>Assault and battery</u>. It shall be unlawful for any person to commit an assault and battery upon another person. (1987 Code, § 10-401)

### OFFENSES AGAINST THE PEACE AND QUIET

- 11-401. Disturbing the peace.
- 11-402. Anti-noise regulations.
- 11-401. <u>Disturbing the peace</u>. No person shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, or obstreperous conduct, and no person shall knowingly permit such conduct upon any premises owned or possessed by him or under his control. (1987 Code, § 10-501)
- 11-402. <u>Anti-noise regulations</u>. Subject to the provisions of this section, the creating of any unreasonably loud, disturbing, and unnecessary noise is prohibited. Noise of such character, intensity, or duration as to be detrimental to the life or health of any individual, or in disturbance of the public peace and welfare, is prohibited.
- (1) <u>Miscellaneous prohibited noises enumerated</u>. The following acts, among others, are declared to be loud, disturbing, and unnecessary noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:
  - (a) Blowing horns. The sounding of any horn or signal device on any automobile, motorcycle, bus, truck, or vehicle while not in motion except as a danger signal if another vehicle is approaching, apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.
  - (b) Radios, phonographs, etc. The playing of any radio, phonograph, or any musical instrument or sound device, including but not limited to loudspeakers or other devices for reproduction or amplification of sound, either independently of or in connection with motion pictures, radio, or television, in such a manner or with such volume, particularly during the hours between 11:00 P.M. and 7:00 A.M., as to annoy or disturb the quiet, comfort, or repose of persons in any office or hospital, or in any dwelling, hotel, or other type of residence, or of any person in the vicinity.
  - (c) Yelling, shouting, hooting, etc. Yelling, shouting, hooting, whistling, or singing on the public streets, particularly between the hours of 11:00 P.M. and 7:00 A.M., or at any time or place so as to annoy or

disturb the quiet, comfort, or repose of any person in any hospital, dwelling, hotel, or other type of residence, or of any person in the vicinity.

- (d) Pets. The keeping of any animal, bird, or fowl which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.
- (e) Use of vehicle. The use of any automobile, motorcycle, truck, or vehicle so out of repair, so loaded, or in such manner as to cause loud and unnecessary grating, grinding, rattling, or other noise.
- (f) Blowing whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper city authorities.
- (g) Exhaust discharge. To discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, or boat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- Building operations. The erection (including excavation), demolition, alteration, or repair of any building in any residential area or section or the construction or repair of streets and highways in any residential area or section, other than between the hours of 7:00 A.M. and 6:00 P.M. on week days, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building inspector granted for a period while the emergency continues not to exceed thirty (30) days. If the building inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration, or repair of any building or the excavation of streets and highways between the hours of 6:00 P.M. and 7:00 A.M., and if he shall further determine that loss or inconvenience would result to any party in interest through delay, he may grant permission for such work to be done between the hours of 6:00 P.M. and 7:00 A.M. upon application being made at the time the permit for the work is awarded or during the process of the work.
- (i) Noises near schools, hospitals, churches, etc. The creation of any excessive noise on any street adjacent to any hospital or adjacent to any school, institution of learning, church, or court while the same is in session.
- (j) Loading and unloading operations. The creation of any loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates, and other containers.
- (k) Noises to attract attention. The use of any drum, loudspeaker, or other instrument or device emitting noise for the purpose of attracting attention to any performance, show, or sale or display of merchandise.

- (l) Loudspeakers or amplifiers on vehicles. The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other purposes.
- (2) <u>Exceptions</u>. None of the terms or prohibitions hereof shall apply to or be enforced against:
  - (a) City vehicles. Any vehicle of the city while engaged upon necessary public business.
  - (b) Repair of streets, etc. Excavations or repairs of bridges, streets, or highways at night, by or on behalf of the city, the county, or the state, when the public welfare and convenience renders it impracticable to perform such work during the day.
  - (c) Noncommercial and nonprofit use of loudspeakers or amplifiers. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character and in the course of advertising functions sponsored by nonprofit organizations. However, no such use shall be made until a permit therefor is secured from the board of mayor and aldermen. Hours for the use of an amplifier or public address system will be designated in the permit so issued and the use of such systems shall be restricted to the hours so designated in the permit. (1987 Code, § 10-502)

### INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL

- 11-501. Impersonating a government officer or employee.
- 11-502. False emergency alarms.
- 11-501. <u>Impersonating a government officer or employee</u>. No person other than an official police officer of the city shall wear the uniform, apparel, or badge, or carry any identification card or other insignia of office like or similar to, or a colorable imitation of that adopted and worn or carried by the official police officers of the city. Furthermore, no person shall deceitfully impersonate or represent that he is any government officer or employee. (1987 Code, § 10-602)
- 11-502. <u>False emergency alarms</u>. It shall be unlawful for any person to intentionally make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance, or to aid or abet in the commission of such act. (1987 Code, § 10-603)

### FIRE ARMS, WEAPONS AND MISSILES

### **SECTION**

11-601. Air rifles, etc.

11-602. Discharge of firearms.

11-601. <u>Air rifles, etc</u>. It shall be unlawful for any person in the city to discharge any air gun, air pistol, air rifle, "BB" gun, or sling shot capable of discharging a bullet or pellet, made of metal, plastic or any other kind of material, whether propelled by spring, compressed air, expanding gas, explosive, or other force-producing means or method. (1987 Code, § 10-701)

11-602. <u>Discharge of firearms</u>. It shall be unlawful for any unauthorized person to discharge a firearm within the corporate limits. (1987 Code, § 10-703)

### TRESPASSING AND INTERFERENCE WITH TRAFFIC

### **SECTION**

11-701. Trespassing.

11-702. Interference with traffic.

# 11-701. Trespassing.<sup>1</sup> (1) On premises open to the public.

- (a) It shall be unlawful for any person to defy a lawful order, personally communicated to him by the owner or other authorized person, not to enter or remain upon the premises of another, including premises which are at the time open to the public.
- (b) The owner of the premises, or his authorized agent, may lawfully order another not to enter or remain upon the premises if such person is committing, or commits, any act which interferes with, or tends to interfere with, the normal, orderly, peaceful or efficient conduct of the activities of such premises.
- (2) On premises closed or partially closed to public. It shall be unlawful for any person to knowingly enter or remain upon the premises of another which is not open to the public, notwithstanding that another part of the premises is at the time open to the public.
- (3) <u>Vacant buildings</u>. It shall be unlawful for any person to enter or remain upon the premises of a vacated building after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.
- (4) <u>Lots and buildings in general</u>. It shall be unlawful for any person to enter or remain on or in any lot or parcel of land or any building or other structure after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.
- (5) <u>Peddlers, etc.</u> It shall also be unlawful and deemed to be a trespass for any peddler, canvasser, solicitor, transient merchant, or other person to fail to promptly leave the private premises of any person who requests or directs him to leave.<sup>2</sup> (1987 Code, § 10-801)
- 11-702. <u>Interference with traffic</u>. It shall be unlawful for any person to stand, sit, or engage in any activity whatever on any public street, sidewalk,

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

Provisions governing peddlers: title 9, chapter 1.

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

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

bridge, or public ground in such a manner as to prevent, obstruct, or interfere with the free passage of pedestrian or vehicular traffic thereon. (1987 Code,  $\S$  10-803)

### **TITLE 12**

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

### **CHAPTER**

- 1. BUILDING CODE.
- 2. ENERGY CONSERVATION CODE.
- 3. RESIDENTIAL CODE.

### CHAPTER 1

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

### **SECTION**

- 12-101. Building code adopted.
- 12-102. Modifications.
- 12-103. Available in recorder's office.
- 12-104. Violations and penalty.
- 12-101. <u>Building code adopted</u>. Pursuant to authority granted by <u>Tennessee Code Annotated</u>, §§ 6-54-501 through 6-54-506, and for the purpose of regulating the construction, alteration, repair, use, occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenance connected or attached to any building or structure, the <u>International Building Code</u>,<sup>2</sup> 2006 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the building code.
- **12-102.** <u>Modifications</u>. (1) <u>Definitions</u>. Whenever the building code refers to the "Chief Appointing Authority," it shall be deemed to be a reference to the board of mayor and aldermen. When the "Building Official" is named it shall, for the purposes of the building code, mean such person as the mayor shall have appointed or designated to administer and enforce the provisions of the building code.

Fire protection, fireworks, and explosives: title 7.

Planning and zoning: title 14.

Streets and other public ways and places: title 16.

Utilities and services: titles 18 and 19.

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

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

- (2) Permit fees. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by the building code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit. Any person, firm, corporation, or association, who fails to make application for and obtain the permit required by this chapter, or any person who performs any work upon any building or structure, in the City of Baxter, for which a permit has not been obtained as herein provided, shall be guilty of a misdemeanor.
- (3) Applications for permits. Any person, firm, corporation, or association desiring to construct, reconstruct, repair, enlarge, extend, or work upon any building or structure, or to contract for the same shall first make application, in writing, to the city recorder for a permit to do such work, and which application shall be on such form as may be prescribed by the city recorder, and which application shall furnish the following information:
  - (a) The street and lot number or house number of the proposed work.
  - (b) The size of the lot upon which such work or construction is to be performed.
  - (c) In the case of new construction, the distance from lot one, the side lines and the rear lines, said building or structure is to be placed upon the lot.
  - (d) The cost of the construction, repair, or improvements to be made estimated as near as reasonably can be done.
  - (e) The type of construction proposed and the material out of which the building or structure is to be constructed, repaired, or enlarged.
    - (f) The use to which said building or structure will be put.
  - (g) The name of the owner of the lot, the contractor who proposed to do the building, and the architect, if any.
    - (h) Such other information as the city recorder may require.
  - (i) The city recorder, in case he deems it necessary, may require a plat of the lot showing the dimensions and the location of the building to be constructed.
  - (j) The application to be submitted on a single form provided by the city recorder.
- (4) <u>Fees</u>. There shall be paid at the time of the filing of the application for said permit:
  - (a) Valuation of one thousand dollars (\$1,000.00) and less. No fee unless inspection is required in which case a fifteen dollar (\$15.00) fee for each inspection shall be charged.
  - (b) Valuation of one thousand dollars (\$1,000.00) to fifty thousand dollars (\$50,000.00). Fifteen dollars (\$15.00) for the first one

thousand dollars (\$1,000.00) plus five dollars (\$5.00) for each additional thousand or fraction thereof, to and including fifty thousand dollars (\$50,000).

- (c) Valuation of fifty thousand dollars (\$50,000.00) to one hundred thousand dollars (\$100,000.00). Two hundred sixty dollars (\$260.00) for the first fifty thousand dollars (\$50,000.00) plus four dollars (\$4.00) for each additional thousand or fraction thereof, to and including one hundred thousand dollars (\$100,000.00).
- (d) Valuation of one hundred thousand dollars (\$100,000.00) to five hundred thousand dollars (\$500,000.00). Four hundred sixty (\$460.00) for the first one hundred thousand dollars (\$100,000.00) plus three dollars (\$3.00) for each additional thousand or fraction thereof, to and including five hundred thousand dollars (\$500,000.00).
- (e) Valuation of five hundred thousands dollars (\$500,000.00) and up. One thousand six hundred sixty dollars (\$1,660.00) for the first five hundred thousand dollars (\$500,000.00) plus two dollars (\$2.00) for each additional thousand or fraction thereof.
- (f) Moving fee. For the moving of any residential or commercial building or structures excluding mobile homes and agricultural buildings not exceeding four hundred (400) square feet, the fee shall be fifty dollars (\$50.00).
- (g) Demolition fee. The demolition of any residential or commercial building or structure excluding agricultural buildings, the fee is fifty dollars (\$50.00).
- (h) Commercial life and safety inspection fee. Fifty dollars (\$50.00).
- (i) Mechanical fees. Thirty-five dollars (\$35.00) and then after ten thousand dollars (\$10,000.00) an additional two dollars (\$2.00) per thousand.
  - (j) Plumbing fees:

Permit fee	\$10.00
Bathtubs	\$2.50 each
Com. lav and tray	\$2.50 each
Kitchen sinks	\$2.50 each
Laundry sinks	\$2.50 each
Slop sinks	\$2.50 each
Lavatory	\$2.50 each
Floor drains	\$2.50 each

Shower drains	\$2.50 each
Dishwasher-fixed unit	\$2.50 each
Washers	\$2.50 each
Urinals	\$2.50 each
Water closets	\$2.50 each
Water heaters	\$2.50 each
Water tanks	\$2.50 each
Dental unit or cuspidor	\$2.50 each
Dental lavatory	\$2.50 each
Drink fountain	\$2.50 each
Dispensing units (com)	\$2.50 each
Roof drains	\$2.50 each
Sump pumps	\$2.50 each
Baptisteries	\$2.50 each
Grease traps and interceptors	\$2.50 each
Pools, fountains, and aquaria	\$2.50 each
Swimming pools	\$2.50 each
Diluting tank and interceptors	\$2.50 each
Boiler b off tanks	\$2.50 each
House sewer	\$2.50 each
House sewer repair	\$2.50 each
Septic tank	\$10.00 each

(k) Penalties. Where work for which a permit is required by this code is started or proceeded prior to obtaining said permit, the fees will be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of this code in the execution of work nor from any other penalties prescribed herein. Each day a violation is allowed to continue shall constitute a separate offense. (1987 Code, § 4-102, as amended by Ord. #2006-7, Aug. 2006, modified)

- **12-103.** Available in recorder's office. Pursuant to the requirements of the <u>Tennessee Code Annotated</u>, § 6-54-502, one (1) copy of the building code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public. (1987 Code, § 4-103, as amended by Ord. #2006-7, Aug. 2006)
- **12-104.** <u>Violations and penalty</u>. It shall be unlawful for any person to violate or fall to comply with any provision of the building code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

# **ENERGY CONSERVATION CODE**

- 12-201. Energy conservation code adopted.
- 12-202. Available in recorder's office.
- 12-203. Violations and penalties.
- 12-201. <u>Energy conservation code adopted</u>. Pursuant to authority granted by <u>Tennessee Code Annotated</u>, §§ 6-54-501 through 6-54-506, and for the purpose of regulating the design of energy-efficient building envelopes and the installation of energy-efficient mechanical, lighting and power systems to establish energy-efficient buildings using prescriptive and performance-related provisions which will make possible the use of new materials and innovative techniques that conserve energy, the <u>International Energy Conservation Code</u>, <sup>1</sup> 2006 edition, as prepared and maintained by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the energy code.
- **12-202.** <u>Available in recorder's office</u>. Pursuant to the requirements of <u>Tennessee Code Annotated</u>, § 6-54-502, one (1) copy of the energy conservation code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.
- **12-203.** <u>Violations and penalties</u>. It shall be unlawful for any person to violate or fail to comply with any provision of the energy conservation code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

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

### RESIDENTIAL CODE

- 12-301. Residential code adopted.
- 12-302. Available in recorder's office.
- 12-303. Violations and penalty.
- **12-301.** Residential code adopted. Pursuant to authority granted by Tennessee Code Annotated, §§ 6-54-501 through 6-54-506, and for the purpose of providing building, plumbing, mechanical and electrical provisions, the International Residential Code, <sup>1</sup> 2006 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code, and is hereinafter referred to as the residential code.
- **12-302.** Available in recorder's office. Pursuant to the requirements of the Tennessee Code Annotated, § 6-54-502, one (1) copy of the residential code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public.
- 12-103. <u>Violations and penalty</u>. It shall be unlawful for any person to violate or fail to comply with any provision of the residential code as herein adopted by reference and modified. The violation of any section of this chapter shall be punishable by a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

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

### **TITLE 13**

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

### **CHAPTER**

- 1. MISCELLANEOUS.
- 2. JUNKYARDS.
- 3. PROPERTY MAINTENANCE.
- 4. JUNKED VEHICLES.
- 5. SLUM CLEARANCE.

### CHAPTER 1

### **MISCELLANEOUS**

#### SECTION

- 13-101. Smoke, soot, cinders, etc.
- 13-102. Stagnant water.
- 13-103. Overgrown and dirty lots.
- 13-104. Dead animals.
- 13-105. Health and sanitation nuisances.
- 13-101. Smoke, soot, cinders, etc. It shall be unlawful for any person to permit or cause the escape of such quantities of dense smoke, soot, cinders, noxious acids, fumes, dust, or gases as to be detrimental to or to endanger the health, comfort, and safety of the public or so as to cause or have a tendency to cause injury or damage to property or business. (1987 Code, § 8-101)
- **13-102.** <u>Stagnant water</u>. It shall be unlawful for any person knowingly to allow any pool of stagnant water to accumulate and stand on his property without treating it so as effectively to prevent the breeding of mosquitoes. (1987 Code, § 8-102)
- 13-103. Overgrown and dirty lots. (1) Prohibition. Pursuant to the authority granted to municipalities under <u>Tennessee Code Annotated</u>, § 6-54-113, it shall be unlawful for any owner of record of real property to create, maintain, or permit to be maintained on such property the growth of trees, vines, grass, underbrush and/or the accumulations of debris, trash, litter, or

<sup>1</sup>Municipal code references

Animal control: title 10.

Littering streets, etc.: § 16-107.

Refuse disposal: title 17.

garbage or any combination of the preceding elements so as to endanger the health, safety, or welfare of other citizens or to encourage the infestation of rats and other harmful animals.

- (2) <u>Designation of public officer or department</u>. The board of mayor and aldermen shall designate an appropriate department or person to enforce the provisions of this section.
- (3) Notice to property owner. It shall be the duty of the department or person designated by the board of mayor and aldermen to enforce this section to serve notice upon the owner of record in violation of subsection (1) above, a notice in plain language to remedy the condition within ten (10) days (or twenty (20) days if the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), excluding Saturdays, Sundays, and legal holidays. The notice shall be sent by registered or certified United States mail, addressed to the last known address of the owner of record, or hand delivered with the deliverer obtaining the owner's signature confirming receipt of the notice. The notice shall state that the owner of the property is entitled to a hearing, and shall, at the minimum, contain the following additional information:
  - (a) A brief statement that the owner is in violation of § 13-103 of the City of Baxter's Municipal Code, which has been enacted under the authority of <u>Tennessee Code Annotated</u>, § 6-54-113, and that the property of such owner may be cleaned up at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;
  - (b) The person, office, address, and telephone number of the department or person giving the notice;
  - (c) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the city; and
  - (d) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing.
- (4) <u>Clean-up at property owner's expense</u>. If the property owner of record fails or refuses to remedy the condition within ten (10) days after receiving the notice (twenty (20) days if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), the department or person designated by the board of mayor and aldermen to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards, and the costs thereof shall be assessed against the owner of the property. The city may collect the costs assessed against the owner through an action for debt filed in any court of competent jurisdiction. The city may bring one (1) action for debt against more than one (1) or all of the owners of properties against whom such costs have been assessed, and the fact that multiple owners have been joined in one (1) action shall not be considered by the court as a misjoinder of parties. Upon the

filing of the notice with the Office of the Register of Deeds in Putnam County, the costs shall be a lien on the property in favor of the municipality, second only to liens of the state, county, and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right, or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. These costs shall be placed on the tax rolls of the municipality as a lien and shall be added to property tax bills to be collected at the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes.

- (5) <u>Clean-up of owner-occupied property</u>. When the owner of an owner-occupied residential property fails or refuses to remedy the condition within ten (10) days after receiving the notice, the department or person designated by the board of mayor and aldermen to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in accordance with reasonable standards in the community, with these costs to be assessed against the owner of the property. The provisions of subsection (4) shall apply to the collection of costs against the owner of an owner-occupied residential property except that the municipality must wait until cumulative charges for remediation equal or exceed five hundred dollars (\$500.00) before filing the notice with the register of deeds and the charges becoming a lien on the property. After this threshold has been met and the lien attaches, charges for costs for which the lien attached are collectible as provided in subsection (4) for these charges.
- (6) Appeal. The owner of record who is aggrieved by the determination and order of the public officer may appeal the determination and order to the board of mayor and aldermen. The appeal shall be filed with the city recorder within ten (10) days following the receipt of the notice issued pursuant to subsection (3) above. The failure to appeal within this time shall, without exception, constitute a waiver of the right to a hearing.
- (7) <u>Judicial review</u>. Any person aggrieved by an order or act of the board of mayor and aldermen under subsection (4) above may seek judicial review of the order or act. The time period established in subsection (3) above shall be stayed during the pendency of judicial review.
- (8) <u>Supplemental nature of this section</u>. The provisions of this section are in addition and supplemental to, and not in substitution for, any other provision in the municipal charter, this municipal code of ordinances or other applicable law which permits the city to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property the growth of trees, vines, grass, weeds, underbrush and/or the accumulation of the debris, trash, litter, or garbage or any combination of the preceding elements, under its charter, any other provisions of this municipal code of ordinances or any other applicable law.

- (9) <u>Violations and penalty</u>. Any person violating this section shall be subject to a civil penalty of fifty dollars (\$50.00) plus court costs for each separate violation of this section. Each day the violation of this section continues shall be considered a separate violation. (Ord. #2011-11, May 2011)
- **13-104.** <u>Dead animals</u>. Any person owning or having possession of any dead animal not intended for use as food shall promptly bury the same or notify the code enforcement officer and dispose of such animal in such manner as the code enforcement officer shall direct. (1987 Code, § 8-104, as amended by Ord. #2006-15, Jan. 2007)
- 13-105. <u>Health and sanitation nuisances</u>. It shall be unlawful for any person to permit any premises owned, occupied, or controlled by him to become or remain in a filthy condition, or permit the use or occupation of same in such a manner as to create noxious or offensive smells and odors in connection therewith, or to allow the accumulation or creation of unwholesome and offensive matter or the breeding of flies, rodents, or other vermin on the premises to the menace of the public health or the annoyance of people residing within the vicinity. (1987 Code, § 8-105)

### **JUNKYARDS**

### **SECTION**

13-201. Junkyards.

- **13-201. Junkyards**. All junkyards within the corporate limits shall be operated and maintained subject to the following regulations:
- (1) All junk stored or kept in such yards shall be so kept that it will not catch and hold water in which mosquitoes may breed and so that it will not constitute a place, or places in which rats, mice, or other vermin may be harbored, reared, or propagated.
- (2) All such junkyards shall be enclosed within close fitting plank or metal solid fences touching the ground on the bottom and being not less than six feet (6') in height, such fence to be built so that it will be impossible for stray cats and/or stray dogs to have access to such junkyards.
- (3) Such yards shall be so maintained as to be in a sanitary condition and so as not to be a menace to the public health or safety. (1987 Code, § 8-501)

### PROPERTY MAINTENANCE

- 13-301. Definitions.
- 13-302. Duty to maintain property.
- 13-303. Enforcement.
- **13-301. <u>Definitions</u>**. As used in the interpretation and application of this chapter, the following words shall have the meanings indicated:
- (1) "Junk" means discarded, broken or disabled material including, but not limited to: furniture; appliances; tools; machinery; or other items that are not in functioning condition.
- (2) "Litter" means discarded waste materials, including but not limited to: paper wrappings; packaging materials; discarded or used bottles and cans; scrap lumber and other building materials broken or discarded furniture, household furnishings and equipment.
- (3) "Owner" means any person owning property in Baxter, Tennessee, as shown on the real property records of Putnam County or on the current assessment role for taxes, and shall also mean any lessee, tenant or other person having control or possession of the property.
- (4) "Property" means land and any buildings or structures located thereon.
- (5) "Trash" means waste food products and other household garbage. (1987 Code, § 8-602)
- 13-302. <u>Duty to maintain property</u>. No person owning, leasing, renting, occupying, being in possession or having charge of any property in the city, including vacant lots, shall maintain or allow to be maintained on such property, except as may be permitted by any other city ordinance, any of the following conditions visible from any public street or alley:
  - (1) Junk, litter and trash;
- (2) Attractive nuisances dangerous to children, including but not limited to abandoned, broken or neglected equipment, machinery, refrigerators and freezers, excavations, wells or shafts;
- (3) Shopping carts in any front yard, side yard, rear yard or vacant lot of any property;
- (4) Dead, decayed, diseased or hazardous trees, or any other vegetation a majority of which (other than vegetation located in flowerbeds, or trees or shrubbery) exceeds twelve inches (12") in height, or which is dangerous to public health, safety and welfare, located in any front yard, side yard, rear yard, or upon any vacant lot;

- (5) Graffiti or signs, not in compliance with the city zoning ordinance, on the exterior of any building, fence or other structure in any front yard, side yard or rear yard or vacant lot;
- (6) Vehicle parts or other articles of personal property which are discarded or left in a state of partial construction or repair in any front yard, side yard, rear yard or vacant lot;
- (7) Utility trailers or unmounted campertops located in any front yard except in the driveway;
- (8) Any accumulation of weeds, brambles, berry vines, or other vegetation which is overgrowing any structure or which exceeds an average height of three feet (3'), other than maintained landscaping, or any accumulation of junk, litter, trash, dead organic matter, debris, offal, rat harborages, stagnant water, combustible materials or vegetation, and similar materials or conditions constituting fire, health or safety hazard;
- (9) Dilapidation or state of filthiness or uncleanliness of any dwelling or other structure which endangers health or life or which permits entrance by rats, mice or other rodents. (1987 Code, § 8-602)
- 13-303. <u>Enforcement</u>. (1) <u>Notice to property owner</u>. It shall be the duty of the code enforcement officer of the City of Baxter, Tennessee, to serve notice upon the property owner of record in violation of § 13-302 above. The notice shall instruct the owner of the violation and to bring his property under compliance within fifteen (15) calendar days. Notice may be given by:
  - (a) Posting notice in plain view on the property in violation, or
  - (b) Sending notice by mail.

The date the notice is posted or mailed shall serve as the beginning of the fifteen (15) day period allowing for corrective action.

(2) <u>Failure to take corrective action</u>. Failure by the property owner to take corrective action to bring the property within compliance of § 13-302 above shall constitute a violation of this chapter and be a civil offense.

Pursuant to <u>Tennessee Code Annotated</u>, § 7-63-101, the building official/zoning compliance officer is authorized to issue ordinance summons for violations of this chapter on private property. The code enforcement officer shall upon the complaint of any citizen, or acting on his own information, investigate complaints of junked vehicles on private property. If after such investigation the building official finds a junked vehicle on private property, he shall issue an ordinance summons. The ordinance summons shall be served upon the owner or owners of the property, or upon the person or persons apparently in lawful possession of the property, and shall give notice to the same to appear and answer the charges against him or them. If the offender refuses to sign the agreement to appear, the building inspector may (1) request the city judge to issue a summons, or (2) request a police officer to witness the violation. The police officer who witnesses the violation may issue the offender a citation in lieu of arrest as authorized by <u>Tennessee Code Annotated</u>, § 7-63-101, <u>et seq</u>.

or if the offender refuses to sign the citation, may arrest the offender for failure to sign the citation in lieu of arrest.

- (3) <u>Penalty for violations</u>. Any person violating this chapter shall be subject to a civil penalty of one dollar (\$1.00) to five hundred dollars (\$500.00) for each separate violation of this chapter. Each day the violation of this chapter continues shall be considered a separate violation.
- (4) <u>Supplemental nature of this section</u>. The provisions of this section are in addition and supplemental to, and not in substitution for, any other provision in the city charter, the municipal code of ordinances, or other applicable law which permits the city to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property the growth of vines, grass, weeds, underbrush, and/or the accumulation of the debris, trash, litter, or garbage or any combination of the preceding elements, under its charter, any other provision of the municipal code of ordinances or any other applicable law.
- Failure to comply with order. If the owner or owners of the premises fail or refuse to comply with the order issued by the code enforcement officer within the time period specified by the letter of notification, as provided herein, such failure or refusal shall be deemed a violation of the provisions of this ordinance and said owner or owners shall be subject to the penalties herein provided. The code enforcement officer that is charged with enforcing this code, or the official's duly authorized representatives may enter onto such premises and take corrective action specified by the letter of notification so that the nuisance identified by said letter is removed or abated. Upon completion of the corrective action carried out by the City of Baxter as authorized herein, the actual costs of such action, plus a fee of fifteen percent (15%) for administrative costs, shall be due from the owner or owners of said property to the City of Baxter and said costs shall be billed to the owner or owners of said property. If said bill is not paid in full within sixty (60) days after the date of mailing, a ten percent (10%) penalty shall be added and said costs and penalties shall be placed on the tax rolls of the City of Baxter as a lien upon said property and collected in the same manner as other city taxes are collected. (1987 Code, § 8-603, as amended by Ord. #2001-3, June 2001, and Ord. #2006-15, Jan. 2007)

### JUNKED VEHICLES

- 13-401. Definitions.
- 13-402. Violations/civil offenses.
- 13-403. Exceptions
- 13-404. Enforcement.
- 13-405. Penalty for violations.
- **13-401.** <u>Definitions</u>. For the purpose of the interpretation and application of this chapter, the following words and phrases shall have the indicated meanings:
- (1) "Person" shall mean any natural person, or any firm, partnership, association, corporation or other organization of any kind and description.
- (2) "Private property" shall include all property that is not public property, regardless of how the property is zoned or used.
- (3) "Traveled portion of any public street or highway" shall mean the width of the street from curb to curb, or where there are no curbs, the entire width of the paved portion of the street, or where the street is unpaved, the entire width of the street in which vehicles ordinarily use for travel.
  - (4) (a) "Vehicle" shall mean any machine propelled by power other than human power, designed to travel along the ground by the use of wheels, treads, selftaying tracks, runners, slides or skids, including but not limited to automobiles, trucks, motorcycles, motor scooters, go-carts, campers, tractors, trailers, tractor trailers, buggies, wagons, and earthmoving equipment, and any part of the same.
  - (b) "Junk vehicle" shall mean a vehicle of any age that is damaged or defective in any one or combination of any of the following ways that either makes the vehicle immediately inoperable, or would prohibit the vehicle from being operated in a reasonably safe manner upon the public streets and highways under its owner power if self-propelled, or while being towed or pushed, if not self-propelled:
    - (i) Flat tires, missing tires, missing wheels, or missing or partially or totally disassembled tires and wheels;
    - (ii) Missing or partially or totally disassembled essential part or parts of the vehicle's drive train, including but not limited to, engine, transmission, transaxle, drive shaft, differential, or axle.
    - (iii) Extensive exterior body damage or missing or partially or totally disassembled essential body parts, including, but not limited to, fenders, doors, engine hood, bumper or bumpers, windshield, or windows.

- (iv) Missing or partially or totally disassembled essential interior parts, including, but not limited to, driver's seat, steering wheel, instrument panel clutch, brake, gear shift lever.
- (v) Missing or partially or totally disassembled parts essential to the starting or running of the vehicle under its own power, including but not limited to, starter, generator or alternator, battery, distributor, gas tank, carburetor or fuel injection system, spark plugs, or radiator.
- (vi) Interior is a container for metal, glass, paper, rags or other cloth, wood, auto parts, machinery, waste or discarded materials in such quantity, quality and arrangement that a driver cannot be properly seated in the vehicle;
- (vii) Lying on the ground (upside down, on its side, or at other extreme angle), sitting on blocks, or suspended in the air by any other method;
- (viii) General environment in which the vehicle sits, including; but not limited to, vegetation that has grown up around, in or through the vehicle, the collection of pools of water in the vehicle, and the accumulation of other garbage or debris around the vehicle. (1987 Code, § 8-701)
- **13-402.** <u>Violations/civil offenses</u>. It shall be unlawful and a civil offense for any person:
- (1) To park and or in any other manner place and leave unattended on the traveled portion of any public street or highway a junked vehicle for any period of time, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle.
- (2) To park or in any other manner place and leave unattended on the untraveled portion of any street or highway, or upon any other public property, a junked vehicle for more than forty-eight (48) continuous hours, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle.
- (3) To park, store, keep, maintain on private property a junked vehicle for more than sixty (60) days. (1987 Code, § 8-702)
- **13-403.** Exceptions. (1) It shall be permissible for a person to park, store, keep and maintain a junked vehicle on private property under the following conditions:
  - (a) The junk vehicle is completely enclosed within a building where neither the vehicle or any part of it is visible from the street or from any other abutting property. However, this exception shall not exempt the owner or person in possession of the property from any zoning, building, housing, property maintenance, and other regulations governing the building in which such vehicle is enclosed.

- (b) The junk vehicle is parked or stored on property lawfully zoned for business engaged in wrecking, junking or repairing vehicles. However, this exception shall not exempt the owner or operator of any such business from any other zoning, building, property maintenance and other regulations governing business engaged in wrecking, junking or repairing vehicles.
- (2) No person shall park, store, keep and maintain on private property a junk vehicle for any period of time if it poses an immediate threat to the health and safety of citizens of the city. (1987 Code, § 8-703)
- 13-404. Enforcement. (1) Pursuant to Tennessee Code Annotated, § 7-63-101, the building official/zoning compliance officer is authorized to issue ordinance summons for violations of this chapter on private property. The building inspector shall upon the complaint of any citizen, or acting on his own information, investigate complaints of junked vehicles on private property. If after such investigation the building inspector finds a junked vehicle on private property, he shall issue an ordinance summons. The ordinance summons shall be served upon the owner or owners of the property, or upon the person or persons apparently in lawful possession of the property, and shall give notice to the same to appear and answer the charges against him or them. If the offender refuses to sign the agreement to appear, the building inspector may:
  - (a) Request the city judge to issue a summons; or
  - (b) Request a police officer to witness the violation. The police officer who witnesses the violation may issue the offender a citation in lieu of arrest as authorized by <u>Tennessee Code Annotated</u>, § 7-63-101, <u>et seq.</u>, or if the offender refuses to sign the citation, may arrest the offender for failure to sign the citation in lieu of arrest.
- (2) <u>Failure to comply with an order to correct violation</u>. If the owner or owners of the premises fail or refuse to comply with the order issued by the code enforcement officer. The code enforcement officer, within the time period specified by the letter of notification, as provided herein, such failure or refusal shall be deemed a violation of the provisions of this ordinance and said owner or owners shall be subject to the penalties herein provided.
- (3) Payment of costs for corrective action. Upon completion of the corrective action carried out by the City of Baxter as authorized herein, the actual costs of such action, plus a fee of fifteen percent (15%) for administrative costs, shall be due from the owner or owners of said property to the City of Baxter and said costs shall be billed to the owner or owners of said property. If said bill is not paid in full within sixty (60) days after the date of mailing, a ten percent (10%) penalty shall be added and said costs and penalties shall be placed on the tax rolls of the City of Baxter as a lien upon said property and collected in the same manner as other city taxes are collected. (1987 Code, § 8-704, as amended by Ord. #2001-3, June 2001, and Ord. #2006-15, Jan. 2007)

**13-405.** <u>Penalty for violations</u>. Any person violating this chapter shall be subject to a civil penalty of one dollar (\$1.00) to five hundred dollars (\$500.00) for each separate violation of this chapter. Each day the violation of this chapter continues shall be considered a separate violation. (1987 Code, § 8-705)

# SLUM CLEARANCE<sup>1</sup>

- 13-501. Findings of board.
- 13-502. Definitions.
- 13-503. "Public officer" designated; powers.
- 13-504. Initiation of proceedings; hearings.
- 13-505. Orders to owners of unfit structures.
- 13-506. When public officer may repair, etc.
- 13-507. When public officer may remove or demolish.
- 13-508. Lien for expenses; sale of salvaged materials; other powers not limited.
- 13-509. Basis for a finding of unfitness.
- 13-510. Service of complaints or orders.
- 13-511. Enjoining enforcement of order.
- 13-512. Additional powers of public officer.
- 13-513. Powers conferred are supplemental.
- 13-501. Findings of board. Pursuant to Tennessee Code Annotated, § 13-21-101, et seq., the board of mayor and aldermen finds that there exists in the city structures which are unfit for human occupation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or insanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the city. (1987 Code, § 4-401)
- **13-502.** <u>Definitions</u>. (1) "Municipality" shall mean the City of Baxter, Tennessee, and the areas encompassed within existing city limits or as hereafter annexed.
- (2) "Governing body" shall mean the board of mayor and aldermen charged with governing the city.
- (3) "Public officer" shall mean the officer or officers who are authorized by this chapter to exercise the powers prescribed herein and pursuant to <u>Tennessee Code Annotated</u>, § 13-21-101, <u>et seq</u>.
- (4) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the city or state relating to health, fire, building regulations, or other activities concerning structures in the city.

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

Tennessee Code Annotated, title 13, chapter 21.

- (5) "Owner" shall mean the holder of title in fee simple and every mortgagee of record.
- (6) "Parties in interest" shall mean all individuals, associations, corporations and other who have interests of record in a dwelling and any who are in possession thereof.
- (7) "Structures" shall mean any building or structure, or part thereof, used for human occupation and intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. (1987 Code, § 4-402)
- 13-503. "Public officer" designated; powers. There is hereby designated and appointed a "public officer," to be the city recorder of the city, to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by the recorder. (1987 Code, § 4-403, as amended by Ord. #2006-15, Jan. 2007)
- 13-504. <u>Initiation of proceedings; hearings</u>. Whenever a petition is filed with the public officer by a public authority or by at least five (5) residents of the city charging that any structure is unfit for human occupancy or use, or whenever it appears to the public officer (on his own motion) that any structure is unfit for human occupation or use, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and parties in interest of, such structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the service of the complaint; and the owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint; and the rules of evidence prevailing in court of law or equity shall not be controlling in hearings before the public officer. (1987 Code, § 4-404)
- 13-505. Orders to owners of unfit structures. If, after such notice and hearing as provided for in the preceding section, the public officer determines that the structure under consideration is unfit for human occupancy or use, he shall state in writing his finding of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:
- (1) If the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure (not exceeding fifty percent (50%) of the reasonable value), requiring the owner, during the time specified in the order, to repair, alter, or improve such structure to render it fit for human occupancy or use or to vacate and close the structure for human occupancy or use; or

- (2) If the repair, alteration or improvement of said structure cannot be made at a reasonable cost in relation to the value of the structure (not to exceed fifty percent (50%) of the value of the premises), requiring the owner within the time specified in the order, to remove or demolish such structure. (1987 Code,  $\S$  4-405)
- 13-506. When public officer may repair, etc. If the owner fails to comply with the order to repair, alter, or improve or to vacate and close the structure as specified in the preceding section hereof, the public officer may cause such structure to be repaired, altered, or improved, or to be vacated and closed; and the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human occupancy or use; the use or occupation of this building for human occupancy or use is prohibited and unlawful." (1987 Code, § 4-406)
- **13-507.** When public officer may remove or demolish. If the owner fails to comply with an order, as specified above, to remove or demolish the structure, the public officer may cause such structure to be removed and demolished. (1987 Code, § 4-407)
- 13-508. Lien for expenses; sale of salvaged materials; other powers not limited. The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such costs were incurred. If the structure is removed or demolished by the public officer, he shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the Chancery Court of Putnam County, Tennessee, by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the person found to be entitled thereto by final order or decree of such court, provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the City of Baxter to define and declare nuisances and to cause their removal or abatement by summary proceedings or as otherwise may be provided by the charter or ordinances of the city. (1987 Code, § 4-408)
- 13-509. <u>Basis for a finding of unfitness</u>. The public officer defined herein shall have the power and may determine that a structure is unfit for human occupation and use if he finds that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants or users of such structure, the occupants or users of neighboring structures or other residents of the City of Baxter; such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light,

or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanliness. (1987 Code, § 4-409)

- 13-510. Service of complaints or orders. Complaints or orders issued by the public officer pursuant to this chapter shall be served upon persons, either personally or by registered mail, but if the whereabouts of such person is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) consecutive weeks in a newspaper printed and published in the city. In addition, a copy of such complaint or order shall be posed in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall also be filed for record in the Register's Office of Putnam County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law. (1987 Code, § 4-410)
- 13-511. Enjoining enforcement of order. Any person affected by an order issued by the public officer served pursuant to this chapter may file a suit in chancery court for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon the filing of such suit, issue a temporary injunction restraining the public officer pending the final disposition of the cause; provided, however, that within sixty (60) days after the posting and service of the order of the public officer, such person shall file such suit in the court.

The remedy provided herein shall be the exclusive remedy and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer, or because of noncompliance by such person with any order of the public officer. (1987 Code, § 4-411)

- 13-512. <u>Additional powers of public officer</u>. The public officer, in order to carry out and effectuate the purposes and provisions of this chapter, shall have the following powers in addition to those otherwise granted herein:
- (1) To investigate conditions of the structures in the city in order to determine which structures therein are unfit for human occupation or use;
- (2) To administer oaths, affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examination, provided that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession:
- (4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter; and

- (5) To delegate any of his functions and powers under this chapter to such officers and agents as he may designate. (1987 Code, § 4-412)
- 13-513. <u>Powers conferred are supplemental</u>. This chapter shall not be construed to abrogate or impair the powers of the city with regard to the enforcement of the provisions of its charter or any other ordinances or regulations, nor to prevent or punish violations thereof, and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by the charter and other laws. (1987 Code, § 4-413)

#### **TITLE 14**

# ZONING AND LAND USE CONTROL

## **CHAPTER**

- 1. MUNICIPAL PLANNING COMMISSION.
- 2. ZONING ORDINANCE.
- 3. MUNICIPAL FLOODPLAIN ZONING ORDINANCE.

## CHAPTER 1

# MUNICIPAL PLANNING COMMISSION

## **SECTION**

- 14-101. Creation and membership.
- 14-102. Organization, rules, staff and finances.
- 14-103. Powers, and duties, etc.
- 14-101. <u>Creation and membership</u>. A planning commission is hereby created in accordance with <u>Tennessee Code Annotated</u>, § 13-4-101. Said planning commission shall consist of seven (7) members of which one (1) shall be the mayor of the municipality or a person designated by the mayor and one (1) shall be a member of the chief legislative body of the municipality elected by that body. Five (5) of the members shall be citizens of Baxter appointed by the mayor. Terms of the citizen members shall be five years, except for those first appointed whose terms shall be for one (1), two (2), and three (3), four (4), and five (5) years respectively so that the term of one member will expire each year.

The planning commission shall have all the powers, duties, and responsibilities authorized for municipal planning commissions under <u>Tennessee Code Annotated</u>, title 13. (1987 Code, § 11-101)

14-102. Organization, rules, staff and finances. The planning commission shall elect its chairman from among its appointive members. The term of the chairman shall be one (1) year with eligibility for reelection. The planning commission shall adopt rules for the transactions, findings and determinations, which record shall be a public record. The planning commission may appoint such employees and staff as it may deem necessary for its work and may contract with city planners and other consultants for such services as it may require. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the board of mayor and aldermen. (1987 Code, § 11-102)

14-103. <u>Powers, and duties, etc</u>. The planning commission shall be organized and shall carry out its powers, functions, and duties in accordance with <u>Tennessee Code Annotated</u>, title 13. (1987 Code, § 11-103)

# **CHAPTER 2**

# **ZONING ORDINANCE**

# **SECTION**

14-201. Land use to be governed by zoning ordinance.

14-201. <u>Land use to be governed by zoning ordinance</u>. Land use within the City of Baxter shall be governed by Ordinance #95-7, titled "Zoning Ordinance, Baxter, Tennessee," and any amendments thereto.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup>Ordinance #95-7, adopted August 10, 1995, and any amendments thereto, are published as separate documents and are of record in the office of the city recorder.

Amendments to the zoning map are of record in the office of the city recorder.

#### **CHAPTER 3**

# MUNICIPAL FLOODPLAIN ZONING ORDINANCE

## **SECTION**

- 14-301. Statutory authorization, findings of fact, purpose and objectives.
- 14-302. Definitions.
- 14-303. General provisions.
- 14-304. Administration.
- 14-305. Provisions for flood hazard reduction.
- 14-306. Variance procedures.
- 14-307. Legal status provisions.

# 14-301. Statutory authorization, findings of fact, purpose and objectives. (1) Statutory authorization. The Legislature of the State of Tennessee has in Tennessee Code Annotated, §§ 13-7-201 through 13-7-210, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Baxter, Tennessee, Mayor and Board of Alderman, do ordain as follows:

- (2) <u>Findings of fact</u>. (a) The City of Baxter, Tennessee, Mayor and its Legislative Body wishes to establish eligibility in the National Flood Insurance Program (NFIP) and in order to do so must meet the NFIP regulations found in title 44 of the Code of Federal Regulations (CFR), ch. 1, section 60.3.
- (b) Areas of the City of Baxter, Tennessee are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (c) Flood losses are caused by the cumulative effect of obstructions in floodplains, causing increases in flood heights and velocities; by uses in flood hazard areas which are vulnerable to floods; or construction which is inadequately elevated, floodproofed, or otherwise unprotected from flood damages.
- (3) <u>Statement of purpose</u>. It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas. This ordinance is designed to:
  - (a) Restrict or prohibit uses which are vulnerable to flooding or erosion hazards, or which result in damaging increases in erosion, flood heights, or velocities;

- (b) Require that uses vulnerable to floods, including community facilities, be protected against flood damage at the time of initial construction;
- (c) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
- (d) Control filling, grading, dredging and other development which may increase flood damage or erosion;
- (e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.
- (4) Objectives. The objectives of this ordinance are:
  - (a) To protect human life, health, safety and property;
- (b) To minimize expenditure of public funds for costly flood control projects;
- (c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - (d) To minimize prolonged business interruptions;
- (e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodprone areas;
- (f) To help establish a stable tax base by providing for the sound use and development of floodprone areas to minimize blight in flood areas;
- (g) To ensure that potential homebuyers are notified that property is in a floodprone area;
- (h) To establish eligibility for participation in the NFIP. (Ord. #2010-14, Nov. 2010)
- **14-302.** <u>**Definitions**</u>. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted as to give them the meaning they have in common usage and to give this ordinance its most reasonable application given its stated purpose and objectives.
- (1) "Accessory structure" means a subordinate structure to the principal structure on the same lot and, for the purpose of this ordinance, shall conform to the following:
  - (a) Accessory structures shall only be used for parking of vehicles and storage;
  - (b) Accessory structures shall be designed to have low flood damage potential;
  - (c) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

- (d) Accessory structures shall be firmly anchored to prevent flotation, collapse, and lateral movement, which otherwise may result in damage to other structures;
- (e) Utilities and service facilities such as electrical and heating equipment shall be elevated or otherwise protected from intrusion of floodwaters.
- (2) "Addition (to an existing building)" means any walled and roofed expansion to the perimeter or height of a building.
- (3) "Appeal" means a request for a review of the local enforcement officer's interpretation of any provision of this ordinance or a request for a variance.
- (4) "Area of shallow flooding" means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with one percent (1%) or greater annual chance of flooding to an average depth of one to three feet (1'-3') where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (5) "Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.
  - (6) "Area of special flood hazard" see "special flood hazard area."
- (7) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. This term is also referred to as the 100-year flood or the one percent (1%) annual chance flood.
- (8) "Basement" means any portion of a building having its floor subgrade (below ground level) on all sides.
  - (9) "Building" see "structure."
- (10) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of equipment or materials.
- (11) "Elevated building" means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwater, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.
- (12) "Emergency flood insurance program" or "emergency program" means the program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer

amount of insurance on all insurable structures before the effective date of the initial FIRM.

- (13) "Erosion" means the process of the gradual wearing away of land masses. This peril is not "per se" covered under the program.
- (14) "Exception" means a waiver from the provisions of this ordinance which relieves the applicant from the requirements of a rule, regulation, order or other determination made or issued pursuant to this ordinance.
- (15) "Existing construction" means any structure for which the "start of construction" commenced before the effective date of the initial floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.
- (16) "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.
  - (17) "Existing structures" see "existing construction."
- (18) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
- (19) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - (a) The overflow of inland or tidal waters;
  - (b) The unusual and rapid accumulation or runoff of surface waters from any source.
- (20) "Flood elevation determination" means a determination by the Federal Emergency Management Agency (FEMA) of the water surface elevations of the base flood, that is, the flood level that has a one percent (1%) or greater chance of occurrence in any given year.
- (21) "Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) or flood-related erosion hazards.
- (22) "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by FEMA, where the boundaries of areas of special flood hazard have been designated as Zone A.
- (23) "Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by FEMA, delineating the areas of special flood hazard or the risk premium zones applicable to the community.

- (24) "Flood insurance study" is the official report provided by FEMA, evaluating flood hazards and containing flood profiles and water surface elevation of the base flood.
- (25) "Floodplain" or "floodprone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").
- (26) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.
- (27) "Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.
- (28) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities and structures and their contents.
- (29) "Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.
- (30) "Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.
- (31) "Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works and floodplain management regulations.
- (32) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
- (33) "Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood

heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization of the watershed.

- (34) "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
- (35) "Highest adjacent grade" means the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.
  - (36) "Historic structure" means any structure that is:
  - (a) Listed individually in the National Register of Historic Places (a listing established by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - (c) Individually listed on the Tennessee inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or
  - (d) Individually listed on the City of Baxter, Tennessee inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
    - (i) By the approved Tennessee program as determined by the Secretary of the Interior; or
      - (ii) Directly by the Secretary of the Interior.
- (37) "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.
- (38) "Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.
- (39) "Lowest floor" means the lowest floor of the lowest enclosed area, including a basement. An unfinished or flood resistant enclosure used solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

- (40) "Manufactured home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."
- (41) "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.
- (42) "Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by FEMA.
- (43) "Mean sea level" means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For the purposes of this ordinance, the term is synonymous with the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.
- (44) "National Geodetic Vertical Datum (NGVD)" means, as corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.
- (45) "New construction" means any structure for which the "start of construction" commenced on or after the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.
- (46) "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this ordinance or the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.
- (47) "North American Vertical Datum (NAVD)" means, as corrected in 1988, a vertical control used as a reference for establishing varying elevations within the floodplain.
  - (48) "100-year flood" see "base flood."
- (49) "Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.
- (50) "Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed structures.
  - (51) "Recreational vehicle" means a vehicle which is:
    - (a) Built on a single chassis;

- (b) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (52) "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
- (53) "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- (54) "Special flood hazard area" is the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE or A99.
- (55) "Special hazard area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, or AH.
- "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; and includes the placement of a manufactured home on a foundation. Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (57) "State coordinating agency." The Tennessee Department of Economic and Community Development's Local Planning Assistance Office, as designated by the Governor of the State of Tennessee at the request of FEMA to assist in the implementation of the NFIP for the state.

- (58) "Structure," for purposes of this ordinance, means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
- (59) "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
- (60) "Substantial improvement" means any reconstruction, rehabilitation, addition, alteration or other improvement of a structure in which the cost equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the initial improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The market value of the structure should be:
  - (a) The appraised value of the structure prior to the start of the initial improvement; or
  - (b) In the case of substantial damage, the value of the structure prior to the damage occurring.

The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been pre-identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions and not solely triggered by an improvement or repair project; or
- (b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."
- (61) "Substantially improved existing manufactured home parks or subdivisions" is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds fifty percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.
- (62) "Variance" is a grant of relief from the requirements of this ordinance.
- (63) "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.
- (64) "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical

Datum (NAVD) of 1988, or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of riverine areas. (Ord. #2010-14, Nov. 2010)

- **14-303.** <u>General provisions</u>. (1) <u>Application</u>. This ordinance shall apply to all areas within the incorporated area of the City of Baxter, Tennessee.
- (2) <u>Basis for establishing the areas of special flood hazard</u>. The areas of special flood hazard identified on the City of Baxter, Tennessee, as identified by FEMA, and in its Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), community panel number(s) 47141C0095D and 47141C0125D, dated May 16, 2007, along with all supporting technical data, are adopted by reference and declared to be a part of this ordinance.
- (3) Requirement for development permit. A development permit shall be required in conformity with this ordinance prior to the commencement of any development activities.
- (4) <u>Compliance</u>. No land, structure or use shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.
- (5) <u>Abrogation and greater restrictions</u>. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restrictions. However, where this ordinance conflicts or overlaps with another regulatory instrument, whichever imposes the more stringent restrictions shall prevail.
- (6) <u>Interpretation</u>. In the interpretation and application of this ordinance, all provisions shall be:
  - (a) Considered as minimum requirements;
  - (b) Liberally construed in favor of the governing body; and
  - (c) Deemed neither to limit nor repeal any other powers granted under Tennessee statutes.
- (7) Warning and disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Baxter, Tennessee or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
- (8) <u>Penalties for violation</u>. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance shall constitute a misdemeanor punishable as other misdemeanors as provided by law. Any person who violates this ordinance or fails to comply with any of its

requirements shall, upon adjudication therefore, be fined as prescribed by Tennessee statutes, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Baxter, Tennessee from taking such other lawful actions to prevent or remedy any violation. (Ord. #2010-14, Nov. 2010)

- **14-304.** <u>Administration</u>. (1) <u>Designation of ordinance administrator</u>. The zoning compliance officer is hereby appointed as the administrator to implement the provisions of this ordinance.
- (2) Permit procedures. Application for a development permit shall be made to the administrator on forms furnished by the community prior to any development activities. The development permit may include, but is not limited to the following: plans in duplicate drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities. Specifically, the following information is required:
  - (a) Application stage.
  - (i) Elevation in relation to mean sea level of the proposed lowest floor, including basement, of all buildings where base flood elevations are available, or to certain height above the highest adjacent grade when applicable under this ordinance.
  - (ii) Elevation in relation to mean sea level to which any non-residential building will be floodproofed where base flood elevations are available, or to certain height above the highest adjacent grade when applicable under this ordinance.
  - (iii) A FEMA floodproofing certificate from a Tennessee registered professional engineer or architect that the proposed non-residential floodproofed building will meet the floodproofing criteria in § 14-305(1) and (2).
  - (iv) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
  - (b) Construction stage. Within AE Zones, where base flood elevation data is available, any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of, a Tennessee registered land surveyor and certified by same. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

Within approximate A Zones, where base flood elevation data is not available, the elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest

adjacent grade. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

For all new construction and substantial improvements, the permit holder shall provide to the administrator an as-built certification of the lowest floor elevation or floodproofing level upon the completion of the lowest floor or floodproofing.

Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The administrator shall review the above-referenced certification data. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed to proceed. Failure to submit the certification or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

- (3) <u>Duties and responsibilities of the administrator</u>. Duties of the administrator shall include, but not be limited to, the following:
  - (a) Review all development permits to assure that the permit requirements of this ordinance have been satisfied, and that proposed building sites will be reasonably safe from flooding.
  - (b) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334.
  - (c) Notify adjacent communities and the Tennessee Department of Economic and Community Development, Local Planning Assistance Office, prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA.
  - (d) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to FEMA to ensure accuracy of community FIRMs through the letter of map revision process.
  - (e) Assure that the flood carrying capacity within an altered or relocated portion of any watercourse is established.
  - (f) Record the elevation, in relation to mean sea level or the highest adjacent grade, where applicable, of the lowest floor (including basement) of all new and substantially improved buildings, in accordance with § 14-304(2).
  - (g) Record the actual elevation, in relation to mean sea level or the highest adjacent grade, where applicable to which the new and substantially improved buildings have been floodproofed, in accordance with § 14-304(2).

- (h) When floodproofing is utilized for a nonresidential structure, obtain certification of design criteria from a Tennessee registered professional engineer or architect, in accordance with § 14-304(2).
- (i) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance.
- (j) When base flood elevation data and floodway data have not been provided by FEMA, obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other sources, including data developed as a result of these regulations, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the City of Baxter, Tennessee FIRM meet the requirements of this ordinance.
- (k) Establish all records pertaining to the provisions of this ordinance in the office of the administrator and shall be open for public inspection. Permits issued under the provisions of this ordinance shall be established in a separate file or marked for expedited retrieval within combined files. (Ord. #2010-14, Nov. 2010)
- 14-305. <u>Provisions for flood hazard reduction</u>. (1) <u>General standards</u>. In all areas of special flood hazard, the following provisions are required:
  - (a) New construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure:
  - (b) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Tennessee and local anchoring requirements for resisting wind forces;
  - (c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
  - (d) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
  - (e) All electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

- (f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (i) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance;
- (j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provision of this ordinance, shall be undertaken only if said non-conformity is not further extended or replaced;
- (k) All new construction and substantial improvement proposals shall provide copies of all necessary federal and state permits, including section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 USC 1334;
- (l) All subdivision proposals and other proposed new development proposals shall meet the standards of § 14-305(2);
- (m) When proposed new construction and substantial improvements are partially located in an area of special flood hazard, the entire structure shall meet the standards for new construction:
- (n) When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.
- (2) <u>Specific standards</u>. In all areas of special flood hazard, the following provisions, in addition to those set forth in § 14-305(1), are required:
  - (a) Residential structures. In AE Zones where base flood elevation data is available, new construction and substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot (1') above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Within approximate A Zones where base flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-302). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

(b) Non-residential structures. In AE Zones, where base flood elevation data is available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than one foot (1') above the level of the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

In approximate A Zones, where base flood elevations have not been established and where alternative data is not available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than three feet (3') above the highest adjacent grade (as defined in § 14-302). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Non-residential buildings located in all A Zones may be floodproofed, in lieu of being elevated, provided that all areas of the building below the required elevation are watertight, with walls substantially impermeable to the passage of water, and are built with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A Tennessee registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the administrator as set forth in § 14-304(2).

(c) Enclosures. All new construction and substantial improvements that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor that are subject to flooding, shall be designed to preclude finished living space and designed to allow for the entry and exit of flood waters to automatically equalize hydrostatic flood forces on exterior walls.

- (i) Designs for complying with this requirement must either be certified by a Tennessee professional engineer or architect or meet or exceed the following minimum criteria:
  - (A) Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
  - (B) The bottom of all openings shall be no higher than one foot (1') above the finished grade;
  - (C) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- (ii) The enclosed area shall be the minimum necessary to allow for parking of vehicles, storage or building access.
- (iii) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms in such a way as to impede the movement of floodwaters and all such partitions shall comply with the provisions of § 14-305(2).
- (d) Standards for manufactured homes and recreational vehicles. (i) All manufactured homes placed, or substantially improved, on:
  - (A) Individual lots or parcels;
  - (B) In expansions to existing manufactured home parks or subdivisions; or
  - (C) In new or substantially improved manufactured home parks or subdivisions, must meet all the requirements of new construction.
- (ii) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that either:
  - (A) In AE Zones, with base flood elevations, the lowest floor of the manufactured home is elevated on a permanent foundation to no lower than one foot (1') above the level of the base flood elevation; or
  - (B) In approximate A Zones, without base flood elevations, the manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least equivalent strength) that are at least three feet (3') in height above the highest adjacent grade (as defined in § 14-302).
- (iii) Any manufactured home, which has incurred "substantial damage" as the result of a flood, must meet the standards of § 14-305(1) and (2).

- (iv) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (v) All recreational vehicles placed in an identified special flood hazard area must either:
  - (A) Be on the site for fewer than one hundred eighty (180) consecutive days;
  - (B) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions); or
  - (C) The recreational vehicle must meet all the requirements for new construction.
- (e) Standards for subdivisions and other proposed new development proposals. Subdivisions and other proposed new developments, including manufactured home parks, shall be reviewed to determine whether such proposals will be reasonably safe from flooding.
  - (i) All subdivision and other proposed new development proposals shall be consistent with the need to minimize flood damage.
  - (ii) All subdivision and other proposed new development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
  - (iii) All subdivision and other proposed new development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
  - (iv) In all approximate A Zones require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser, include within such proposals base flood elevation data (see § 14-305(5)).
- (3) Standards for special flood hazard areas with established base flood elevations and with floodways designated. Located within the special flood hazard areas established in § 14-303(2) are areas designated as floodways. A floodway may be an extremely hazardous area due to the velocity of floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights and velocities. Therefore, the following provisions shall apply:
  - (a) Encroachments are prohibited, including earthen fill material, new construction, substantial improvements or other development within the regulatory floodway. Development may be

permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the cumulative effect of the proposed encroachments or new development shall not result in any increase in the water surface elevation of the base flood elevation, velocities, or floodway widths during the occurrence of a base flood discharge at any point within the community. A Tennessee registered professional engineer must provide supporting technical data, using the same methodologies as in the effective flood insurance study for the City of Baxter, Tennessee and certification, thereof.

- (b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-305(1) and (2).
- (4) <u>Standards for areas of special flood hazard Zones AE with established base flood elevations but without floodways designated</u>. Located within the special flood hazard areas established in § 14-303(2), where streams exist with base flood data provided but where no floodways have been designated (Zones AE), the following provisions apply:
  - (a) No encroachments, including fill material, new construction and substantial improvements shall be located within areas of special flood hazard, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.
  - (b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-305(1) and (2).
- (5) <u>Standards for streams without established base flood elevations</u> and floodways (A Zones). Located within the special flood hazard areas established in § 14-303(2), where streams exist, but no base flood data has been provided and where a floodway has not been delineated, the following provisions shall apply:
  - (a) The administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any federal, state, or other sources, including data developed as a result of these regulations (see (b) below), as criteria for requiring that new construction, substantial improvements, or other development in approximate A Zones meet the requirements of § 14-305(1) and (2).
  - (b) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres,

whichever is the lesser, include within such proposals base flood elevation data.

- (c) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-302). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in § 14-304(2). Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with the standards of § 14-305(2).
- (d) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, no encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty feet (20'), whichever is greater, measured from the top of the stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the City of Baxter, Tennessee. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.
- (e) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-305(1) and (2). Within approximate A Zones, require that those subsections of § 14-305(2) dealing with the alteration or relocation of a watercourse, assuring watercourse carrying capacities are established and manufactured homes provisions are complied with as required.
- (6) Standards for areas of shallow flooding (AO and AH Zones). Located within the special flood hazard areas established in § 14-303(2) are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet (1-3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions, in addition to those set forth in § 14-305(1) and (2), apply:
  - (a) All new construction and substantial improvements of residential and non-residential buildings shall have the lowest floor, including basement, elevated to at least one foot (1') above as many feet as the depth number specified on the FIRMs, in feet, above the highest adjacent grade. If no flood depth number is specified on the FIRM, the lowest floor, including basement, shall be elevated to at least three feet (3') above the highest adjacent grade. Openings sufficient to

facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with standards of § 14-305(2).

- (b) All new construction and substantial improvements of non-residential buildings may be floodproofed in lieu of elevation. The structure together with attendant utility and sanitary facilities must be floodproofed and designed watertight to be completely floodproofed to at least one foot (1') above the flood depth number specified on the FIRM, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If no depth number is specified on the FIRM, the structure shall be floodproofed to at least three feet (3') above the highest adjacent grade. A Tennessee registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this ordinance and shall provide such certification to the administrator as set forth above and as required in accordance with § 14-304(2).
- (c) Adequate drainage paths shall be provided around slopes to guide floodwaters around and away from proposed structures.
- (7) <u>Standards for areas protected by flood protection system (A-99 Zones)</u>. Located within the areas of special flood hazard established in § 14-303(2), are areas of the 100-year floodplain protected by a flood protection system but where base flood elevations have not been determined. Within these areas (A-99 Zones), all provisions of §§ 14-304 and 14-305 shall apply.
- (8) <u>Standards for unmapped streams</u>. Located within the City of Baxter, Tennessee, are unmapped streams where areas of special flood hazard are neither indicated nor identified. Adjacent to such streams, the following provisions shall apply:
  - (a) No encroachments including fill material or other development including structures shall be located within an area of at least equal to twice the width of the stream, measured from the top of each stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the locality.
  - (b) When a new flood hazard risk zone, and base flood elevation and floodway data is available, new construction and substantial improvements shall meet the standards established in accordance with §§ 14-304 and 14-305. (Ord. #2010-14, Nov. 2010)

- 14-306. <u>Variance procedures</u>. (1) <u>Municipal board of zoning appeals</u>.
- (a) Authority. The City of Baxter, Tennessee Municipal Board of Zoning Appeals shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (b) Procedure. Meetings of the municipal board of zoning appeals shall be held at such times, as the board shall determine. All meetings of the municipal board of zoning appeals shall be open to the public. The municipal board of zoning appeals shall adopt rules of procedure and shall keep records of applications and actions thereof, which shall be a public record. Compensation of the members of the municipal board of zoning appeals shall be set by the legislative body.
- Appeals: how taken. An appeal to the municipal board of zoning appeals may be taken by any person, firm or corporation aggrieved or by any governmental officer, department, or bureau affected by any decision of the administrator based in whole or in part upon the provisions of this ordinance. Such appeal shall be taken by filing with the municipal board of zoning appeals a notice of appeal, specifying the grounds thereof. In all cases where an appeal is made by a property owner or other interested party, a fee of fifty dollars (\$50.00) for the cost of publishing a notice of such hearings shall be paid by the appellant. The administrator shall transmit to the municipal board of zoning appeals all papers constituting the record upon which the appeal action was taken. The municipal board of zoning appeals shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to parties in interest and decide the same within a reasonable time which shall not be more than forty-five (45) days from the date of the hearing. At the hearing, any person or party may appear and be heard in person or by agent or by attorney.
- (d) Powers. The municipal board of zoning appeals shall have the following powers:
  - (i) Administrative review. To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, permit, decision, determination, or refusal made by the administrator or other administrative official in carrying out or enforcement of any provisions of this ordinance.
  - (ii) Variance procedures. In the case of a request for a variance the following shall apply:
    - (A) The City of Baxter, Tennessee Municipal Board of Zoning Appeals shall hear and decide appeals and requests for variances from the requirements of this ordinance.
    - (B) Variances may be issued for the repair or rehabilitation of historic structures as defined, herein, upon a determination that the proposed repair or rehabilitation

will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary deviation from the requirements of this ordinance to preserve the historic character and design of the structure.

- (C) In passing upon such applications, the municipal board of zoning appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance; and
  - (1) The danger that materials may be swept onto other property to the injury of others;
  - (2) The danger to life and property due to flooding or erosion;
  - (3) The susceptibility of the proposed facility and its contents to flood damage;
  - (4) The importance of the services provided by the proposed facility to the community;
  - (5) The necessity of the facility to a waterfront location, in the case of a functionally dependent use;
  - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (9) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
  - (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, and streets and bridges.
- (D) Upon consideration of the factors listed above, and the purposes of this ordinance, the municipal board of zoning appeals may attach such conditions to the granting of variances, as it deems necessary to effectuate the purposes of this ordinance.

- (E) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (2) <u>Conditions for variances</u>. (a) Variances shall be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard and the factors listed in § 14-306(1).
- (b) Variances shall only be issued upon: a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship; or a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (c) Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance (as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00)) coverage, and that such construction below the base flood elevation increases risks to life and property.
- (d) The administrator shall establish the records of all appeal actions and report any variances to FEMA upon request. (Ord. #2010-14, Nov. 2010)
- **14-307.** <u>Legal status provisions</u>. (1) <u>Conflict with other ordinances</u>. In case of conflict between this ordinance or any part thereof, and the whole or part of any existing or future ordinance of the City of Baxter, Tennessee, the most restrictive shall in all cases apply.
- (2) <u>Severability</u>. If any section, clause, provision, or portion of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, provision, or portion of this ordinance which is not of itself invalid or unconstitutional.
- (3) <u>Effective date</u>. This ordinance shall become effective immediately after its passage, in accordance with the Charter of the City of Baxter, Tennessee, and the public welfare demanding it. (Ord. #2010-14, Nov. 2010)

#### TITLE 15

# MOTOR VEHICLES, TRAFFIC AND PARKING<sup>1</sup>

# **CHAPTER**

1. MISCELLANEOUS.

# CHAPTER 1

# **MISCELLANEOUS**

## **SECTION**

15-101. Adoption of state traffic statutes.

15-102. Compliance with financial responsibility law required.

**15-101.** Adoption of state traffic statues. By the authority granted under Tennessee Code Annotated, § 16-18-302, the City of Baxter adopts by reference as if fully set forth in this section, the "Rules of the Road," as codified in Tennessee Code Annotated, §§ 55-8-01 through 55-8-131, and §§ 55-8-133 through 55-8-180. Additionally, the City of Baxter adopts Tennessee Code Annotated, §§ 55-8-181 through 55-8-193, §§ 55-9-601 through 55-9-606, § 55-12-139 and § 55-21-108 by reference as if fully set forth in this section. (Ord. #2007-1, March 2007)

# 15-102. Compliance with financial responsibility law required.

- (1) This section shall apply to every vehicle subject to the state registration and certificate of title provisions.
- (2) At the time the driver of a motor vehicle is charged with any moving violation under title 55, chapter 8 and 10, parts 1-5, chapter 50; any provision in this title of this municipal code; or at the time of an accident for which notice is required under <u>Tennessee Code Annotated</u>, § 55-10-106, the officer shall request evidence of financial responsibility as required by this section. In case of an accident for which notice is required under <u>Tennessee Code Annotated</u>, § 55-10-106, the officer shall request such evidence from all drivers involved in the accident, without regard to apparent or actual fault.
  - (3) For the purposes of this section, "financial responsibility" means:
  - (a) Documentation, such as the declaration page of an insurance policy, an insurance binder, or an insurance card from an insurance

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

Junked vehicles: title 13, chapter 4.

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

company authorizing to do business in Tennessee, stating that a policy of insurance meeting the requirements of the Tennessee Financial Responsibility Law of 1977, compiled in <u>Tennessee Code Annotated</u>, chapter 12, title 55, has been issued;

- (b) A certificate, valid for one (1) year, issued by the commissioner of safety, stating that a cash deposit or bond in the amount required by the Tennessee Financial Responsibility Law of 1977, compiled in <u>Tennessee Code Annotated</u>, chapter 12, title 55, has been paid or filed with the commissioner, or has qualified as a self-insurer under <u>Tennessee</u> Code Annotated, § 55-12-111; or
- (c) The motor vehicle being operated at the time of the violation was owned by a carrier subject to the jurisdiction of the department of safety or the interstate commerce commission, or was owned by the United States, the State of Tennessee or any political subdivision thereof, and that such motor vehicle was being operated with the owner's consent.
- (4) <u>Civil offense</u>. It is a civil offense to fail to provide evidence of financial responsibility pursuant to this chapter. Any violation of this chapter is punishable by a civil penalty of up to fifty dollars (\$50.00). The civil penalty prescribed by this chapter shall be in addition to any other penalty prescribed by the laws of this state or by the city's municipal code.
- (5) Evidence of compliance after violation. On or before the court date, the person so charged may submit evidence of financial responsibility at the time of the violation. If it is the person's first violation of this section and the court is satisfied that the financial responsibility was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility shall be dismissed. Upon the person's second or subsequent violation of this section, if the court is satisfied that the financial responsibility was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility may be dismissed. Any charge that is dismissed pursuant to this subsection shall be dismissed without costs to the defendant and no litigation tax shall be due or collected. (Ord. #2002-4, May 2002, modified)

#### **TITLE 16**

# STREETS AND SIDEWALKS, ETC1

## **CHAPTER**

- 1. MISCELLANEOUS.
- 2. EXCAVATIONS AND CUTS.

# CHAPTER 1

# **MISCELLANEOUS**

## **SECTION**

- 16-101. Obstructing streets, alleys, or sidewalks prohibited.
- 16-102. Trees projecting over streets, etc., regulated.
- 16-103. Trees, etc., obstructing view at intersections prohibited.
- 16-104. Projecting signs and awnings, etc., restricted.
- 16-105. Banners and signs across streets and alleys restricted.
- 16-106. Gates or doors opening over streets, alleys or sidewalks prohibited.
- 16-107. Littering streets, alleys, or sidewalks prohibited.
- 16-108. Obstruction of drainage ditches.
- 16-109. Abutting occupants to keep sidewalks clean, etc.
- 16-110. Parades, etc., regulated.
- 16-111. Animals and vehicles on sidewalks.
- 16-112. Fires in streets, etc.
- **16-101.** Obstructing streets, alleys, or sidewalks prohibited. No person shall use or occupy any portion of any public street, alley, sidewalk, or right-of-way for the purpose of storing, selling, or exhibiting any goods, wares, merchandise, or materials. (1987 Code, § 12-101)
- **16-102.** Trees projecting over streets, etc., regulated. It shall be unlawful for any property owner or occupant to allow any limbs of trees on his property to project out over any street or alley at a height of less than fourteen feet (14') or over any sidewalk at a height of less than eight feet (8'). (1987 Code, § 12-102)
- 16-103. <u>Trees, etc., obstructing view at intersections prohibited</u>. It shall be unlawful for any property owner or occupant to have or maintain on his property any tree, shrub, sign, or other obstruction which prevents persons

Related motor vehicle and traffic regulations: title 15.

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

driving vehicles on public streets or alleys from obtaining a clear view of traffic when approaching an intersection. (1987 Code, § 12-103)

- **16-104.** Projecting signs and awnings, etc., restricted. Signs, awnings, or other structures which project over any street or other public way shall be erected subject to the requirements of the building code. (1987 Code, § 12-104)
- 16-105. <u>Banners and signs across streets and alleys restricted</u>. It shall be unlawful for any person to place or have placed any banner or sign across or above any public street or alley except when expressly authorized by the board of mayor and aldermen after a finding that no hazard will be created by such banner or sign. (1987 Code, § 12-105)
- 16-106. Gates or doors opening over streets, alleys or sidewalks prohibited. It shall be unlawful for any person owning or occupying property to allow any gate or door to swing open upon or over any street, alley, or sidewalk except when required by law. (1987 Code, § 12-106)
- 16-107. <u>Littering streets, alleys, or sidewalks prohibited</u>. It shall be unlawful for any person to litter, place, throw, track, or allow to fall on any street, alley, or sidewalk any refuse, glass, tacks, mud, or other objects or materials which are unsightly or which obstruct or tend to limit or interfere with the use of such public ways and places for their intended purposes. (1987 Code, § 12-107)
- **16-108.** <u>Obstruction of drainage ditches</u>. It shall be unlawful for any person to permit or cause the obstruction of any drainage ditch in any public right-of-way. (1987 Code, § 12-108)
- 16-109. <u>Abutting occupants to keep sidewalks clean, etc.</u> The occupants of property abutting on a sidewalk are required to keep the sidewalk clean. Also, immediately after a snow or sleet, such occupants are required to remove all accumulated snow and ice from the abutting sidewalk. (1987 Code, § 12-109)
- **16-110.** <u>Parades, etc., regulated</u>. It shall be unlawful for any person, club, organization, or similar group to hold any meeting, parade, demonstration, or exhibition on the public streets without some responsible representative first securing a permit from the city recorder. (1987 Code, § 12-110)

Building code: title 12, chapter 1.

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

- **16-111.** Animals and vehicles on sidewalks. It shall be unlawful for any person to ride, lead, or tie any animal, or ride, push, pull, or place any vehicle across or upon any sidewalk in such manner as to unreasonably interfere with or inconvenience pedestrians using the sidewalk. It shall also be unlawful for any person knowingly to allow any minor under his control to violate this section. (1987 Code, § 12-112)
- **16-112.** <u>Fires in streets, etc</u>. It shall be unlawful for any person to set or contribute to any fire in any public street, alley, or sidewalk. (1987 Code, § 12-113)

## **CHAPTER 2**

# **EXCAVATIONS AND CUTS**

## **SECTION**

- 16-201. Permit required.
- 16-202. Applications.
- 16-203. Fee.
- 16-204. Deposit or bond.
- 16-205. Manner of excavating--barricades and lights--temporary sidewalks.
- 16-206. Restoration of streets, etc.
- 16-207. Insurance.
- 16-208. Time limits.
- 16-209. Supervision.
- **16-201.** Permit required. It shall be unlawful for any person, firm, corporation, association, or others, including utility districts, to make any excavation in any street, alley, or public place, or to tunnel under any street, alley, or public place without having first obtained a permit as herein required, and without complying with the provisions of this chapter; and it shall also be unlawful to violate, or vary from, the terms of any such permit; provided, however, any person maintaining pipes, lines, or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately and a permit cannot reasonably and practicably be obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the city recorder is open for business, and said permit shall be retroactive to the date when the work was begun. (1987 Code, § 12-201)
- 16-202. <u>Applications</u>. Applications for such permits shall be made to the city recorder, or such person as he may designate to receive such applications, and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the person, firm, corporation, association, or others doing the actual excavating, the name of the person, firm, corporation, association, or others for whom the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done. Such application shall be rejected or approved by the city recorder within twenty-four (24) hours of its filing. (1987 Code, § 12-202)
- **16-203.** Fee. The fee for such permits shall be twenty dollars (\$20.00). (1987 Code, § 12-203)

16-204. Deposit or bond. No such permit shall be issued unless and until the applicant therefor has deposited with the city recorder a cash deposit. The deposit shall be in the sum of five hundred dollars (\$500.00) if no pavement is involved or one thousand dollars (\$1,000.00) if the excavation is in a paved area and shall insure the proper restoration of the ground and laying of the pavement, if any. Where the amount of the deposit is clearly inadequate to cover the cost of restoration, the city recorder may increase the amount of the deposit to an amount considered by him to be adequate to cover the cost. From this deposit shall be deducted the expense to the city of relaying the surface of the ground or pavement, and of making the refill if this is done by the city or at its expense. The balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored.

In lieu of a deposit the applicant may deposit with the recorder a surety bond in such form and amount as the recorder shall deem adequate to cover the costs to the city if the applicant fails to make proper restoration. (1987 Code, § 12-204)

16-205. Manner of excavating--barricades and lights--temporary sidewalks. Any person, firm, corporation, association, or others making any excavation or tunnel shall do so according to the terms and conditions of the application and permit authorizing the work to be done. Sufficient and proper barricades and lights shall be maintained to protect persons and property from injury by or because of the excavation being made. If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed and provided which shall be safe for travel and convenient for users. (1987 Code, § 12-205)

**16-206.** Restoration of streets, etc. Any person, firm, corporation, association, or others making any excavation or tunnel in or under any street, alley, or public place in this city shall restore said street, alley, or public place to its original condition except for the surfacing, which shall be done by the city, but shall be paid for by such person, firm, corporation, association, or others promptly upon the completion of the work for which the excavation or tunnel was made. In case of unreasonable delay in restoring the street, alley, or public place, the city recorder shall give notice to the person, firm, corporation, association, or others that unless the excavation or tunnel is refilled properly within a specified reasonable period of time, the city will do the work and charge the expense of doing the same to such person, firm, corporation, association, or others. If within the specified time the conditions of the above notice have not been complied with, the work shall be done by the city, an accurate account of the expense involved shall be kept, and the total cost shall be charged to the person, firm, corporation, association, or others who made the excavation or tunnel. (1987 Code, § 12-206)

- **16-207. Insurance**. In addition to making the deposit or giving the bond hereinbefore required to insure that proper restoration is made, each person applying for an excavation permit shall file a certificate of insurance indicating that he is insured against claims for damages for personal injury as well as against claims for property damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The amount of the insurance shall be prescribed by the recorder in accordance with the nature of the risk involved; provided, however, that the liability insurance shall not be less than three hundred thousand dollars (\$300,000.00) for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and not less than seven hundred thousand dollars (\$700,000,00) for bodily injury or death of all persons in any one (1) accident. occurrence or act, and one hundred thousand dollars (\$100,000.00) for injury or destruction of property of others in any one (1) accident, occurrence, or act.
- 16-208. <u>Time limits</u>. Each application for a permit shall state the length of time it is estimated will elapse from the commencement of the work until the restoration of the surface of the ground or pavement, or until the refill is made ready for the pavement to be put on by the city if the city restores such surface pavement. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the recorder. (1987 Code, § 12-208)
- **16-209.** <u>Supervision</u>. The person designated by the board of mayor and aldermen shall from time to time inspect all excavations and tunnels being made in or under any public street, alley, or other public place in the city and see to the enforcement of the provisions of this chapter. Notice shall be given to him at least ten (10) hours before the work of refilling any such excavation or tunnel commences. (1987 Code, § 12-209)

#### **TITLE 17**

# REFUSE AND TRASH DISPOSAL<sup>1</sup>

### **CHAPTER**

1. REFUSE.

### **CHAPTER 1**

### **REFUSE**

## **SECTION**

- 17-101. Refuse defined.
- 17-102. Premises to be kept clean.
- 17-103. Storage.
- 17-104. Location of containers.
- 17-105. Disturbing containers.
- 17-106. Collection.
- 17-107. Collection vehicles.
- 17-108. Disposal.
- 17-109. Refuse collection fees.
- 17-110. Standards for non-residential refuse collection.
- 17-101. <u>Refuse defined</u>. Refuse shall mean and include garbage, and rubbish, leaves, brush, and refuse as those terms are generally defined except that dead animals and fowls, body wastes, hot ashes, rocks, concrete, bricks, and similar materials are expressly excluded therefrom and shall not be stored therewith. (1987 Code, § 8-201)
- 17-102. <u>Premises to be kept clean</u>. All persons within the city are required to keep their premises in a clean and sanitary condition, free from accumulations of refuse except when stored as provided in this chapter. (1987 Code, § 8-202)
- 17-103. <u>Storage</u>. Each owner, occupant, or other responsible person using or occupying any building or other premises within this city where refuse accumulates or is likely to accumulate, shall provide and keep covered an adequate number of refuse containers. The refuse containers shall be strong, durable, and rodent and insect proof. They shall each have a capacity of not less than twenty (20) nor more than thirty-two (32) gallons, except that this maximum capacity shall not apply to larger containers which the city handles

Property maintenance regulations: title 13.

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

- mechanically. Furthermore, except for containers which the city handles mechanically, the combined weight of any refuse container and its contents shall not exceed seventy-five (75) pounds. No refuse shall be placed in a refuse container until such refuse has been drained of all free liquids. Tree trimmings, hedge clippings, and similar materials shall be cut to a length not to exceed four feet (4') and shall be securely tied in individual bundles weighing not more than seventy-five (75) pounds each and being not more than two feet (2') thick before being deposited for collection. (1987 Code, § 8-203)
- 17-104. <u>Location of containers</u>. Where alleys are used by the city refuse collectors, containers shall be placed on or within six feet (6') of the alley line in such a position as not to intrude upon the traveled portion of the alley. Where streets are used by the city refuse collectors, containers shall be placed adjacent to and back of the curb, or adjacent to and back of the ditch or street line if there is no curb, at such times as shall be scheduled by the city for the collection of refuse therefrom. As soon as practicable after such containers have been emptied they shall be removed by the owner to within, or to the rear of, his premises and away from the street line until the next scheduled time for collection. (1987 Code, § 8-204)
- 17-105. <u>Disturbing containers</u>. No unauthorized person shall uncover, rifle, pilfer, dig into, turn over, or in any other manner disturb or use any refuse container belonging to another. This section shall not be construed to prohibit the use of public refuse containers for their intended purpose. (1987 Code, § 8-205)
- 17-106. <u>Collection</u>. All refuse accumulated within the corporate limits shall be collected, conveyed, and disposed of under the direction of the city recorder. Collections shall be made regularly in accordance with an announced schedule. (1987 Code, § 8-206)
- 17-107. <u>Collection vehicles</u>. The collection of refuse shall be by means of vehicles with beds constructed of impervious materials which are easily cleanable and so constructed that there will be no leakage of liquids draining from the refuse onto the streets and alleys. Furthermore, all refuse collection vehicles shall utilize closed beds or such coverings as will effectively prevent the scattering of refuse over the streets or alleys. (1987 Code, § 8-207)
- 17-108. <u>Disposal</u>. The disposal of refuse in any quantity by any person in any place, public or private, other than at the site or sites designated for refuse disposal by the board of mayor and aldermen is expressly prohibited. (1987 Code, § 8-208)

- 17-109. <u>Refuse collection fees</u>. Refuse collection fees shall be at such rates as are from time to time set by the board of mayor and aldermen by ordinance or resolution. (1987 Code, § 8-209)
- 17-110. <u>Standards for non-residential refuse collection</u>. The following general standards shall apply for the collection of non-residential refuse in the City of Baxter:
- (1) <u>Fee to be assessed</u>. The City of Baxter will assess a fee for dumpsters and pickup of refuse of multi-family residential and non-residential uses; said fee shall be set by the board of mayor and aldermen.
  - (2) <u>Penalty for non-payment</u>. (a) It is unlawful to refuse or neglect to pay the monthly non-residential refuse collection fee when billed. Each user shall be given ten (10) days from the due date to make payment to the city.
  - (b) Each thirty (30) day period that the service fee remains unpaid shall subject the contracted user of the refuse container to a separate fifty dollar (\$50.00) civil fine for non-payment.
- (3) <u>Standards for non-residential refuse containers</u>. If determined as necessary by the board of mayor and aldermen based on quantity of refuse containers and uses, non-residential users shall be required to obtain a dumpster. When dumpsters are not required, then all non-residential refuse containers shall meet the requirements as specified in § 17-103.
- (4) <u>Location</u>. All dumpsters shall be located as determined by the sanitation department supervisor.
- (5) <u>Standards for dumpster pads and approaches</u>. Pads and approaches for all dumpsters shall be installed as per the specifications of the sanitation department. (Ord. #2007-21, Feb. 2008, as amended by Ord. #2009-02, June 2009)

### **TITLE 18**

# WATER AND SEWERS<sup>1</sup>

#### **CHAPTER**

- 1. WATER AND SEWER SERVICE.
- 2. SEWER USE AND WASTEWATER TREATMENT.
- 3. CROSS CONNECTIONS, AUXILIARY INTAKES, ETC.
- 4. SPECIAL ASSESSMENT ZONE.

## **CHAPTER 1**

# WATER AND SEWER SERVICE

#### **SECTION**

- 18-101. Application and scope.
- 18-102. Definitions.
- 18-103. Application and contract for service.
- 18-104. Service charges for temporary service.
- 18-105. Connection charges.
- 18-106. Water and sewer main extensions.
- 18-107. Water and sewer main extension variances.
- 18-108. Meters.
- 18-109. Meter tests.
- 18-110. Multiple services through a single meter.
- 18-111. Customer billing and payment policy.
- 18-112. Termination or refusal of service.
- 18-113. Termination of service by customer.
- 18-114. Access to customers' premises.
- 18-115. Inspections.
- 18-116. Customer's responsibility for system's property.
- 18-117. Customer's responsibility for violations.
- 18-118. Supply and resale of water.
- 18-119. Unauthorized use of or interference with water supply.
- 18-120. Limited use of unmetered private fire line.
- 18-121. Damages to property due to water pressure.
- 18-122. Liability for cutoff failures.
- 18-123. Restricted use of water.
- 18-124. Interruption of service.

<sup>1</sup>Municipal code references

Building, utility and housing codes: title 12.

Refuse disposal: title 17.

- 18-125. Schedule of rates.
- 18-126. Water and sewer service charges.
- 18-127. Board of mayor and aldermen to perform duties required of the board of waterworks and/or sewerage commissioners.
- 18-128. Adjustments to water and sewer service charges.
- **18-101. Application and scope**. The provisions of this chapter are a part of all contracts for receiving water and sewer service from the city and shall apply whether the service is based upon contract, agreement, signed application, or otherwise. (1987 Code, § 13-101)
- **18-102.** <u>Definitions</u>. (1) "Customer" means any person, firm, or corporation who receives water and/or sewer service from the city under either an express or implied contract.
- (2) "Dwelling" means any single structure, with auxiliary buildings, occupied by one (1) or more persons or households for residential purposes
- (3) "Premise" means any structure or group of structures operated as a single business or enterprise, provided, however, the term "premise" shall not include more than one (1) dwelling.
- (4) "Sewer service line" shall consist of the pipe line extending for any sewer main of the city to the customer's premises. The city shall own and be responsible for maintenance of that portion of the service line from the main to the property line or first cleanout if equipped. The customer shall be responsible for that portion of the service line from the property line or first cleanout onto the property and connection to a home, business or other point of use. All private portions of service lines shall be inspected and constructed according to the requirements of the city and Tennessee Department of Environment and Conservation and shall be water tight, exclude all rainwater and stormwater and be equipped with cleanouts as directed by the city. Cleanouts shall be installed where practical within five feet (5') of the property line and within five feet (5') of exiting any building and at any change in direction of the service greater than forty-five degrees (45°). The city reserves the right to use the first cleanout in case of blockages.
- (5) "Water service line" shall consist of the pipe line extending from any water main to and connecting to the customer's premises. The city shall own and be responsible for that portion for the service line that extends from the main to and including the water meter and meter box. The customer shall own and be responsible for that portion of the service line beyond the meter which connects the meter to the home, business or other points of customer usage. (1987 Code, § 13-102, as amended by Ord. #2006-2, March 2006)
- **18-103.** <u>Application and contract for service</u>. Each prospective customer desiring water and/or sewer service will be required to sign a standard form contract and pay a connection fee of fifty dollars (\$50.00). If the prospective

customer desiring water and/or sewer service is not the owner of record of the specific property, they must submit in addition to the connection fee deposit of one hundred thirty dollars (\$130.00). After a request for cancellation of service, the deposit will be refunded less any charges owed.

The receipt of a prospective customer's application for service, shall not obligate the city to render the service applied for. If the service applied for cannot be supplied in accordance with the provisions of this chapter, the liability of the city to the applicant shall be limited to the return of any deposit made by such applicant. (1987 Code, § 13-104)

**18-104.** Service charges for temporary service. Customers requiring temporary service shall pay all costs for connection and disconnection incidental to the supplying and removing of service in addition to the regular charge for water and/or sewer service. (1987 Code, § 13-104)

**18-105.** <u>Connection charges</u>. Service lines will be laid by the city from its mains to the property line at the expense of the applicant for service. The location of such lines will be determined by the city.

Before a new water or sewer service line will be laid by the city, the applicant shall pay a nonrefundable connection charge of one thousand two hundred dollars (\$1,200.00). In addition, a fee of one hundred fifty dollars (\$150.00) will be assessed if it is necessary for the city to bore underneath a street or road in order to make the connection. For sewer connections a ten dollar (\$10.00) inspection fee is also charged.

Once a tap is connected, the customer will be billed monthly according to the city's water and sewer rates. In addition, to the connection charge, the applicant for service will be responsible for any costs associated with boring underneath a State of Tennessee road or highway in order to make the connection.

When a service line is completed, the city shall be responsible for the maintenance and upkeep of such service line from the main to and including the meter and meter box, and such portion of the service line shall belong to the city. The remaining portion of the service line beyond the meter box (or property line, in the case of sewers) shall belong to and be the responsibility of the customer. (Ord. #2007-7, Sept. 2007)

18-106. <u>Water and sewer main extensions</u>.<sup>1</sup> Persons desiring water and/or sewer main extensions must pay all of the cost of making such extensions.

Construction of building sewers: title 8, chapter 3.

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

All such extensions shall be installed either by city forces or by other forces working directly under the supervision of the city in accordance with plans and specifications prepared by an engineer registered with the State of Tennessee.

Upon completion of such extensions and their approval by the city, such water and/or sewer mains shall become the property of the city. The persons paying the cost of constructing such mains shall execute any written instruments requested by the city to provide evidence of the city's title to such mains. In consideration of such mains being transferred to it, the city shall incorporate said mains as an integral part of the municipal water and sewer systems and shall furnish water and sewer service therefrom in accordance with these rules and regulations, subject always to such limitations as may exist because of the size and elevation of the mains. (1987 Code, § 13-106)

**18-107.** Water and sewer main extension variances. Whenever the board of mayor and aldermen is of the opinion that it is to the best interest of the city and its inhabitants to construct a water and/or sewer main extension without requiring strict compliance with the preceding section, such extension may be constructed upon such terms and conditions as shall be approved by the board of mayor and aldermen.

The authority to make water and/or sewer main extensions under the preceding section is permissive only and nothing contained therein shall be construed as requiring the city to make such extensions or to furnish service to any person or persons. (1987 Code, § 13-107)

**18-108.** <u>Meters</u>. All meters shall be installed, tested, repaired, and removed only by the city.

No one shall do anything which will in any way interfere with or prevent the operation of a meter. No one shall tamper with or work on a water meter without the written permission of the city. No one shall install any pipe or other device which will cause water to pass through or around a meter without the passage of such water being registered fully by the meter. (1987 Code, § 13-108)

**18-109.** <u>Meter tests</u>. The city will, at its own expense, make routine tests of meters when it considers such tests desirable.

In testing meters, the water passing through a meter will be weighed or measured at various rates of discharge and under varying pressures. To be considered accurate, the meter registration shall check with the weighed or measured amounts of water within the percentage shown in the following table:

Meter Size	<u>Percentage</u>
5/8", 3/4", 1", 2"	2%
3"	3%
4"	4%
6"	5%

The city will also make tests or inspections of its meters at the request of the customer. (1987 Code, § 18-109)

**18-110.** <u>Multiple services through a single meter</u>. No customer shall supply water service to more than one (1) dwelling or premise from a single service line and meter without first obtaining the written permission of the city.

Where the city allows more than one (1) dwelling or premise to be served through a single service line and meter, the amount of water used by all the dwellings and premises served through a single service line and meter shall be allocated to each separate dwelling or premise served. The water and charges for each such dwelling or premise thus served shall be computed just as if each such dwelling or premise had received through a separately metered service the amount of water so allocated to it, such computation to be made at the city's applicable water schedule, including the provisions as to minimum bills. The separate charges for each dwelling or premise served through a single service line and meter shall then be added together, and the sum thereof shall be billed to the customer in whose name the service is supplied. (1987 Code, § 13-110)

**18-111.** Customer billing and payment policy. Water and sewer bills shall be rendered monthly and shall designate a standard net payment period for all members of not less than ten (10) days after the date of the bill. Failure to receive a bill will not release a customer from payment obligation. There is established for all members a late payment charge not to exceed ten percent (10%) for any portion of the bill paid after the net payment period.

Payment must be received in the water and sewer department no later than 4:30 P.M. on the due date. If the due date falls on Saturday, Sunday, or a holiday, net payment will be accepted if paid on the next business day no later than 4:30 P.M.

If a meter fails to register properly, or if a meter is removed to be tested or repaired, or if water is received other than through a meter, the city reserves the right to render an estimated bill based on the best information available. (1987 Code, § 13-111)

**18-112.** <u>Termination or refusal of service</u>. (1) <u>Basis of termination or refusal</u>. The city shall have the right to discontinue water and sewer service or to refuse to connect service for a violation of, or a failure to comply with, any of the following:

- (a) These rules and regulations, including the nonpayment of bills.
  - (b) The customer's application for service.
  - (c) The customer's contract for service.

The right to discontinue service shall apply to all water and sewer services received through collective single connections or services, even though more than one (1) customer or tenant is furnished services therefrom, and even though the delinquency or violation is limited to only one (1) such customer or tenant.

- (2) <u>Termination of service</u>. (a) If bill remains unpaid ten (10) days after the gross amount due date, service will be discontinued without further notice.
- (b) In the case of termination for nonpayment of bills, the employee carrying out the termination procedure will attempt before disconnecting service to contact the customer at the premises in a final effort to collect payment and avoid termination.
- (c) A customer may request a hearing to resolve any disputes they may have about the bill including the payment schedule. The request must be made to the city business office any time during regular business hours, and must be made prior to the termination of service. Once the city staff has resolved the dispute, or provided an explanation for the billing, the bill will be considered due and payable. The fact that a customer may continue to dispute the bill does not relieve them of the payment obligation.
- (d) Service termination for any reason shall be reconnected only after the payment of all charges due or satisfactory arrangements for payment have been made, or the correction of the problem that resulted in the termination of the service in a manner satisfactory to the water and sewer department, plus the payment of a reconnection charge of seventy-five dollars (\$75.00).
- (e) Reconnection of the service shall be normally made only during the regular business hours of the City of Baxter. Reconnection of the service outside of regular business hours will be subject to additional charges. (1987 Code, § 13-112, as amended by Ord. #2005-8, Sept. 2005)
- 18-113. <u>Termination of service by customer</u>. Customers who have fulfilled their contract terms and wish to discontinue service must give at least three (3) days written notice to that effect unless the contract specifies otherwise. Notice to discontinue service prior to the expiration of a contract term will not relieve the customer from any minimum or guaranteed payment under such contract or applicable rate schedule.

When service is being furnished to an occupant of premises under a contract not in the occupant's name, the city reserves the right to impose the

following conditions on the right of the customer to discontinue service under such a contract:

- (1) Written notice of the customer's desire for such service to be discontinued may be required; and the city shall have the right to continue such service for a period not to exceed ten (10) days after receipt of such written notice, during which time the customer shall be responsible for all charges for such service. If the city should continue service after such ten (10) day period subsequent to the receipt of the customer's written notice to discontinue service, the customer shall not be responsible for charges for any service furnished after the expiration of the ten (10) day period.
- (2) During the ten (10) day period, the occupant of premises to which service has been ordered discontinued by a customer other than such occupant, may be allowed by the city to enter into a contract for service in the occupant's own name upon the occupant's complying with these rules and regulations with respect to a new application for service. (1987 Code, § 13-113)
- 18-114. Access to customers' premises. The city's identified representatives and employees shall be granted access to all customers' premises at all reasonable times for the purpose of reading meters, for testing, inspecting, repairing, removing, and replacing all equipment belonging to the city, and for inspecting customers' plumbing and premises generally in order to secure compliance with these rules and regulations. (1987 Code, § 13-114)
- **18-115.** <u>Inspections</u>. The city shall have the right, but shall not be obligated, to inspect any installation or plumbing system before water and/or sewer service is furnished or at any later time. The city reserves the right to refuse service or to discontinue service to any premises not in compliance with any special contract, these rules and regulations, or other requirements of the city.

Any failure to inspect or reject a customer's installation or plumbing system shall not render the city liable or responsible for any loss or damage which might have been avoided had such inspection or rejection been made. (1987 Code, § 13-115)

18-116. <u>Customer's responsibility for system's property</u>. Except as herein elsewhere expressly provided, all meters, service connections, and other equipment furnished by or for the city shall be and remain the property of the city. Each customer shall provide space for and exercise proper care to protect the property of the city on his premises. In the event of loss or damage to such property arising from the neglect of a customer to care for it properly, the cost of necessary repairs or replacements shall be paid by the customer. (1987 Code, § 13-116)

- 18-117. <u>Customer's responsibility for violations</u>. Where the city furnishes water and/or sewer service to a customer, such customer shall be responsible for all violations of these rules and regulations which occur on the premises so served. Personal participation by the customer in any such violations shall not be necessary to impose such personal responsibility on him. (1987 Code, § 13-117)
- 18-118. <u>Supply and resale of water</u>. All water shall be supplied within the city exclusively by the city, and no customer shall, directly or indirectly, sell, sublet, assign, or otherwise dispose of the water or any part thereof except with written permission from the city. (1987 Code, § 13-118)
- 18-119. <u>Unauthorized use of or interference with water supply</u>. No person shall turn on or turn off any of the city's stop cocks, valves, hydrants, spigots, or fire plugs without permission or authority from the city. (1987 Code, § 13-119)
- 18-120. <u>Limited use of unmetered private fire line</u>. Where a private fire line is not metered, no water shall be used from such line or from any fire hydrant thereon, except to fight fire or except when being inspected in the presence of an authorized agent of the city.

All private fire hydrants shall be sealed by the city, and shall be inspected at regular intervals to see that they are in proper condition and that no water is being used therefrom in violation of these rules and regulations. When the seal is broken on account of fire, or for any other reason, the customer taking such service shall immediately give the city a written notice of such occurrence. (1987 Code, § 13-120)

- **18-121.** <u>Damages to property due to water pressure</u>. The city shall not be liable to any customer for damages caused to his plumbing or property by high pressure, low pressure, or fluctuations in pressure in the city's water mains. (1987 Code, § 13-121)
- **18-122.** <u>Liability for cutoff failures</u>. The city's liability shall be limited to the forfeiture of the right to charge a customer for water that is not used but is received from a service line under any of the following circumstances:
- (1) After receipt of at least ten (10) days' written notice to cut off water service, the city has failed to cut off such service.
- (2) The city has attempted to cut off a service but such service has not been completely cut off.
- (3) The city has completely cut off a service but subsequently the cutoff develops a leak or is turned on again so that water enters the customer's pipes from the city's main.

Except to the extent stated above, the city shall not be liable for any loss or damage resulting from cutoff failures. If a customer wishes to avoid possible damage for cutoff failures, the customer shall rely exclusively on privately-owned cutoffs and not on the city's cutoff. Also, the customer (and not the city) shall be responsible for seeing that his plumbing is properly drained and is kept properly drained, after his water service has been cut off. (1987 Code, § 13-122)

- **18-123.** Restricted use of water. In times of emergencies or in times of water shortage, the city reserves the right to restrict the purposes for which water may be used by a customer and the amount of water which a customer may use. (1987 Code, § 13-123)
- **18-124.** <u>Interruption of service</u>. The city will endeavor to furnish continuous water and sewer service, but does not guarantee to the customer any fixed pressure or continuous service. The city shall not be liable for any damages for any interruption of service whatsoever.

In connection with the operation, maintenance, repair, and extension of the municipal water and sewer systems, the water supply may be shut off without notice when necessary or desirable, and each customer must be prepared for such emergencies. The city shall not be liable for any damages from such interruption of service or for damages from the resumption of service without notice after any such interruption. (1987 Code, § 13-124)

18-125. <u>Schedule of rates</u>. (1) <u>Water service rates</u>. The following shall be the schedule of monthly charges for water service furnished within the corporate limits of the City of Baxter by its waterworks system:

<u>Gallons metered</u>	Water rates inside city
First 2,000	\$14.70 (minimum)
2,000 and after	\$5.35 per thousand gallon

The established water rates for customers served by the City of Baxter, Tennessee municipal water system outside the city limits (except West Putnam area) are as follow:

<u>Gallons metered</u>	Water rates outside city
First 2,000	\$22.79 (minimum)
2,000 and after	\$7.15 per thousand gallons
Gallons metered	West Putnam area

<u>Gallons metered</u> <u>Water rates outside city</u>

First 2,000 \$24.12 (minimum)

2,000 and after \$7.65 per thousand gallons

The following schedule shall be used for public carwashes and laundry mats:

# Gallons metered

First \$2,000 \$14.70 minimum

2,000 and after\* \$4.10 per thousand gallons

\*This rate shall only apply if fifteen thousand (15,000) gallons are used. If fifteen thousand (15,000) gallons are not used, the water service rate of fourteen dollars and seventy cents (\$14.70) will apply.

A three dollar (\$3.00) per month administrative service charge will be applied to each customer's water bill.

- (2) <u>Sewer service rate</u>. Sewer service rates shall be based on actual water meter reading. Each service customer will pay a charge based on a minimum sewer charge of fourteen dollars and seventy cents (\$14.70) for two thousand (2,000) gallons and then six dollars and fifty-five cents (\$6.55) for each one thousand (1,000) gallons over two thousand (2,000) gallons.
- (3) The water rate for all other utility districts served by the City of Baxter water system will be six dollars fifty cents (\$6.50) per one thousand (1,000) gallons of water metered. (Ord. #2008-23, Feb. 2009, modified)
- **18-126.** Water and sewer service charges. The Board of Mayor and Aldermen of the City of Baxter hereby make the following service charges.
- (1) If bills are not paid by cutoff date, there will be a seventy-five dollar (\$75.00) reconnection fee. This reconnection fee may be waived once per calendar year per water customer upon completion of a signed waiver form acknowledging that they will receive only one (1) waiver of the reconnection fee per calendar year.
- (2) The meters will be pulled when inactive. There will be service charge of twenty-five dollars (\$25.00) to reinstall the meter.
- (3) There will be a service charge for all returned checks. This charge will be the maximum amount allowable by state law with the current charge in force posted at the business office.
- (4) There will be a one thousand two hundred dollar (\$1,200.00) charge for a water tap and a one thousand two hundred dollar (\$1,200.00) charge for a sewer tap. This fee is applicable in such a case as the city performs the tap and

installs the service line from the transmission main to the meter and/or the collection line to the clean-out.

In cases where approved subdivisions, defined as divided tracks of ten (10) or more building lots, that require the construction of new water transmission mains and/or sewer collection lines by either the City of Baxter or Putnam County Planning Commission(s):

- (a) The developer shall be required to install the water service connection from the main to each lot service meter location to include all materials, labor, and equipment constructed to the City of Baxter specifications, except the service meter as located, inspected, and approved by the City of Baxter Water Department. In this case the water service connection fee shall be six hundred dollars (\$600.00).
- (b) The developer shall be required to install the sewer service lateral from the main to each lot clean-out location to include all materials, labor, and equipment constructed to the City of Baxter specifications as located, inspected, and approved by the City of Baxter Sewer Department. In this case the sewer service connection fee shall be six hundred dollars (\$600.00). (Ord. #2005-8, Sept. 2005, as amended by Ord. #2007-7, Sept. 2007, Ord. #2008-1, July 2008, and Ord. #2010-9, July 2010, modified)
- 18-127. Board of mayor and aldermen to perform duties required of the board of waterworks and/or sewerage commissioners. Pursuant to Tennessee Code Annotated, § 7-35-406, and it being in the best interests of the City of Baxter, Tennessee, the board of mayor and aldermen hereby elect to perform the duties required of the board of waterworks and/or sewerage commissioners under the ordinances of this city and the laws of the State of Tennessee. The board of mayor and aldermen shall have all the powers, duties and responsibilities otherwise imposed upon the board of waterworks and/or sewerage commissioners, and all references to such board shall refer to the board of mayor and aldermen acting in the capacity of the board of waterworks and/or sewerage commissioners. (1987 Code, § 13-127)
- 18-128. Adjustments to water and sewer service charges. Any Baxter Utility Department customer who has a water leak on their side of the water meter is responsible for the water loss. A customer may request in writing an adjustment to his/her water and/or sewer service charge and the Baxter Water Board may make adjustments to those charges based upon the following:

No customer may be granted more than one (1) adjustment in any twelve (12) month period. (1987 Code, § 13-128)

#### **CHAPTER 2**

# SEWER USE AND WASTEWATER TREATMENT

#### **SECTION**

- 18-201. Purpose and policy.
- 18-202. Definitions.
- 18-203. Connection to public sewers.
- 18-204. Private domestic wastewater disposal.
- 18-205. Regulation of holding tank waste disposal.
- 18-206. Application for domestic wastewater discharge and industrial wastewater discharge permits.
- 18-207. Discharge regulations.
- 18-208. Fats, oils and grease traps and interceptors.
- 18-209. Industrial user monitoring, inspection reports, records access, and safety.
- 18-210. Enforcement and abatement.
- 18-211. Penalties; costs.
- 18-212. Fees and billing.
- 18-213. Validity.
- **18-201.** <u>Purpose and policy</u>. This chapter sets forth uniform requirements for the disposal of wastewater in the service area of the City of Baxter, Tennessee, wastewater treatment system. The objectives of this chapter are:
  - (1) To protect the public health;
- (2) To provide problem free wastewater collection and treatment service;
- (3) To prevent the introduction of pollutants into the municipal wastewater treatment system, which will interfere with the system operation, which will cause the system discharge to violate its National Pollutant Discharge Elimination System (NPDES) permit or other applicable state requirements, or which will cause physical damage to the wastewater treatment system facilities;
- (4) To provide for full and equitable distribution of the cost of the wastewater treatment system;
- (5) To enable the City of Baxter to comply with the provisions of the Federal Water Pollution Control Act, the General Pretreatment Regulations (40 CFR, part 403), and other applicable federal, state laws and regulations;
- (6) To improve the opportunity to recycle and reclaim wastewaters and sludges from the wastewater treatment system.

In meeting these objectives, this chapter provides that all persons in the service area of the City of Baxter must have adequate wastewater treatment either in the form of a connection to the municipal wastewater treatment system

or, where the system is not available, an appropriate private disposal system. The chapter also provides for the issuance of permits to system users, for the regulations of wastewater discharge volume and characteristics, for monitoring and enforcement activities; and for the setting of fees for the full and equitable distribution of costs resulting from the operation, maintenance, and capital recovery of the wastewater treatment system and from other activities required by the enforcement and administrative program established herein.

This chapter shall apply to the City of Baxter, Tennessee, and to persons outside the city who are, by contract or agreement with the city users of the municipal wastewater treatment system. Except as otherwise provided herein, the Board of Mayor and Aldermen of the City of Baxter shall administer, implement, and enforce the provisions of this chapter. (1987 Code, § 8-301)

- **18-202. Definitions**. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:
- (1) "Act or the act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended 33 USC § 1251, et seg.
- (2) "Approval authority." The director in an NPDES state with an approved state pretreatment program and the administrator of the EPA in a non-NPDES state or NPDES state without an approved state pretreatment program.
- (3) "Authorized representative of industrial user." An authorized representative of an industrial user may be:
  - (a) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;
  - (b) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively;
  - (c) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.
- (4) "Biochemical Oxygen Demand (BOD)." The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure for five (5) days at 20 degrees (20°) centigrade expressed in terms of weight and concentration (milligrams per liter (mg/L)).
- (5) "Building sewer." A sewer conveying wastewater from the premises of a user to the POTW.
- (6) "Categorical standards." The national categorical pretreatment standards or pretreatment standard.
- (7) "Compatible pollutant." Shall mean BOD, suspended solids, pH, fecal coliform bacteria, and such additional pollutants as are now or may in the future be specified and controlled in the city's NPDES permit for its wastewater treatment works where sewer works have been designed and used to reduce or remove such pollutants.

- (8) "Cooling water." The water discharge from any use such as air conditioning, cooling, or refrigeration, or to which the only pollutant added is heat.
- (9) "Control authority." The term "control authority" shall refer to the "approval authority," defined hereinabove; or the board of mayor and aldermen if the city has an approved pretreatment program under the provisions of 40 CFR 403.11.
- (10) "Customer." Means any individual, partnership, corporation, association, or group who receives sewer service from the city under either an express or implied contract requiring payment to the city for such service.
- (11) "Direct discharge." The discharge of treated or untreated wastewater directly to the waters of the State of Tennessee.
- (12) "Domestic wastewater." Wastewater that is generated by a single family, apartment or other dwelling unit or dwelling unit equivalent or commercial establishment containing sanitary facilities for the disposal of wastewater and used for residential or commercial purposes only.
- (13) "Environmental Protection Agency, or EPA." The U.S. Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of the said agency.
- (14) "Garbage." Shall mean solid wastes generated from any domestic, commercial or industrial source.
- (15) "Grab sample." A sample which is taken from a waste stream on a one (1) time basis with no regard to the flow in the waste stream and without consideration of time.
- (16) "Holding tank waste." Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.
- (17) "Incompatible pollutant." Shall mean any pollutant which is not a "compatible pollutant" as defined in this section.
- (18) "Indirect discharge." The discharge or the introduction of non-domestic pollutants from any source regulated under § 307(b) or (c) of the Act, (33 USC § 1317), into the POTW (including holding tank waste discharged into the system).
- (19) "Industrial user." A source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to § 402, of the Act (33 USC § 1342).
- (20) "Interference." The inhibition or disruption of the municipal wastewater processes or operations which contributes to a violation of any requirement of the city's NPDES permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with § 405 of the Act, (33 USC § 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act, or more stringent state criteria (including those

contained in any state sludge management plan prepared pursuant to title IV of SWDA) applicable to the method of disposal or use employed by the municipal wastewater treatment system.

- (21) "National categorical pretreatment standard or pretreatment standard." Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the Act (33 USC § 1347) which applies to a specific category of industrial users.
- (22) "NPDES (National Pollution Discharge Elimination System." Shall mean the program for issuing, conditioning, and denying permits for the discharge of pollutants from point sources into navigable waters, the contiguous zone, and the oceans pursuant to § 402 of the Federal Water Pollution Control Act as amended.
- (23) "New source." Any source, the construction of which is commenced after the publication of proposed regulations prescribing a § 307(c) (33 USC § 1317) categorical pretreatment standard which will be applicable to such source, if such standard if thereafter promulgated within one hundred twenty (120) days of proposal in the Federal Register. Where the standard is promulgated later than one hundred twenty (120) days after proposal, a new source means any source, the construction of which is commenced after the date of promulgation of the standard.
- (24) "Person." Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine and the singular shall include the plural where indicated by the context.
- (25) "pH." The logarithm (base ten (10)) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- (26) "Pollution." The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.
- (27) "Pollutant." Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharge into water.
- (28) "Pretreatment or treatment." The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical, biological processes, or process changes or other means, except as prohibited by 40 CFR § 40.36(d).
- (29) "Pretreatment requirements." Any substantive or procedural requirement related to pretreatment other than a national pretreatment standard imposed on an industrial user.

- (30) "Publicly Owned Treatment Works (POTW)." A treatment works as defined by § 212 of the Act, (33 USC § 1292) which is owned in this instance by the city. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this chapter, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the City of Baxter who are, by contract or agreement with the City of Baxter users of the city's POTW.
- (31) "POTW treatment plant." That portion of the POTW designed to provide treatment to wastewater.
  - (32) "Shall" is mandatory; "may" is permissive.
- (33) "Slug." Shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentrations of flows during normal operation or any discharge of whatever duration that causes the sewer to overflow or back up in an objectionable way or any discharge of whatever duration that interferes with the proper operation of the wastewater treatment facilities or pumping stations.
  - (34) "State." The State of Tennessee.
- (35) "Standard industrial classification (SIC)." A classification pursuant to the <u>Standard Industrial Classification Manual</u> issued by the Executive Office of the President, Office of Management and Budget, 1972.
- (36) "Storm water." Any flow occurring during or following any form of natural precipitation and resulting therefrom.
- (37) "Storm sewer or storm drain." Shall mean a pipe or conduit which carries storm and surface waters and drainage, but excludes sewage and industrial wastes. It may, however, carry cooling waters and unpolluted waters, upon approval of the city.
- (38) "Suspended solids." The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids and that is removable by laboratory filtering.
- (39) "Superintendent." The person designated by the board of mayor and aldermen to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this chapter, or his duly authorized representative.
- (40) "Town." The Town of Baxter or the Board of Mayor and Aldermen, Town of Baxter, Tennessee.
- (41) "Toxic pollutant." Any pollutant or combination of pollutants listed as toxic in regulations published by the administrator of the Environmental Protection Agency under the provision of Clean Water Act 307(a) or other Acts.
- (42) "Twenty-four (24) hour flow proportional composite sample." A sample consisting of several sample portions collected during a twenty-four (24)

hour period in which the portions of a sample are proportioned to the flow and combined to form a representative sample.

- (43) "User." Any person who contributes, causes or permits the contribution of wastewater into the city's POTW.
- (44) "Wastewater." The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, whether treated or untreated, which is contributed into or permitted to enter the POTW.
  - (45) "Wastewater treatment systems." Defined the same as POTW.
- (46) "Waters of the state." All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and other bodies of accumulation of water, surface or underground, natural or artificial, public or private, that are contained within, flow through, or border upon the state or any portion thereof. (1987 Code, § 8-302)
  - **18-203.** Connection to public sewers. (1) Requirements for proper wastewater disposal. (a) It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the service area of the City of Baxter, any human or animal excrement, garbage, or other objectionable waste.
  - (b) It shall be unlawful to discharge to any waters of the state within the service area of the city any sewage or other polluted waters, except where suitable treatment has been provided in accordance with provisions of this chapter.
  - (c) Except as herein provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.
  - (d) Except as provided in § 18-203(1)(e) below, the owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the service area in which there is now located or may in the future be located a public sanitary sewer, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of the chapter, within sixty (60) days after date of official notice to do so, provided that said public sewer is within five hundred feet (500') of the property line over public access.
  - (e) The owner of a manufacturing facility may discharge wastewater to the waters of the state provided that he obtains an NPDES permit and meets all requirements of the Federal Clean Water Act, the NPDES permit, and any other applicable local, state, or federal statutes and regulations.
  - (f) Where a public sanitary sewer is not available under the provisions of § 18-203(1)(d) above, the building sewer shall be connected

to a private sewage disposal system complying with the provisions of § 18-204 of this chapter.

(2) <u>Physical connection public sewer</u>. (a) No person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof. The city shall make all connections to the public sewer upon the property owner first obtaining a written permit from the city as required by § 18-206 of this chapter.

The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the board of mayor and aldermen. A connection fee shall be paid to the city at the time the application is filed.

- (b) All costs and expenses incident to the installation, connection, and inspection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- (c) A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one (1) building sewer.
- (d) Old building sewers may be used in connection with new buildings only when they are found, on examination and tested by the city to meet all requirements of this chapter. All others may be sealed to the specifications of the city.
  - (e) Building sewers shall conform to the following requirements:
  - (i) The minimum size of a building sewer shall be as follows:

Conventional sewer system - four inches (4"). Small diameter gravity sewer - two inches (2"). Septic tank effluent pump - one and one-quarter inches (1 1/4").

Where the septic tanks becomes an integral part of the collection and treatment system, the minimum size influent line shall be four inches (4") and the minimum size of septic tank shall be one thousand (1,000) gallons. Septic tanks shall be constructed of polyethylene and protected from flotation. The city shall have the right, privilege, and authority to locate, inspect, operate, and maintain septic tanks which are an integral part of the collection and treatment system.

(ii) The minimum depth of a building sewer shall be eighteen inches (18").

(iii) Building sewers shall be laid on the following grades: Four inch (4") sewers - one-eighth inch (1/8") per foot. Two inch (2") sewers - three-eighths inch (3/8") per foot.

Larger building sewers shall be laid on a grade that will produce a velocity. When flowing full of at least two feet (2') per second.

- (iv) Slope and alignment of all building sewers shall be neat and regular.
- (v) Building sewers shall be constructed only of ductile iron pipe class 50 or above or polyvinyl chloride pipe SDR-35 for gravity sewers and SDR-21 for pressure sewers. Joints shall be rubber or neoprene "o" ring compression joints. No other joints shall be acceptable.
- (vi) A cleanout shall be located five feet (5') outside of the building, one (1) as it crosses the property line and one (1) at each change of direction of the building sewer which is greater than forty-five degrees (45°). Additional cleanouts shall be placed not more than seventy-five feet (75') apart in horizontal building sewers of six inch (6") nominal diameter and not more than one hundred feet (100') apart for larger pipes. Cleanouts shall be extended to or above the finished grade level directly above the place where the cleanout is installed. A "Y" (wye) and one-eighth (1/8) bend shall be used for the cleanout base. Cleanouts shall not be smaller than four inches (4").
- (vii) Connections of building sewers to the public sewer system shall be made only by the city and shall be made at the appropriate existing wyes or tee branch using compression type couplings or collar type rubber joint with stainless steel bands. Where existing wye or tee branches are not available, connections of building services shall be made by either removing a length of pipe and replacing it with a wye or tee fitting using flexible neoprene adapters with stainless steel bands of a type approved by the city. All such connections shall be made gastight and watertight.
- (viii) The building sewer may be brought into the building below the basement floor when gravity flow from the building to the sanitary sewer is at a grade of one-eighth inch (1/8") per foot or more if possible. In cases where basement or floor levels are lower than the ground elevation at the point of connection to the sewer, adequate precautions by installation of check valves or other backflow prevention devices to protect against flooding shall be provided by the owner. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary

sewage carried by such building drain shall be lifted by a pump and discharged to the building sewer at the expense of the owner.

- (ix) The methods to be used in excavating, placing of pipe, jointing, testing, backfilling the trench, or other activities in the construction of a building sewer which have not been described above shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city or to the procedures set forth in appropriate specifications of the ASTM and Water Pollution Control Federal Manual of Practice No. 9. Any deviation from the prescribed procedures and materials must be approved by the city before installation.
- (x) An installed building sewer shall be gastight and watertight.
- (f) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.
- (g) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, basement drains, or other sources of surface runoff or groundwater to a building directly or indirectly to a public sanitary sewer.
- (3) <u>Inspection of connections</u>. (a) The sewer connection and all building sewers from the building to the public sewer main line shall be inspected before the underground portion is covered, by the board of mayor and aldermen or its authorized representative.
- (b) The applicant for discharge shall notify the city when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the board of mayor and aldermen or its representative.
- (4) <u>Maintenance of building sewers</u>. Each individual property owner or user of the POTW shall be entirely responsible for the maintenance which will include repair or replacement of the building sewer as deemed necessary by the board of mayor and aldermen to meet specifications of the city. (1987 Code, § 8-303)

# 18-204. Private domestic wastewater disposal. (1) Availability.

- (a) Where a public sanitary sewer is not available under the provisions of § 18-203(1)(d), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this section.
- (b) Any residence, office, recreational facility, or other establishment used for human occupancy where the building drain is below the elevation to obtain a grade equivalent to one-eighth inch (1/8")

per foot in the building sewer but is otherwise accessible to a public sewer as provided in § 18-203, the owner shall provide a private sewage pumping station as provided in § 18-203(2)(e)(viii).

- (c) Where a public sewer becomes available, the building sewer shall be connected to said sewer within sixty (60) days after date of official notice from the city to do so.
- (2) Requirements. (a) A private domestic wastewater disposal system may not be constructed within the service area unless and until a certificate is obtained from the city stating that a public sewer is not accessible to the property and no such sewer is proposed for construction in the immediate future. No certificate shall be issued for any private domestic wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than that specified by the Putnam County Health Department.
- (b) Before commencement of construction of a private sewage disposal system the owner shall first obtain written permission from the City of Baxter and the Putnam County Health Department. The owner shall supply any plans, specifications, and other information as are deemed necessary by the City of Baxter and the Putnam County Health Department.
- (c) A private sewage disposal system shall not be placed in operation until the installation is completed to the satisfaction of the City of Baxter and the Putnam County Health Department. They shall be allowed to inspect the work at any stage of construction and the owner shall notify the City of Baxter and the Putnam County Health Department when the work is ready for final inspection, before any underground portions are covered. The inspection shall be made within a reasonable period of time after the receipt of notice by the City of Baxter and the Putnam County Health Department.
- (d) The type, capacity, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Health and Environment of the State of Tennessee, the City of Baxter, and the Putnam County Health Department. No septic tank or cesspool shall be permitted to discharge to waters of Tennessee.
- (e) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city. When the public sewer becomes available, the building sewer, or the septic tank effluent line shall be connected to the public sewer within sixty (60) days of the date of availability and the private sewage disposal system should be cleaned of sludge and if no longer used as a part of the city's treatment system, filled with suitable material.
- (f) No statement contained in this chapter shall be construed to interfere with any additional or future requirements that may be

imposed by the City of Baxter and the Putnam County Health Department. (1987 Code, § 8-304)

18-205. <u>Regulation of holding tank waste disposal</u>. (1) <u>Permit</u>. No person, firm, association or corporation shall clean out, drain, or flush any septic tank or any other type of wastewater or excreta disposal system, unless such person, firm, association, or corporation obtains a permit from the city to perform such acts or services.

Any person, firm, association, or corporation desiring a permit to perform such services shall file an application on the prescribed form. Upon any such application, said permit shall be issued by the city when the conditions of this chapter have been met and providing the city is satisfied the applicant has adequate and proper equipment to perform the services contemplated in a safe and competent manner. Such permits shall be limited to the discharge of domestic sewage waste containing no industrial waste.

- (2) <u>Fees</u>. For each permit issued under the provisions of this chapter the applicant shall agree in writing by the provisions of this section and pay an annual service charge to the city to be set as specified in § 18-212. Any such permit granted shall be for one (1) fiscal year or fraction of the fiscal year, and shall continue in full force and effect from the time issued until the ending of the fiscal year, unless sooner revoked, and shall be nontransferable. The number of the permit granted hereunder shall be plainly painted three inch (3") permanent letters on each side of each motor vehicle used in the conduct of the business permitted hereunder.
- (3) <u>Designated disposal locations</u>. The city shall designate approved locations for the emptying and cleansing of all equipment used in the performance of the services rendered under the permit herein provided for, and it shall be a violation hereof for any person, firm, association or corporation to empty or clean such equipment at any place other than a place so designated. The city may refuse to accept any truckload of waste at his absolute discretion where it appears that the waste could interfere with the operation of the POTW.
- (4) Revocation of permit. Failure to comply with all the provisions of this chapter shall be sufficient cause for the revocation of such permit by the city. The possession within the service area by any person of any motor vehicle equipped with a body type and accessories of a nature and design capable of serving a septic tank of wastewater or excreta disposal system cleaning unit shall be prima facie evidence that such person is engaged in the business of cleaning, draining, or flushing septic tanks or other wastewater or excreta disposal systems within the service area of the City of Baxter. (1987 Code, § 8-305)
- 18-206. <u>Applications for domestic wastewater discharge and industrial wastewater discharge permits</u>. (1) <u>Applications for discharge of domestic wastewater</u>. All users or prospective users which generate domestic

wastewater shall make application to the city for written authorization to discharge to the municipal wastewater treatment system. Applications shall be required from all new dischargers as well as for any existing discharger desiring additional service. Connection to the city sewer shall not be made until the application is received and approved by the city, the building sewer is installed in accordance with this chapter and an inspection has been performed by the board of mayor and aldermen or its representative.

The receipt by the city of a prospective customer's application for service shall not obligate the city to render the service. If the service applied for cannot be supplied in accordance with this chapter and the city's rules and regulations and general practice, the connection charge will be refunded in full, and there shall be no liability of the city to the applicant for such service.

- (2) <u>Industrial wastewater discharge permits</u>. (a) General requirements. All industrial users proposing to connect to or to contribute to the POTW shall obtain a wastewater discharge permit before connecting to or contributing to the POTW. All existing industrial users connected to or contributing to the POTW within one hundred eighty (180) days after the effective date of this chapter.
- (b) Applications. Applications for wastewater discharge permits shall be required as follows:
  - (i) Users required to obtain a wastewater discharge permit shall complete and file with the city, an application on a prescribed form accompanied by the appropriate fee. Existing users shall apply for a wastewater contribution permit within sixty (60) days after the effective date of this chapter, and proposed new users shall apply at least sixty (60) days prior to connecting to or contributing to the POTW.
  - The application shall be in the prescribed form of the city and shall include, but not be limited to the following name, address, and SIC number of applicant; information: wastewater volume; wastewater constituents and characteristic, including but not limited to those mentioned in § 18-207(1) and (2) discharge variations -- daily, monthly, seasonal and thirty (30) minute peaks; a description of all chemicals handled on the premises, each produce produced by type, amount, process or processes and rate of production, type and amount of raw materials, number and type of employees, hours of operation, site plans, floor plans, mechanical and plumbing plans and details showing all sewers and appurtenances by size, location and elevation; a description of existing and proposed pretreatment and/or equalization facilities and any other information deemed necessary by the city.
  - (iii) Any user who elects or is required to construct new or additional facilities for pretreatment shall as part of the

application for wastewater discharge permit submit plans, specifications and other pertinent information relative to the proposed construction to the city for approval. Plans and specifications submitted for approval must bear the seal of a professional engineer registered to practice engineering in the State of Tennessee. A wastewater discharge permit shall not be issued until such plans and specifications are approved. Approval of such plans and specifications shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this chapter.

- (iv) If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the application shall include the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. For the purpose of this paragraph, "pretreatment standard," shall include either a national pretreatment standard or a pretreatment standard imposed by § 18-207 of this chapter.
- (v) The city will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the city may issue a wastewater discharge permit subject to terms and conditions provided herein.
- (vi) The receipt by the city of a prospective customer's application for wastewater discharge permit shall not obligate the city to render the wastewater collection and treatment service. If the service applied for cannot be supplied in accordance with this chapter or the city's rules and regulations and general practice, the application shall be rejected and there shall be no liability of the city to the applicant of such service.
- (vii) The city will act only on applications containing all the information required in this section. Persons who have filed incomplete applications will be notified by the city that the application is deficient and the nature of such deficiency and will be given thirty (30) days to correct the deficiency. If the deficiency is not corrected within thirty (30) days or within such extended period as allowed by the city, the city shall deny the application and notify the applicant in writing of such action.
- (c) Permit conditions. Wastewater discharge permits shall be expressly subject to all provisions of this chapter and all other applicable regulations, user charges and fees established by the city. Permits may contain the following:

- (i) The unit charge or schedule of user charges and fees for the wastewater to be discharged to a community sewer;
- (ii) Limits on the average and maximum rate and time of discharge or requirements and equalization.
- (iii) Requirements for installation and maintenance of inspections and sampling facilities;
- (iv) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests and reporting schedule;
  - (v) Compliance schedules;
- (vi) Requirements for submission of technical reports or discharge reports;
- (vii) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the city, and affording city access thereto;
- (viii) Requirements for notification of the city of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system.
  - (ix) Requirements for notification of slug discharged;
- (x) Other conditions as deemed appropriate by the city to ensure compliance with this chapter.
- (d) Permit modifications. Within nine (9) months of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. A user with an existing wastewater discharge permit shall submit to the city within one hundred eighty (180) days after the promulgation of an applicable federal categorical pretreatment standard the information required by §§ 18-206(2)(b)(ii) and (3). The terms and conditions of the permit may be subject to modification by the city during the term of the permit as limitations or requirements are modified or other just cause exists. The user shall be informed of any proposed changes in this permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
- (e) Permits duration. Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The user shall apply for permit reissuance a minimum of one hundred eighty (180) days prior to the expiration of the user's existing permit.
- (f) Permit transfer. Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user,

different premises, or a new or changed operation without the approval of the city. Any succeeding owner or user shall also comply with the terms and conditions of the existing permit.

- (g) Revocation of permit. Any permit issued under the provisions of the chapter is subject to be modified suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:
  - (i) Violation of any terms or conditions of the wastewater discharge permit or other applicable federal, state, or local law or regulation.
  - (ii) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.
  - (iii) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
  - (iv) Intentional failure of a user to accurately report the discharge constituents and characteristics or to report significant changes in plant operations or wastewater characteristics.
- (3) <u>Confidential information</u>. All information and data on a user obtained from reports, questionnaire, permit application, permits and monitoring programs and from inspection shall be available to the public or any governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets of the users.

When requested by the person furnishing the report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available to governmental agencies for use; related to this chapter or the city's or user's NPDES permit. Provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

Information accepted by the city as confidential shall not be transmitted to any governmental agency or to the general public by the city until and unless prior and adequate notification is given to the user. (1987 Code, § 8-306)

18-207. <u>Discharge regulations</u>. (1) <u>General discharge prohibitions</u>. No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation and performance of the POTW. These general prohibitions apply to all such users of a POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state, or local pretreatment

standards or requirements. A user may not contribute the following substances to any POTW:

- (a) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time, shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromate, carbides, hydrides and sulfides and any other substances which the city, the state or EPA has notified the user is a fire hazard or a hazard to the system.
- (b) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities but not limited to: grease, garbage with particles greater than one-half inch (1/2") in any dimension, paunch manure, bones, hair, hides, or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
- (c) Any wastewater having a pH less than 5.5 or higher than 9.5 or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW.
- (d) Any wastewater containing any toxic pollutants, chemical elements, or compounds in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a categorical pretreatment standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to § 307(a) of the Act.
- (e) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance, hazard to life, are sufficient to prevent entry into the sewers for maintenance and repair.
- (f) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation

process. In no case, shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or under § 405 of the Act; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.

- (g) Any substances which will cause the POTW to violate its NPDES permit or the receiving water quality standards.
- (h) Any wastewater causing discoloration of the wastewater treatment plant effluent to the extent that the receiving stream water quality requirements would be violated, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (i) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into the sewer system which exceeds sixty-five degrees Celsius (65° C or one hundred fifty degrees (150°) Fahrenheit) or causes the influent at the wastewater plant to exceed forty degrees Celsius (40° C or one hundred four degrees (104°) Fahrenheit).
- (j) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which a user knows or has reason to know will cause interference to the POTW.
- (k) Any waters or wastes causing an unusual volume of flow or concentration of waste constituting "slug" as defined herein.
- (l) Any waters containing any radioactive wastes or isotopes of such halflife or concentration as may exceed limits established by the city in compliance with applicable state or federal regulations.
- (m) Any wastewater which causes a hazard to human life or creates a public nuisance.
- (n) Any waters or wastes containing fats, wax, grease, or oil, whether emulsified or not, in excess of one hundred (100) mg/L or containing substances which may solidify or become viscous at temperature between thirty-two (32°) or one hundred fifty (150°) degrees Fahrenheit (zero degrees (0°) and sixty-five degrees (65°) Celsius).
- (o) Any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the city and the Tennessee Department of Health and Environment. Industrial cooling water or unpolluted process waters may be discharged on approval of the city and the Tennessee Department of Health and Environment, to a storm sewer or natural outlet.

(2) <u>Restrictions on wastewater strength</u>. No person or user shall discharge wastewater which exceeds the following set of standards (Table A - User Discharge Restrictions) unless an exception is permitted as provided in this chapter. Dilution of any wastewater discharge for the purpose of satisfying these requirements shall be considered in violation of this chapter.

Table A - User Discharge Restrictions

<u>Pollutant</u>	Daily Average*  Maximum  Concentration (mg/l)	Instantaneous Maximum Concentration (mg/l)
Antimony	5.0	8.0
Arsenic	1.0	1.5
Cadmium	1.0	1.5
Chromium (total)	4.0	7.0
Copper	3.0	5.0
Cyanide	1.0	2.0
Lead	1.0	1.5
Mercury	0.1	0.2
Nickel	3.0	4.5
Pesticides and herbicides	BDL	1.0
Phenols	10.0	15.0
Selenium	1.0	1.5
Silver	1.0	1.5
Surfectants, as MBAS	25.0	50.0
Zinc	3.0	5.0

<sup>\*</sup>Based on 24-hour flow proportional composite samples.

<sup>(3) &</sup>lt;u>Protection of treatment plant influent</u>. The city shall monitor the treatment works influent for each parameter in the following table. (Table B - Plant Protection Criteria). Industrial users shall be subject to reporting and monitoring requirements regarding these parameters as set forth in this chapter. In the event that the influent at the POTW reaches or exceeds

the levels established by this table, the city shall initiate technical studies to determine the cause of the influent violation and shall recommend to the city the necessary remedial measures, including, but not limited to, recommending the establishment of new or revised pre-treatment levels for these parameters. The city shall also recommend changes to any of these criteria in the event that: the POTW effluent standards are changed, there are changes in any applicable law or regulation affecting same, or changes are needed for more effective operation of the POTW.

**Table B-Plant Protection Criteria** 

Parameter	Maximum Concentration mg/l (24 Hour Flow) Proportional Composite Sample	Maximum Instantaneous Concentration (mg/l) Grab Sample
Aluminum dissolved (AL)	3.0	6.0
Antimony (Sb)	0.50	1.00
Arsenic (As)	0.06	0.12
Barium (Ba)	2.50	5.00
Boron	0.4	0.8
Cadmium (Cd)	0.004	0.008
Chromium hex	0.06	0.12
Cobalt	0.03	0.06
Cooper (Cu)	0.16	0.32
Cyanide (CN)	0.03	0.06
Fluoride (F)	0.6	1.2
Iron (Fe)	3.0	6.0
Lead (Pb)	0.10	0.2
Manganese (Mn)	0.1	0.2
Mercury (Hg)	0.025	0.050
Nickel (Ni)	0.15	0.30
Pesticides and herbicides	.001	.002

	<u>Maximum</u>	<u>Maximum</u>
	Concentration mg/l (24	<u>Instantaneous</u>
	<u> Hour Flow) Proportional</u>	Concentration (mg/l)
<u>Parameter</u>	Composite Sample	<u>Grab Sample</u>
Phenols	1.0	2.0
Selenium (Se)	0.01	0.02
Silver (Ag)	0.05	0.10
Sulfide	25.0	40.0
Zinc (Zn)	0.3	0.6
Total Kjeldahl Nitrogen (TKN)	45.00	90.00
Oil and grease	50.00	100.00
MBAS	5.00	10.0
BOD	220	350
COD	440	700
Suspended solids	220	350

BDL = Below Detectable Limits

- (4) Federal categorical pretreatment standards. Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this chapter for sources in that subcategory, shall immediately supersede the limitations imposed under this chapter. The city shall notify all affected users of the applicable reporting requirements under 40 CFR, § 403.12.
- (5) Right to establish more restrictive criteria. No statement in this chapter is intended or may be construed to prohibit the city from establishing specific wastewater discharge criteria more restrictive where wastes are determined to be harmful or destructive to the facilities of the POTW or to create a public nuisance, or to cause the discharge of the POTW to violate effluent or stream quality standards, or to interfere with the use or handling of sludge, or to pass through the POTW resulting in a violation of the NPDES permit, or to exceed industrial pretreatment standards for discharge to municipal wastewater treatment systems as imposed or as may be imposed by the Tennessee Department of Health and Environment and/or the United States Environmental Protection Agency.

(6) Accidental discharges. (a) Protection from accidental discharge. All industrial users shall provide such facilities and institute such procedures as are reasonably necessary to prevent or minimize the potential for accidental discharge into the POTW of waste regulated by this chapter from liquid or raw material storage areas, from truck and rail car loading and unloading areas, from in-plant transfer or processing and materials handling areas, and from like areas or holding ponds of any waste regulated by this chapter. Detailed plans showing the facilities and operating procedures shall be submitted to the city before the facility is constructed.

The review and approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility to provide the protection necessary to meet the requirements of this chapter.

(b) Notification of accidental discharge. Any person causing or suffering from any accidental discharge shall immediately notify the board of mayor and aldermen (or designated official) in person, by the telephone to enable countermeasures to be taken by the city to minimize damage to the POTW, the health and welfare of the public, and the environment.

This notification shall be followed, within five (5) days of the date of occurrence, by a detailed written statement describing the cause of the accidental discharge and the measures being taken to prevent future occurrence.

Such notification shall not relieve the user of liability for any expense, loss, or damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or state or federal law.

- (c) Notice to employees. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure. In lieu of placing notices on bulletin boards, the users may submit an approved SPIC. Each user shall annually certify to the city compliance with this paragraph. (1987 Code, § 8-307)
- 18-208. Fats, oils and grease traps and interceptors. (1) Fat, oil, and grease (FOG), waste food, and sand interceptors. FOG, waste food and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing fats, oils, and grease, any flammable wastes, ground food waste, sand, soil, and solids, or other harmful ingredients in excessive amount which impact the wastewater collection system. Such interceptors shall not be required for single family residences, but

may be required on multiple family residences. All interceptors shall be of a type and capacity approved by the superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection.

- (2) <u>Fat, oil, grease, and waste food</u>. (a) New construction and renovation. Upon construction or renovation, all restaurants, cafeterias, hotels, motels, hospitals, nursing homes, schools, grocery stores, prisons, jails, churches, camps, caterers, manufacturing plants and any other sewer users who discharge applicable waste shall submit a FOG and food waste control plan that will effectively control the discharge of FOG and food waste.
- (b) Existing structures. All existing restaurants, cafeterias, hotels, motels, hospitals, nursing homes, schools, grocery stores, prisons, jails, churches, camps, caterers, manufacturing plants and any other sewer users who discharge applicable waste shall be required to submit a plan for control of FOG and food waste, if and when the superintendent determines that FOG and food waste are causing excessive loading, plugging, damage or potential problems to structures or equipment in the public sewer system.
- (c) Implementation of plan. After approval of the FOG plan by the superintendent the sewer user must:
  - (i) Implement the plan within a reasonable amount of time;
  - (ii) Service and maintain the equipment in order to prevent adverse impact upon the sewer collection system and treatment facility. If in the opinion of the superintendent the user continues to impact the collection system and treatment plan, additional pretreatment may be required, including a requirement to meet numeric limits and have surcharges applied.
- (3) <u>Sand, soil, and oil interceptors</u>. All car washes, truck washes, garages, service stations and other sources of sand, soil, and oil shall install effective sand, soil, and oil interceptors. These interceptors shall be sized to effectively remove sand, soil, and oil at the expected flow rates. The interceptors shall be cleaned on a regular basis to prevent impact upon the wastewater collection and treatment system. Owners whose interceptors are deemed to be ineffective by the superintendent may be asked to change the cleaning frequency or to increase the size of the interceptors. Owners or operators of washing facilities will prevent the inflow of rainwater into the sanitary sewers.
- (4) <u>Laundries</u>. Commercial laundries shall be equipped with an interceptor with a wire basket or similar device, removable for cleaning, that prevents passage into the sewer system of solids inch (1/2") or larger in size such as strings, rags, buttons, or other solids detrimental to the system.
- (5) <u>Control equipment</u>. The equipment of facilities installed to control FOG, food waste, sand and soil, must be designed in accordance with the plumbing code currently enforced by the City of Baxter and Tennessee

Department of Environment and Conservation engineering standards. Underground equipment shall be tightly sealed to prevent inflow of rainwater and easily accessible to allow regular maintenance. Control equipment shall be maintained by the owner or operator of the facility so as to prevent a stoppage of the public sewer, and the accumulation of FOG in the lines, pump stations and treatment plant. If the city is required to clean out the public sewer lines as a result of a stoppage resulting from poorly maintained control equipment, the property owner shall be required to refund the labor, equipment, materials and overhead costs to the city. Nothing in this subsection shall be construed to prohibit or restrict any other remedy the city has under this chapter, or state or federal law.

The city retains the right to inspect and approve installation of control equipment.

(6) The superintendent may use industrial wastewater discharge permits under § 18-206 to regulate the discharge of fat, oil and grease. (Ord. #2004-2, Feb. 2004)

18-209. <u>Industrial user monitoring, inspection reports, records access, and safety</u>. (1) <u>Monitoring facilities</u>. The installation of a monitoring facility shall be required for all industrial users. A monitoring facility shall be a manhole or other suitable facility approved by the city.

When in the judgment of the city, there is a significant difference in wastewater constituents and characteristics produced by different operations of a single user the city may require that separate monitoring facilities be installed for each separate source of discharge.

Monitoring facilities that are required to be installed shall be constructed and maintained at the user's expense. The purpose of the facility is to enable inspection, sampling and flow measurement of wastewater produced by a user. If sampling or metering equipment is also required by the city, it shall be provided and installed at the user's expense.

The monitoring facility will normally be required to be located on the user's premises outside of the building. The city may, however, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street right-of-way with the approval of the public agency having jurisdiction of that right-of-way and located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expenses of the user.

(2) <u>Inspection and sampling</u>. The city shall inspect the facilities of any user to ascertain whether the purpose of this chapter is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the city or their representative

ready access at all reasonable times to all parts of the premises for the purpose of inspection, sampling, records examination or in the performance of any of their duties. The city, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the city, approval authority and EPA will be permitted to enter, without delay, for the purposes of perform in their specific responsibility.

- (3) Compliance date report. Within one hundred eighty (180) days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit to the city a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user, and certified to by a professional engineer registered to practice engineering in Tennessee.
  - (4) Periodic compliance reports. (a) Any user subject to a pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the city during the months of June and December, unless required more frequently in the pretreatment standard or by the city, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards and requirements.

In addition, this report shall include a record of all daily flows which during the reporting period exceeded the average daily flow. At the discretion of the city and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the city may agree to alter the months during which the above reports are to be submitted.

- (b) The city may impose mass limitations on users where the imposition of mass limitations are appropriate. In such cases, the report required by subparagraph (a) of this paragraph shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user.
- (c) The reports required by this section shall contain the results of sampling and analysis of the discharge, including the flow and the

nature and concentration or production and mass where requested by the city of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the wastewater discharge permit or the pretreatment standard. All analysis shall be performed in accordance with procedures established by the administrator pursuant to § 304(g) of the Act and contained in 40 CFR, and amendments thereto. Sampling shall be performed in accordance with techniques approved by the administrator.

- (5) <u>Maintenance of records</u>. Any industrial user subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:
  - (a) The date, exact place, method, and time of sampling and the names of the persons taking the samples;
    - (b) The dates analyses were performed;
    - (c) Who performed the analyses;
    - (d) The analytical techniques/methods used; and
    - (e) The results of such analyses.

Any industrial user subject to the reporting requirement established in this section shall be required to retain for a minimum of three (3) years all records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the city, director of the division of water quality control, Tennessee Department of Health and Environment or the Environmental Protection Agency. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or when requested by the city, the approval authority, or the Environmental Protection Agency.

- (6) <u>Safety</u>. While performing the necessary work on private properties, duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the city employees and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the monitoring and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions. (1987 Code, § 8-308)
- **18-210.** Enforcement and abatement. (1) Issuance of cease and desist orders. When the city finds that a discharge of wastewater has taken place in violation of prohibitions or limitations of this chapter, or the provisions of a wastewater discharge permit, the city shall issue an order to cease and desist, and direct that these persons not complying with such prohibitions, limits requirements, or provisions to:
  - (a) Comply immediately;

- (b) Comply in accordance with a time schedule set forth by the city;
- (c) Take appropriate remedial or preventive action in the event of a threatened violation; or
- (d) Surrender the applicable user's permit if ordered to do so after a show cause hearing.

Failure of the city to issue a cease and desist order to a violating user shall not in any way relieve the user from any consequences of a wrongful or illegal discharge.

- (2) <u>Submission of time schedule</u>. When the city finds that a discharge of wastewater has been taking place in violation of prohibitions or limitations prescribed in this chapter, or wastewater source control requirements, effluent limitations of pretreatment standards, or the provisions of a wastewater discharge permit, the city shall require the user to submit for approval, with such modifications as it deems necessary, a detailed time schedule of specific actions which the user shall take in order to prevent or correct a violation of requirements. Such schedule shall be submitted to the city within thirty (30) days of the issuance of the cease and desist order.
  - (3) Show cause hearing. (a) The city may order any user who causes or allows an unauthorized discharge to enter the POTW to show cause before the board of mayor and aldermen why the proposed enforcement action should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the board of mayor and aldermen regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause before the board of mayor and aldermen why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing.
  - (b) The board of mayor and aldermen may itself conduct the hearing and take the evidence, or the board of mayor and aldermen may appoint a person to:
    - (i) Issue in the name of the board of mayor and aldermen notice of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
      - (ii) Take the evidence;
    - (iii) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the board of mayor and aldermen for action thereon.
  - (c) At any hearing held pursuant to this chapter, testimony taken must be under oath and recorded. The transcript, so recorded, will be

made available to any member of the public or any party to the hearing upon payment of reproduction costs.

- (d) After the board of mayor and aldermen or the appointed persons have reviewed the evidence, it/they may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities, and that these devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.
- (4) <u>Legal action</u>. If any person discharges sewage, industrial wastes, or other wastes into the city's wastewater disposal system contrary to the provisions of this chapter, federal or state pretreatment requirements, or any order of the city, the city attorney may commence an action for appropriate legal and/or equitable relief in a court of competent jurisdiction.
- (5) <u>Emergency termination of service</u>. The city may suspend the wastewater treatment service and/or a wastewater contribution permit when such suspension is necessary, in the opinion of the city, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes the city to violate any condition of its NPDES permit.

Any person notified of a suspension of the wastewater treatment service and/or the wastewater contribution permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the city shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The city shall reinstate the wastewater contribution permit and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the city within fifteen (15) days of the date of occurrence.

- (6) <u>Public nuisance</u>. Discharges or wastewater in any manner in violation of this chapter or of any order issued by the board of mayor and aldermen or its designated representative as authorized by this chapter is hereby declared a public nuisance and shall be corrected or abated as directed by the board of mayor and aldermen. Any person creating a public nuisance shall be subject to the provisions of the city code of ordinances governing such nuisance.
- (7) <u>Correction of violation and collection of costs</u>. In order to enforce the provisions of this chapter, the city shall correct any violation hereof. The cost of such correction shall be added to any sewer service charge payable by the person violating this chapter or the owner or tenant of the property upon which the

violation occurs, and the city shall have such remedies for the collection of such costs as it has for the collection of sewer service charges.

- (8) <u>Damage to facilities</u>. When a discharge of wastes causes an obstruction, damage, or any other physical or operational impairment to facilities, the city shall assess a charge against the user for the work required to clean or repair the facility and add such charge to the user's sewer service charge.
- (9) <u>Civil liabilities</u>. Any person or user who intentionally or negligently violates any provision of this chapter, requirements, or conditions set forth in permit duly issued, or who discharges wastewater which causes pollution or violates any cease and desist order, prohibition, effluent limitation, national standard or performance, pretreatment, or toxicity standard, shall be liable civilly.

The City of Baxter shall sue for such damage in any court of competent jurisdiction. (1987 Code, § 8-309)

- 18-211. Penalties; costs. Civil penalties. Any user who is found to have violated an order of the board of mayor and aldermen or its designated representative, or who willfully or negligently failed to comply with any provision of this chapter, and the order, rules, regulations and permits issued hereunder, shall be fined not less than fifty dollars (\$50.00) for each offense. Each day of which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the city may recover reasonable attorney's fees, engineering fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person found to have violated this chapter or the person found to have violated this chapter or the orders, rules, regulations, and permits issued hereunder. (1987 Code, § 8-310)
- **18-212.** <u>Fees and billing</u>. (1) <u>Purpose</u>. It is the purpose of this chapter to provide for the equitable recovery of costs from users of the city's wastewater treatment system including costs of operation, maintenance, administration, bond service costs, capital improvements, depreciation, and equitable cost recovery of EPA administered federal wastewater grants.
- (2) <u>Types of charges and fees</u>. The charges and fees as established in the city's schedule of charges and fees may include but are not limited to:
  - (a) Inspection fee and tapping fee;
  - (b) Fees for applications for discharge;
  - (c) Sewer use charges;
  - (d) Surcharge fees;
  - (e) Industrial wastewater discharge permit fees;
  - (f) Fees for industrial discharge monitoring; and
  - (g) Other fees as the city may deem necessary.

- (3) Fees for application for discharge. A fee may be charged when a user or prospective user makes application for discharge as required by § 18-206 of this chapter.
- (4) <u>Inspection fee and tapping fee</u>. An inspection fee and tapping fee for a building sewer installation shall be paid to the city's sewer department at the time the application is filed.
- (5) <u>Sewer user charges</u>.<sup>1</sup> The board of mayor and aldermen shall establish monthly rates and charges for the use of the wastewater system and for the services supplied by the wastewater system.
- (6) <u>Industrial wastewater discharge permit fees</u>. A fee may be charged for the issuance of an industrial wastewater discharge fee in accordance with § 18-206 of this chapter.
- (7) <u>Fees for industrial discharge monitoring</u>. Fees may be collected from industrial user's having pretreatment or other discharge requirements to compensate the city for the necessary compliance monitoring and other administrative duties of the pretreatment program. (1987 Code, § 8-311)
- **18-213.** <u>Validity</u>. This chapter and its provisions shall be valid for all service areas, regions, and sewage works under the jurisdiction of the City of Baxter, Tennessee. (1987 Code, § 8-312)

<sup>&</sup>lt;sup>1</sup>Such rates are reflected in administrative ordinances or resolutions, which are of record in the office of the city recorder.

#### **CHAPTER 3**

### CROSS CONNECTIONS, AUXILIARY INTAKES, ETC.

#### **SECTION**

- 18-301. Definitions.
- 18-302. Compliance with <u>Tennessee Code Annotated</u>.
- 18-303. Regulated.
- 18-304. Statement required.
- 18-305. Inspections.
- 18-306. Correction of violations.
- 18-307. Required protective device.
- 18-308. Non-potable supplies.
- 18-309. Provision applicable.
- 18-310. Penalty.
- **18-301.** <u>**Definitions**</u>. The following definitions and terms shall apply in the interpretation and enforcement of this chapter.
- (1) "Auxiliary intake." Any piping connection or other device whereby water may be secured from a source other than that normally used.
- (2) "Bypass." Any system of piping or other arrangement whereby the water may be diverted around any part or portion of a water purification plant.
- (3) "Cross connection." Any physical arrangement whereby a public water system is connected, directly or indirectly, with any other water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device which contains, or may contain, contaminated water, sewage, or other waste or liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water system as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices through which, or because of which, backflow could occur are considered to be cross connections.
- (4) "Interconnection." Any system of piping or other arrangement whereby the public water system is connected directly with a sewer, drain, conduit, pool, storage reservoir, or other device which does or may contain sewage or other waste or liquid which would be capable of imparting contamination to the public water system.
- (5) "Person." Any individual, corporation, company, association, partnership, state, municipality, utility district, water cooperative, or federal agency.
- (6) "Public water system." The waterworks system which furnishes water to Baxter and certain surrounding areas of general use and which is recognized as a public water system by the Tennessee Department of Health and Environment.

- (7) "Superintendent." That person in charge of the operation of the Baxter water system or the authorized representative of that person. (Ord. #2007-3, March 2007)
- 18-302. <u>Compliance with Tennessee Code Annotated</u>. The Baxter public water system is to comply with <u>Tennessee Code Annotated</u>, §§ 68-13-701 through 68-13-719, as well as the rules and regulations for public water systems, legally adopted in accordance with this code, which pertains to cross connections, auxiliary intakes, bypasses, and interconnections, and establish an effective on-going program to control these undesirable water uses. (Ord. #2007-3, March 2007)
- 18-303. <u>Regulated</u>. It shall be unlawful for any person to cause a cross connection to be made, or allow one to exist for any purpose whatsoever unless the construction and operation of same have been approved by the Tennessee Department of Health and Environment, and the operation of such cross connection, auxiliary intake, bypass, or interconnection is at all time under the direct supervision of the superintendent of the such as manager of the Baxter public water system.<sup>1</sup> (Ord. #2007-3, March 2007)
- 18-304. <u>Statement required</u>. Any person whose premises are supplied with water from the public water supply, and who also has on the same premises a separate source of water supply or stores water in an uncovered or unsanitary storage reservoir from which the water stored therein is circulated through a piping system, shall file with the superintendent a statement of the non-existence of unapproved or unauthorized cross connections, auxiliary intakes, bypasses, or interconnections. Such statement shall also contain an agreement that no cross connection, auxiliary intake, bypass, or in interconnection will be permitted upon the premises. (Ord. #2007-3, March 2007)
- 18-305. <u>Inspections</u>. The superintendent shall inspect all properties served by the public water supply where cross connections with the public water supply are deemed possible. The frequency of inspections and re-inspections based on potential health hazards involved shall be established by the superintendent in accordance with guidelines acceptable to Tennessee Department of Health and Environment.

The superintendent or authorized representative shall have the right to enter at any reasonable time any property served by a connection to the Baxter public water system for the purpose of inspecting the piping system therein for

<sup>&</sup>lt;sup>1</sup>The "Cross Connection Control Plan for Baxter, Tennessee" adopted with Ord. #2007-3, March 2007, is available for inspection in the office of the city recorder.

cross connections, auxiliary intakes, bypasses or interconnections. On request, the owner, lessee, or occupant of any property so served shall furnish any pertinent information regarding the piping system on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross connections. (Ord. #2007-3, March 2007)

18-306. <u>Correction of violations</u>. Any person who now has cross connections, auxiliary intakes, bypasses, or interconnections in violation of the provisions of this chapter shall be allowed a reasonable time within which to comply with provisions of this chapter. After a thorough investigation of existing conditions and an appraisal of time required to complete the work, the amount of time shall be designated by the superintendent.

The failure to correct conditions threatening the safety of the public water system as prohibited by this chapter and <u>Tennessee Code Annotated</u>, § 68-13-711, within the time limits set by the Baxter public water system, shall be grounds for denial of water service. If proper protection has not been provided after a reasonable time, the superintendent shall give the customer legal notification that water service is to be discontinued, and physically separate the public water system from the customer's on-site piping system in such a manner that the two systems cannot again by connected by an unauthorized person.

Where cross connections, interconnections, auxiliary intakes, or bypasses are found that constitute an extreme hazard of immediate concern of contaminating the public water system, the superintendent of the water system shall require that immediate corrective action be taken to eliminate the threat to the public water system. Immediate steps shall be taken to disconnect the public water system from the on-site piping system unless the imminent hazard is corrected immediately. (Ord. #2007-3, March 2007)

**18-307.** Required protective device. Where the nature of use of the water supplied a premises by the water system is such that it is deemed:

- (1) Impractical to provide an effective air-gap separation.
- (2) The owner and/or occupant of the premises cannot, or is not willing, to demonstrate to the superintendent or his designated representative that the water use and protective features of the plumbing are such as to pose no threat to the safety or potability of the water.
- (3) The nature and mode of operation within a premises are such that frequent alterations are made to the plumbing.
- (4) There is a likelihood that protective measures may be subverted, altered, or disconnected. Then the superintendent shall require the use of an approved protective device on the service line serving the premises to assure that any contamination that may originate in the customer's premise is contained therein. The protective devices shall be reduced pressure zone type backflow preventers approved by the Tennessee Department of Health and Environment as to manufacture, model, and size. The method of installation of backflow

protective devices shall be approved by the superintendent prior to installation and shall comply with the criteria set forth by the Tennessee Department of Health and Environment. The installation shall be at the expense of the owner or occupant of the premises.

Personnel of the Baxter Public Water System shall have the right to inspect and test the device on an annual basis or whenever deemed necessary by the superintendent.

Water service shall not be disrupted to test the device without the knowledge of the occupant of the premises.

Where the use of water is critical to the continuance of normal operations or protection of life, property, or equipment, duplicate units shall be provided to avoid the necessity of discontinuing water service to test or repair the protective device. Where it is found that only one (1) unit has been installed and the continuance of service is critical, the superintendent shall notify, in writing the occupant of the premises of plans to discontinue water service and arrange for a mutually acceptable time to test or repair the device. The water system shall require the occupant of the premises to make all repairs indicated promptly, and to keep any protective device working properly. The expense of such repairs shall be borne by the owner or occupant of the premises. Repairs shall be made by qualified personnel, acceptable to the superintendent.

The failure to maintain a backflow prevention device in proper working order shall be grounds for discontinuing water service to a premises. Likewise the removal, bypassing, or altering protective device or the installation thereof so as to render a device ineffective shall constitute grounds for discontinuance of water service. Water service to such premises shall not be restored until the customer has corrected or eliminated such conditions or defects to the satisfaction of the superintendent. (Ord. #2007-3, March 2007)

**18-308.** <u>Non-potable supplies</u>. The potable water system made available to premises served by the public water system shall be protected from possible contamination as specified herein. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as:

# WATER UNSAFE FOR DRINKING

Minimum acceptable sign shall have black letters at least one inch (1") high located on a red background. (Ord. #2007-3, March 2007)

18-309. <u>Provision applicable</u>. The requirements contained herein shall apply to all premises served by the Baxter public water system whether located inside or outside the corporate limits and are hereby made a part of the conditions required to be met for the city to provide water services to any

premises. Such action, being essential for the protection of the water distribution system against the entrance of contamination which my render the water unsafe health-wise, or otherwise undesirable, shall be enforced rigidly without regard to location of the premises, whether inside or outside the Baxter corporate limits. (Ord. #2007-3, March 2007)

**18-310.** <u>Penalty</u>. Any person who neglects or refuses to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be fined not less than ten dollars (\$10.00) not more than fifty dollars (\$50.00), and each day of continued violation shall constitute a separate offense. (Ord. #2007-3, March 2007)

#### **CHAPTER 4**

### SPECIAL ASSESSMENT ZONE

#### **SECTION**

- 18-401. Definition.
- 18-402. Use of fees collected.
- 18-403. Future upgrades.
- 18-404. Fees assessed: residential connections.
- 18-405. Fees assessed: commercial connections.
- 18-406. Application.
- 18-407. Payment by developer: calculation.
- 18-408. Amendment: notice.
- **18-401.** <u>Definition</u>. The "special assessment zone," shall be defined as the area within the City of Baxter wastewater service area located east of Highway 56 and south of I-40 and as shown in the "special assessment zone map" on file in the city recorder's office. (Ord. #2008-22, Feb. 2009, modified)
- 18-402. <u>Use of fees collected</u>. The collection of the "special assessment fee" shall be used for the repayment of funds and/or indebtedness, interest, and projected depreciation incurred for the expansion of the described extension of wastewater services only into the expansion of the described extension of wastewater services only into the "special assessment zone" as well as any necessary wastewater system future upgrades specifically necessary to support growth as needed within the "special assessment zone" and/or the conveyance system directly to the Waste Water Treatment Plant (WWTP) and/or the expansion or upgrade of said WWTP. (Ord. #2008-22, Feb. 2009)
- 18-403. <u>Future upgrades</u>. Said future upgrades being acknowledged by the Mayor and Board of Aldermen of the City of Baxter, and known to be necessary when the daily flows within the defined "special assessment zone" combined with the peak daily flows of the collection system and pump station defined as "Baxter Junction/Love's Pump Station" exceed one hundred fifty thousand (150,000) gallons per day. Future upgrades to be determined based upon the most cost effective and timely alternative as upgrades of gravity collections along 1<sup>st</sup> Ave., force main directly to the WWTP, and/or expansion/upgrade of the WWTP as necessary. (Ord. #2008-22, Feb. 2009)
- 18-404. Fees assessed: residential connections. The "Special Assessment Fee" (SAF) shall be one thousand six hundred twenty dollars (\$1,620.00) per Standard Residential Unit (SRU). A standard residential unit shall be defined as the average daily demand of two hundred fifty (250) gallons per day (gpd) for a typical (three (3) bedroom) single family dwelling, and shall

be the minimum fee unit. Any connection or demand that exceeds one (1) SRU shall be a direct multiplier of the SAF x the equivalent number of SRUs. (see example below)

```
3 BR House = 1 SRU x $1,620.00 = $1,620.00  
4 BR House = 1.33 SRU x $1,620.00 = $2,154.60  
6 BR House = 2 SRU x $1,620.00 = $3,240.00  
Business (2,500 gpd/ 250 gpd = 10 SRU x $1,620.00 = $16,200.00) (Ord. #2008-22, Feb. 2009)
```

- 18-405. Fees assessed: commercial connections. In the case of commercial, industrial, retail, or other connections the equivalent number of SRUs that shall be the multiplier of the SAF shall be defined by the customer or customer's agent and approved by the City of Baxter or Baxter's engineer based upon the required peak daily flow demand as defined by either Tennessee Department of Environment and Conservation for fixture counts and type of facility use, sample data from a similar size and use facility in another location, or other method of calculation of peak daily flow demand to be approved by the City of Baxter and/or Baxter's engineer. (Ord. #2008-22, Feb. 2009)
- **18-406.** <u>Application</u>. The SAF is for the recovery of funds and indebtedness as described herein, and this chapter shall have no impact on the standard connection fees or service rates that are defined and published for all sewer service customers. Customers within the "special assessment zone" shall be subject to all other standard connection fees and service rates as applicable. (Ord. #2008-22, Feb. 2009)
- 18-407. Payment by developer: calculation. The SAF is due and payable to the City of Baxter by the developer at the time of application for service and shall be paid prior to connection to the wastewater collection system. The City of Baxter agrees to provide service for the peak daily capacity as defined in the special assessment fee. Since the equivalent number of SRUs cannot be determined for unsold lots, the SAF will initially be based upon one (1) SRU per half (1/2) acre of each lot. If the area of a lot exceeds any half (1/2) acre increment, the acreage will be rounded to the next subsequent half (1/2) acre. (See example below)

```
(1.62 \text{ acres rounded to } 2 \text{ acres } x \text{ 1 SRU per half acre} = 4 \text{ SRUs } x \$1,620.00 = \$6,480.00)
(1.03 \text{ acres rounded to } 1.5 \text{ acres } x \text{ 1 SRU per half acre} = 3 \text{ SRUs } x \$1,620.00 = \$4,860.00)
```

When a lot sells and a use is determined and approved for that lot, the peak daily flow demand will be calculated as provided in § 18-404. At that time, if the number of SRUs exceeds one (1) per half (1/2) acre as determined above, the

additional SRUs will be paid for by the Baxter utility department customer before a sewer tap can be purchased for that lot. (Ord. #2008-22, Feb. 2009)

18-408. <u>Amendment: notice</u>. The City of Baxter reserves the right to amend the special assessment zone to recover any future cost or indebtedness, but prior to any amendment of this chapter or amendment to the system of establishing the "special assessment fee" or the description of the "special assessment zone," the City of Baxter shall publish notice of the proposed amendment in accordance with standard practices. (Ord. #2008-22, Feb. 2009)

#### **TITLE 19**

### **ELECTRICITY**

#### **CHAPTER**

- 1. ELECTRICITY.
- 2. GAS.

### CHAPTER 1

## **ELECTRICITY**

### **SECTION**

19-101. To be furnished by Upper Cumberland Electric Membership Corporation, Carthage, Tennessee.

19-101. To be furnished by Upper Cumberland Electric Membership Corporation, Carthage, Tennessee. Electricity shall be provided to the City of Baxter and its inhabitants by the Upper Cumberland Electric Membership Corporation, Carthage, Tennessee. The rights, powers, duties, and obligations of the City of Baxter and its inhabitants, are stated in the agreements between the parties. (1987 Code, § 13-301)

<sup>&</sup>lt;sup>1</sup>The agreements are of record in the office of the city recorder.

## **CHAPTER 2**

## **GAS**

## **SECTION**

19-201. To be furnished under franchise.

19-201. To be furnished under franchise. Gas service shall be furnished for the municipality and its inhabitants under such franchise as the governing body shall grant. The rights, powers, duties, and obligations of the municipality, its inhabitants, and the grantee of the franchise shall be clearly stated in the written franchise agreement which shall be binding on all parties concerned.<sup>1</sup> (1987 Code, § 13-401)

<sup>&</sup>lt;sup>1</sup>The agreements are of record in the office of the city recorder.

### **TITLE 20**

## **MISCELLANEOUS**

### **CHAPTER**

- 1. HOUSE OR STREET ADDRESS NUMBERS.
- 2. BURGLARY AND ROBBERY ALARMS.

### CHAPTER 1

# **HOUSE OR STREET ADDRESS NUMBERS**

### **SECTION**

20-101. House or street address numbers required.

**20-101.** <u>House or street address numbers required</u>. Each dwelling or commercial building must have house numbers or street address numbers posted in a conspicuous location to the building. The numbers shall be of such a size, color and material to be readable from the street in front of such building. (1987 Code, § 4-501)

#### **CHAPTER 2**

### BURGLARY AND ROBBERY ALARMS

#### SECTION

- 20-201. Definitions.
- 20-202. Alarm system requirements, generally.
- 20-203. Permits required.
- 20-204. Permit application.
- 20-205. Permit fees.
- 20-206. Terms of permit and renewal.
- 20-207. Inspection of alarm systems.
- 20-208. Current information required.
- 20-209. Determination of false alarm.
- 20-210. Malicious false alarm.
- 20-211. Appeals.
- 20-212. Fee assessment.
- 20-213. Notices.
- 20-214. Penalty.
- **20-201.** <u>**Definitions**</u>. As used in this chapter, unless the context otherwise requires:
- (1) "Alarm system" means a device or system of interconnected devices, including hardware and related appurtenances, mechanical or electrical, designed to give warning of activities, indicative of felony and criminal conduct requiring urgent attention and to which the police department is expected to respond, but does not include alarms installed in motor vehicles or fire alarms.
- (2) "Alarm user" means the person, firm, partnership, association, corporation, company or organization of any kind in control of any building, structure, or facility or portion thereof, wherein an alarm system is maintained.
- (3) "Annunciator" means that part of an alarm system, other than an automatic dialer, which communicates the fact that the system has been triggered.
- (4) "Answering service" means a telephone answering service providing, among its services, the receiving, through trained employees, of emergency signals from alarm systems and the relaying of the message by live voice to the communications center of the Baxter Police Department.
- (5) "Audible annunciator" means an annunciator which gives alarm by means of a bell, siren, buzzer or similar sound producing device mounted at some location, other than wholly within a building; or which, when activated, is clearly audible at a distance of fifty feet (50') or more outside of any building in which it is mounted.

- (6) "Automatic dialer" means a device, which is programmed to select a telephone number and deliver a warning message or signal over standard telephone lines using telephone voice communication equipment.
- (7) "Chief" means the Chief of Police of the City of Baxter, or a police officer under his jurisdiction designed by him to exercise any power or duty conferred under this chapter.
- (8) "City of Baxter telephone line" means a telephone line, which rings or terminates on the premises of the City of Baxter, or dispatch center for the City of Baxter Police Department.
  - (9) "Department" means the City of Baxter Police Department.
- (10) "False alarm" means any activation of an alarm system upon or following which communication is made to the department that an alarm has been triggered, except alarms resulting from one of the following causes:
  - (a) Criminal activity or unauthorized entry.
  - (b) Earthquake causing structural damage to the protected premises.
  - (c) Tornado winds causing structural damage to the protected premises.
  - (d) Flooding of the protected premises due to overflow of natural drainage.
  - (e) A lightning bolt causing physical damage to the protected premises.
  - (f) Fire causing structural damage to the protected premises verified by the fire department.
  - (g) Telephone line malfunction verified in writing upon the request of the chief of police or his designee to the department by at least a first line telephone company supervisor within seven (7) days of the occurrence.

If the alarm, when communicated to the department before an officer is dispatched to investigate is clearly identified to the department as resulting from authorized entry, authorized system test, or other non-criminal cause, it shall not be considered as a false alarm. If police units, responding to an alarm and checking the protected premises according to standard department operating procedure, do not discover any evidence of unauthorized entry or criminal activity, there shall be a rebuttable presumption that the alarm is false.

- (11) "Fiscal year" means June 30th through July 1st.
- (12) "Hearing officer" means an employee of the City of Baxter designated by the chief of police to act as an impartial arbitrator at hearings related to the enforcement of the herein chapter.
- (13) "Malicious false alarm" means the intentional false reporting to the police of a police emergency condition, or the intentional setting off of an alarm which will cause another to report the signal to the police. However, this

definition is not to include the testing of an alarm system when proper notification has been made to the police department.

- (14) "On-premise annunciator" means an annunciator which is designed to give waning only to a person or persons on the protected premises, and which is neither an "audible" or "remote" annunciator as those terms are defined in this section.
- (15) "Person" means any natural person or individual or any firm, partnership, association, limited partnership, sole proprietorship or corporation of any business entity.
- (16) "Protected premises" means that all of that contiguous area, including buildings, protected by a single alarm system and under common ownership and use.
- (17) "Remote annunciator" means an annunciator located at a terminal not a part of the protected premises.
- (18) "Sensor" means that part of an alarm system which is designed to detect the happenings of some event or existence of some condition indicative of criminal activity or unauthorized entry.
- (19) "Special trunk line" means a telephone line leading into the communications center of the police department and having the primary purpose of handling emergency or messages originating either directly or through a central location from an automatic dialer.
- (20) "Telephone company" means the publicly regulated industry that furnishes telephone communication services to the City of Baxter.
- (21) "Visual annunciator" means an annunciator installed entirely on the protected premises and which gives inaudible warning by means of a flashing light or other visible signal. (Ord. #2002-12, Feb. 2003)
- **20-202.** Alarm system requirements, generally. (1) No alarm system shall be installed, used or maintained in violation of any of the requirements of this code, or any applicable statute, law or administrative regulation of the United States of America, the State of Tennessee, or any administrative rule-making body thereof.
- (2) The alarm user shall be responsible for the actions and omissions of family members and other persons who may make regular use of the protected premises and who may, in the normal course of their activities, be in a position to accidentally trigger a sensor.
- (3) The alarm user shall, at all times, be responsible for the proper maintenance and repair of the system, and for the repair or replacement of any component, method of installment, design feature or like condition which may give rise to a false alarm.
- (4) All alarm systems shall have a back-up power supply that will become effective in the event of power failure or outage in the source of electricity from the utility company. (Ord. #2002-12, Feb. 2003)

- **20-203.** <u>Permits required</u>. (1) It shall be unlawful for any person to use or maintain any alarm system without a current valid permit therefore:
- (2) No permit shall be required for an exempt alarm system as defined in § 3 (no exemptions provided and no § 3 in ordinance need instruction from city), and the provisions of this chapter shall not apply to such systems.
- (3) In the event police investigate an alarm, the permit holder or an agent shall cooperate by promptly coming the to premises upon request. Refusal shall constitute grounds for suspension or revocation of a permit.
- (4) If an alarm user has one (1) or more alarm systems protecting two (2) or more structures having different addresses, a separate permit will be required for each structure.
- (5) On or after the adoption of this chapter, a permit will not be issued for any alarm system wherein the protected premises is located outside the corporate limits of the City of Baxter. (Ord. #2002-12, Feb. 2003)
- **20-204.** <u>Permit application</u>. Each application for an alarm system permit shall be made on a form prescribed by the chief, and shall contain the following information:
- (1) The name, address, and telephone number of the principal of the protected premises.
- (2) The type of premises (home, office, variety-store, etc.) and any business name by which the premises is known.
- (3) The address of the protected premises; including, if it is in a residential, commercial or industrial complex (office building, apartment house, shopping center, etc.), any name by which the complex is commonly known.
- (4) The names, addresses and telephone numbers, including home phone numbers, of all agents.
- (5) The number and type of annunciator and automatic dialers which the alarm system incorporates, the location of all remote annunciators, and the names and phone numbers of all persons or businesses which are or may be preselected for automatic dialer contact.
- (6) Each application shall list an emergency telephone number of the alarm user or his representative to permit prompt notification of alarm calls and facilities assisting the police in the inspection of the property. Changes in emergency telephone numbers shall be kept current, and failure to provide updated information may constitute grounds for revocation of the permit.
- (7) The application shall be accompanied by the fee prescribed under § 20-205.
- (8) The application for all alarm systems shall list the name and phone number of at least one (1) responsible person (other than the principal or a member of his household) having access to the premises who may be notified and assist the police in the event the alarm is activated. Said person must reside in Putnam County. The principal shall immediately notify the chief of police of any changes in this information. (Ord. #2002-12, Feb. 2003)

- **20-205.** <u>Permit fees</u>. The fees for alarm system permit and renewals shall be as follows:
- (1) The initial registration fee for all alarms shall be fifteen dollars (\$15.00).
- (2) An annual renewal fee of fifteen dollars (\$15.00) shall be paid for all alarm systems having more than three (3) false alarms during the fiscal year.
- (3) Said registration fees are payable to the City of Baxter and are separate and distinct from any fees which may be payable to alarm companies maintaining alarm user systems. (Ord. #2002-12, Feb. 2003)
- **20-206.** Term of permit and renewal. (1) Alarm system permits shall expire on June 30 of each year.
- (2) Those alarm users whose systems have not been the source of more than three (3) false alarms in the previous twelve (12) month period shall have their permit automatically renewed without further application and shall have their annual renewal fee waived.
- (3) An alarm system permit shall automatically terminate upon any change of principal or protected premises. No permit may be transferred to another principal or protected premises. No refunds will be given on termination or suspension of any permit for any reason.
- (4) Renewal permits shall be dated July 1. The renewal application shall contain the principal's signed statement that there have been no changes in principal or protected premises.
- (5) Permits shall not be renewed if outstanding fines, fees or late charges, which have been incurred as a result of the use of the system, have not been paid. If the fines, fees or late charges are being processed through administrative channels or court system, then a permit may be issued or renewed.
- (6) Any alarm user who operates an alarm system without first obtaining a permit as required by this section, or who, after having a permit revoked or suspended and after exhausting his rights of appeal fails to disconnect his alarm system, shall be in violation of this chapter. (Ord. #2002-12, Feb. 2003)
- **20-207.** <u>Inspection of alarm systems</u>. Prior to issuing an alarm system permit, and at any time thereafter during the term thereof, the chief of police, or his designee, may inspect any alarm system for which a permit is required. Such inspection shall be for the purpose of ascertaining that information furnished by the applicant or permittee is correct, and that the system is maintained in conformance with the provisions of this chapter. (Ord. #2002-12, Feb. 2003)
- **20-208.** Current information required. Within ten (10) days following any change of circumstances which renders obsolete any of the

information submitted pursuant to § 20-204, the alarm user shall file an amendment to his application setting forth the currently accurate information. No additional fee shall be required unless the change has terminated the permit as provided in § 20-206(3). Failure to comply with this section shall constitute grounds for revocation of the permit. (Ord. #2002-12, Feb. 2003)

- **20-209.** Determination of false alarm. (1) Whenever an alarm is activated in the city, thereby requiring an emergency response to the location by the police department, and the police department does respond, a police officer on the scene of the activated alarm system shall inspect the area protected by the system and shall determine whether the emergency response was in fact required as indicated by the alarm system or whether in some way the alarm system malfunctioned and thereby activated a false alarm.
- (2) If the police officer at the scene of the activated alarm system determines the alarm to be false, said officer shall make a report of the false alarm, a notification of which shall be mailed or delivered to the alarm user, at the address of the said alarm system installation location, advising alarm user of the false alarm. (Ord. #2002-12, Feb. 2003)
- **20-210.** <u>Malicious false alarm</u>. Any person who shall maliciously cause a false alarm to be reported shall be in violation of this chapter. (Ord. #2002-12, Feb. 2003)
- **20-211.** <u>Appeals</u>. (1) A hearing officer shall be appointed by the chief of police to hear appeals from alarm users on the issue of whether the alarm system in question activated a false alarm, as determined by a police officer at the scene of such activated alarm.
- (2) Upon receipt of any false alarm report from the city, the alarm user shall have ten (10) days to request, in writing, a hearing before the said hearing officer.
- (3) At the hearing, which must be scheduled and concluded within fifteen (15) days from the date the request for said hearing is received, the alarm user shall have the right to present evidence and testimony.
- (4) The hearing officer shall make written findings available to the alarm user and the chief of police within ten (10) days from the date the hearing is concluded.
- (5) A decision by the chief of police, or his designee, to uphold or to cancel the false alarm report which is the subject of the herein section must be made within ten (10) days from the receipt of the above findings by the chief of police.
- (6) Until all of the steps set forth in this section have been completed, the false alarm in question will be considered to have been genuine and will not be considered the basis for the prima facie presumption that the involved alarm

system is malfunctioning, except as to any proceedings that may be instituted in the city court for a violation of this chapter.

- (7) The imposition of fees, actions and procedures for enforcement and regulation herein are declared to be cumulative and in addition to such court procedures as may be herein created or previously existing. Nothing in this section or in any other provisions of this chapter shall alter, control or modify the jurisdiction and procedure of the city court in those cases where one is charged with any act or omission which this chapter prohibits, declares to be unlawful, describes as a misdemeanor or is designated as a violation of this chapter. (Ord. #2002-12, Feb. 2003)
- **20-212.** <u>Fee assessment</u>. (1) It is hereby found and determined that all false alarms constitute a public nuisance. The permit holder will be billed a twenty-five dollar (\$25.00) service charge per false alarm occurrence after the third such false alarm in any fiscal year. Each service charge incurred shall be billed and payment shall be made within thirty (30) days from the date of receipt thereof. Failure to make payments within thirty (30) days from the date of receipt shall result in a discontinuance of police response to alarms that may occur at the premises described in the alarm user's permit until payment is received. Failure to make payment within sixty (60) days of receipt of the bill shall result in the user's permit being deemed to thereby be revoked.
- (2) Any permit revoked shall not be reinstated until all outstanding false alarm service charges are paid in full together with a fifteen dollar (\$15.00) reinstatement fee. There shall be no refund of any unused portion of a permit fee. (Ord. #2002-12, Feb. 2003)
- **20-213.** <u>Notices</u>. (1) Notice or billing from the city to any permit holder shall be deemed to have been given or rendered on the date such notice or billing is deposited in the U.S. mail, first class postage, prepaid addressed to the permit holder at the address shown in the city's permit records. A certificate signed by the person who mailed the notice shall be prima facie evidence of the facts stated therein with respect to such notice.
- (2) Notice to the city and payment under this chapter shall be effective when received at the appropriate city office. (Ord. #2002-12, Feb. 2003)
- **20-214.** Penalty. Any person who shall violate or fail to comply with any provision of this chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined accordingly. Each day during which violation is maintained or continued shall be deemed a separate offense. (Ord. #2002-12, Feb. 2003)

# APPENDIX A

# CODE OF ETHICS APPENDIX

# Appendix A

### 1. Campaign finance.

All candidates for the chief administrative office (mayor), any candidates who spend more than \$500, and candidates for other offices that pay at least \$100 a month are required to file campaign financial disclosure reports. Civil penalties of \$25 per day are authorized for late filings. Penalties up to the greater of \$10,000 or 15 percent of the amount in controversy may be levied for filings more than 35 days late. It is a Class E felony for a multicandidate political campaign committee with a prior assessment record to intentionally fail to file a required campaign financial report. Further, the treasurer of such a committee may be personally liable for any penalty levied by the Registry of Election Finance (T.C.A. § 2-10-101–118).

Contributions to political campaigns for municipal candidates are limited to:

- a. \$1,000 from any person (including corporations and other organizations);
- b. \$5,000 from a multicandidate political campaign committee;
- c. \$20,000 from the candidate;
- d. \$20,000 from a political party; and
- e. \$75,000 from multicandidate political campaign committees.

The Registry of Election Finance may impose a maximum penalty of \$10,000 or 115 percent of the amount of all contributions made or accepted in excess of these limits, whichever is greater (T.C.A. § 2-10-301-310).

Each candidate for local public office must prepare a report of contributions that includes the receipt date of each contribution and a political campaign committee's statement indicating the date of each expenditure (T.C.A. § 2-10-105, 107).

Candidates are prohibited from converting leftover campaign funds to personal use. The funds must be returned to contributors, put in the volunteer public education trust fund, or transferred to another political campaign fund, a political party, a charitable or civic organization, educational institution, or an organization described in 26 U.S.C. 170(c) (T.C.A. § 2-10-114).

# 2. Conflicts of Interest.

Municipal officers and employees are permitted to have an "indirect interest" in contracts with their municipality if the officers or employees publicly acknowledge their interest. An indirect interest is any interest that is not "direct," except it includes a direct interest if the officer is the only supplier of

goods or services in a municipality. A "direct interest" is any contract with the official himself or with any business of which the official is the sole proprietor, a partner, or owner of the largest number of outstanding shares held by any individual or corporation. Except as noted, direct interests are absolutely prohibited (T.C.A. § 6-2-402, T.C.A. § 6-20-205, T.C.A. § 6-54-107–108, T.C.A. § 12-4-101–102).

#### 3. Disclosure conflict of interests.

Conflict of interest disclosure reports by any candidate or appointee to a local public office are required under T.C.A. §§ 8-50-501 *et seq.* Detailed financial information is required, including the names of corporations or organizations in which the official or one immediate family member has an investment of over \$10,000 or 5 percent of the total capital. This must be filed no later than 30 days after the last day legally allowed for qualifying as a candidate. As long as an elected official holds office, he or she must file an amended statement with the Tennessee Ethics Commission or inform that office in writing that an amended statement is not necessary because nothing has changed. The amended statement must be filed no later than January 31 of each year (T.C.A. § 8-50-504).

# 4. Consulting fee prohibition for elected municipal officials.

Any member or member-elect of a municipal governing body is prohibited under T.C.A. § 2-10-124 from "knowingly" receiving any form of compensation for "consulting services" other than compensation paid by the state, county, or municipality. Violations are punishable as Class C felonies if the conduct constitutes bribery under T.C.A. § 39-16-102. Other violations are prosecuted as Class A misdemeanors. A conviction under either statute disqualifies the offender from holding any office under the laws or Constitution of the State of Tennessee.

"Consulting services" under T.C.A. § 2-10-122 means "services to advise or assist a person or entity in influencing legislative or administrative action, as that term is defined in § 3-6-301, relative to the municipality or county represented by that official." "Consulting services" also means services to advise or assist a person or entity in maintaining, applying for, soliciting or entering into a contract with the municipality represented by that official. "Consulting services" does not mean the practice or business of law in connection with representation of clients by a licensed attorney in a contested case action, administrative proceeding or rule making procedure;

"Compensation" does not include an "honorarium" under T.C.A. § 2-10-116, or certain gifts under T.C.A. § 3-6-305(b), which are defined and prohibited under those statutes.

The attorney general construes "Consulting services" to include advertising or other informational services that directly promote specific legislation or specifically target legislators or state executive officials. Advertising aimed at the general public that does not promote or otherwise attempt to influence specific legislative or administrative action is not prohibited. Op. Atty.Gen. No. 05-096, June 17, 2005.

### 5. Bribery offenses.

- a. A person who is convicted of bribery of a public servant, as defined in T.C.A. § 39-16-102, or a public servant who is convicted of accepting a bribe under the statute, commits a Class B felony.
- b. Under T.C.A. § 39-16-103, a person convicted of bribery is disqualified from ever holding office again in the state. Conviction while in office will not end the person's term of office under this statute, but a person may be removed from office pursuant to any law providing for removal or expulsion existing prior to the conviction.
- c. A public servant who requests a pecuniary benefit for performing an act the person would have had to perform without the benefit or for a lesser fee, may be convicted of a Class E felony for solicitation of unlawful compensation under T.C.A. § 39-16-104.
- d. A public servant convicted of "buying and selling in regard to offices" under T.C.A. § 39-16-105, may be found guilty of a Class C felony. Offenses under this statute relevant to public officials are selling, resigning, vacating, or refusing to qualify and enter upon the duties of the office for pecuniary gain, or entering into any kind of borrowing or selling for anything of value with regard to the office.
- e. Exceptions to 1, 3, and 4, above include lawful contributions to political campaigns, and a "trivial benefit" that is "incidental to personal, professional, or business contacts" in which there is no danger of undermining an official's impartiality.

# 6. Official misconduct. official oppression, misuse of official information.

a. Public misconduct offenses under <u>Tennessee Code Annotated</u> § 39-16-401 through § 39-16-404 apply to officers, elected officials, employees,

candidates for nomination or election to public office, and persons performing a governmental function under claim of right even though not qualified to do so.

- b. Official misconduct under <u>Tennessee Code Annotated</u> § 39-16-402 pertains to acts related to a public servant's office or employment committed with an intent to obtain a benefit or to harm another. Acts constituting an offense include the unauthorized exercise of official power, acts exceeding one's official power, failure to perform a duty required by law, and receiving a benefit not authorized by law. Offenses under this section constitute a Class E felony.
- c. Under <u>Tennessee Code Annotated</u> § 39-16-403, "Official oppression," a public servant acting in an official capacity who intentionally arrests, detains, frisks, etc., or intentionally prevents another from enjoying a right or privilege commits a Class E felony.
- d. <u>Tennessee Code Annotated</u> § 39-16-404 prohibits a public servant's use of information attained in an official capacity, to attain a benefit or aid another which has not been made public. Offenses under the section are Class B misdemeanors.
- e. A public servant convicted for any of the offenses summarized in sections 2-4 above shall be removed from office or discharged from a position of employment, in addition to the criminal penalties provided for each offense. Additionally, an elected or appointed official is prohibited from holding another appointed or elected office for ten (10) years. At-will employees convicted will be discharged, but are not prohibited from working in public service for any specific period. Subsequent employment is left to the discretion of the hiring entity for those employees. Tennessee Code Annotated § 39-16-406.

### 7. Ouster law.

Some Tennessee city charters include ouster provisions, but the only general law procedure for removing elected officials from office is judicial ouster. Cities are entitled to use their municipal charter ouster provisions, or they may proceed under state law.

The judicial ouster procedure applies to all officers, including people holding any municipal "office of trust or profit." (Note that it must be an "office" filled by an "officer," distinguished from an "employee" holding a "position" that does not have the attributes of an "office.") The statute makes any officer subject to such removal "who shall knowingly or willfully misconduct himself in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall

engage in any form of illegal gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude" (T.C.A. § 8-47-101).

T.C.A. § 8-47-122(b) allows the taxing of costs and attorney fees against the complainant in an ouster suit if the complaint subsequently is withdrawn or deemed meritless. Similarly, after a final judgment in an ouster suit, governments may order reimbursement of attorney fees to the officer targeted in a failed ouster attempt (T.C.A. § 8-47-121).

The local attorney general or city attorney has a legal "duty" to investigate a written allegation that an officer has been guilty of any of the mentioned offenses. If he or she finds that "there is reasonable cause for such complaint, he shall forthwith institute proceedings in the Circuit, Chancery, or Criminal Court of the proper county." However, with respect to the city attorney, there may be an irreconcilable conflict between that duty and the city attorney's duties to the city, the mayor, and the rules of professional responsibility governing attorneys. Also, an attorney general or city attorney may act on his or her own initiative without a formal complaint (T.C.A. § 8-47-101–102). The officer must be removed from office if found guilty (T.C.A. § 8-47-120).

# APPENDIX B

# SUBSTANCE ABUSE POLICY AND DRUG-FREE WORKPLACE PROGRAM

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#### CITY OF BAXTER

# SUBSTANCE ABUSE POLICY AND DRUG FREE WORKPLACE PROGRAM

## I. GENERAL POLICY STATEMENT

The Town of Baxter has a strong commitment to providing its employees with a safe, drug-free working environment, and to discourage drug and alcohol abuse. The presence of illegal drugs or alcohol in the workplace and employees being under the influence of these substances during working hours are inconsistent with the Town of Baxter's objectives. Employees of the Town of Baxter are public employees and must foster the public trust by preserving employee reputation for integrity, honesty, and responsibility.

While the Town of Baxter has no intention of intruding into the private lives of its potential or present employees, the Town of Baxter expects all employees to report to work in a condition to perform their duties in a safe and productive manner. The Town of Baxter intends to provide for itself and its employees the opportunity to maximize our mutual productivity, and to reach our desired levels of success without experiencing the costs, delays and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. Employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits.

Employees are expected to report to work with no illegal or non-prescribed drugs in their bodies and not to be under the influence of drugs or alcohol. Compliance with this requirement is considered an essential job qualification for all job assignments and is a condition of employment at the Town of Baxter. It is a violation of this policy for any employee to:

- (1) Report to work under the influence of alcohol, intoxicants, illegal drugs, or controlled substances as confirmed on the basis of a positive confirmed drug or alcohol test result:
- (2) Possess or consume intoxicants, illegal drugs, or controlled substances on city/town premises, while working, or while operating company vehicles, machinery or equipment;
- (3) Refuse to submit to testing for drugs or alcohol when requested, tamper with a drug or alcohol test specimen, or otherwise fail to cooperate under this policy;
- (4) Use, possess, sell, trade, offer for sell, or offer to buy illegal drugs or otherwise engage in the illegal use of drugs on or off the job;
- (5) Report to work under the influence of or while possessing in his or her body, blood or urine, illegal drugs in any detectable amount;
- (6) Report to work under the influence of or impaired by alcohol, or use of alcohol while on call for duty;
- (7) Use of alcohol or drugs within eight (8) hours following an accident (incident), if the employee's involvement has not been discounted as a

contributing factor in the accident (incident), or until the employee has successfully completed drug and/or alcohol testing procedures;

(8) Use prescription drugs illegally, i.e., to use prescription drugs that have not been legally obtained or in a manner or for a purpose other than as prescribed.

Any violation of the provisions of this policy will subject an employee to disciplinary action, up to and including termination. Additionally, any illegal drugs or substances found on city/town property will be confiscated and turned over to the appropriate law enforcement agency, which may result in criminal prosecution.

## II. THE DRUG-FREE WORKPLACE ACT

This policy is implemented pursuant to The Tennessee Drug-Free Workplace Act, ("the Act"). Tennessee law provides that if an employer has implemented a drug-free workplace pursuant to the act, and if the injured employee has, at the time of an injury, a blood alcohol concentration level as determined by blood or breath testing of greater than .08% for non-safety sensitive positions, or .04% for safety-sensitive positions; or if the injured employee has a positive confirmation of a drug, it is presumed that the drug or alcohol was the proximate cause of the injury. This is a rebuttable presumption which can be rebutted by sufficient evidence that the drug or alcohol was not the proximate cause of the injury.

# A. <u>Employer Rights and Obligations</u>

- 1. Nothing in this policy is to be construed to prohibit the Town of Baxter from conducting medical screening or other tests required, permitted or which are not disallowed by any statute, rule or regulation, for the purpose of monitoring employee exposure to toxic or other unhealthy substances in the workplace.
- 2. These testing rules and guidelines do not prohibit the Town of Baxter from conducting any drug or alcohol testing of employees which is otherwise permitted by law.
- **3.** If an employee or job applicant receives a positive confirmed test result for an otherwise legal medication for which he/she does not hold a valid prescription, the Town of Baxter may discharge the employee or refuse to hire the job applicant.
- **4.** The Town of Baxter will not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment for a drug or alcohol related problem, so long as the employee has not previously tested positive or entered an employee assistance or rehabilitation program.
- **5.** In the event the Town of Baxter discharges, disciplines or refuses to hire an employee or job applicant in compliance with this policy, such action is considered to have been taken for cause.
- **6.** If an employee refuses to submit to a post-accident drug test pursuant to this policy, the presumption that the drug was the proximate cause

of the accident will still apply. Additionally, if a job applicant refuses to submit to a drug or alcohol test or has a positive confirmed drug test, such refusal or positive confirmation may be used as grounds for refusing to hire the job applicant.

- 7. The Town of Baxter will include a notice of drug and alcohol testing on vacancy announcements for positions for which drug or alcohol testing is required.
- 8. All Town of Baxter property may be subject to inspection at any time without notice. There shall be no expectation of privacy in such property. Property includes, but is not limited to, vehicles, desks, containers, files and lockers.

# B. <u>Employee/ Job Applicant Rights and Obligations</u>

- 1. Drug or alcohol tests which are not conducted according to this policy and guidelines will not be used to terminate workers' compensation benefits.
- **2.** An employee will not be discharged, disciplined, or discriminated against solely upon the employee's voluntarily seeking treatment for a drug or alcohol-related problem, so long as the employee has not previously tested positive or entered an employee assistance or rehabilitation program.
- **3.** Employees and job applicants can confidentially report to a medical review officer ("MRO") the use of prescription or non-prescription medications being tested, but only after a positive confirmed test result for drug or alcohol use. The name and address of the Town of Baxter's MRO is identified within the appendix of approved providers attached to this policy. The Town of Baxter will provide the employee or job applicant with a form on which to provide any information that the employee/applicant considers relevant to the drug or alcohol test.
- 4. An employee or job applicant who receives a positive confirmed test result may contest or explain the result to the MRO within five (5) working days after receiving written notification of the test result. An employee or a job applicant must notify the testing laboratory of any administrative or civil action brought pursuant to the act.
- **5.** An employee or job applicant has the right to consult with the MRO for technical information.
- **6.** If an employee is tested based upon reasonable suspicion, the documentation which formed the basis for the test will be provided to the employee upon request.
- 7. An employee/job applicant will not be discharged, disciplined, or refused employment on the sole basis of a positive test result unless an initial test has been verified by a confirmation test and a medical review officer.
- 8. Any employee convicted of violating a criminal drug statute shall inform his/her supervisor of such conviction (including pleas of guilty and no contest) within five (5) days of the conviction. Failure to so inform the Town

of Baxter subjects the employee to disciplinary action, up to and including termination.

#### III. TESTING

#### A. Definitions

The term "drug" is defined as any drug subject to testing pursuant to regulations adopted by the United States Department of Transportation. The Town of Baxter will test an individual for any or all of such drugs. A "drug test" is defined as any "chemical, biological, or physical instrumental analysis administered by a certified laboratory for the purpose of determining the presence or absence of a drug or its metabolites or alcohol pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation or such other recognized authority approved by the Commissioner of Labor."

The term "alcohol" is defined as having the same meaning as in the federal regulations describing procedures for the testing of alcohol by programs operating pursuant to the authority of the United States Department of Transportation. An "alcohol test" is any "analysis of breath or blood, or any other analysis which determines the presence, absence or level of alcohol as authorized by relevant regulations of the United States Department of Transportation."

## B. Types of Tests

# 1. Job Applicant Drug or Alcohol Testing

A "job applicant" is defined as any person who has applied for a position with the Town of Baxter and has been offered employment conditioned upon successfully passing a drug or alcohol test, and may have begun work pending the results of the drug or alcohol test. The Town of Baxter will require job applicants to submit to a drug test and may use the refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire the job applicant. If there is reasonable suspicion o believe that the job applicant has tampered with the specimen, the applicant will not be considered for employment. With respect to alcohol, the Town of Baxter may, but is not required to test job applicants for alcohol. Limited testing of applicants, if based on a reasonable classification basis, may be performed.

#### 2. Reasonable Suspicion Testing

Reasonable suspicion testing is defined as testing which is based on a belief that the employee is using or has used drugs, or alcohol, in violation of this policy, drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, these facts and inferences may be based upon:

- Observable phenomena while at work, such as direct observation of drug or alcohol use or the physical symptoms or manifestations of being under the influence of drugs or alcohol.
- Abnormal conduct or erratic behavior while at work, or a significant deterioration in work performance.

- A report of drug or alcohol use provided by a reliable and credible source.
- Evidence that an individual has tampered with a drug or alcohol test.
- Information that an employee has caused, contributed to, or been involved in an accident while at work.
- Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or alcohol while working, or while on company premises, or while operating the Town of Baxter's vehicle, machinery or equipment.
- Where the employee has indicated an inability to perform their job duties or has given the company cause to believe that they are using or have used drugs in violation of this policy.
- A pattern of or otherwise excessive absenteeism and/or tardiness.

If an employee is tested based upon reasonable suspicion, the Town of Baxter will detail in writing the circumstances which formed the basis that reasonable suspicion existed to warrant the testing. The written record will be made within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier. A copy of this documentation is to be provided to the employee upon request and the original documentation will be kept confidential and maintained by the Town of Baxter for at least one year.

## 3. Follow-up Drug or Alcohol Testing

If an employee has voluntarily entered an employee assistance program, the Town of Baxter will require that employee to submit to follow-up drug or alcohol testing at least once a year for a two (2) year period after successful completion of such program. Advance notice of such follow-up tests will not be given to the employee.

#### 4. Post-Accident and Post-Incident Testing

"Injury" is defined as a harm or damage to an employee occurring in the workplace or in the scope of employment, which must be recorded in the Town of Baxter's OSHA 300 Log. An injury is recordable under the OSHA 300 log if it results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

After an accident or an incident which (a) results in an injury or which (b) results in property damage which may reasonably be expected to exceed \$500 to repair, the Town of Baxter will require the employee to submit to a drug and/or alcohol test in accordance with these rules:

An employee injured at the workplace and required to be tested shall be taken to a medical facility for immediate treatment of the injury. Specimens are to be obtained at the treating facility or a designated collection site under the procedures set forth in the regulations and transported to an approved testing laboratory. No specimens are to be taken prior to the administration of emergency

- medical care. Once this condition has been satisfied, an injured employee must submit to testing.
- In the case of non-emergency injuries or property damage accidents reported to the Town of Baxter after the fact, the employee must submit to drug testing within thirty-two (32) hours of the accident.

## 5. Blanket/Random Testing

In addition to the above types of drug tests mandated pursuant to the Act, all employees, including officers, managers, supervisors, and employees, must submit to (a) an initial drug test to be required as part of the Town of Baxter's implementation of this drug-free workplace program, to commence no sooner than sixty (60) days after the Town of Baxter adopts this policy; and (b) random drug testing of employees to occur on an annual basis, without cause or prior notice to employees to be tested.

Employees will be selected at random by the MRO pursuant to a predetermined neutral selection formula. At least fifty percent (50%) of the total number of employees subject to random testing shall be tested annually. Employees subject to random testing shall include the following:

- Police officers
- Street and sanitation employees and supervisor
- Water and sewer employees and supervisor
- Fire chief
- Crossing guards
- Janitors

Upon notification of an employee's selection for random testing, the employee shall report as directed immediately to the Town of Baxter for the specimen collection. Once the employee reports to the Town of Baxter for the specimen collection, the employee cannot leave the collection site premises until the drug screen is complete. Specimen collections may be observed.

#### C. Testing Procedures

# 1. Required Substances

The Town of Baxter will test employees and job applicants for the following:

- (a) Alcohol (although not required for job applicant testing)
- (b) Amphetamines
- (c) Cannabinoids (THC)
- (d) Cocaine
- (e) Opiates
- (f) Phencyclidine
- (g) Methadone
- (h) Propoxyphene
- (i) Benzodiazepines
- (j) Barbiturates

- (k) Methaqualone
- (l) Morphine
- (m) Ecstasy

# 2. Drugs by Common Name

The following list contains those drugs to be tested for, by common and chemical name, and is also a list of the most common drugs or medications which may alter or affect a drug test:

Alcohol Beer, wine, distilled spirits, as well as all

liquid medications containing ethyl alcohol (ethanol). Please read the label for alcohol content. As an example, Vick's Nyquil is 25% (50 proof) ethyl alcohol, Comtrex is 20% (40 proof), Contact Severe Cold Formula Night Strength is 25% (50 proof) and Listerine is

26.9% (54 proof).

Amphetamines Speed (Obetrol), Biphetamine, Desoxyn,

Dexedrine, Didrex, Ionamine, Fastin.

Cannabinoids Marijuana, Marinol, Dronabinol, THC.

Cocaine Cocaine (Crack), HCL, topical solution

(Roxanne).

Phencyclidine(PCP) Not legal by prescription.

Methaqualone Not legal by prescription.

Opiates Paregoric, Parepectolin, Donnagel PG,

Morphine, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guiatuss AC, Novahistine DH, Novahistine Expectorant, Dilaudid (Hydromorphone), M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin,

Tussi-organidin, etc.

Barbiturates Phenobarbital, Tuinal, Amytal, Nembutal,

Seconal, Lotusate, Fiorinal, Fioricet, Esgic, Butisol, Mebaral, Butabarbital, Butalbital,

Phrenilin, Triad, etc.

Benzodiazepines Ativan, Azene, Klonopin, Dalmane, Diazepam,

Librium, Xanax, Serax, Tranxene, Valium, Verstran, Halcion, Paxipam, Restoril, Centrax.

Methadone Dolophine, Methadose.

Propoxyphene Darvocet, Darvon N, Dolene, etc.

MDMA MDA, MDEA, Ecstasy

#### 3. Prohibited Levels

Prohibited levels for a drug or a drug's metabolites are defined as certain cut-off levels on screened specimens which are equal to or exceed the following levels and are presumed positive. Prohibited levels for alcohol are defined as cut-off levels on screened specimens which are equal to or exceed the following levels and are likewise presumed positive:

a. (	Cut-off	levels on	initially	screened	specimens:
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Amphetamines	500  mg/ml
Marijuana (Cannabinoids)	50 mg/ml
Cocaine (Benzolylecgonine)	150  mg/ml
Opiates (Codeine, Morphine, Heroin)	2000 mg/ml
PCP (Phencyclidine)	$25~\mathrm{mg/ml}$
6-Acetylmorphine	10 mg/ml
MDMA (Ecstasy)	500  mg/ml

b. Cut-off levels on confirmation specimens:

Amphetamines	$250~\mathrm{mg/ml}$
Marijuana (Cannabinoids)	15 mg/ml
Cocaine (Benzolylecgonine)	100 mg/ml
Opiates (Codeine, Morphine, Heroin)	2000 mg/ml
PCP (Phencyclidine)	$25~\mathrm{mg/ml}$
6-Acetylmorphine	10 mg/ml
MDMA, MDA, MDEA (Ecstasy)	$250~\mathrm{mg/ml}$

- c. Cut-off levels for alcohol specimens:
  - 1) Non Safety-Sensitive Positions (.08% by weight blood alcohol concentration)
  - 2) Safety-Sensitive Positions (.04% by blood weight alcohol concentration)

#### 4. Safety-Sensitive v. Non-Safety-Sensitive Positions

"Safety-sensitive position" is defined as a position involving a safety-sensitive function pursuant to regulations adopted by the United States Department of Transportation. "Safety-sensitive" also means a position in which a drug-impairment constitutes an immediate and direct threat to public health or safety; a position in which a momentary lapse in attention could result in injury or death to another person; or where impairment may present a clear and present risk to co-workers or other persons.

An employee, who is not in a safety-sensitive position, may be tested for drug or alcohol only when the test is based upon reasonable suspicion.

An employee in a safety-sensitive position may be tested for drug or alcohol use at any occasion described above.

#### 5. Laboratory Procedures

All specimens will be tested by a certified laboratory. This means that the laboratory will be licensed and approved by the Tennessee Department of Health, using criteria established by the U.S. Department of Health and Human Services or some other recognized authority approved by the Commissioner of Labor. The certified laboratory may also be approved pursuant to the College of American Pathologists - Forensic Urine Drug Testing Program. Additionally, all testing for drugs or alcohol will be in accordance with the procedures compiled at 49 Code of Federal Regulations, Part 40, dealing with drug testing

pursuant to the United States Department of Transportation. If a certified laboratory is utilized, no further quality assurance monitoring or proficiency testing will be required.

# a. Initial and Confirmatory Tests

The Town of Baxter will not discharge, discipline, refuse to hire, or require rehabilitation of an employee or job applicant on the sole basis of a positive test result unless an initial test has been verified by a confirmation test and the MRO.

An "initial drug testing" is defined as a procedure that qualifies as a "screening test" or "initial test" pursuant to regulations governing drug or alcohol testing adopted by the U.S. Department of Transportation or another recognized authority approved by the Commissioner of Labor. The initial screen for all drugs, except alcohol, is required to utilize the immunoassay procedure.

A "confirmation test" is defined as a second analytical procedure used to identify the presence of a specific drug or alcohol, or metabolite in a specimen. This test must be different in scientific principle from the initial procedure and must be capable of providing requisite specificity and quantitative accuracy. All specimens identified as positive on the initial test, excluding tests for alcohol, are required to be confirmed using the gas chromatography/spectrometry (GC/MS) procedure.

#### b. Collection Procedures

The collection procedures utilized will be in accordance with the procedures compiled under 49 Code of Federal Regulations, Part 40, dealing with drug and alcohol testing pursuant to the United States Department of Transportation. It is required that the specimens be collected according to the "split sample" method. A "split sample" is the procedure by which a urine specimen is divided in two and put into a primary specimen container and a secondary or "split" specimen container. Only the primary specimen is opened and used for the initial screening and confirmation tests. The split specimen container remains sealed and is stored at the testing laboratory.

The Town of Baxter and/or the testing facility will provide the employee or job applicant with a form on which to provide any information that the employee/applicant considers relevant to the test. This would include identification of currently or recently used prescription or non-prescription medication or other related information.

#### c. Chain of Custody

The Town of Baxter will use chain of custody procedures established by regulations for the U.S. Department of Transportation, or such other recognized authority approved by the Commissioner of Labor.

#### d. Reporting and Review of Results

The procedures for laboratory reporting, and MRO review and reporting of specimen test results are required to be in accordance with the regulations described in 49 C.F.R., Parts 40.29 and 40.33. In addition, an employee or job applicant who receives a positive confirmed test result upon notification by the

MRO may contest or explain the result to the MRO within five (5) working days after notice of the test result. If the employee/job applicant's explanation or challenge is unsatisfactory to the MRO, the MRO is to report the positive test result back to the Recorder for the Town of Baxter.

#### D. Costs

The Town of Baxter will pay the costs of all tests which are required by the program, i.e. both initial and confirmation tests. The employee or job applicant is required to pay the costs of any additional drug or alcohol tests which are not required by the employer. When a re-test of a split specimen is performed, the party requesting the re-test is required to pay the cost of that test.

#### IV. CONFIDENTIALITY

All information received by the Town of Baxter through this policy is considered confidential communications and may not be used or received in evidence or obtained in discovery or disclosed in any proceedings, with limited exceptions:

- (1) Release of such information can be authorized by written consent given by the person tested, or if compelled by a hearing officer in a proceeding under the act. The consent form must provide the name of the person who is authorized to obtain the information; the purpose of the disclosure; the precise information to be disclosed; the duration of the consent; and the signature of the person authorizing the release of the information.
- (2) Otherwise confidential information under the policy can be disclosed while consulting with legal counsel and can be disclosed to and among management personnel, including the Board of Mayor and Aldermen, as is reasonably necessary for making disciplinary decisions relating to violations of drug or alcohol standards of conduct adopted by the Town of Baxter.

Confidential information is not to be released or used in any criminal proceeding against an employee or job applicant. Additionally, no physician-patient relationship is created between an employee or job applicant and a covered employer, or any person performing or evaluating a drug or alcohol test, solely by the implementation of this program.

#### V. OTHER REQUIREMENTS

# A. Program Education and Training

- 1. Workplace Substance Abuse Recognition Training will be provided annually to all supervisors employed by the Town of Baxter. The Recorder will be responsible for organizing the minimum two (2) hour training program to be administered pursuant to Rule 0800-2-12-.13 of the Tennessee Department of Labor Drug Free Workplace Programs Rules.
- **2.** Workplace Substance Education and Awareness Training will be provided annually to all employees of the Town of Baxter. The Recorder will be responsible for organizing the minimum one (1) hour training program to be administered pursuant to Rule 0800-2-12-.13 of the Tennessee Department of Labor Drug Free Workplace Programs Rules.

**3.** The Town of Baxter will distribute materials regarding this policy, program, penalties, and approved providers by providing employees with copies of this policy and by posting this information in appropriate work areas.

# B. Selection of Approved Providers

- 1. "Medical Review Officer" or "MRO" means a licensed physician, employed with or contracted with the Town of Baxter, who has knowledge of substance abuse disorders, laboratory testing procedures and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information. The MRO designated by the Town of Baxter shall be identified within Appendix A, attached to this policy.
- 2. "Employee Assistance Program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug or alcohol abuse; referrals of employees for appropriate diagnosis, treatment and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by the program. A list of approved Employee Assistance Program providers designated by the Town of Baxter shall be identified within Appendix A, attached to this policy.

# C. <u>Voluntary Disclosure of Drug and/or Alcohol Use</u>

In the event that an employee of the Town of Baxter is dependent upon or is an abuser of drugs and/or alcohol and sincerely wishes to seek professional medical care, that employee should discuss this matter with his/her supervisor voluntarily and in private. Such voluntary desire for help with a substance abuse problem will be honored by the Town of Baxter. If substance abuse treatment is required, the employee will be removed from active duty pending completion of the treatment.

Affected employees will be permitted up to thirty (30) consecutive calendar days for initial substance abuse treatment. The employee must use all vacation, sick and compensatory time available. In the event accumulated leave time is insufficient to provide the medically prescribed and needed treatment up to the maximum of thirty (30) consecutive calendar days, the employee will be permitted unpaid leave for the remainder of the maximum thirty (30) day period.

Voluntary disclosure must occur before an employee is notified of or otherwise becomes subject to a pending drug and/or alcohol test. Voluntary disclosure provisions do not apply to job applicants. All costs of treatment must be paid by the employee and/or his/her health care insurance.

Prior to any return-to-duty consideration of an employee following voluntary substance abuse treatment, the employee shall obtain a return-to-duty recommendation from an approved Substance Abuse Professional

identified within Appendix A, attached to this policy. The Town of Baxter will pay the costs for this recommendation which may include conditions of reinstatement of the employee. These conditions may include aftercare counseling and return-to-duty and/or random drug and alcohol testing requirements. All return-to-duty and/or random drug and alcohol testing costs shall be paid by the Town of Baxter. Any recommended aftercare or counseling shall be paid by the employee.

The employee's supervisor and the Recorder will consider each case individually and set forth final conditions of reinstatement. All conditions of reinstatement must be met by the employee. Failure of the employee to complete treatment or follow aftercare conditions, or subsequent failure of any drug test under this policy will result in administrative action up to and including termination of employment.

## D. <u>Tennessee Drug Free Workplace Premium Credit Program</u>

To obtain an annual premium credit on workers' compensation insurance, the Town of Baxter Recorder shall complete and sign the Premium Credit Program Application promulgated by the Tennessee Department of Labor.

# Appendix A

# **Designated Medical Review Officer**

Toney B. Hudson, M.D. Occupational Health Center, LLC 315 N. Washington, Suite 165 Cookeville, TN 38501 (931) 526-1604

# Approved Employee Assistance Programs

Bradford Health Services 1330 Neal Street, Suite D Cookeville, TN 38501 (931) 528-6803

Plateau Mental Health Center New Leaf Recovery Center 1200 S. Willow Avenue Cookeville, TN 38502 (931) 432-2698

First-time appointments: 877-567-6051

# APPENDIX C

# CITY OF BAXTER, TENNESSEE EMPLOYEE SAFETY HANDBOOK

The City of Baxter, Tennessee (BAXTER) is dedicated to having a total safety/loss control program which in turn provides a safe work environment for employees in all departments. There are many responsibilities for both administration and you, the employees of BAXTER. This program has many parts and it is very important that it is adhered to in its entirety.

Each department is required to keep this manual. Spot checks will be made to ensure your copy is on hand.

Please sign below incomanual. Return this pa		l this
Name		
Department		

Date

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## I. Employee Safety Program Purpose

BAXTER is dedicated to providing a safe workplace for all its employees. BAXTER recognizes that, through an effective safety/loss control program, the City can reduce the frequency of workplace injuries, resulting in less lost time by employees. This, in turn, reduces workers compensation cost. In order to achieve this reduction in worker injuries, the City is dedicated to continually improving and maintaining a total safety program for BAXTER.

This manual provides important information about procedures and programs that are relevant to job safety. For more detailed information about our Safety and Health Program, see your department head or supervisor.

### AUTHORITY/RESPONSIBILITY

Basic safety responsibility is a function of management, supervisors, and the individual employee. Each individual employee has the responsibility to ensure that the safety requirements associated with their job are followed. If the safety requirements cannot be followed, each individual employee has the authority to not perform the assignment until his or her supervisor has provided a method for accomplishing the task safely.

# 1. Management

- a. Responsibility. The city supervisors are responsible for providing a safe and healthful workplace free from recognized hazards which may cause serious injury. It is his/her responsibility to participate in safety activities; set the proper example for employees by following appropriate safety rules and procedures; encourage employees to follow safety rules and procedures; and effectively enforce safety rules and procedures.
- **b.** Authority. The Board of Mayor and Aldermen have the authority to provide a safe and healthful workplace by using city resources to do what is reasonable to properly protect people, property, and the environment.

# 2. Department Heads

a. Responsibility. All department heads are responsible for assuring that their assigned employees perform their assignments in a safe manner by following the specified safety rules and procedures. They are to accomplish this by:

- (1) providing the necessary tools, equipment and facilities necessary to perform the job safely.
- (2) providing the necessary rules and procedures for assigned tasks.
- (3) educating and training employees concerning job safety rules and procedures.
- (4) routinely inspecting workplaces to detect potential safety hazards so effective corrective action can be taken.
- (5) enforcing safety rules and procedures.
- b. Authority. Each department head has the authority to assure that his/her assigned employees are provided the necessary tools, equipment, facilities, rules and procedures, education and training, to perform their job duties safely. They are authorized to routinely inspect their workplace and correct any defects observed. Each department head has the authority and is held accountable for enforcing safety rules and procedures.

# 3. Employees

- a. Responsibility. All employees are responsible for performing their job duties in a safe manner by following the specified safety rules and procedures. Each employee must:
  - (1) not perform jobs unless he/she has been authorized to perform them and has been properly trained.
  - (2) wear the prescribed personal protective equipment.
  - (3) review each assignment prior to performing it to ensure it can be performed safely.
  - (4) must not perform jobs unless they can be performed safely.
- **b.** Authority. Each employee has the responsibility and authority to follow the safety rules and procedures pertaining to his or her job.

- 1. Follow all safety rules and procedures applicable to the work being performed.
- 2. Review jobs before performing them to assure that the job can be performed safely. If any doubt exists about job safety, do not perform the job until the supervisor provides a way to safely perform the job.
- 3. Perform only those jobs and operate only equipment authorized by the department head.
- 4. Wear the personal protective equipment prescribed within specific job/operating procedures and applicable safety rules.
- 5. Inspect tools and equipment prior to use and report any defects to supervision for repair before using.
- 6. Assure safety guards and devices on machinery and equipment are functioning properly before use.
- 7. Promptly report all accidents, including injuries, to supervision so prompt action can be. taken to provide the necessary medical attention and prevent recurrence.
- 8. Maintain a clean and orderly workplace by providing needed materials in assigned locations and removing all unnecessary items.
- 9. Lift, push, pull and handle only those things you are physically capable of handling safely while following the prescribed procedure.
- 10. Horseplay often results in injury and will not be tolerated. Prompt disciplinary action will be taken.
- 11. Know the potential hazards associated with chemical substances and how to protect yourself before handling chemicals.
- 12. Report any detected safety or health hazards promptly to the department head so effective corrective measures can be taken.
- 13. Use of alcohol and nonprescription drugs on the job is strictly prohibited. Use of prescription drugs which may affect proper job performance must be reported to the department head.

14. Lockout/tagout procedures shall be followed by all authorized employees to protect themselves from hazardous energy while servicing and maintaining equipment, machines and processes.

## NEW EMPLOYEE SAFETY ORIENTATION

All new employees, including supervisors and department heads, must be properly trained to perform their assigned job safely prior to initial workplace exposure. The following new employee safety orientation training will be completed for each new employee.

- 1. Ranking Supervisor. The ranking supervisor will welcome the new employee to the department or office and explain the city's safety policy and inform the employee about the presence and purpose of the Safety Program. Emphasis will be placed on the need to perform jobs safely each time they are performed. The new employee will be informed that good job performance depends on following the safety rules and procedures associated with the jobs. The new employee will be told that every job can and must be done safely.
- 2. **Safety Program**. The new employee's supervisor shall ensure that the safety, health and environmental items pertaining to the new employee's job are reviewed and discussed. As a minimum, the following information will be covered:
  - a. Safety Activities. Review and describe the purpose of the Safety Program. Explain the employee participation in the program and the importance of employee involvement. Describe how the Safety Program is responsible for coordinating the overall safety program designed to protect people, property, the environment, and comply with governmental regulations, as well as protecting against liability.
  - b. Rules and Procedures. Review the Safety Rules and Procedures that apply to the new employee's task assignment. Explain each rule and validate that the new employee understands the rule.
  - c. Education and Training. Explain the importance of safety education and training to ensure a safe and healthful workplace. Emphasize that employees must not perform tasks, jobs, assignments, etc., for which they have not been trained and authorized to perform safely. Describe how routine safety meetings will be held with all employees to keep them properly informed

concerning how to perform their assigned work safely. Also, encourage the new employee to report on the effectiveness of his/her safety orientation and safety meetings so that improvements can be made.

- d. Inspections. Describe the overall safety inspection program and its importance in assuring a safe and healthful workplace. Also, describe each employee's responsibility for inspecting tools and equipment prior to use to ensure that the equipment can be used safely. Explain that defective tools and equipment must not be used until repaired. State that defective tools and equipment must be taken out of service until repaired.
- e. Health and Environment. Describe the overall potential health hazards associated with their jobs including chemicals, dusts, fumes, vapors, noise, etc. Explain the city's hazard communication program including its purpose, the chemical inventory, material safety data sheets (MSDS), container labeling, protective measures, etc. Discuss the importance of employees following safe work practices when manually handling materials. State that proper lifting techniques must be followed and that help must be obtained when heavy loads are lifted. Also, explain any environmental hazards associated with operations and control measures for protecting the environment.
- f. Fire and Emergency. Describe the proper action that must be taken when an emergency occurs. Explain the type of emergency situations which might occur and the proper action to take. Provide classroom and hands-on fire extinguisher training, if appropriate, and explain the limitations for using fire extinguishers (not for fighting structural fires). If workplace exposure warrants, explain the fire and explosion hazards associated with the use of flammable liquids, gases, etc.
- g. Accident Investigation. Explain the procedure and need for reporting all accidents promptly, including injury or illness. Discuss that the purposes of accident investigations are to obtain the facts, determine basic causes, develop solutions, and recommend action to prevent recurrences. Emphasize that investigations are not to place blame, but only to the facts. Describe how employees are part of all accident investigations and are important to gathering pertinent information. Review the typical accidents occurring within the department and how they can be avoided. Tell the new employee that newly assigned

employees are more apt to be injured on-the-job than other employees and that he or she must perform all work assignments with caution.

h. Housekeeping. Explain how a clean and orderly workplace is usually a safe workplace. State that a good safety program cannot be achieved and maintained without good housekeeping and orderliness. Describe how to maintain good housekeeping and orderliness by keeping all necessary things in their assigned places and removing all unnecessary things from the workplace. State that a job has not been done right until the worksite has been cleaned up and returned to its normal orderly state. Ask the new employee to report housekeeping problems to supervision so that effective corrective action can be taken.

### CONTINUING SAFETY EDUCATION

Safety education and training is a never-ending job which must be continued throughout employment. Through continuing safety education, employee safety awareness continuously improves and accident potential in the city's work-related activities continuously decreases. Types of continuing safety education include:

- 1. Safety Meetings. All employees are expected to participate in safety meetings. Safety meetings will be conducted periodically. Safety meetings are an opportunity to review specific accidents and cover the overall safety performance of the group. Discussion time must also be allotted to allow employees to air safety and health concerns.
- 2. **In-Service Training**. The state commissions for both fire fighters and police officers mandate specific training for these uniformed services. Each of these departments shall present 40 hours of training that covers subject material related to either fire or police, as the case may be.
- 3. Special Training. Special safety, health and/or environmental education and training programs will be presented on an as-needed basis as determined by the Safety Program. Such training may include back safety training, defensive driving, etc

### Words of Motivation

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Pro-Active Safety - Aggressive Pursuit of Zero Accidents in the Workplace - relies not only on safe operating procedures and principles, but also on the right

attitude among workers. One way to foster the right attitude is through leadership.

Leadership is different from management; therefore, employees at all levels can become pro-active safety leaders. Rather than concentrating on rules as management does, leadership is the ability to motivate a group toward a certain attitude and behavior through emotional and spiritual connections. Anyone who shares the vision of Zero Accidents can discover or develop the attributes of a good leader.

By encouraging each employee to take a leadership role in a Pro-Active Safety Program, we can unleash a wide range of talents and abilities and create a positive, enthusiastic attitude for safety.

## II. Accident Reporting

Accurate, detailed, and timely reporting of all accidents and/or incidents is extremely important. Accidents that require reporting include: employee accidents and vehicle accidents. Proper reporting of accidents is very important because:

- Timely investigation of accidents can reduce the chances of recurrence.
- Proper handling of accidents can reduce the instances of liability/lawsuits.
- Employee injury claims can be denied if not reported in a timely and accurate fashion. (First Reports of Injury should be filed immediately after an injury no matter how minor; even if you do not plan to go to the doctor.)
- Keeping these detailed reports on file is extremely important because it
  is impossible to predict which incidents may result in claims to our
  insurance company at a later date.
- Copies of each accident report are submitted to the proper insurance company as soon as they are received at the City Recorder's Office. It is extremely important that they are made aware of these incidents before they are contacted for a claim.

<u>Accurate Accident Reporting</u> - Ensuring that all information contained in a report is completely accurate.

<u>Detailed Accident Reporting</u> - Ensuring that exactly what occurred at the time of an accident is included in the report can prove very beneficial in the event a claim is filed. (Example details - witnesses, witness statement, supervisor's location at time of incident, what task the supervisor was performing when the accident took place, etc.). The reports need to be legible, preferably typed.

<u>Timely Reporting of Accidents</u> - There is absolutely no excuse for failure to report accidents. It is extremely important, for the reasons listed above, that accidents be reported at the time of injury. Failure to do so will be considered a violation of BAXTER's safety policy and will be treated as such.

DO NOT let employees fill out their own accident report forms. They usually contain very little detail and are often illegible. Do not forget that the information contained in the report could be used later on, if a claim is filed; therefore, it is extremely important that accident reports be completed properly.

Each Department Supervisor shall be responsible for filling out accident reports, assuring proper contacts are made, and that copies are sent to the appropriate offices. This person also has copies of the employee First Report of Injury Forms.

The Department Supervisor is responsible for contacting the City Recorder immediately any time there is an employee injury or vehicle accident. All First Reports of Injury are to be sent to the City Recorder.

# III. Health and Safety Complaint Procedures

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If an employee feels that he is assigned to work where conditions could affect his health, safety, or general welfare, he should report this to the Department Supervisor.

- a. The complaint must be in the form of a letter and give details of the condition(s) and how the employee believes it affects or will affect his health, safety, or general welfare. The employee should sign the letter; however, if he wishes to remain anonymous, a signature is not required.
- b. Upon receipt of the complaint letter, the Department Supervisor will evaluate the condition(s) and institute any corrective action warranted. Within ten (10) working days following the receipt of the complaint, he will answer the complaint in writing stating whether or not the complaint is deemed to be valid and if not, why; what action has been or will be taken to correct or abate the condition(s); and a designated time period for correction or abatement. Answers to anonymous complaints will be posted for a period of three (3) working days on bulletin boards or in other places of common passage where the anonymous complaint may be reasonably expected to be seen by the complainant.
- c. If the complainant finds the reply unsatisfactory because the complaint was held to be invalid, the corrective action is felt to be insufficient, or the time period for correction is felt to be too long, he may forward a letter to the Department Supervisor or to the governing body explaining the

- condition(s) cited in his original complaint and why he believes the answer to be inappropriate or insufficient.
- d. The Department Supervisor or a representative of the governing body will evaluate the complaint and begin action to correct or abate the condition(s) through arbitration or administrative sanctions or they may also find the complaint to be invalid. An answer will be sent to the complainant within ten (10) working days following receipt of the complaint, or the next regularly scheduled meeting of the governing body following receipt of the complaint, explaining decisions made and action taken or planned.
- e. After the above steps are taken, if the complainant is still not satisfied with the results, he may file a complaint with the Commissioner of Labor. Complaints filed with the Commissioner of Labor shall include copies of all related correspondence with the Department Supervisor and the City Recorder or the representative of the governing body.
- f. Copies of all complaints and answers thereto will be filed by the Department Supervisor who shall make them available to the Commissioner of Labor or his designated representative upon request.

FAILURE TO FOLLOW THIS PROCESS IS A VIOLATION OF OUR SAFETY POLICY AND WILL BE TREATED AS SUCH!

# IV. Employee's Rights and Responsibilities

Rights and responsibilities of employees shall include, but are not limited to, the following provisions:

- a. Each employee shall comply with Occupational Safety and Health Act standards and all rules, regulations, and orders issued pursuant to this program and the Tennessee Occupational Safety and Health Act of 1972, which are applicable to his or her own actions and conduct.
- b. Each employee shall be notified, by the placing of a notice on bulletin boards or other places of common passage, of any application for a permanent or temporary order granting the employer a variance from any provision of the TOSHA Act or any standard or regulation promulgated under the Act.
- c. Employees shall be given the opportunity to participate in any hearing which concerns an application by the employer for a variance from a standard or regulation promulgated under the Act.
- d. Employees who may be adversely affected by a standard or variance issued pursuant to the Act or this program may file a petition with the

- Commissioner of Labor or whoever is responsible for the promulgation of the standard or the granting of the variance.
- e. Employees who have been exposed or are being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall be provided with information on significant hazards to which they are or have been exposed, relevant symptoms, and proper conditions for safe use or exposure. Employees shall also be informed of corrective action being taken.
- f. Subject to regulations issued pursuant to this program, employees or an authorized representative of employees shall be given the right to request an inspection and to consult with the Department Supervisor, the Director of Occupational Safety and Health or Inspector at the time of the physical inspection of the worksite.
- g. Employees may bring to the attention of the Director of Occupational Safety and Health any violation or suspected violation of the standards or any other health or safety hazards.
- h. No employee shall be discharged or discriminated against because he has filed any safety complaint or instituted or caused to be instituted any proceeding or inspection under or relating to this program.
- i. Any employee who believes he has been discriminated against or discharged in violation of subsection (h) of this section may file a complaint with the Department Head alleging such discrimination. Such employee may also, within thirty (30) days after violation occurs, file a complaint with the Commissioner of Labor alleging such discrimination.

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- j. Nothing in this or any other provision of this program shall be deemed to authorize or require any employee to undergo medical examination, immunization, or treatment for those who object thereto on religious grounds, except where it is necessary for the protection of the health or safety of others or when a medical examination may be reasonably required for performance of a specific job.
- k. Employees shall immediately report any accident, injury, or illness resulting from their job, however minor they may appear, to their supervisor or the Department Head. Not complying with this rule is a violation of the BAXTER's Safety Policy.

# V. Discipline for Failure to Follow Safety Regulations and Procedures

Any employee, regardless of status, who willfully and/or repeatedly violates, or causes to be violated, any safety and health standard or BAXTER safety policy shall be subject to disciplinary action. Supervisors and/or Department Heads have the discretion on how to proceed with the disciplinary policy. The following are the disciplinary steps set forth in the agreement between BAXTER.

- 1. Oral Reprimand
- 2. Written Reprimand
- 3. Termination

(Refer to your immediate Supervisor/Department Head for further explanation of this policy)

## VI. Bloodborne Pathogens Program

Employees who have initial contact with injured employees or visitors must adhere to the requirements of the BAXTER's Bloodborne Pathogens Program.

Under this plan:

Each employee is required to have refresher training on bloodborne pathogens each year.

Each "high risk" employee of BAXTER is offered the hepatitis vaccination each year. If an employee declines the hepatitis vaccinations, a Statement of Declination form will be provided for you. This form has to be completed once, not each year. Currently the Center for Disease Control is recommending no booster for this vaccination; therefore, at this point the vaccination is considered good for life. If you are made aware through blood work that your body has not built up immunity to hepatitis after the vaccinations, the City will provide boosters. Contact the City Recorder to make arrangements.

Each department should have the means necessary to properly clean up potentially infectious material.

If an employee has a bloodborne exposure, the incident must be reported immediately to your supervisor and the City Recorder's Office. A BAXTER official will meet with you to discuss your options as stated in the complete Bloodborne Pathogens Program. Appropriate accident reports and any other specific form required will need to be completed.

The complete Bloodborne Pathogens Program is available for your review in your department head or supervisors office.

As a BAXTER employee, you must react to an emergency not only with your heart, but also, with your head. Co-workers and loved ones are counting on you. Take time to protect yourself while helping a child or co-worker in need.

## VII. Hazardous Communications Program

The Tennessee Hazardous Chemical Right-To-Know Law was passed May 23, 1985. The primary objective of this law is to train employees about the hazardous chemicals that they work with or may be exposed to in a foreseeable emergency. In order to comply with this law, BAXTER established its own Hazardous Communication Program. The complete copy of this program can be found in the BAXTER Safety Manual in your supervisors or department head's office.

Chemicals and chemical processes are used to manufacture materials, packaging, fuels and even medicines. Many of the chemicals you work with every day can be hazardous, causing injuries, illness or even death.

BAXTER employees shall be trained on Hazardous Communications each year. It is very important that employees understand Material Safety Data Sheets (MSDS). These are kept at each worksite and contain information on chemicals that individuals may come in contact with. The information contained on an MSDS includes emergency procedures, such as what to do if someone ingests a specific chemical or gets it in their eyes.

You can protect yourself from chemical hazards by knowing proper chemical safety procedures such as:

- Identification
- · Storage and Handling
- · Personal Protection
- Emergency Response

FOR MORE INFORMATION, PLEASE REVIEW THE COMPLETE HAZARD COMMUNICATIONS PROGRAM WHICH CAN BE FOUND IN THE BAXTER'S SAFETY MANUAL IN CITY RECORDER'S OFFICE!

# VIII. Ergonomics and Lifting Safety

#### Introduction

Working in awkward positions or using poor lifting techniques can put unnecessary strain on your body. Body stresses accumulated over time can actually cause more shoulder, neck and back pain than one traumatic event.

Fortunately, the scientific field of ergonomics provides information to make your job fit your body's needs and abilities. This section will explain how you can eliminate strain by working with less force, using safe lifting techniques, taking short breaks and performing exercises to keep muscles in shape.

#### What Are CTDs?

Slouched shoulders, a bent neck, and arms lifted above the shoulders, behind the back or to the side are all unnatural positions that are stressful to the body. These positions bend the body at awkward angles and can result in a cumulative trauma disorder. Cumulative trauma disorders (CTDs) are injuries which result in damage to muscles and tendons. No bones are broken in this type injury. Soreness, swelling or tearing of muscles causes the damage. For example, if your neck is continuously bent while you are working, you can experience pinched muscles. This injury may cause headaches, neck pain and numbness in your shoulders and arms. The shoulder tendons can become inflamed, requiring rest to repair the strain.

CTD symptoms usually develop as a result of months or years of strain on the body. By making an effort now with exercise, neutral positions, rest and good nutrition, you can avoid CTDs later. If you are already experiencing symptoms such as soreness or swelling of muscles, report them to your supervisor immediately. A medical exam can be conducted to determine if you are suffering from a CTD.

# Your Upper Limbs

The human body has a series of tendons that control movement throughout the arms. When these tendons are overused or used with excessive force, they can become irritated and sore. Over a period of months or years, this irritation can lead to cumulative trauma disorders, or CTDs. One particular CTD, known as carpal tunnel syndrome, results when tendons in the wrist are overused, become swollen and press on the median nerve in the wrist. Carpal tunnel syndrome interferes with hand and arm movements by causing numbness, tingling and pain.

If you develop soreness in the wrist, arm or hand, report it to your supervisor or the Safety Department immediately. Testing can be arranged to see if you have a cumulative trauma disorder. When diagnosed early, symptoms of CTDs can be eased by simple changes in job design or work routines. Physical therapy may also be used to strengthen weakened body parts.

# Stay In Neutral

When you work in a natural or neutral position, there is less strain on your body. To put your body in a neutral position:

- · Stand up straight with arms relaxed at your sides.
- Put two fingers on your top lip and press your head backward until you feel a slight stretching.
- Take your fingers away, keeping the position, and let your head glide forward until it is comfortable and you feel relaxed.

To put your shoulders in neutral:

- Move your shoulders back until you feel them stretching.
- Hold this position and then allow your shoulders to glide forward naturally. Now your upper body is in a neutral work position.

# **Modify Your Workstation**

Modifying your workstation to ease strain on your arms or hands does not have to be complex or expensive. Work-area stresses can be reduced by having a table or other surface moved slightly above your waist level. That way forearms are angled slightly downward and wrists remain straight. If your work surface is significantly higher than waist level, you may be able to stand on a platform to raise the level of your arms-particularly if you work over a fixed object. Work areas can also be improved by eliminating unnecessary reaching or stretching for work materials. Work materials that are frequently used should be stored within arm's reach.

# **Healthy Postures**

#### Chairs

If your work requires that you sit for most of the day, a good ergonomically-designed chair is your key to good posture and comfort.

- Use a chair that is adjustable up and down, so that your feet can be placed flat on the floor.
- Adjust the backrest of your chair to fit the curve of your lower back.
- If possible, use a chair with solid armrests to support your arms.
- Use a chair with a seat that swivels to help protect your back from unnecessary twisting.

## Sitting and Standing

If you are seated most of the time at your job, get up hourly to take a short walk or stretch break to increase your circulation. When working at computers, sit erect so that the monitor is at eye level and the keyboard is at elbow height. This will decrease strain on your shoulders, neck and back.

If your job requires that you stand, stagger your feet or place one foot on a footrest to ease strain on your back. Whenever possible, sit down to perform your work. Being in one position for too long, whether sitting or standing, cuts off the flow of blood to the muscles and may cause fatigue and gradual tissue deterioration.

#### **Use Less Force**

Force is the strength applied to perform a task such as trying to open a jar lid or turning a wrench on a rusted bolt. Don't increase the irritation of your muscles, tendons and nerves by adding unnecessary force to repetitive motions.

## Ways to limit force:

- Use smooth movements instead of rough, jerky movements when performing tasks.
- Move carts by pushing rather than pulling. This will help relieve stress on the back by using the larger, stronger muscles in the chest and arms.
- Use power tools whenever possible.
- Use hand tools that are well-oiled and sharp so they don't require extra strength to operate.

#### **How To Lift**

Back pain is often caused by lifting materials incorrectly. In fact, back sprains and strains are among the most common workplace injuries. These simple lifting techniques will help you ease the strain on your back:

- Before lifting an object, get your body as close to the object as possible.
- When lifting, assume the correct lifting position. Stagger your feet, bending your knees as you lower yourself. Lean over your forward leg and pick up the object. Move back to an upright position by using your leg muscles.
- When carrying an awkward or heavy object, turn with your feet--not your waist. Twisting while you lift can place a dangerous strain on your back.
- When putting the object down, go slowly. Stagger your feet and bend your body at knee level.
- Before moving an object, be sure of its final destination.
- Objects you move frequently should. be stored at waist level.
- Get help when lifting heavy objects. Request assistance from a co-worker or use a mechanical aid such as a hand truck, a Heavy Equipment or a hoist.

# **Limit Repetition**

When you limit the repetitive motions or tasks you do, you reduce the amount of strain on various parts of your body. You may be able to accomplish this by rearranging your workstation. Altering your work methods by combining several steps into one may help reduce the chance of strain. Some employers are able to rotate workers among different jobs to reduce repetitive motions. Approach your supervisor to discuss any ideas you may have about limiting repetitive motions on your job.

# Give Your Body A Break

Parts of the body which are used continually become fatigued and may, over time, become injured and sore. Rest breaks are essential to give the body a chance to recover from constant movement. Whenever possible, try to take several short breaks instead of one long one. During break time, take a short walk, climb a set of stairs or do any of the following stretching exercises. This will help relax your muscles and improve circulation.

- Shoulder Roll -- Roll your shoulders up and back in a circular motion, then relax. Perform this motion slowly several times. Try this exercise in reverse, rolling shoulders up and forward several times.
- Neck Stretch -- Turn your head one way until you feel a comfortable stretch. Pull your shoulder down on the opposite side of your body and hold it there for a count of 15. Then turn your head in the opposite direction and repeat this exercise.
- Back Bend -- Put your hands in the curve of your back and slowly bend back over your hands. Try taking several slow, deep breaths at the same time while stretching your back muscles.

## Stretching Around The Clock

Take the opportunity to stretch throughout the day--before, during and after work. When you take time to stretch, you change the direction of your muscles, relieve tension and stimulate blood circulation in your neck, shoulders and back.

The best place to give your neck, shoulders and back a rest is at home. Limit the number of repetitive tasks you do at home. Try to vary your tasks at home and avoid using the same muscles you use at work.

# **Tips For Exercising Muscles**

To ease the strain on the muscles you continuously use, it is important to exercise. Stretching is one form of exercise that changes the positions of the muscles in your arms and hands and stimulates blood circulation in the area. The following stretching and conditioning exercises can be done at home or at work:

#### 1. Wrists

- · Slowly circle your wrist in one direction.
- · Repeat ten times in both directions.
- Perform the same exercise with your other wrist.

#### 2. Hands

- \* Close your hand into a fist and hold it for a few seconds.
- \* Stretch out all your fingers as wide as possible.

- \* Repeat five times.
- \* Perform the same exercise with your other hand.

## Off The Job

Repetitive strains can also occur off the job. Hobbies such as playing the piano, knitting, golfing or gardening can cause repetitive strains. Balance these hobbies with activities that don't require repetitive hand and arm movements. Give your hands a rest from repetitive tasks, both on and off the job, so that these muscles have a chance to rest and repair themselves.

#### Get Involved

Look at the risk factors you encounter each day both at home and at work--and think ergonomics. Based on what you've learned in this section, ask yourself:

- What awkward postures do I encounter on my job?
- Can I readjust sitting or standing positions so that my head is up and my shoulders are back and relaxed?
- Is the work in front of me within arm's reach?
- Do I use excess force on my job? If so, are there ways to reduce or eliminate the force?
- · When lifting is required, am I following the right steps to lift safely?
- If I need to lift a heavy object, can I get help lifting it from a co-worker or use mechanical assistance?
- Do I have any other ideas to make my work space or my tasks more ergonomically comfortable that I could share with my supervisor?

# Summary

Remember, adjusting workstations and procedures can make your work fit your body. Taking the time to relax your posture and stretch your body can lead to a healthier body and take a weight off your shoulders!

## IX. Fire Safety

#### Introduction

Fire is the third leading cause of accidental deaths in the United States, yet most people ignore it. More than 150 workplace fires occur every day.

In this section, you will see:

- · How fires start
- · How fires are classified
- How to prevent fires
- When not to fight a fire
- · How to identify the proper fire extinguisher
- · How to use a portable fire extinguisher
- How to extinguish small fires
- · How to inspect your fire extinguisher
- How to create an Emergency Action Plan
- · How to evacuate a burning building
- · What to do if trapped in a burning building

#### **How Fires Start**

Fire is a chemical reaction involving rapid oxidation or burning of a fuel. It needs four elements to occur:

- Fuel Fuel can be any combustible material--solid, liquid or gas. Most solids and liquids become a vapor or gas before they burn.
- Oxygen The air we breathe is about 21 percent oxygen. Fire only needs an atmosphere with 16 percent oxygen.
- **Heat** Heat is the energy necessary to increase the temperature of the fuel to a point where sufficient vapors are given off for ignition to occur.

• Chemical Reaction - A chain reaction can occur when the other three elements are present in the proper conditions and proportions. Fire occurs when this rapid oxidation or burning takes place.

Take anyone of these factors away and the fire cannot occur or will be extinguished if it is already burning.

#### How Fires Are Classified

Class A - Ordinary combustibles or fibrous material, such as wood, paper, cloth, rubber and some plastics.

Class B - Flammable or combustible liquids such as gasoline, kerosene, paint, paint thinners and propane.

Class C - Energized electrical equipment such as appliances, switches, panel boxes and power tools.

Class D - Certain combustible metals, such as magnesium, titanium, potassium and sodium. Explosive reactions can result from using common agents on Class D fires. Therefore, it is important to use the appropriate extinguishing agent for the type of metal that is burning.

#### **How To Prevent Fires**

## Class A - Ordinary combustibles:

- Keep storage and work areas free of trash.
- Place oily rags in covered containers.

# Class B - Flammable liquids or gases:

- Don't refuel gasoline-powered equipment in a confined space, especially in the presence of an open flame such as a furnace or water heater.
- Don't refuel gasoline-powered equipment while it's hot.
- Keep flammable liquids stored in tightly closed, self-closing, spill-proof containers. Pour only what you need from storage drums.
- Store flammable liquids away from spark-producing sources.
- Use flammable liquids only in well-ventilated areas.

# Class C - Electrical equipment:

- Look for old wiring, worn insulation and broken electrical fittings. Report any hazardous conditions to your supervisor.
- Prevent motors from overheating by keeping them clean and in good working order. A spark from a rough-running motor can ignite the oil and dust in it.
- Investigate any appliances or electrical equipment that smells strange.
  Unusual odors can be the first sign of fire.
- Don't overload wall outlets.
- Utility lights should always have a wire guard over them. Heat from an uncovered light bulb can easily ignite ordinary combustibles.
- Don't misuse fuses. Never install a fuse rated higher than specified for the circuit.

# When Not To Fight A Fire

Never fight a fire:

- If the fire is spreading beyond the spot where it started.
- · If you can't fight the fire with your back to an escape exit.
- · If the fire can block your only escape.
- · If you don't have adequate fire-fighting equipment.

In any of the situations, DON'T FIGHT THE FIRE YOURSELF. CALL FOR HELP.

# **How To Extinguish Small Fires**

- Class A Extinguish ordinary combustibles by cooling the material below its ignition temperature and soaking the fibers to prevent re-ignition. Use pressurized water, foam or multi-purpose dry chemical extinguishers.
- Class B Extinguish flammable liquids, greases or gases by removing the
  oxygen, preventing the vapors from reaching the ignition source or
  inhibiting the chemical chain reaction. Foam, carbon dioxide, ordinary

dry chemical, multi-purpose dry chemical and halon extinguishers can be used to fight Class B fires.

- Class C Extinguish energized electrical equipment by using an extinguishing agent that is not capable of conducting electrical currents. Carbon dioxide, ordinary dry chemical, multi-purpose dry chemical and halon fire extinguishers\* can be used to fight Class C fires. DO NOT USE water extinguishers on energized electrical equipment
  - \*Even though halon is widely used, the EPA hopes to replace it with an agent that is less harmful to the environment.
- Class D Extinguish combustible metals such as magnesium, titanium, potassium and sodium with dry powder extinguishing agents specially designated for the material involved. In most cases, the powder absorbs the heat from the material, cooling it below its ignition temperature.
- Multi-purpose chemical extinguishers leave a residue that can harm sensitive equipment, such as computers and other electronic equipment. Carbon dioxide or halon extinguishers are preferred in these instances because they leave very little residue.

# How To Identify The Proper Fire Extinguisher

All ratings are shown on the extinguisher faceplate. Some extinguishers are marked with multiple ratings such as AB, BC and ABC. These extinguishers are capable of putting out more than one class of fire.

- Class A and B extinguishers carry a numerical rating that indicates how large a fire an experienced person can safely put out with that extinguisher.
- Class C extinguishers have only a letter rating to indicate that the extinguishing agent will not conduct electrical current. Class C extinguishers must also carry a Class A or B rating.
- Class D extinguishers carry only a letter rating indicating their effectiveness on certain amounts of specific metals.

# How To Use A Portable Fire Extinguisher

P.....Pull the pin.

A.....Aim extinguisher nozzle at the base of the flames.

S......Squeeze trigger while holding the extinguisher upright.

S......Sweep the extinguisher from side to side, covering the area of the fire with the extinguishing agent.

#### REMEMBER:

- · Should your path of escape be threatened
- · Should the extinguisher run out of agent
- Should the extinguisher prove to be ineffective, or
- Should you no longer be able to safely fight the fire

#### ...LEAVE THE AREA IMMEDIATELY!

# How To Inspect Your Fire Extinguishers

- Know the locations of your fire extinguishers
- Make sure the class of extinguisher is safe to use on fires likely to occur in the immediate area.
- Check the seal. Has the extinguisher been tampered with or used before?
- Look at the gauge and feel the weight. Is the extinguisher full? Does it need to be recharged?
- Make sure the pin, nozzle and nameplate are intact.
- Report any missing, empty or damaged fire extinguishers.

# How To Evacuate A Burning Building

• The last one out of the room should close the door but not lock it. Locking the door hinders the Fire Department's search and rescue efforts.

- Proceed to the exits as outlined in the Emergency Action Plan.
- Don't use elevators under any circumstances.
- Stay low and avoid smoke and toxic gases. The best air is close to the floor, so crawl if you have to.
- If possible, cover your mouth and nose with a damp cloth to help you breathe.
- If you work in a building with multiple stories, a stairway will be your primary escape route.
- Once in the stairwell, proceed down to the first floor. Never go up.
- Once outside the building, report to a predetermined area so that a head count can be taken.

# What To Do If Trapped In A Burning Building

- If you're trying to escape a fire, never open a closed door without first feeling it. Use the back of your hand to prevent burning your palm. If the door is hot, try another exit. If none exists, seal the cracks around the door and vents with anything available.
- If trapped, look for a nearby phone and call the Fire Department, giving them your exact location.
- If breathing is difficult, try to ventilate the room, but don't wait for an emergency to discover that windows can't be opened.

#### What To Do If Someone Catches On Fire

If you should catch on fire:

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- STOP --- where you are
- DROP --- to the floor
- ROLL --- around on the floor.

This will smother the flames, possibly saving your life. Just remember to STOP, DROP AND ROLL.

• If a co-worker catches on fire, smother the flames by grabbing a blanket or rug and wrapping them up in it.

# Summary

- Knowledge
- · Awareness
- · Preparation.

These are your keys of preventing and surviving fires wherever they occur.

# X. Drug and Alcohol Testing Program

#### Introduction

Baxter Government (BAXTER) has a strong commitment to providing its employees with a safe, drug-free working environment, and to discourage drug and alcohol abuse. The presence of illegal drugs or alcohol in the workplace and employees being under the influence of these substances during working hours are inconsistent with BAXTER's objectives. Employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits.

This section will explain your rights and responsibilities. You'll learn about the effects of drugs, when and how you'll be tested, and the consequences of a positive test.

#### A Bad Influence

Controlled substances and alcohol have many unpleasant side effects that can adversely impact our work and personal lives. Some of these include:

- Declining job performance
- Increased accidents and mistakes
- Emotional instability such as exaggerated moods, negativism, and difficulty getting along with others
- Forgetfulness, decreased mental alertness and decreased concentration
- · Increased absenteeism and frequent tardiness
- Physical problems such as unusual nasal and respiratory problems, excessive sniffing, running or bleeding nose, sores around nose, deteriorating physical appearance, bloodshot eyes and sudden or unpredictable changes in energy level.

These symptoms are good indicators of someone with a substance abuse problem. Follow your company's policies if you or a co-worker shows these signs and symptoms.

# Safety-Sensitive Functions

Safety-sensitive functions include driving, of COlJI's, but also include many other duties you may normally perform such as:

- · Inspecting or servicing a motor vehicle
- · Loading or unloading a vehicle
- · Attending a vehicle
- · Giving receipts for shipments.

The use of controlled substances is illegal on and off the job. If you are found under the influence of controlled substances, you will not be allowed to perform safety-sensitive functions on the job and you will be considered for dismissal as stated in board policy.

Although the use of alcohol is legal, you may not perform safety-sensitive functions:

- Within four hours of using alcohol
- When you have a breath alcohol concentration of .04 or greater
- · If you refuse to take an alcohol test.

If you refuse to take a breath alcohol test or have breath alcohol concentration of .04 or greater, you will be considered for dismissal according to board policy.

# **Conditions For Testing**

Random drug and alcohol tests must be given to a certain portion of the employees in each department. These tests must be administered by BAXTER or a consortium--a group acting on behalf of BAXTER to provide drug and alcohol testing. Names of specific employees who are tested are selected at random from the entire group-like a lottery.

**Pre-employment** drug tests must be given to any applicant that BAXTER decides to hire. **Pre-employment** alcohol tests may be given to any applicant that BAXTER decides to hire.

Post-Accident and Post-Incident Testing-"Injury" is determined as a harm or damage to an employee occurring in the workplace or in the scope of employment, which must be recorded in the BAXTER'S OSHA 300 Log. An injury is recordable under the OSHA 300 log if it results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

After an accident or an incident which (a) results in an injury or which (b) results in property damage which may reasonably be expected to exceed \$500 to repair, BAXTER will require the employee to submit to a drug and/or alcohol test in accordance with these rules:

- An employee injured at the workplace and required to be tested shall be taken to a medical facility for immediate treatment of the injury. Specimens are to be obtained at the treating facility or a designated collection site under the procedures set forth in the regulations and transported to an approved testing laboratory. No specimens are to be taken prior to the administration of emergency medical care. Once this condition has been satisfied, an injured employee must submit to testing.
- In the case of non-emergency injuries or property damage accidents reported to BAXTER after the fact, the employee must submit to drug testing within thirty-two (32) hours of the accident.

Post-accident tests will also be given to employees who are not in a safety sensitive job. (See Substance Abuse Policy)

Reasonable suspicion drug or alcohol tests must be given when an employee looks, acts or smells like he or she is using drugs or alcohol. The behavior must be witnessed by one, but preferably two, supervisors trained to detect drug or alcohol abuse. (See Substance Abuse Policy)

#### An Offer You Can't Refuse

Refusing to submit to a drug or alcohol test is prohibited by law. Refusing to be tested includes:

 Failing to provide adequate urine or breath without a valid medical explanation.

- · Clearly obstructing the testing process, such as adulterating a specimen.
- Outright refusal to participate.

#### The Unsafe Six

You will be tested for the following six substances which can cause you to be unfit for the road. This is not an all inclusive list. For a more complete listing, see Substance Abuse Policy for the City of Baxter. A list or the substance for which you will be tested includes, but is not limit to, the following:

- 1. Alcohol is a depressant which may reduce tension, lessen inhibitions, cause drowsiness, impair judgment, distort speed and vision, decrease motor coordination and slow reaction time. Long-term effects often include a negative self-image, mood swings, increased heart, brain, kidney and liver trouble--and even premature death.
- 2. Marijuana is a commonly used illegal drug. It distorts visual perception and alters one's sense of reality. Obvious effects last four to six hours. Impaired performance may last longer.
- 3. Cocaine is a highly addictive stimulant which causes paranoia, hallucination and extreme mood swings. Drivers on cocaine may be inattentive, ignore warning signals and take unnecessary risks. Single-dose effects last one to two hours, but it may be detected up to three days after use.
- 4. Opiates include opium, morphine, codeine and heroin. They may cause depression, fatigue and slowed reflexes that impair the driver's reaction time. Single-dose effects last three to six hours, but may be detected up to two days later.
- 5. Amphetamines are stimulants, speed or uppers. They are used to help a driver stay awake while driving. The body needs rest and will eventually "crash" because it cannot be denied rest indefinitely. Effects last two to four hours and can be detected one to two days after use.
- 6. Phencyclidine (PCP) can cause hallucinations and sudden personality changes as well as drowsiness, paranoia, agitation, convulsions or coma. Effects of one dose can last a few days. It can be detected up to eight days after use.

# **Protecting Your Rights**

By law, every effort is made to prevent you from being falsely accused of drug or alcohol abuse. Safeguards include:

- A confirmation test for alcohol testing should be performed 15 minutes after the initial test is positive. This allows time for any alcohol residue from mouthwash or a mint to disappear.
- For controlled substances testing, you have the opportunity to request that a split sample of your urine be tested. The split sample protects you. If the primary sample tests positive, you may request that the secondary sample be tested at another lab.
- Also, if anything distorts test results (such as prescription cough syrup), you
  can take your case to the Medical Review Officer, or MRO. The MRO is an
  independent third party, a licensed physician with knowledge of substance
  abuse.

#### At The Collection Center

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You can expect to be treated in a professional and courteous manner. You must present your driver's license or other photo ID to the collector. If you don't have a photo ID, an employer representative may be called to identify you. The test cannot proceed until you are positively identified. You may also ask the collector to show his or her ID.

The collection person assigned to you:

- · Is carefully trained in controlled substances and alcohol testing procedures
- · Will only manage one donor at a time
- · Will not leave your specimens or paperwork unattended--even for an instant.

Keep in mind that drug and alcohol tests are very different. It may take one to five days to learn the results of a controlled substance test, while alcohol test results are immediate. Also, just because you're being tested for one does not necessarily mean you will be tested for the other. You will only be tested for alcohol while you're performing a safety sensitive function, just before performing one or just after.

# **Drug Test Results**

The lab reports drug test results to your company's Medical Review Officer within one to five working days after receiving the specimen. If the test is negative, the MRO informs your company or consortium and your employer can inform you.

A positive test result does not automatically brand you as a drug abuser. Instead, the MRO notifies you of the results and reviews your case for alternate medical explanations, like prescription drugs.

If you are sure you have never used a prohibited substance, you can request that the MRO have the split sample tested at a different lab for the drug that came up positive. You must make your request within 72 hours of MRO notification of test results.

While awaiting the split-sample test results, you will not be permitted to perform safety sensitive duties. If it is negative, the MRO will cancel the first test and you may return to your normal duties.

# Summary

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You have nothing to fear from drug and alcohol testing. While you have little control over if or when you will be tested, you have a great deal of control over your results. In fact, testing actually makes your job safer. It protects your life--and the lives of other people--by keeping drug and alcohol abusers off the road.

Take drug and alcohol testing seriously. It's your right and your responsibility.

# XI. General Safety Rules

If any employee performs any task which is a duty of another department, he/she is responsible for following the rules of that department.

# A. Custodial Department

As a custodial worker, you perform many different tasks each day. All of these tasks can be completed in a manner which will make your job a safer one. It is very important to BAXTER that your workplace be one in which you feel comfortable safely performing your daily tasks. The following are a list of simple safety rules. If followed, most injuries currently being suffered by custodial staff will not take place. Failure to follow any of these safety rules is considered a violation of our Safety Policy and will be treated as such.

1. An employee should never attempt to perform a task that he has not been instructed how to perform safely.

- 2. All accidents, no matter how minor, must be immediately reported to your supervisor. The supervisor should then immediately report the accident to the City Recorder's Office.
- 3. Never attempt to lift objects which are too heavy for you; always ask for help. When lifting items, always wear your back support belt.
- 4. Always keep your work area clean and orderly; good housekeeping keeps workplace hazards to a minimum.
- 5. When performing maintenance on electrical equipment, always cut off the power source before performing these tasks.
- 6. When dealing with sharp objects such as wire, metal, glass, etc., gloves must be worn. Many injuries occur each year to custodial employees that can be prevented by wearing gloves.
- 7. Before using any chemical or other materials, closely read instructions and warnings.
- 8. All horseplay and practical jokes are prohibited.
- 9. Anytime there is a potential for flying debris, safety glasses must be worn. This includes sawing, drilling, mowing, weed eating, using chemicals or other materials including paints, and many other maintenance tasks.
- 10. Always flag off work areas to keep unauthorized persons from entering a potentially dangerous area.
- 11. When mowing or using other high noise equipment, always wear earplugs.
- 12. When mopping floors, cleaning up spills, or anytime the floor becomes wet for whatever reason, always put the wet floor signs out until the area is completely dry.
- 13. Custodial closets and supply rooms must be kept reasonably clean. Many hazards are presented by bad housekeeping in these areas.

# B. Police, Fire, Water, Street, & Sewer Departments

The above named departments are BAXTER's most hazardous department due to the variety of equipment and materials employees may work with or encounter each day. This is why each of you must dedicate yourself to performing every task in a safe manner every day. Using good judgment is very

important in order to complete your work without incident. The following is a list of procedures which failure to adhere to will be seen as a violation of BAXTER's Safety Policy and will be treated as such:

- 1. An employee should never attempt to perform any task that he has not been instructed how to perform safely.
- 2. All accidents, no matter how minor, must be reported to your supervisor immediately. The supervisor should then immediately report the accident to the City Recorder.
- 3. Never attempt to lift objects which are too heavy for you; always ask for help.
- 4. Always keep your work area clean and orderly; good housekeeping keeps workplace hazards to a minimum.
- 5. When performing maintenance on electrical equipment, always cut off the power source first.
- 6. When dealing with sharp objects such as wire, metal, glass, etc., gloves must be worn. Many injuries occur each year to maintenance employees, which could be prevented by wearing gloves.
- 7. Before using any chemicals or other materials, closely read instructions and warnings.
- 8. All horseplay and practical jokes are prohibited.
- 9. Anytime there is a potential for flying debris, safety glasses must be worn. This includes sawing, drilling, mowing, weed eating, using chemicals or other materials including paints, and many other maintenance tasks.
- 10. Do not use or help in the use of any maintenance lift apparatus unless you have completed the appropriate manufacturer training.
- 11. Always wear your seat belt while operating a BAXTER vehicle.
- 12. Always flag off work areas to keep unauthorized persons from entering a potentially dangerous area.
- 13. When working overhead or when there is potential for falling objects, always wear a hard-hat.
- 14. When mowing or using other high noise equipment, always wear ear plugs.

# **Heavy Equipment - Operating Heavy Equipment Safely**

#### Introduction

Knowledge, skill and confidence are the essential tools of a professional Heavy Equipment operator. The knowledge that your equipment is in safe working condition and the skill that comes from practicing safe operating techniques will produce the confidence you need to get the job done right.

# **Pre-Use Inspection**

The physical operating condition of a Heavy Equipment will change throughout each day and between each shift. A pre-use inspection identifies potential hazards you may encounter from a damaged Heavy Equipment.

Before you start to work:

- Inspect the mast for broken or cracked weld-points and any other obvious damage.
- Make sure roller tracks are greased and that chains are free to travel.
- Be sure the forks are equally spaced and free from cracks along the blade and at the heels.
- · Check hydraulic fluid levels.
- Check each hydraulic line and fitting for excessive wear or crimping.
- Look at lift and tilt cylinders to see if there is any damage or fluid leaking.
- Inspect mounting hardware on the cylinders and make sure everything is secure.
- · Check tires for excessive wear, splitting or missing tire material.
- If you're operating on pneumatic tires, check them for the proper pressure indicated on the tire.

# **Inspecting The Power Source**

Heavy Equipment is powered by batteries, propane or diesel. If you find a problem, never attempt to fix it yourself. Report any problems to your supervisor and let a qualified mechanic fix the problem.

#### **Battery Power**

- Working around batteries can be dangerous because they contain acid.
- Don't smoke or let anyone else smoke in a charging area. Gases that can escape from a battery vent hole are extremely flammable.
- Check batteries for:
  - ♦ Cracks or holes
  - ♦ Security sealed cells
  - ♦ Frayed cables
  - ♦ Broken insulation
  - **♦** Tight connections
  - ♦ Clogged vent caps
  - **♦** Tight connections

# **Battery Charging**

Battery-powered Heavy Equipments requires constant charging. Do not smoke in the charging area because the materials are flammable. Follow your manufacturer's procedures for safe charging of the battery and proper cable connections for re-charging.

# **Propane Power**

If the Heavy Equipment is powered by propane, inspect the tank for cracks, broken weldpoints and other damage. Make sure all valves, nozzles and hoses are secure and do not leak.

Anytime you have to handle a propane tank, do it outside, away from the building and other workers. Smoking, open flames and hotwork are never allowed around propane tanks. You should always have a fire extinguisher nearby.

# Starting the Heavy Equipment

• Once you have inspected for any visible damage, you're ready to start the Heavy Equipment.

- Apply the foot brake.
- Shift gears to neutral.
- Turn the key.
- Check all gauges and indicators.
- · Check controls, steering and brakes for smooth operation.

# **Finding The Rated Capacity**

One of the most important things to know about a Heavy Equipment is its rated capacity under normal conditions and with special attachments.

It is important to know how much a load weighs before you try to move it. If the weight of the load is not clearly marked, try a simple test to see if it's safe to move.

- Lift the load an inch or two. The Heavy Equipment should feel stable and the rear wheels in firm contact with the floor.
- If everything is operating properly and steering seems normal, you may begin to move the load. If you feel the Heavy Equipment struggling, set the load down and check with your supervisor before you go on.

# **Handling And Moving Loads**

# To Pick Up A Load:

- Square up on the center of the load and approach it straight on with forks in traveling position.
- Stop when the tips of your forks are about a foot away from the load.
- Level the forks and slowly drive forward until the load is resting against the backrest.
- · Lift the load high enough to clear whatever is under it.
- Look over both shoulders to make sure you're clear and back out about a foot.
- Carefully tilt the mast back to stabilize the load.

#### To Put A Load Down:

- Drive safely to the location.
- Square up and stop about a foot away.
- Level the forks and then drive the rest of the way in.
- Now you can lower the load to the floor.
- To make sure you won't hook the load when you back out, tilt the forks slightly forward.
- Look over both shoulders and back straight out until the forks have cleared the pallet.

# **Stacking And Unstacking Loads**

Many facilities use Heavy Equipment to stack products and increase storage capacity. When you're stacking or unstacking a product, keep in mind that the higher your load is positioned, the less stable your Heavy Equipment becomes.

Lifting a load from a stack is similar to lifting a load from the floor.

- Approach the load slowly and squarely with the forks in the traveling position.
- Stop about a foot from the load and raise the mast so the forks are at the correct height.
- Level the forks and drive forward until the load is flush against the backrest.
- Lift it high enough to clear the bottom load, look over both shoulders, and slowly back straight out.
- Once you've cleared the top of the stack, stop and lower the mast to the traveling position.
- Tilt the forks back and you are ready to go.

# To Stack One Load On Top Of Another:

Approach the load slowly and squarely.

- Stop about a foot away from the loading area and lift the mast high enough to clear the top of the stack.
- Slowly move forward until the load is square over the top.
- Level the forks and lower the mast until the load is no longer supported by the forks.
- Look over both shoulders and slowly back straight out.

# **Safety Tips**

- Never lift a load while you're moving. Always wait until you're in the loading area and completely stopped before you raise the mast.
- Be sure that the top load sits squarely on the stack. If you're just a little off, the whole thing could tip over.

# **Driving With A Load**

Once you've picked up a load you'll have to move it somewhere, so follow these safe driving tips:

- Always travel with a load tilted slightly back for added stability.
- Travel with a load at the proper height. A stable clearance height is four to six inches at the tips and two inches at the heels to clear most uneven surfaces and avoid debris.
- Never speed or use excessive maneuvering.
- If you can't see over the load, drive in reverse. Never try to look around it.

# Safe Steering

Turning a Heavy Equipment will require a little more concentration than driving a car. Because it steers from the rear, the Heavy Equipment handles very differently from a car and other roadway vehicles. The back end of the Heavy Equipment swings wide and can injure co-workers or damage products or equipment if you're not careful.

 Think of the drive wheels as a pivot point. When you turn, the back of the Heavy Equipment makes a circle around the front.

- Never make a turn at normal traveling speed. Always slow down to maintain balance.
- When you're turning into an aisle, stay wide. This will help your load clear the sides and give you the chance to square-up with your destination.
- When you back out of an aisle, remember to allow enough room for forks to clear the sides before starting the turn.
- If you leave your Heavy Equipment unattended for any reason, always lower the mast completely, turn off the engine and set the brake.

NOTE:

Check with your supervisor about specific BAXTER safety rules. Some policies may state that if you are closer than 25 feet or maintain visual contact with the Heavy Equipment, you may leave the engine running.

#### Summary

Practice and concentration on your work are the keys to becoming a successful operator. Keep in mind that you put yourself and your co-workers in danger when you do not follow safe operating procedures. A professional Heavy Equipment driver will make sure that equipment is in good condition and will practice safe operating techniques.

# XII. SLIP, TRIP AND FALL PREVENTION

Falls are accidents, which often cause injury and lost time. Injuries from falls may include cuts, bruises, muscle sprains and strains, broken bones and back injuries.

# What Happens When You Slip?

Slips can be caused by constantly wet surfaces, spills or weather hazards like ice and snow. Slips are more likely to occur when you hurry or run, wear the wrong kind of shoes or don't pay attention to where you're walking. Follow these safety precautions in order to avoid a slip.

 Practice safe walking skills. If you must walk on wet surfaces, take short steps to keep your center of balance under you and point your feet slightly outward. Move slowly and pay attention to the surface you're walking on.

- Clean up spills right away. Whenever you see any kind of spill, clean it up yourself or report it to a maintenance person. Even minor spills can be very hazardous.
- Don't let grease accumulate on floors. If grease is present in your work area, be sure that it's cleaned up promptly.
- Wear the right shoes.

# What Happens When You Trip?

Trips occur whenever your foot hits an object and you are moving with enough momentum to be thrown off balance. A trip can happen when your work area is cluttered, when lighting is poor, or when an area has loose footing. Trips are more likely to happen when you are in a hurry and don't pay attention to where you're going. Remember these rules to avoid tripping:

- Make sure you can see where you're going. Carry only loads that you can see over.
- Keep work areas well-lit.
- Keep your work area clean and don't clutter aisles or stairs. Store materials and tools in closets, cabinets, or specially assigned storage areas.
- Extension or power tool cords can be dangerous tripping hazards. Tape them to the floor or arrange them so that they won't be in the way for pedestrians/customers.
- Eliminate hazards due to loose footing on stairs, steps, and floors. Report loose carpeting, stair treads, or hand rails. Broken pavement and floor boards or loose floor tiles can also catch a foot and cause a fall.
- On loading docks, store gangplanks and ramps properly.

# What Happens When You Fall?

Falls occur whenever you move too far off your center of balance. Slips and trips often push you off your center of balance far enough to cause a fall, but there are many other ways to fall. They are also caused by makeshift ladders, misuse of ladders, accidents while climbing, and improper scaffolding use. Avoid falls of any kind with these safety measures:

Don't jump. Lower yourself carefully from docks, trucks, or work stages.

- Check lighting. Make sure hallways, stairs, and work areas are properly lit.
- Repair or replace stairs or handrails that are loose or broken.
- Don't store things on stairs or in aisles.
- Wear good shoes.

# **Work Safely**

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Preventing slips, trips, and falls is a task that depends on many factors-most importantly-you. You might not be able to change your workplace, but you can recognize dangers, work to eliminate hazards, and use safety devices and equipment.

#### XIII. DRIVER SAFETY

- 1. It is the responsibility of assigned drivers to inspect their vehicle for safe operating conditions before the vehicle for safe operating conditions before the vehicle is moved from the yard each day.
- 2. Pre-trip vehicle inspections must include the following:

Lights

Signals

Horns

Mirrors

Tires

**Brakes** 

Wipers

Seat belts

Defrosters

Safety and emergency equipment

Check all fluid levels

\*A log book of all inspections will be required.

- 3. Seat belts must be worn at all times.
- 4. All motor vehicle operators will know and observe laws that govern safe operation of their vehicle.
- 5. All motor vehicles owned by the BAXTER are to be used for BAXTER BUSINESS ONLY and are not to be used during nor after normal work hours for any use other than BAXTER Business.

Exceptions to this policy are to be allowed only by BAXTER supervisors/department heads.

6. Any BAXTER employee hired to drive a motor vehicle must have a valid Tennessee drivers license consistent with the job being done. Persons who drive motor vehicles incidental to their main responsibilities must also have a valid Tennessee drivers license.

Periodic checks will be made among employees for compliance of this rule and anyone found to be in violation may be suspended from the City, without pay, until such time as proof can be shown that deficiencies have been corrected.

- 7. All accidents shall be considered preventable and all operators shall do all things possible to prevent accidents.
- 8. In case of an accident, after taking care of physical needs of persons involved, and notification of public emergency authorities, do not give any statements to anyone concerning the accident except to police, other authorized public officials, or City/representatives. At no time is anyone to make any accusations that might complicate the investigation or further legal positions.
- 9. ALWAYS DRIVE DEFENSIVELY

# XIV. PERSONAL PROTECTIVE EQUIPMENT AND APPAREL

1. The use of personal protective items such as safety glasses, hearing protection, etc. is REQUIRED IN DESIGNATED AREAS. The proper personal protective equipment will be assigned by your supervisor. Each piece of equipment should be suitable for your particular situation.

Violation of this rule will result in disciplinary action that may ensue in termination or leave of absence without pay.

- 2. Clothing that is appropriate for the work to be performed is required and there shall be no personal property used or worn that may endanger the individual or any employee working with or near the employee.
- 3. Any safety equipment issued is to be used in accordance with rules, regulations, or manufacturer recommendations.

- 4. Anyone working with paints, solvents, or other materials that may be hazardous are to check with their supervisor for proper personal protective equipment. When in doubt about task to be performed, all labels or other warnings are to be followed carefully as set out in Material Safety Data Sheets, as directed by the Hazardous Materials, Right-To-Know Program.
- 5. Employees are required to maintain their personal protective equipment in a clean and efficient manner at all times.

#### XV. LAWN CARE SAFETY

- Employees are required to wear eye protection and hearing protection when operating a lawn mower and weed eater.
- Always turn your equipment off before making any mechanical adjustments.
- Wear proper eye and hand protection when charging mower batteries.
- Follow all manufacturers guidelines on proper maintenance of your equipment.

#### XVI. LADDER SAFETY

- Don't use metal ladders when performing electrical work. Wood or fiberglass ladders are recommended.
- · Set up the ladder on a firm, solid surface.
- · Face the ladder when ascending or descending.
- One person allowed on the ladder at a time.
- Never stand on the top rung.
- Inspect the ladder periodically to ensure that it's safe.
- Replace or repair damaged ladders immediately.
- Use the 4 to 1 rule when using extension ladders. (1' from the wall for every 4' of ladder length)

# XVII. Office Safety

Common repetitious activities in offices that may cause stress if performed unceasingly for several hours at a time include:

- filing
- · copying
- keyboarding
- · phone usage
- writing

Obviously, many office jobs involve some or all of those activities. However, if anyone of these is performed for a long period of time during the day, you should make a special effort to take a break from the activity at least once every hour. Choose a different task to do for five minutes each hour.

The need for short breaks cannot be emphasized too much. Especially when doing computer work, long sessions can affect not only your wrists, hands, and shoulders, but also your eyes. Five minutes of a different activity each hour should become a standard part of your routine, to keep your mind and body fresh.

Neck tension is an especially common problem caused by holding the telephone between the head and the neck. Use a headset or speakerphone if you use the telephone for extended periods of time.

#### Exercises To Do At Work

During the work day, perform a variety of stretches and exercises to help the shoulders, neck, wrists, hands, and fingers stay relaxed and comfortable.

<u>Exercise</u>	How To Do
Overall body stretch	Stand up, raise your arms over your head, hands close together, and reach for the ceiling.
Shoulder blade stretch	Clasp hands behind your head and try to pinch shoulder your shoulder blades together.
Shoulder shrugs	Slowly shrug shoulders five times, raising shoulders as far as is comfortable.

Shoulder rolls

Slowly roll your shoulders five times

forward then five times backward.

Head tilt

Slowly tilt head to the right, stopping when you feel the stretch. Then slowly tilt your head to the

left. Repeat twice.

#### Wrist exercise

Wrists are also vulnerable and prone to injury in the office environment and it is especially important to do a variety of exercises for your wrists several times a day if your job involves heavy data entry, keyboarding or writing.

Do the following exercises to help avoid carpal tunnel syndrome:

- Rest your forearm on edge of desk and gently bend back wrist by grasping fingers with the other hold for five seconds.
- Gently press hand flat against desktop, causing wrist to bend as arm is not parallel to desk, but is perpendicular to it. Stretch fingers and wrist for five seconds.
- Clench hand into a tight fist, then slowly release until fingers are fanned out. Repeat five times.
- Clench one hand, then cup it from above and apply gentle pressure, but make the wrist stay straight (resistance exercise). Do that with clenched hand palm away, then palm toward the cupping hand, then switch hands and do opposite.

# Safety Tips For Use Of Office Furniture

#### File cabinets

- Open only one drawer at a time
- · Close drawers when they are not in use
- Don't place heavy objects on top of cabinets and be aware that things on top may fall off if a drawer is opened suddenly
- Close drawers slowly, and use the handle to avoid pinched or crushed fingers

Fill the bottom drawer first to stabilize

# Shelves

- Place heavy objects on the bottom or lowest shelf
- Keep at least 18 inches between top shelf items and the ceiling if a sprinkler system is in place

#### Desks

- Never climb on shelves, use an approved ladder to climb or to reach for anything out of reach.
- Keep desks in good condition (free from sharp edges, protruding screws, etc.)
- · Do not climb on desks
- Keep drawers closed when not in use
- · Repair or report any desk damage that could be hazardous

# EMPLOYEE SIGNATURE SHEET

(name) SSN

Rules reviewed with supervisor.

(supervisor)

(date)

do hereby acknowledge that I have been provided a being an employee of the City of Baxter, Tennessee applying to my work or task in my service to copy of and am informed of all Safety Rules Baxter, Tennessee.

regulations, and requirements of the Safety Program of Baxter, Tennessee, and that I intend to do all that I can to encourage and promote safety within the I hereby signify my intent to abide by the rules, scope of my assignment and the realm of my influence.

(signature)

(date)

Please execute the above and return to your immediate supervisor for inclusion in your employment file.

# APPENDIX D

PLAN OF OPERATION FOR THE OCCUPATIONAL SAFETY AND HEALTH PROGRAM FOR THE EMPLOYEES OF THE CITY OF BAXTER

# APPENDIX D

# PLAN OF OPERATION FOR THE OCCUPATIONAL SAFETY AND HEALTH PROGRAM FOR THE EMPLOYEES OF THE CITY OF BAXTER

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#### I. PURPOSE AND COVERAGE

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The purpose of this plan is to provide guidelines and procedures for implementing the Occupational Safety and Health Program for the employees of City of Baxter.

This plan is applicable to all employees, part-time or full-time, seasonal or permanent.

The City of Baxter in electing to update and maintain an effective occupational safety and health program for its employees,

- a. Provide a safe and healthful place and condition of employment.
- b. Require the use of safety equipment, personal protective equipment, and other devices where reasonably necessary to protect employees.
- c. Make, keep, preserve, and make available to the Commissioner of Labor and Workforce Development, his designated representatives, or persons within the Department of Labor and Workforce Development to whom such responsibilities have been delegated, including the Director of the Division of Occupational Safety and Health, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.
- d. Consult with the Commissioner of Labor and Workforce Development or his designated representative with regard to the adequacy of the form and content of such records.
- e. Consult with the Commissioner of Labor and Workforce Development regarding safety and health problems which are considered to be unusual or peculiar and are such that they cannot be resolved under an occupational safety and health standard promulgated by the State.
- f. Assist the Commissioner of Labor and Workforce Development or his monitoring activities to determine program effectiveness and compliance with the occupational safety and health standards.
- g. Make a report to the Commissioner of Labor and Workforce Development annually, or as may otherwise be required, including information on occupational accidents, injuries, and illnesses and accomplishments and progress made toward achieving the goals of the occupational safety and health program.
- h. Provide reasonable opportunity for and encourage the participation of employees in the effectuation of the objectives of this program, including the opportunity to make anonymous complaints concerning conditions or practices which may be injurious to employees' safety and health.

#### II. DEFINITIONS

For the purposes of this program, the following definitions apply:

- a. COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT means the chief executive officer of the Tennessee Department of Labor and Workforce Development. This Includes any person appointed, designated, or deputized to perform the duties or to exercise the powers assigned to the Commissioner of Labor and Workforce Development.
- b. EMPLOYER means the City of Baxter and includes each administrative department, board, commission, division, or her agency of the City of Baxter.
- c. DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH or DIRECTOR means the person designated by the establishing Ordinance, or executive order to perform duties or to exercise powers assigned so as to plan, develop and administer the occupational safety and health program for the employees of City of Baxter
- d. INSPECTOR(S) means the individual(s) or designated by the Director of Occupational Safety and Health to conduct inspection provide for herein. If no such compliance inspector(s) is appointed, inspections shall be conducted by the Director of Occupational Safety and Health.
- e. APPOINTING AUTHORITY means any official or group of officials of the employer having legally designated powers of appointment, employment, or removal therefrom for a specific department, board, commission, division, or other agency of this employer.
- f. EMPLOYEE means any person performing services for this employer and listed on the payroll of this employer, either as part-time, full-time, seasonal, or permanent. It also includes any persons normally classified as volunteers provided such persons received remuneration of any kind for their services. This definition shall not include independent contractors, their agents, servants, and employees.
- g. PERSON means one or more individual, partnership, association, corporation, business trust, or legal representative of any organized group of persons.
- h. STANDARD means an occupational safety and health standard promulgated by the Commissioner of Labor and Workforce Development in accordance with Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972 which requires conditions or the adoption or the use of one or more practices, means, methods, operations, or processes or the use of equipment or personal protective equipment necessary or appropriate to provide safe and healthful conditions and places of employment.
- i. IMMINENT DANGER means any conditions or practices in any place of employment which are such that a hazard exists which could reasonably

be expected to cause death or serious physical harm immediately or before the imminence of such hazard can be eliminated through normal compliance enforcement procedures.

j. ESTABLISHMENT or WORKSITE means a single physical location under the control of this employer where business is conducted, services are rendered, or industrial type operations are performed.

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- k. SERIOUS INJURY or HARM means that type of harm that would cause permanent or prolonged impairment of the body in that:
  - 1. a part of the body would be permanently removed (e.g., amputation of an arm, leg, finger(s); loss of an eye) or rendered functionally useless or substantially reduced in efficiency on or off the job (e.g., leg shattered so severely that mobility would be permanently reduced), or
  - 2. a part of an internal body system would be inhibited in its normal performance or function to such a degree as to shorten life or cause reduction in physical or mental efficiency (e.g., lung impairment causing shortness of breath).

On the other hand, simple fractures, cuts, bruises, concussions, or similar injuries would not fit either of these categories and would not constitute serious physical harm.

- 1. ACT or TOSHAct shall mean the Tennessee Occupational Safety and Health Act of 1972.
- m. GOVERNING BODY means the County Quarterly Court, Board of Aldermen, Board of Commissioners, City or Town Council, Board of Governors, etc., whichever may be applicable to the local government, government agency, or utility to which this plan applies.
- n. CHIEF EXECUTIVE OFFICER means the chief administrative official, County Judge, County Chairman, Mayor, City Manager, General Manager, etc., as may be applicable.

#### III. EMPLOYERS RIGHTS AND DUTIES

Rights and duties of the employer shall include, but are not limited to, the following provisions:

a. Employer shall furnish to each employee conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm to employees.

- b. Employer shall comply with occupational safety and health standards and regulations promulgated pursuant to Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972.
- c. Employer shall refrain from any unreasonable restraint on the right of the Commissioner of Labor and Workforce Development to inspect the employers place(s) of business. Employer shall assist the Commissioner of Labor and Workforce Development in the performance of their monitoring duties by supplying or by making available information, personnel, or aids reasonably necessary to the effective conduct of the monitoring activity.
- d. Employer is entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearing on proposed standards, or by requesting the development of standards on a given issue under Section 6 of the Tennessee Occupational Safety and Health Act of 1972.
- e. Employer is entitled to request an order granting a variance from an occupational safety and health standard.
- f. Employer is entitled to protection pf its legally privileged communication.
- g. Employer shall inspect all worksites to insure the provisions of this program are complied with and carried out.
- h. Employer shall notify and inform any employee who has been or is being exposed in a biologically significant manner to harmful agents or material in excess of the applicable standard and of corrective action being taken.
- i. Employer shall notify all employees of their rights and duties under this program.

#### IV. EMPLOYEES RIGHTS AND DUTIES

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Rights and duties of employees shall include, but are not limited to, the following provisions:

- a. Each employee shall comply with occupational safety and health act standards and all rules, regulations, and orders issued pursuant to this program and the Tennessee Occupational Safety and Health Act of 1972 which are applicable to his or her own actions and conduct.
- b. Each employee shall be notified by the placing of a notice upon bulletin boards, or other places of common passage, of any application for a permanent or temporary order granting the employer a variance from any provision of the TOSHAct or any standard or regulation promulgated under the Act.
- c. Each employee shall be given the opportunity to participate in any hearing which concerns an application by the employer for a variance from a standard or regulation promulgated under the Act.

- d. Any employee who may be adversely affected by a standard or variance issued pursuant to the Act or this program may file a petition with the Commissioner of Labor and Workforce Development or whoever is responsible for the promulgation of the standard or the granting of the variance.
- e. Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall be provided by the employer with information on any significant hazards to which they are or have been exposed, relevant symptoms, and proper conditions for safe use or exposure. Employees shall also be informed of corrective action being taken.
- f. Subject to regulations issued pursuant to this program, any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the Director or Inspector at the time of the physical inspection of the worksite.
- g. Any employee may bring to the attention of the Director any violation or suspected violations of the standards or any other health or safety hazards.
- h. No employee shall be discharged or discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceeding or inspection under or relating to this program.
- i. Any employee who believes that he or she has been discriminated against or discharged in violation of subsection (h) of this section may file a complaint alleging such discrimination with the Director. Such employee may also, within thirty (30) days after such violation occurs, file a complaint with the Commissioner of Labor and Workforce Development alleging such discrimination.
- j. Nothing in this or any other provisions of this program shall be deemed to authorize or require any employee to undergo medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others, or when a medical examination may be reasonably required for performance of a specific job.
- i. Employees shall report any accident, injury, or illness resulting from their job, however minor it may seem to be, to their supervisor or the Director within twenty-four (24) hours after the occurrence.

#### V. ADMINISTRATION

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a. The Director of Occupational Safely and Health is designated to perform duties or to exercise powers assigned so as to administer this Occupational Safety and Health Program.

- 1. The Director may designate person or persons as he deems necessary to carry out his powers, duties, and responsibilities under this program.
- 2. The Director may delegate the power to make inspections, provided procedures employed are as effective as those employed by the Director.
- 3. The Director shall employ measures to coordinate, to the extent possible, activities of all departments to promote efficiency and to minimize any inconveniences under this program.
- The Director may request qualified technical personnel from any department or section of government to assist him in making compliance inspections, accident investigations, or as he may otherwise deem necessary and appropriate in order to carry out his duties under this program.
- 5. The Director shall prepare the report to the Commissioner of Labor and Workforce Development required by subsection (g) of Section 1 of this plan.
- 6. The Director shall make or cause to be made periodic and follow-up Inspections of all facilities and worksites where employees of this employer are employed. He shall make recommendations to correct any hazards or exposures observed. He shall make or cause to be made any inspections required by complaints submitted by employees or inspections requested by employees.
- 7. The Director shall assist any officials of the employer in the investigation of occupational accidents or illnesses.
- 8. The Director shall maintain or cause to be maintained records required under Section VIII of this plan.
- 9. The Director shall, in the eventuality that there is a fatality or an accident resulting in the hospitalization of three or more employees insure that the Commissioner of Labor and Workforce Development receives notification of the occurrence within eight (8) hours.
- b. The administrative or operational head of each department, division, board, or other agency of this employer shall be responsible for the implementation of this occupational safety and health program within their respective areas.
  - 1. The administrative or operational head shall follow the directions of the Director on all issues involving occupational safety and health of employees as set forth in this plan.

- 2. The administrative or operational head shall comply with all abatement orders issued in accordance with the provisions of this plan or request a review of the order with the Director within the abatement period.
- 3. The administrative or operational head should make periodic safety surveys of the establishment under his jurisdiction to become aware of hazards or standards violations that may exist and make an attempt to immediately correct such hazards or violations.
- 4. The administrative or operational head shall investigate all occupational accidents, injuries, or illnesses reported to him. He shall report such accidents, injuries, or illnesses to the Director along with his findings and/or recommendations in accordance with APPENDIX V of this plan.

#### VI. STANDARDS AUTHORIZED

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The standards adopted under this program are the applicable standards developed and promulgated under Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972 or which may, in the future, be developed and promulgated. Additional standards may be promulgated by the governing body of this employer as that body may deem necessary for the safety and health of employees.

#### OCCUPATIONAL SAFETY AND HEALTH PROGRAM PLAN

#### ACCIDENT REPORTING PROCEDURES

Note: All fatalities or accidents involving the hospitalization of three (3) or more employees shall be reported by phone to the Commissioner of Labor and Workforce Development within eight (8) hours.

There are six important steps required by the OSHA recordkeeping system:

- 1. Obtain a report on every injury/illness requiring medical treatment (other than first aid).
- 2. Record each injury/illness on the OSHA Form No. 300 according to the instructions provided.
- 3. Prepare a supplementary record of occupational injuries and illnesses for recordable cases either on OSHA Form No. 301 or on worker's compensation reports giving the same information.
- 4. Every year, prepare the annual summary (OSHA Form No. 300A); post it no later than February 1, and keep it posted until April 30.
- 5. Retain these records for at least 5 years.

6. Complete the Survey of Occupational Injuries/Illness and mail it to Labor Research and Statistics, when requested.

The four (4) procedures listed below are based upon the size of the work force and relative complexity of the organization. The approximate size of the organization for which each procedure is suggested is indicated in parenthesis in the left hand margin at the beginning, i.e., (1-15), (16-50), (51-250), and (251 Plus), and the figures relate to the total number of employees including the Chief Executive Officer but excluding the governing body (County Court, City Council, Board of Directors, etc.).

- (1-15) Employees shall report all accidents, injuries, or illnesses directly to the Director as soon as possible, but not later than twenty-four (24) hours, of their occurrence. Such reports may be verbal or in writing. All fatalities or accidents involving the hospitalization of three (3) or more employees shall be reported to the Director and/or recordkeeper immediately, either by telephone or verbally, and will be followed by a written report within four (4) hours after their occurrence. The Director will insure completion of required reports and records in accordance with Section VIII of the basic plan.
- (16-50) Employees shall report all accidents, injuries, or illnesses to their supervisor as soon as possible, but not later than two (2) hours after their occurrence. All fatalities or accidents involving the hospitalization of three (3) or more employees shall be reported to the Director and/or recordkeeper immediately, either by telephone or verbally, and will be followed by a written report within four (4) hours after their occurrence. The supervisor will investigate the accident or illness, complete an accident report, and forward the accident report to the Director and/or recordkeeper within twenty-four (24) hours of the time the accident or injury occurred or the time of the first report of the illness.
- (51-250) Employees shall report all accidents, injuries, or illnesses to their supervisor as soon as possible, but not later than two (2) hours, after their occurrence. The supervisor will provide the Director and/or recordkeeper with the name of the injured or ill employee and a brief description of the accident or illness by telephone as soon as possible, but not later than four (4) hours, after the accident or injury occurred or the time of the first report of the illness. All fatalities or accidents involving the hospitalization of three (3) or more employees shall be reported to the Director

and/or recordkeeper immediately, either by telephone or verbally, and will be followed by a written report within four (4) hours after their occurrence. The supervisor will then make a thorough investigation of the accident or illness (with the assistance of the Director or Compliance Inspector, if necessary) and will complete a written report on the accident or illness and forward it to the Director within seventy-two (72) hours after the accident, injury, or first report of illness and will provide one (1) copy of the written report to the recordkeeper.

#### VII. VARIANCE PROCEDURE

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The Director may apply for a variance as a result of a complaint from an employee or of his knowledge of certain hazards or exposures. The Director should definitely believe that a variance is needed before the application for a variance is submitted to the Commissioner of Labor and Workforce Development.

The procedure for applying for a variance to the adopted safety and health standards is as follows:

- a. The application for a variance shall be, prepared in writing and shall contain:
  - 1. A specification of the standard or portion thereof from which the variance is sought.
  - 2. A detailed statement of the reason(s) why the employer is unable to comply with the standard supported by representations by qualified personnel having first hand knowledge of the facts represented.
  - 3. A statement of the steps employer has taken and will take (with specific date) to protect employees against the hazard covered by the standard.
  - 4. A statement of when the employer expects to comply and what steps have or will be taken (with dates specified) to come Into compliance with the standard.
  - 5. A certification that the employer has informed employees, their authorized representative(s), and/or interested parties by giving them a copy of the request, posting a statement summarizing the application (to include the location of a copy available for examination) at the places where employee notices are normally posted and by other appropriate means. The certification shall contain a

description of the means actually used to inform employees and that employees have been informed of their right to petition the Commissioner of Labor and Workforce Development for a hearing.

- b. The application for a variance should be sent to the Commissioner of Labor and Workforce Development by registered or certified mail.
- c. The Commissioner of Labor and Workforce Development will review the application for a variance and may deny the request or issue an order granting the variance. An order granting a variance shall be issued only if it has been established that:

## 1. The employer

- i. Is unable to comply with the standard by the effective date because of unavailability of professional or technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology.
- ii. Has taken all available steps to safeguard employees against the hazard(s) covered by the standard.
- iii. Has an effective program for coming into compliance with the standard as quickly as possible.
- 2. The employee is engaged in an experimental program as described in subsection (b), section 13 of the Act.
- d. A variance may be granted for a period of no longer than is required to achieve compliance or one (1) year, whichever is shorter.
- e. Upon receipt of an application for an order granting a variance, the Commissioner to whom such application is addressed may issue an interim order granting such a variance for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than one hundred eighty (180) days.
- f. The order or interim order granting a variance shall be posted at the worksite and employees notified of such order by the same means used to inform them of the application for said variance (see subsection (a)(5) of this section).

#### VIII. RECORDKEEPING AND REPORTING

- a. Recording and reporting of all occupational accident, injuries, and illnesses shall be in accordance with instructions and on forms prescribed in the booklet, <u>RECORDKEEPING REQUIREMENTS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970</u> (Revised 2003) or as may be prescribed by the Tennessee Department of Labor and Workforce Development.
- b. The position responsible for recordkeeping is shown on the SAFETY AND HEALTH ORGANIZATIONAL CHART, Appendix V to this plan.
- c. Details of how reports of occupational accidents, injuries, and illnesses will reach the recordkeeper are specified by ACCIDENT REPORTING PROCEDURES, Appendix V to this plan.

#### IX. EMPLOYEE COMPLAINT PROCEDURE

If any employee feels that he is assigned to work in conditions which might affect his health, safety, or general welfare at the present time or at any time in the future, he should report the condition to the Director of Occupational Safety and Health.

- a. The complaint should be in the form of a letter and give details on the condition(s) and how the employee believes it affects or will affect his health, safety, or general welfare. The employee should sign the letter but need not do so if he wishes to remain anonymous (see subsection (h) of Section 1 of this plan).
- b. Upon receipt of the complaint letter, the Director will evaluate the condition(s) and institute any corrective action, if warranted. Within ten (10) working days following the receipt of the complaint, the Director will answer the complaint in writing stating whether or not the complaint is deemed to be valid and if no, why not, what action has been or will be taken to correct or abate the condition(s), and giving a designated time period for correction or abatement. Answers to anonymous complaints will be posted upon bulletin boards or other places of common passage where the anonymous complaint may be reasonably expected to be seen by the complainant for a period of three (3) working days.
- c. If the complainant finds the reply not satisfactory because it was held to be invalid, the corrective action is felt to be insufficient, or the time period for correction is felt to be too long, he may forward a letter to the Chief Executive Officer or to the governing body explaining the condition(s) cited in his original complaint and why he believes the answer to be inappropriate or insufficient.

- d. The Chief Executive Officer or a representative of the governing body will evaluate the complaint and will begin to take action to correct or abate the condition(s) through arbitration or administrative sanctions or may find the complaint to be invalid. An answer will be sent to the complainant within ten (10) working days following receipt of the complaint or the next regularly scheduled meeting of the governing body following receipt of the complaint explaining decisions made and action taken or to be taken.
- e. After the above steps have been followed and the complainant is still not satisfied with the results, he may then file a complaint with the Commissioner of Labor and Workforce Development. Any complaint filed with the Commissioner of Labor and Workforce Development in such cases shall include copies of all related correspondence with the Director and the Chief Executive Officer or the representative of the governing body.
- f. Copies of all complaint and answers thereto will be filed by the Director who shall make them available to the Commissioner of Labor and Workforce Development or his designated representative upon request.

#### X. EDUCATION AND TRAINING

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- a. Director and/or Compliance Inspector(s):
  - 1. Arrangements will be made for the Director and/or Compliance Inspector(s) to attend training seminars, workshops, etc., conducted by the State of Tennessee or other agencies.
  - 2. Reference materials, manuals, equipment, etc., deemed necessary for use in conducting compliance inspections, conducting local training, wiring technical reports, and informing officials, supervisors, and employees of the existence of safety and health hazards will be furnished.
- b. All Employees (including Managers and Supervisory personnel):

A suitable safety and health training program for employees will be established. This program will, as a minimum:

1. Instruct each employee in the recognition and avoidance of hazards or unsafe conditions and of standards and regulations applicable to the employees work environment to control or eliminate any hazards, unsafe conditions, or

other exposures to occupational illness or injury (such as falls, electrocution, crushing Injuries (e.g., trench cave-ins), and being struck by material or equipment).

- 2. Instruct employees who are required to handle poisons, acids, caustics, explosives, and other harmful or dangerous substances (including carbon monoxide and chlorine) in the safe handling and use of such items and make them aware of the potential hazards, proper handling procedures, personal protective measures, personal hygiene, etc., which may be required.
- 3. Instruct employees who may be exposed to environments where harmful plants or animals are present of the hazards of the environment, how to best avoid injury or exposure, and the first aid procedures to be followed in the event-of injury or exposure.
- 4. Instruct employees required to handle or use flammable liquids, gases, or toxic materials in their safe handling and use and make employees aware of specific requirements contained in Subparts H and M and other applicable subparts of TOSHAct standards (1910 and/or 1926).
- 5. Instruct employees on hazards and dangers of confined or enclosed spaces.
  - i. Confined or enclosed space means space having a limited means of egress and which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined or enclosed spaces include, but are not limited to, storage tanks, boilers, ventilation or exhaust ducts, sewers, underground utility accesses, tunnels, pipelines, and open top spaces more than four feet (40) in depth such as pits, tubs, vaults, and vessels.
  - ii. Employees will be given general instruction on hazards involved, precautions to be taken, and on use of personal protective and emergency equipment required. They shall also be instructed on all specific standards or regulations that apply to work in dangerous or potentially dangerous areas.
  - iii. The immediate supervisor of any employee who must perform work in a confined or enclosed space shall be

responsible for instructing employees on danger of hazards which may be present, precautions to be taken, and use of personal protective and emergency equipment, immediately prior to their entry into such an area and shall require use of appropriate personal protective equipment.

#### XI. GENERAL INSPECTION PROCEDURES

It is the intention of the governing body and responsible officials to have an occupational safety and health program that will insure the welfare of employees. In order to be aware of hazards, periodic inspections must be performed. These inspections will enable the finding of hazards or unsafe conditions or operations that will need correction in order to maintain safe and healthful worksites. Inspections made on a pre-designated basis may not yield the desired results. Inspections will be conducted, therefore, on a random basis at intervals not to exceed thirty (30) calendar days.

- a. In order to carry out the purposes of this program, the Director and/or Compliance Inspector(s), if appointed, is authorized:
  - 1. To enter at any reasonable time, any establishment, facility, or worksite where work is being performed by an employee when such establishment, facility, or worksite is under the jurisdiction of the employer and;
  - 2. To inspect and investigate during regular working hours and at other reasonable times, within reasonable limits, and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any supervisor, operator, agent, or employee working therein.
- b. If an imminent danger situation is found, alleged, or otherwise brought to the attention of the Director or Inspector during a routine inspection, he shall immediately inspect the imminent danger situation in accordance with Section XII of this plan before inspecting the remaining portions of the establishment, facility. or worksite.
- c. An administrative representative of the employer and a representative authorized by the employees shall be given an opportunity to consult with and/or to accompany the Director or inspector during the physical inspection of any worksite for the purpose of aiding such inspection.
- d. The right of accompaniment may be denied any person whose conduct interferes with a full and orderly inspection.

- e. The conduct of the inspection shall be such as to preclude unreasonable disruptions of the operation(s) of the workplace.
- f. Interviews of employees during the course of the inspection may be made when such interviews are considered essential to investigative techniques.
- g. Advance Notice of Inspections.

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- 1. Generally, advance notice of inspections will not be given as this precludes the opportunity to make minor or temporary adjustments in an attempt to create a misleading impression of conditions in an establishment.
- 2. There may be occasions when advance notice of inspections will be necessary in order to conduct an effective inspection or investigation. When advance notice of inspection is given, employees or their authorized representative(s) will also be given notice of the inspection.
- h. The Director need not personally make an inspection of each and every worksite once every thirty (30) days. He may delegate the responsibility for such inspections to supervisors or other personnel provided:
  - 1. Inspections conducted by supervisors or other personnel are at least as effective as those made by the Director.
  - 2. Records are made of the inspections and of any discrepancies found and are forwarded to the Director.
- i. The Director shall maintain records of inspections to include identification of worksite inspected, date of inspection, description of violations of standards or other unsafe conditions or practices found, and corrective action taken toward abatement. Said inspection records shall be subject to review by the Commissioner of Labor and Workforce Development or his authorized representative.

#### XII. IMMINENT DANGER PROCEDURES

- a. Any discovery, any allegation, or any report of imminent danger shall be handled in accordance with the following procedures:
  - 1. The Director shall immediately be informed of the alleged imminent danger situation and he shall immediately ascertain whether there is a reasonable basis for the allegation.
  - 2. If the alleged imminent danger situation is determined to have merit by the Director, he shall make or cause to be

made an immediate inspection of the alleged imminent danger location.

- 3. As soon as it is concluded from such inspection that conditions or practices exist which constitute an imminent danger, the Director or Compliance inspector shall attempt to have the danger corrected. All employees at the location shall be informed of the danger and the supervisor or person in charge of the worksite shall be requested to remove employees from the area, if deemed necessary.
- 4. The administrative or operational head of the workplace in which the imminent danger exists, or his authorized representative, shall be responsible for determining the manner in which the imminent danger situation will be abated. This shall be done in cooperation with the Director or Compliance Inspector and to the mutual satisfaction of all parties involved.
- 5. The imminent danger shall be deemed abated if:
  - i. The imminence of the danger has been eliminated by removal of employees from the area of danger.
  - ii. Conditions or practices which resulted in the imminent danger have been eliminated or corrected to the point where an unsafe condition or practice no longer exists.
- 6. A written report shall be made by or to the Director describing in detail the imminent danger and its abatement. This report will be maintained by the Director in accordance with subsection (i) of Section XI of this plan.

#### b. Refusal to Abate.

- 1. Any refusal to abate an imminent danger situation shall be reported to the Director and/or Chief Executive Officer immediately.
- 2. The Director and/or Chief Executive Officer shall take whatever action may be necessary to achieve abatement.

#### XIII. ABATEMENT ORDERS AND HEARINGS

a. Whenever, as a result of an inspection or investigation, the Director or Compliance Inspector(s) finds that a worksite is not in

compliance with the standards, rules or regulations pursuant to this plan and is unable to negotiate abatement with the administrative or operational head of the worksite within a reasonable period of time, the Director shall:

- 1. Issue an abatement order to the head of the worksite.
- 2. Post, or cause to be posted, a copy of the abatement order at or near each location referred to in the abatement order.
- b. Abatement orders shall contain the following information:
  - 1. The standard, rule, or regulation which was found to violated.
  - 2. A description of the nature and location of the violation.
  - 3. A description of what is required to abate or correct the violation.
  - 4. A reasonable period of time during which the violation must be abated or corrected.
- c. At any time within ten (10) days after receipt of an abatement order, anyone affected by the order may advise the Director in writing of any objections to the terms and conditions of the order. Upon receipt of such objections, the Director shall act promptly to hold a hearing with all interested and/or responsible parties in an effort to resolve any objections. Following such hearing, the Director shall, within three (3) working days, issue an abatement order and such subsequent order shall be binding on all parties and shall be final.

#### XIV. PENALTIES

- a. No civil or criminal penalties shall be issued against any official, employee, or any other person for failure to comply with safety and health standards or any rules or regulations issued pursuant to this program.
- b. Any employee, regardless of status, who willfully and/or repeatedly violates, or causes to be violated, any safety and health standard, rule, or regulation or any abatement order shall be subject to disciplinary action by the appointing authority. It shall be the duty of the appointing authority to administer discipline by taking action in one of the following ways as appropriate and warranted:
  - 1. Oral reprimand
  - 2. Written reprimand

- 3 Suspension for three (3) or more working days
- 4. Termination of employment

#### XV. CONFIDENTIALITY OF PRIVILEGED INFORMATION

All information obtained by or reported to the Director pursuant to this plan of operation or the legislation (Ordinance, or executive order) enabling this occupational safety and health program which contains or might reveal information which is otherwise privileged shall be considered confidential. Such information may be disclosed to other officials or employees concerned with carrying out this program or when relevant in any proceeding under this program. Such information may also be disclosed to the Commissioner of Labor and Workforce Development or their authorized representatives in carrying out their duties under the Tennessee Occupational Safety and Health Act of 1972.

#### XVI. COMPLIANCE WITH OTHER LAWS NOT EXCUSED

- a. Compliance with any other law, statute, Ordinance, or executive order, as applicable, which regulates safety and health in employment and places of employment shall not excuse the employer, the employee, or any other person from compliance with the provisions of this program.
- b. Compliance with any provisions of this program or any standard, rule, regulation, or order issued pursuant to this program shall not excuse the employer, the employee, or any other person from compliance with the law, statute, Ordinance, or executive order, as applicable, regulating and promoting safety and health unless such law, statute, Ordinance, or executive order, as applicable, is specifically repealed.

# OCCUPATIONAL SAFETY AND HEALTH PROGRAM PLAN APPENDIX I

#### ORGANIZATIONAL CHART

{For this section make a list of each work location wherein city employees work, such as City Hall, Water Plant, Police Department, City Garage, etc.), the address for the workplace, phone number at that workplace, and number of employees who work there.}

#### Example:

City Garage - <u>12 employees</u> 1234 Main Street Chattanooga, TN 37415 423-345-6789

Police Department - <u>25 employees</u> 4567 Garden Avenue Chattanooga, TN 37415 423-222-5555

## TOTAL NUMBER OF EMPLOYEES: 37

{Once each work location has been listed, record the total number of employees that the city employs.}

Police Dept. - 5 employees 200 Main Street Baxter, TN 38544 Phone - 931-858-4111

Street and Sanitation - 3 employees 200 Main Street Baxter, TN 38544 Phone - 931-858-4111

Fire Dept. - 1 full time and 11 volunteers 315 Broad Street Baxter, TN 38544 Phone - 931-858-2621

Water and Sewer - 6 employees 200 Main Street Baxter, TN 38544 Phone - 931-858-3348

City Hall - 3 employees 200 Main Street Baxter, TN 38544 Phone - 931-858-4111

Total Employees - 18

# OCCUPATIONAL SAFETY AND HEALTH PROGRAM PLAN APPENDIX II

#### NOTICE TO ALL EMPLOYEES OF CITY OF BAXTER

The Tennessee Occupational Safety and Health Act of 1972 provides job safety and health protection for Tennessee workers through the promotion of safe and healthful working conditions. Under a plan reviewed by the Tennessee Department of Labor and Workforce Development, this government, as an employer, is responsible for administering the Act to its employees. Safety and health standards are the same as State standards and jobsite inspections will be conducted to insure compliance with the Act.

Employees shall be furnished conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm to employees.

Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this program which are applicable to his or her own actions and conduct.

Each employee shall be notified by the placing upon bulletin boards or other places of common passage, of any application for a temporary variance from any standard or regulation.

Each employee shall be given the opportunity to participate in any hearing which concerns an application for a variance from a standard.

Any employee who may be adversely affected by a standard or variance issued pursuant to this program may file a petition with the Director of City of Baxter.

Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by an applicable standard shall be notified by the employer and informed of such exposure and corrective action being taken.

Subject to regulations issued pursuant to this program, any employee or authorized representative(s) of employees shall be given the right to request an inspection.

No employee shall be discharged or discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceedings or inspection under, or relating to, this. program.

Any employee who believes he or she has been discriminated against or discharged in violation of these sections may, within thirty (30) days after such violation occurs, have an opportunity to appear in a hearing before City of Baxter for assistance in obtaining relief or to file a complaint with the Commissioner of Labor and Workforce Development alleging such discrimination.

A copy of the Occupational Safety and Health Program for the Employees of City of Baxter available for inspection by any employee at City of Baxter during regular office hours.

## OCCUPATIONAL SAFETY AND HEALTH PLAN PROGRAM PLAN APPENDIX III

#### PROGRAM BUDGET

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- 1. Prorated portion of wages, salaries, etc., for program administration and support
- 2. Office space and office supplies
- 3. Safety and health educational materials and support for education and training
- 4. Safety devices for personnel safety and health
- 5. Equipment modifications
- 6. Equipment additions (facilities)
- 7. Protective clothing and equipment (personnel)
- 8. Safety and health instruments
- 9. Funding for projects to correct hazardous conditions
- 10. Reserve fund for the program
- 11. Contingencies and miscellaneous

#### TOTAL ESTIMATED PROGRAM FUNDING:

#### ESTIMATE OF TOTAL BUDGET FOR:

Be assured that the City of Baxter has sufficient financial resources available or will make financial resources available as may be required, in order to administer and staff its Occupational Safety and Health Program to comply with standards.

## APPENDIX E

## CONFINED SPACE ENTRY AND RESCUE PROCEDURE

#### ORDINANCE #200-5

#### CITY OF BAXTER

#### PUTNAM COUNTY, TENNESSEE

AN ORDINANCE OF THE CITY OF BAXTER, TENNESSEE, ADOPTING A CONFINED SPACE ENTRY AND RESCUE PROCEDURE.

The City Council of the City of Baxter, Tennessee hereby resolves as follows:

#### Section 1: Statement of Purpose

In the interest of the City of Baxter and its employees the City Council adopts an addendum to resolution 1993-017 that sets policy and procedures for the use of confined space entry and rescue entry and rescue procedures as follows:

#### CONFINED SPACE ENTRY AND RESCUE PROCEDURES

## I. Policy Objectives

To establish minimum standards and procedures that shall be mandatory for the. adequate protection of employees and other persons who may be required to enter dangerous confined spaces as defined below:

- A. Any enclosed and/or confining space that may contain or be subject to the entry of and/or accumulation of toxic gases, flammable gases and/or have the atmosphere rendered deficient in breathable oxygen.
- B. Any work area that has limited room for movement and/or ready access or egress by workers. In particular, any confining work area or space that will require special equipment and preparations for the safe and injury free recovery of a worker that becomes disabled.
- C. Dangerous confined spaces shall include, but not be limited to, sewer and storm drain pipes, utility access, wet wells, pump stations, vaults, tanks (including fresh water tanks) and similar types of structures.

## II. Responsibility

It is the policy of the City of Baxter to require all employees assigned to work in and around confined spaces to be adequately trained and protected from the hazards that might be encountered. All persons, supervisors, overseer and lead persons working in or near confined spaces shall rigidly follow the procedures set forth herein.

#### III. Hazardous Conditions Definitions

- A. Confined Space A space defined by the concurrent existence of the following conditions:
  - 1. Existing ventilation is insufficient to remove dangerous air contamination and/or oxygen deficiency which may exist or develop.
  - 2. Ready access or egress for the removal of a suddenly disabled employee is difficult due to the location and/or size of the opening(s).
- B. Dangerous Air Contamination An atmosphere presenting a threat of causing death, injury, acute illness, or disablement due to the presence of flammable and/or explosive, toxic, or otherwise injurious or incapacitating substances.
  - 1. Dangerous air contamination due to the flammability of a gas or vapor is defined as an atmosphere containing the gas or vapor at a concentration greater than 20 percent of its lower explosive (lower flammable) limit.
  - 2. Dangerous air contamination due to a combustible particulate is defined as a concentration greater than 20 percent of the minimum explosive concentration of the particulate.
  - 3. Dangerous air contamination due to the toxicity of a substance is defined as the atmospheric concentration immediately hazardous to life or health.

NOTE: This definition of dangerous air contamination due to the toxicity of a substance does not preclude the requirement to control harmful exposures, toxic substances at

concentrations less than those immediately hazardous to life or health.

C. Oxygen deficiency - An atmosphere containing oxygen at a concentration of less than 19.5 percent by volume.

NOTE:

Authority cited: WAC 296-62-1.45 through 296-62-14529;

WAC 296-62-071 through 296-62-07121; WAC 296-79-230; ANSI 2117.1 1977;

WAC 196-24-715; WAC 296-24-722; NIOSH 80-106

## IV: Procedures - Pre-Entry

- A. Prior to the entry of any person into any dangerous and/or hazardous spaces, a confined space entry permit shall be completed by the confined space attendant for the entry.
- B. Testing shall be done with a device that shall sound an audible alarm and have lighted signal to indicate violation of any of the threshold limit values.

#### Threshold Limit Values

- 1. Toxic Greater than 10-ppm Hydrogen Sulfide (H S)
- 2. Flammable Greater than 20% of the explosive level of Methane (CH)
- 3. Oxygen Deficiency Less than 19.5% by volume.
- C. Two separate tests shall be made as follows:
  - 1. A pre-opening test wherein a sample is drawn through a hose attached to the detection device. The hose shall be inserted in the pick hole or small opening of a utility access or the exhaust vent of a lift station that has continuous ventilation.
  - 2. A pre-entry test where in the probe hose detection device is lowered to the bottom and at various levels inside the confined space.

- D. The above test results are to achieve the following determination:
  - 1. "Safe for Entry" The testing device did not alarm indicating that no hazardous conditions above threshold limit values were detected.
  - 2. "Unsafe for Entry" The testing device had one or more of its alarms activated. No person shall enter any confined space where the required preentry testing indicates the space is "Unsafe for Entry". Exceptions to this rule shall be only as prescribed by written permission from the Community Service Director or for the emergency rescue of a disabled fellow employee. In each case, proper self-contained breathing apparatus shall be used. All persons who may participate in functions relative to entry into a confined space shall be fully trained in these procedures and the hazards that may be found in this work.

NOTE:

Employees have the right to refuse to work in unsafe conditions. This included working with untrained personnel.

- E. The following rules shall apply to the entry of an employee into any confined space where in pre-testing has shown that the space is "Safe for Entry".
  - 1. The space shall have been previously inspected (without entry) by a competent supervisor or worker who shall have accomplished the following:
    - a. Listing and layout of necessary traffic control and warning equipment, when appropriate.
    - b. Directed preparation for entry by requiring necessary or desired cleaning or other preentry work deemed necessary for safety.
    - c. Prepared the safety equipment items that will be required for entry into the confined space.
    - d. Prepared the necessary tools and materials covering the demands of the work that is to be done by the crew at the confined space entry site.

e. Discussed and provided necessary listing to job site lead person and make certain that all of the special and general conditions are fully understood.

### V. Entry Procedures

No person shall enter any confined space unless all of the following conditions have been met:

- A. In addition to the fully trained employee who will enter the space, not less than one additional fully trained person shall be present. At least one of the persons shall be trained in First Aid and CPR. Exceptions are listed below.
- B. One of the persons present shall be designated the Confined Space Attendant and shall never leave the confined space access point while employee is inside. The Confined Space Attendant shall be in voice or radio contact with the employee inside the confined space at all times.
- C. Confined Space Attendant shall keep a written log of all work activities.
- D. The entering employee shall be suitably attired in desirable clothing for confined space work.
  - 1. Suitable Coveralls
  - 2. Hard Hat
  - 3. Suitable Gloves
  - 4. Rubber Boots
- E. All pre-entry test and other functions have been properly accomplished.
- F. The entering employee is properly wearing a proper safety harness.
- G. A suitable tripod/winch device is attached to the proper safety harness. This will permit one individual to recover the employee from the confined space in the event of difficulties.
- H. An atmospheric alarm unit (Gas Detector) is worn by, or accompanies the employee into the confined space.

- I. A fresh air supply with an installed or portable ventilation system is in operation to supply fresh air to the confined space.
- J. Necessary traffic control equipment and required flagperson are in place.
- K. Suitable plans for summoning emergency assistance (ambulance, Fire Department, Police Department, etc.) Have been made and fully understood by all job Sites employees.
- L. Lines that may convey flammable, injurious, or 'incapacitating substances into the space shall be disconnected, blinded, or blocked off by other positive means to prevent the development of dangerous air contamination and/or oxygen deficiency within the space. The disconnection or blind shall be so located or done in such a manner that inadvertent reconnect ion of the line or removal of the blind are effectively prevented.
- VI. Lift Station Crew or Other Two-person Work Crews.
  - A. All two-person work crews shall contact the Community Service Director by radio and do the following.
    - 1. Give time of entry
    - 2. Check in with the Director every 15 minutes
    - 3. Check in when job is complete
  - B. The Director will do the following:
    - 1. Log time of entry
    - 2. Log check-in time
    - 3. Log completion time
  - C. If the Director does not hear from the crew at check-in time, the Director shall dispatch another unit in the area to check on the lift station crew.
- VII: While An Employee is Inside of Any Confined Space, The Following Shall be Rigidly Enforced:
  - A. There shall be no smoking or open flames permitted within ten feet of the confined space or any access points to the confined space While it is occupied by an employee.

- B. No person except the confined space attendant shall be permitted to enter within ten feet of the confined space access opening except at the direction of and in strict conformance With the instructions of the confined space attendant.
- C. The confined space attendant shall maintain continuous communications with frequent replies required of the employee inside of the confined space.
- D. There shall be no other conversation with the confined space attendant by other job site employees except absolutely necessary and these shall be kept as brief as possible.
- F. Monitoring shall be continuous during operation. In event any of the alarms of the atmospheric unit (Gas Detector) are activated, or any condition of suspected safety develops, the employee shall be brought out of the confined space immediately. Re-entry shall not be made until all conditions are deemed to be safe.
- VIII. The Third Fully Trained Person At The Confined Space Entry Job Site Shall Be Designated As A Lead Person Or The Standby Person Shall Accomplish The Following Functions and Comply with the Following Rules:
  - A. While an employee is inside of the confined space, the stand-by person shall never be out of reasonable hailing distance of the Confined Space Attendant.
  - B. If called by the Confined Space Attendant, the stand-by person shall make an immediate reply and provide whatever assistance or perform whatever function he may be directed to do by the Confined Space Attendant.
  - C. The stand-by person shall maintain surveillance and awareness of conditions in the job site and shall take the following actions as required:
    - 1. Prevent other employees or on-lookers from approaching the confined space entry point or attempting to interfere with the Confined Space Attendant.
    - 2. Enforce the no smoking or open flame rule.

- 3. Immediately advise the Confined Space Attendant of any circumstances affecting the safety of the work site and its personnel.
- 4. Handle questions of any curious on-lookers.
- 5. Provide tools or other materials to the Confined Space Attendant.
- IX. It Shall Be The Responsibility Of The Confined Space Attendant To Maintain Written Records Of Each Function Of A Confined Space Entry By An Employee. These Records Shall Include But Not Be Limited To, All Of The Following Notations; On Appendix A Of This Policy.
  - A. Date
  - B. Location and type of confined space entered.
  - C. Purpose of entry.
  - D. Time and results of pre-opening atmospheric test.
  - E. Time and results of per-entry atmospheric test.
  - F. Names and assignments of confined space entry work force members.
  - G. Times of entry of employee into confined space
  - H. Times employee was brought out of space.
  - I. Descriptions of any injuries / emergencies, or other notable circumstances with comments on actions that were taken and results obtained.
- X. Procedure For Contaminated Confined Spaces.

The following procedures shall apply wherein pre-testing has shown that the confined spaces "Unsafe for Entry" or it is suspected that a space is contaminated or a space becomes contaminated While working in the space.

NOTE: Unless it is absolutely necessary to work in a confined space, no employee shall enter or continue to work in a contaminated space.

- A. Should the confined space become contaminated, the worker shall evacuate the space.
- B. All workers shall evacuate the immediate area -- at least 50 feet.
- C. Notify your supervisor immediately.

- D. One worker shall don the appropriate self-contained breathing apparatus and establish safe perimeter around the confined space with the aid of a gas detector, continue to monitor area until supervision arrives.
- E. The Supervisor shall determine the extent and type of contamination. If unable to determine, call 911 and/or close the confined space.
- F. If work is to continue, purge the confined space (record time) until it reaches a safe level. Monitor with direct reading while purging.
- G. Stop purging and monitor space to see how quickly the space re-contaminates. If the space becomes recontaminated, before a worker can safety evacuate the space. DO NOT ENTER SPACE.
- H. If tests indicate a safe exit time, continue to purge space before worker re-enters space.
- I. Before the employee re-enters the previously contaminated space, the worker shall be wearing the following items:
  - 1. Appropriate protective clothing
  - 2. Appropriate gloves
  - 3. Self-contained breathing apparatus where needed
  - 4. Safety harness attached to a tripod and safety line
  - 5. Hard hat
  - 6. Rubber Boots
  - 7. Gas detector
- J. While worker is inside confined space the Confined Space Attendant shall establish voice contact and maintain communication at regular intervals.
- K. Confined Space Attendant shall fill out a written report.
- L. Post as contaminated, if necessary.
- XI. Certified First Aid And CPR Person At Job Site.

Entry into any confined space shall require that there is at least one person present at the job site that holds a current certification in First Aid training and in the administration of CPR (cardiopulmonary resuscitation).

#### XII. Sewer Work Force Immunizations

All employees who will be required to work in sewer collection system structures and in conjunction with sewage and waste disposal in any way must current immunization. These will be specified by the Health Department and will require renewal at frequencies as designated by the Health Department.

## XIII. Required Safety Equipment At The Job Site.

The following items and quantities shall always be present at any job site Wherein an employee may be required to enter a confined space

- A. At least an atmospheric alarm unit.
- B. At least one proper safety harness including necessary devices for connection to a lifeline. Lifeline shall be 2,000 pounds test.
- C. At least one winch device for lifting a person out of a utility access or other underground structure.
- D. At least two explosion proof flashlights with one set of fresh spare batteries for each.
- E. At least one ventilation blower with hose and hose storage drum. This must include necessary power supply wiring and hook-ups for operation.
- F. At least one fully equipped first aid kit.
- G. At least one eyewash unit filled with fresh and clear water.
- H. Fresh water with soap and paper towels.
- I. Suitable lanyards and buckets for supplying tools and other work requirements to the confined space workman.
- J. Adequate traffic control safety devices.
- K. Other devices and equipment as may be required for the completion of all work in the confined space.

### XIV. Work Force Training

It shall be the responsibility of the City to provide training of all employees who may be assigned to a confined space entry work force. This training shall include complete instruction in all of the subjects as listed below:

- A. Instruction in the hazards that can be encountered in a confined space.
- B. Instructions in the methods of assuring maximum employee protection from these hazards.
- C. Instruction in the purpose, functional applications and proper operation and use of safety equipment.
- D. Instruction in standard and emergency procedures at confined space entry job site.
- E. Instruction in post confined entry procedures for maximum health and protection.

## XV. Safety Equipment: Care, Inspection And Testing.

It shall be the special responsibility of every employee of the City of Baxter to be continuously aware of the location and condition of the safety equipment provided for the work force. The assignment shall include all of the following coverages.

- A Inspection and checking of the condition of snaps, buckles, hardware, straps, seams and stitching of approved safety harnesses, lanyards, ropes, strap ladders, rope ladders and winch units as are used with confined space entry.
- B. Testing, necessary lubrication, and service to the ventilation blower units.
- C. Daily battery recharging, oxygen calibration and operational condition of the atmospheric hazard alarm unit. Weekly testing of this unit with the use of a gas test kit. Keep a written record of the weekly test.

D. Inventory and inspection of first aid kits with any required replacements for items missing or not in a condition for suitable use.

<u>Section 3</u>: This ordinance shall be effective immediately upon passage by the board of mayor and aldermen.

## ORDINANCE NO. 17

AN ORDINANCE ADOPTING AND ENACTING SUPPLEMENTAL AND REPLACEMENT PAGES FOR THE MUNICIPAL CODE OF THE CITY OF BAXTER, TENNESSEE.

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF BAXTER, TENNESSEE, THAT:

Section 1. Ordinances codified. The supplemental and replacement pages contained in this revision the City of Baxter Municipal Code, hereinafter referred to as the "supplement," are incorporated by reference as if fully set out herein and are ordained and adopted as part of the City of Baxter Municipal Code.

This includes revisions required to the municipal code when considering ordinance numbers 2009-2, 2009-3, 2010-3, 2010-4, 2010-9, 2010-14, 2010-17, 2010-19, 2011-2, 2011-7, 2011-8 2011-11 and 2011-12. Code sections affected by these ordinances contain a citation to the amending ordinance at the end of the code section. Changes were made in §§ 7-504, 7-506 and 7-507 per codes officer and fire chief and MTAS recommendations were incorporated regarding fire, building and utility codes and fireworks. In addition, a new substance abuse and drug free workplace program as been enacted. Each instance of "town" within the municipal code has been changed to "city."

Section 2. Continuation of existing provisions. Insofar as the provisions of the supplement are the same as those of ordinances existing and in force on its effective date, the provisions shall be considered to be continuations thereof and not as new enactments.

Section 3. Penalty clause. Unless otherwise specified, wherever in the supplement, including any codes and ordinances adopted by reference, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of any such provision shall be punishable by a penalty of not more than fifty dollars (\$50.00) and costs for each separate violation; provided, however, that the imposition of a penalty under the provisions of this section shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the provisions of the supplement or the municipal code or other applicable law.

When any person is fined for violating any provision of the supplement and defaults on payment of the penalty, he may be required to perform hard labor, within or without the workhouse, to the extent that his physical condition shall permit, until the penalty is discharged by payment, or until the person, being credited with such sum as may be prescribed for each day's hard labor, has fully discharged the penalty.<sup>1</sup>

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Section 4. Severability clause. Each section, subsection, paragraph, sentence, and clause of the supplement, including any codes and ordinances adopted by reference, are hereby declared to be separable and severable. The invalidity of any section, subsection, paragraph, sentence, or clause in the supplement shall not affect the validity of any other portion, and only any portion declared to be invalid by a court of competent jurisdiction shall be deleted therefrom.

Section 5. Construction of conflicting provisions. Where any provision of the supplement is in conflict with any other provision of the supplement or municipal code, the provision which establishes the higher standard for the promotion and protection of the public health, safety, and welfare shall prevail.

Section 6. Code available for public use. A copy of the municipal code shall be kept available in the recorder's office for use and inspection at all reasonable times.

Section 7. Date of effect. This supplement, including all the codes and ordinances therein adopted by reference, shall take effect from and after final passage, the public welfare requiring it, and shall be effective on and after that date.

Passed 1st reading,	10-6	
Passed 2nd reading.		, 20 11.

/ / Mayo

Recorder

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

For authority to allow deferred payment of fines, or payment by installments, see <u>Tennessee Code Annotated</u>, section 40-24-101et seq.

ORDINANCE NO.

AN ORDINANCE ADOPTING AND ENACTING A CODIFICATION AND REVISION OF THE ORDINANCES OF THE TOWN OF BAXTER TENNESSEE.

WHEREAS some of the ordinances of the Town of Baxter are obsolete, and

WHEREAS some of the other ordinances of the city are inconsistent with each other or are otherwise inadequate, and

WHEREAS the Board of Mayor and Aldermen of the Town of Baxter, Tennessee, has caused its ordinances of a general, continuing, and permanent application or of a penal nature to be codified and revised and the same are embodied in a code of ordinances known as the "Baxter Municipal Code," now, therefore:

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF BAXTER, TENNESSEE, THAT:

Section 1. Ordinances codified. The ordinances of the town of a general, continuing, and permanent application or of a penal nature, as codified and revised in the following "titles," namely "titles" 1 to 20, both inclusive, are ordained and adopted as the "Baxter Municipal Code," hereinafter referred to as the "municipal code."

Section 2. Ordinances repealed. All ordinances of a general, continuing, and permanent application or of a penal nature not contained in the municipal code are hereby repealed from and after the effective date of said code, except as hereinafter provided in Section 3 below.

Section 3. Ordinances saved from repeal. The repeal provided for in Section 2 of this ordinance shall not affect: Any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of the municipal code; any ordinance or resolution promising or requiring the payment of money by or to the town or authorizing the issuance of any bonds or other evidence of said town's indebtedness; any appropriation ordinance or ordinance providing for the levy of taxes or any budget ordinance; any contract or obligation assumed by or in favor of said town; any ordinance establishing a social security system or providing coverage under that system; any administrative ordinances or resolutions not in conflict or inconsistent with the provisions of such code; the

portion of any ordinance not in conflict with such code which regulates speed, direction of travel, passing, stopping, yielding, standing, or parking on any specifically named public street or way; any right or franchise granted by the town; any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way; any ordinance establishing and prescribing the grade of any street; any ordinance providing for local improvements and special assessments therefor; any ordinance dedicating or accepting any plat or subdivision; any prosecution, suit, or other proceeding pending or any judgment rendered on or prior to the effective date of said code; any zoning ordinance or amendment thereto or amendment to the zoning map; nor shall such repeal affect any ordinance annexing territory to the town.

Section 4. Continuation of existing provisions. Insofar as the provisions of the municipal code are the same as those of ordinances existing and in force on its effective date, said provisions shall be considered to be continuations thereof and not as new enactments.

Section 5. Penalty clause. Unless otherwise specified in a title, chapter or section of the municipal code, including the codes and ordinances adopted by reference, whenever in the municipal code any act is prohibited or is made or declared to be a civil offense, or whenever in the municipal code the doing of any act is required or the failure to do any act is declared to be a civil offense, the violation of any such provision of the municipal code shall be punished by a civil penalty of not more than fifty dollars (\$50.00) and costs for each separate violation; provided, however, that the imposition of a civil penalty under the provisions of this municipal code shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the provisions of the municipal code or other applicable law. In any place in the municipal code the term "it shall be a misdemeanor" or "it shall be an offense" or "it shall be unlawful" or similar terms appears in the context of a penalty provision of this municipal code, it shall mean "it shall be a civil offense." Anytime the word "fine" or similar term appears in the context of a penalty provision of this municipal code, it shall mean "a civil penalty."1

Each day any violation of the municipal code continues shall constitute a separate civil offense.

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

For authority to allow deferred payment of fines, or payment by installments, see <u>Tennessee Code Annotated</u>, § 40-24-101 <u>et seq</u>.

Section 6. Severability clause. Each section, subsection, paragraph, sentence, and clause of the municipal code, including the codes and ordinances adopted by reference, is hereby declared to be separable and severable. The invalidity of any section, subsection, paragraph, sentence, or clause in the municipal code shall not affect the validity of any other portion of said code, and only any portion declared to be invalid by a court of competent jurisdiction shall be deleted therefrom.

Section 7. Reproduction and amendment of code. The municipal code shall be reproduced in loose-leaf form. The board of mayor and aldermen, by motion or resolution, shall fix, and change from time to time as considered necessary, the prices to be charged for copies of the municipal code and revisions thereto. After adoption of the municipal code, each ordinance affecting the code shall be adopted as amending, adding, or deleting, by numbers, specific chapters or sections of said code. Periodically thereafter all affected pages of the municipal code shall be revised to reflect such amended, added, or deleted material and shall be distributed to city officers and employees having copies of said code and to other persons who have requested and paid for current revisions. Notes shall be inserted at the end of amended or new sections, referring to the numbers of ordinances making the amendments or adding the new provisions, and such references shall be cumulative if a section is amended more than once in order that the current copy of the municipal code will contain references to all ordinances responsible for current provisions. One copy of the municipal code as originally adopted and one copy of each amending ordinance thereafter adopted shall be furnished to the Municipal Technical Advisory Service immediately upon final passage and adoption.

Section 8. Construction of conflicting provisions. Where any provision of the municipal code is in conflict with any other provision in said code, the provision which establishes the higher standard for the promotion and protection of the public health, safety, and welfare shall prevail.

Section 9. Code available for public use. A copy of the municipal code shall be kept available in the recorder's office for public use and inspection at all reasonable times.

Section 10. Date of effect. This ordinance shall take effect from and after its final passage, the public welfare requiring it, and the municipal code, including all the codes and ordinances therein adopted by reference, shall be effective on and after that date.

Passed 1st reading,	12-2	, 20 <u>10</u> .
Passed 2nd reading,	1-6	, 20 <u>                                   </u>
Passed 3rd reading.	3-3	, 2011.

Mayor

Staur M. Austin Recorder