

**THE
PORTLAND
MUNICIPAL
CODE**

Prepared by the

**MUNICIPAL TECHNICAL ADVISORY SERVICE
INSTITUTE FOR PUBLIC SERVICE
THE UNIVERSITY OF TENNESSEE**

in cooperation with the

TENNESSEE MUNICIPAL LEAGUE

April 1998

Change 12
December 6, 2021

CITY OF PORTLAND, TENNESSEE

MAYOR

Mike Callis

VICE MAYOR

Drew Jennings

COUNCIL MEMBERS

Penny Barnes
Thomas Dillard
Mike Hall
Jody McDowell
Megann Thompson
Brian Woodall

CITY RECORDER

Patricia Keen

CITY ATTORNEY

John R. Bradley

PREFACE

The Portland Municipal Code contains the codification and revision of the ordinances of the City of Portland, Tennessee. By referring to the historical citation appearing at the end of each section, the user can determine the origin of each particular section. The absence of a historical citation means that the section was added by the codifier. The word "modified" in the historical citation indicates significant modification of the original ordinance.

The code is arranged into titles, chapters, and sections. Related matter is kept together, so far as possible, within the same title. Each section number is complete within itself, containing the title number, the chapter number, and the section of the chapter of which it is a part. Specifically, the first digit, followed by a hyphen, identifies the title number. The second digit identifies the chapter number, and the last two digits identify the section number. For example, title 2, chapter 1, section 6, is designated as section 2-106.

By utilizing the table of contents and the analysis preceding each title and chapter of the code, together with the cross references and explanations included as footnotes, the user should locate all the provisions in the code relating to any question that might arise. However, the user should note that most of the administrative ordinances (e.g. Annual Budget, Zoning Map Amendments, Tax Assessments, etc...) do not appear in the code. Likewise, ordinances that have been passed since the last update of the code do not appear here. Therefore, the user should refer to the city's ordinance book or the city recorder for a comprehensive and up to date review of the city's ordinances.

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

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

- (1) That all ordinances relating to subjects treated in the code or which should be added to the code are adopted as amending, adding, or deleting specific chapters or sections of the code (see section 8 of the adopting ordinance).
- (2) That one copy of every ordinance adopted by the city is kept in a separate ordinance book and forwarded to MTAS annually.
- (3) That the city agrees to 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).

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

The able assistance of Bobbie J. Sams, the MTAS Word Processing Specialist who did all the typing on this project, and Tracy G. Gardner Administrative Services Assistant, is gratefully acknowledged.

Steve Lobertini
Codification Specialist

**ORDINANCE ADOPTION PROCEDURES PRESCRIBED BY THE
CITY CHARTER**

ARTICLE IV

ORDINANCES

Section 1. Be it further enacted, That all ordinances shall begin, "Be it ordained by the City of Portland."

Section 2. Be it further enacted, That all ordinances in force at the time of the taking effect of this Act, passed under authority of prior charters, shall remain in full force and effect until amended or repealed, except where they are in conflict with the provisions of this Act.

Section 3. Be it further enacted, That every ordinance shall be passed on two readings on two separate days in open session in the City Council before it shall become effective, and all ordinances shall take effect from and after their final passage, unless otherwise provided therein; provided, that resolutions may be passed on one reading; All ordinances and resolutions shall be signed by the Mayor and Recorder.

Section 4. Be it further enacted, That every ordinance, when filed with the Recorder, shall immediately be numbered and copied in an ordinance book and preserved in his office.

*Change 12
December 6, 2021*

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TITLE 1

GENERAL ADMINISTRATION¹

CHAPTER

1. CITY COUNCIL.
2. MAYOR.
3. RECORDER.
4. ENGINEERING DEPARTMENT.
5. PLANNING AND CODES DEPARTMENT.
6. HUMAN RESOURCES DEPARTMENT.
7. ELECTIONS.

CHAPTER 1

CITY COUNCIL²

SECTION

- 1-101. Time and place of regular meetings.
- 1-102. Order of business.
- 1-103. General rules of order.
- 1-104. Compensation of members of city council.

1-101. Time and place of regular meetings. The city council shall hold regular monthly meetings at 7:00 P.M. on the first Monday of each month at the city hall. (1980 Code, § 1-101)

¹Charter 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.

²Charter references

Compensation: art. III, § 1.

Quorum: art. III, § 11.

Meetings: art. III, § 7.

1-102. Order of business. At each meeting of the city council the following regular order of business shall be observed unless dispensed with by a majority vote of the members present:

- (1) Call to order by the mayor.
- (2) Roll call by the recorder.
- (3) Reading of minutes of the previous meeting by the recorder and approval or correction.
- (4) Grievances from citizens.
- (5) Communications from the mayor.
- (6) Reports from committees members of the city council and other officers.
- (7) Old business.
- (8) New business.
- (9) Adjournment. (1980 Code, § 1-102)

1-103. General rules of order. The rules of order and parliamentary procedure contained in Robert's Rules of Order, Newly Revised, shall govern the transaction of business by and before the city council 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. (1980 Code, § 1-103, modified)

1-104. Compensation of members of city council. Commencing July 1, 2009, the monthly salary of each member shall be the sum of six hundred dollars (\$600.00). (as added by Ord. #600, May 1999, and amended by Ord. #07-14, May 2007)

CHAPTER 2

MAYOR¹

SECTION

- 1-201. Generally supervises city's affairs.
 1-202. Executes city's contracts.
 1-203. Salary and benefits of mayor.

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. (1980 Code, § 1-201)

1-202. Executes city's contracts. The mayor shall execute all contracts authorized by the city council. (1980 Code, § 1-202)

1-203. Salary and benefits of mayor. The office of mayor for the City of Portland is a full-time position, requiring at least forty (40) hours per week. Commencing on December 1, 2022 the annual salary of the mayor shall be set to a sum that is equal to one hundred ten percent (110%) of the average combined salaries of all full-time city department heads, and the same calculation shall be used to adjust the mayor's salary at the beginning of each term. The salary shall be payable on the same schedule as that of other employees of the City of Portland. The following fringe benefits shall apply at time of passage:

- (1) Participation in Tennessee Consolidated Retirement System (TCRS) plan (optional by choice of mayor);
- (2) Health, dental, vision and life insurance provided at the same cost as provided to full-time employees;
- (3) Use of a city vehicle for city business, employee training and city events;
- (4) Use of a city cell phone or a cell phone allotment (optional by choice of mayor);
- (5) Two (2) weeks paid vacation per year, commencing at the beginning of the term and then given each year on the term anniversary date, and any

¹Charter references

Compensation: art VI, § 1.

Powers and duties: art. V, §§ 1 and 2.

Vacancy in office: art. III, § 9.

Veto power: art. V, § 4.

unused portion of annual vacation may be cashed in or carried over into the next year;

(6) All other benefits that are available to full-time employees are also available to the mayor, including Christmas bonus, sick leave, holidays, personal leave (day), Family Medical Leave (FMLA), and paid educational training. (as added by Ord. #600, May 1999, amended by Ord. #01-22, Sept. 2001, Ord. #04-49, Jan. 2005, and Ord. #07-13, May 2007, and replaced by Ord. #21-60, Dec. 2021 *Ch12_12-06-21*)

CHAPTER 3**RECORDER¹****SECTION**

1-301. To be bonded.

1-302. To keep minutes, etc.

1-303. To perform general administrative duties, etc.

1-301. To be bonded. The recorder shall be bonded in such sum as may be fixed by, and with such surety as may be acceptable to, the city council. (1980 Code, § 1-301)

1-302. To keep minutes, etc. The recorder shall keep the minutes of all meetings of the city council and shall preserve the original copy of all ordinances in a separate ordinance book. (1980 Code, § 1-302)

1-303. To perform general administrative duties, etc. The recorder shall perform all administrative duties for the city council and for the city which are not assigned by the charter, this code, or the city council to another corporate officer. The recorder shall also have custody of, and be responsible for maintaining all corporate bonds, records, and papers in such fireproof vault or safe as the city shall provide. (1980 Code, § 1-303)

¹Charter references

Appointment: art. III, § 2.

Bond required: art. VII, § 2.

Compensation: art. VII, § 3.

Powers and duties: art. VII, § 2.

CHAPTER 4

ENGINEERING DEPARTMENT

SECTION

1-401. Engineering department established.

1-402. Duties and responsibilities.

1-403. Department head to be licensed and certified.

1-401. Engineering department established. An engineering department is hereby established and shall be under the supervision of the city engineer. (as added by Ord. #589, Nov. 1998, and replaced by Ord. #04-43, Jan. 2005).

1-402. Duties and responsibilities. The engineering department shall have the following duties and responsibilities:

1. To provide such reviews of plans and specifications, surveys, drainage plans, water and sewer plans, subdivision plans, building plans and all related documents where knowledge of engineering is required to coordinate relationships with professional engineering firms the City of Portland deals with on a day-to-day basis;

2. To advise the mayor as to the engineering standards and other related standards required by contract(s) to which the City of Portland is a party;

3. To coordinate activities with other departments of the city and other government agencies involved in city projects, where engineering services are necessary and required, especially with respect to design of buildings used by the city and other infrastructure owned by the City of Portland, pertaining to delivery of such to its citizenry. (as added by Ord. #589, Nov. 1998, and replaced by Ord. #04-43, Jan. 2005)

4-403. Department head to be licensed and certified. The head of the new department shall hold such licenses and certifications as may be required by state and federal law to perform the duties and responsibilities set forth herein. (as added by Ord. #589, Nov. 1998, and replaced by Ord. #04-43, Jan. 2005)

CHAPTER 5

PLANNING AND CODES DEPARTMENT

SECTION

1-501. Planning and codes department established.

1-502. Duties and responsibilities.

1-503. Department head to be licensed and certified.

1-501. Planning and codes department established. A planning and codes department is hereby established and shall be under the supervision of the planning and codes director. (as added by Ord. #04-45, Jan. 2005)

1-502. Duties and responsibilities. The planning and codes department shall have the following duties and responsibilities:

1. To be responsible for administering planning and zoning ordinances of the City of Portland;

2. To administer all hereby attached codes as adopted by the City of Portland;

3. To collect all building permit fees and other fees required by ordinance of the City of Portland;

4. To provide such reports and studies as required by the Planning Commission of the City of Portland and the mayor;

5. To assist the planning commission in the implementation of long range plans for the City of Portland and take into account the laws of the State of Tennessee as they may pertain to growth. (as added by Ord. #04-45, Jan. 2005)

1-503. Department head to be licensed and certified. Department head shall have all requisite license and certificates required by the laws of the State of Tennessee and those qualifications set forth in the job description attached hereto.¹ (as added by Ord. #04-45, Jan. 2005)

¹Attachments to Ord. #04-45 are of record in the recorder's office.

CHAPTER 6**HUMAN RESOURCES DEPARTMENT****SECTION**

- 1-601. Human resources department established.
- 1-602. Duties and responsibilities.
- 1-603. Human resources manager to be certified.

1-601. Human resources department established. A new department for the City of Portland is hereby established and shall be known as the human resources department and shall be under the supervision of the human resources manager. (as added by Ord. #04-46, Jan. 2005)

1-602. Duties and responsibilities. The human resources department shall have the following duties and responsibilities:

1. To be responsible for administering all personnel programs;
2. To comply with all local, state and federal laws;
3. Prepare and present departmental reports, recommendations, budgets at stated intervals when requested by the mayor;
4. Plans and directs personnel programs, benefits and does related work as required;
5. Confers and coordinates with the mayor and city council on personnel matters. (as added by Ord. #04-46, Jan. 2005)

1-603. Human resources manager to be certified. The human resources manager shall be certified for this position as may be required by the laws of the State of Tennessee. (as added by Ord. #04-46, Jan. 2005)

CHAPTER 7

ELECTIONS¹

SECTION

- 1-701. Terms.
- 1-702. City council members and the mayor.
- 1-703. Effective date.
- 1-704. Non-resident property owners.
- 1-705. Date of installation and oath of office.

1-701. Terms. (1) The terms of office of the three (3) city council members elected in May 2009, shall be extended from the election in May, 2013 until Tuesday after the first Monday in November, 2014. This will result in an increase of approximately eighteen (18) months in the terms of the city council members elected in May, 2009.

(2) The terms of office of the four (4) city council members elected in May, 2011, shall be extended from the election in May, 2011 until Tuesday after the first Monday in November, 2016. This will result in an increase of approximately eighteen (18) months in the terms of office of the council members elected in May, 2011.

(3) The term of office of the mayor elected in May, 2009, shall be extended from the election date in May, 2013 until Tuesday after the first Monday in November, 2014. This will result in an increase of approximately eighteen (18) months in the term of the mayor elected in May 2009. (as added by Ord. #12-01, Feb. 2012)

1-702. City council members and the mayor. The city council members and the mayor are to be elected in the November general elections and every four (4) years thereafter shall be elected for a four (4) year term of office. (as added by Ord. #12-01, Feb. 2012)

1-703. Effective date. Upon final passage of the ordinance comprising this chapter, a copy shall be forwarded to the Sumner County Election Commission.

This chapter shall take effect immediately upon final passage, welfare requiring it. (as added by Ord. #12-01, Feb. 2012)

¹State law reference

Tennessee Code Annotated, § 6-54-138 permits the legislative body of a private act municipality, notwithstanding any provision in the private act to the contrary, to modify the date of municipal elections to coincide with the August or November election.

1-704. Non-resident property owners. Non-resident property owners of the municipality shall cast ballots as absentee by mail. (as added by Ord. #14-06, Feb. 2014)

1-705. Date of installation and oath of office. The date of December 1, following the date of the election and its certification by the Sumner County Election Commission, shall be the date for installation and taking the oath of office, unless this day is on a Sunday or if the certification has not been completed, then the first day thereafter. (as added by Ord. #14-08, March 2014)

TITLE 2

BOARDS AND COMMISSIONS, ETC.

CHAPTER

1. DELETED.
2. DELETED.
3. DELETED.
4. PARKS AND RECREATION ADVISORY BOARD.
5. RETAIL COMMITTEE.
6. WATER SUPPLY BOARD.
7. CONSTRUCTION BOARD/PROPERTY MAINTENANCE BOARD OF APPEALS.

CHAPTER 1

DELETED

(as added by Ord. #585, Oct. 1998, amended by Ord. #20-16, March 2020 *Ch12_12-06-21*, and deleted by Ord. #21-39, Sept. 2021 *Ch12_12-06-21*)

CHAPTER 2

DELETED

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

CHAPTER 3

DELETED

(as added by Ord. #00-2, March 2000, and deleted by Ord. #01-23, Nov. 2001)

CHAPTER 4

PARKS AND RECREATION ADVISORY BOARD

SECTION

2-401. Created.

2-402. Members.

2-403. Term and appointment.

2-401. Created. There is hereby created a parks and recreation advisory board. Said board shall have all duties and powers pursuant to Tennessee Code Annotated, title 11, chapter 24, and shall be an advisory board. (as added by Ord. #08-20, May 2008)

2-402. Members. The following shall be utilized for appointing members of this board:

(1) At least three (3) members of the board shall be bona fide citizens of the City of Portland planning region.

(2) None may be members of the council or employees of the City of Portland.

(3) There is no compensation for service. (as added by Ord. #08-20, May 2008, and amended by Ord. #10-26, Oct. 2010)

2-403. Term and appointment. (1) Appointments shall be for a term of two (2) years (except initial appointments), with a maximum of three (3) consecutive terms or six (6) years (including initial appointments), whichever occurs last.

(2) Term year is defined to commence July 1 and end June 30.

(3) Initial appointments shall be as follows:

(a) Parks committee appointment (one year term)

(b) Parks director appointment (one year term)

(c) Parks committee appointment (school system) (two year term)

(d) Parks director appointment (two year term)

(e) Mayoral appointment (three year term)

(4) The parks director will appoint the chair of the board annually, during the first meeting following July 1.

(5) There are no members appointed with this chapter. Appointments will require approval of the council. (as added by Ord. #08-20, May 2008)

CHAPTER 5

RETAIL COMMITTEE

SECTION

2-501. Established.

2-502. Function.

2-503. Appointments, terms and meetings.

2-501. Established. There is hereby established a retail committee to be composed of five (5) members as follows:

(1) One (1) citizen from the community at large, who must be a resident of the City of Portland, and shall be appointed to a two-year term by the mayor and approved by resolution of the city council;

(2) One (1) member of the Portland City Council to be appointed by the mayor and approved by resolution of the city council to a term that is concurrent with his/her elected term of office;

(3) The Director of the Portland Chamber of Commerce term to be concurrent with employment as director of the local chamber;

(4) One (1) local business owner to be appointed by the chamber of commerce board of directors to a two-year term; and

(5) The community development director, to act as the coordinator of the committee and whose term shall be concurrent with employment as City of Portland's CD Director. (as added by Ord. #09-57, Nov. 2009)

2-502. Function. (1) The primary function and goals of this committee shall be to work with current local retail businesses to improve their business and to seek and attract new businesses to the City of Portland.

(2) The mayor is authorized to remove, or cause to be removed, any member who does not act in accordance with the stipulations and provisions of this chapter. (as added by Ord. #09-57, Nov. 2009)

2-503. Appointments, terms and meetings. The retail committee shall:

(1) Serve without compensation;

(2) Compose a mission statement;

(3) Choose a chairman and vice-chairman from among its members annually;

(4) Set its own meeting date(s) and time(s) and publish meeting notices to comply with Tennessee's Open Meetings laws; and

(5) Have three (3) of the five (5) members in attendance to constitute a quorum before a meeting is held. (as added by Ord. #09-57, Nov. 2009)

CHAPTER 6

WATER SUPPLY BOARD

SECTION

- 2-601. Created.
- 2-602. Membership.
- 2-603. Election.
- 2-604. Nature of the board.
- 2-605. Duties of the board.
- 2-606. Expenses.
- 2-607. Duration.

2-601. Created. A joint board to be known as the Water Supply Board for Robertson County (hereinafter referred to as the "board") is hereby created and established to serve the citizens of Robertson County, Tennessee pursuant to the authority granted to the parties to this agreement as "local government entities" or "public agencies" by Tennessee Code Annotated, §§ 12-9-101 through 12-9-112. (as added by Ord. #11-03, Feb. 2011)

2-602. Membership. The board shall consist of eleven (11) members as follows:

(1) One (1) member shall be the County Mayor of Robertson County, Tennessee or said mayor's designee.

(2) The governing body of each of the four (4) utilities (governmental entities or public agencies) providing water services to the citizens of Robertson County shall appoint one (1) member to the board from its membership who shall serve at the pleasure of the appointing governing body.

(3) The water services operations director for each of the four (4) utilities providing water services within Robertson County shall be a member of the board.

(4) Two (2) members shall be appointed on a rotating basis by two (2) of the nine (9) incorporated municipalities of Robertson County not represented through the other subsections of this section. The members shall be selected by the governing body of these municipalities. The members appointed pursuant to this subsection will serve a term of one (1) year beginning at the first meeting of the board after the individuals' appointment. The municipalities of Greenbrier and Cross Plains shall be the first in the rotation; thereafter, the rotation of members appointed by the other seven (7) incorporated municipalities shall be determined by the county mayor. The county mayor shall by letter to the affected municipalities request an appointment at least sixty (60) days prior to the end of the term of a member appointed under this subsection. (as added by Ord. #11-03, Feb. 2011)

2-603. Election. The board shall elect a chair, vice-chair and secretary.

(1) The chair shall preside at all meetings of the board at which he or she is present.

(2) The vice-chair shall preside at all meetings of the board when the chair is absent.

(3) The secretary shall take minutes of the proceedings of the board and keep the minutes and other documents and records of the board.

(4) The board may assign other duties to the aforementioned officers and may elect such other officers as it deems necessary and assign duties to such officers consistent with this agreement. (as added by Ord. #11-03, Feb. 2011)

2-604. Nature of the board. The nature of the board is planning and advisory. The purpose of board is to carry out the duties listed in § 2-605 below. (as added by Ord. #11-03, Feb. 2011)

2-605. Duties of the board. The duties of the board are follows:

(1) Meet at least twice per year.

(2) Coordinate meetings with representatives of the Tennessee Department of Conservation and Environment and other entities that can provide information useful to the board.

(3) Receive recommendations from each of the municipalities of Robertson County not represented on the board.

(4) Conduct open meetings with adequate public notice.

(5) Provide for citizen input into the work of the board.

(6) Examine the costs and benefits of the most logical alternatives for providing adequate future water supply to the citizens of Robertson County.

(7) Provide detailed recommendations to the governing bodies of the four (4) utilities providing water services in Robertson County and to the Robertson County Commission as to the best means of securing adequate future water supply for the citizens of Robertson County. The recommendations of the board shall be consistent with the Robertson County Growth Plan. These recommendations shall state the assumptions for water use in Robertson County for the future up to a period of thirty (30) years, the preferred source or sources of future water supplies, the funding options for securing new water supplies, the preferred legal mechanism for securing new water supplies, the preferred method of operation for any new water distribution and storage facilities, and the role of all parties to this agreement in providing for the future water supply needs of the citizens of Robertson County. (as added by Ord. #11-03, Feb. 2011)

2-606. Expenses. The board shall not receive or expend any funds, nor shall the board own any property. The parties to this agreement may provide meeting space, office supplies, public notices and other reasonable accommodations for the board to properly conduct its meetings and make its

recommendations. In the event no other party offers to provide the necessary meeting space, office supplies or other reasonable accommodations for the work of the board, these things will be provided by Robertson County under the direction of the county mayor and within the budget of Robertson County. (as added by Ord. #11-03, Feb. 2011)

2-607. Duration. The duration of this agreement and the board is perpetual. However, this agreement and the board may be terminated by an amendment to this agreement. (as added by Ord. #11-03, Feb. 2011)

CHAPTER 7

CONSTRUCTION BOARD/MAINTENANCE BOARD OF APPEALS

SECTION

2-701. CB/PMBOA created.

2-701. CB/PMBOA created. There is hereby established a construction board/property maintenance board of appeals to hear and decide appeals of orders, decisions or determinations made by the building official or his/her designee relative to the application and interpretation of the current adopted model codes.

A standard of bylaws and code of ethics for the construction board/property maintenance board of appeals to include, but not limited to, the authority of the board, membership requirements of board members, qualification of board members, and terms of board members, and a code of ethics for the board members, and any amendments thereto, may be found in the recorder's office. (as added by Ord. #19-21, March 2019 *Ch12_12-06-21*)

TITLE 3

MUNICIPAL COURT¹

CHAPTER

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

CHAPTER 1

CITY JUDGE

SECTION

3-101. City judge.

3-101. City judge. The officer designated by the charter to handle judicial matters within the city shall preside over the city court and shall be known as the city judge. (1980 Code, § 1-501)

¹Charter reference: art. X.

CHAPTER 2

COURT ADMINISTRATION

SECTION

- 3-201. Maintenance of docket.
- 3-202. Imposition of fines, penalties, and costs.
- 3-203. Disposition and report of fines, penalties, and costs.
- 3-204. Disturbance of proceedings.
- 3-205. Trial and disposition of cases.
- 3-206. Electronic citation regulations and fees.

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 that may be relevant. (1980 Code, § 1-502)

3-202. Imposition of fines, penalties, and costs. All fines, penalties and costs shall be imposed and recorded by the city judge on the city court docket in open court.

(1) In all cases heard and determined by the city, the city judge shall impose court costs in the amount of sixty-seven dollars fifty cents (\$67.50). One dollar (\$1.00) of the court costs shall be forwarded by the court clerk to the state treasurer in accordance with Tennessee Code Annotated, § 16-18-304(a), to be used by the administrative office of the courts for training and continuing education courses for municipal court judges and municipal court clerks. In addition, the court shall levy a local litigation tax in the amount of thirteen dollars seventy-five cents (\$13.75) in all cases in which the state litigation tax is levied.

(2) When any person has been charged with violation of a law regarding vehicle equipment (including, but not limited to, inoperable headlights, tail lights, brake lights or turn signals), driver licensing, or vehicle licensing and registration, the charge may be dismissed if the person charged with the violation submits evidence of compliance with such law on or before the court date; provided, however, that the city judge may establish a separate court cost not to exceed twenty-five dollars (\$25.00) to be collected from the person charged with the violation. This separate court costs will be assessed in lieu of the court costs detailed in § 3-202(1) above. (1980 Code, § 1-508, as replaced by Ord. #21-46, Oct. 2021 *Ch12_12-06-21*)

3-203. 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 city council 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. (1980 Code, § 1-511)

3-204. Disturbance of proceedings. 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. (1980 Code, § 1-512)

3-205. Trial and disposition of cases. Every person charged with violating a city ordinance shall be entitled to an immediate trial and disposition of his case, provided the city court is in session or the city judge is reasonably available. However, the provisions of this section shall not apply when the alleged offender, by reason of drunkenness or other incapacity, is not in a proper condition or is not able to appear before the court. (1980 Code, § 1-506)

3-206. Electronic citation regulations and fees. Pursuant to and in accordance with state statutory requirements found in Tennessee Code Annotated, § 55-10-207(e), each court clerk shall charge and collect an electronic citation fee of five dollars (\$5.00) for each citation which results in a conviction. (as added by Ord. #21-47, Oct. 2021 *Ch12_12-06-21*)

CHAPTER 3

WARRANTS, SUMMONSES AND SUBPOENAS

SECTION

3-301. Issuance of arrest warrants.

3-302. Issuance of summonses.

3-303. Issuance of subpoenas.

3-301. Issuance of arrest warrants.¹ The city judge shall have the power to issue warrants for the arrest of persons charged with violating municipal ordinances. (1980 Code, § 1-503)

3-302. Issuance of summonses. 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 ordinance alleged to have been violated. Upon failure of any person to appear before the city court as commanded in a summons lawfully served on him, the cause may be proceeded with ex parte, and the judgment of the court shall be valid and binding subject to the defendant's right of appeal. (1980 Code, § 1-504)

3-303. Issuance of subpoenas. 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. (1980 Code, § 1-505)

¹State law reference

For authority to issue warrants, see Tennessee Code Annotated, title 40, chapter 6.

CHAPTER 4

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 drunk or otherwise in need of protective custody. (1980 Code, § 1-507)

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 appeal to the next term of the circuit court upon posting a proper appeal bond.¹ (1980 Code, § 1-509)

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 and fifty dollars (\$250.00) and shall be conditioned that if the circuit court shall find against the appellant the fine or penalty 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. (1980 Code, § 1-510)

¹State law reference

Tennessee Code Annotated, § 27-5-101.

TITLE 4

MUNICIPAL PERSONNEL

CHAPTER

1. PERSONNEL POLICY.
2. OCCUPATIONAL SAFETY AND HEALTH PROGRAM.
3. CODE OF ETHICS.

CHAPTER 1

PERSONNEL POLICY

SECTION

4-101. Policy adopted.

4-101. Policy adopted. The personnel policy as adopted by ordinance number 19-67, dated August 19, 2019, replaced title 4 of this code in its entirety. The full text of the policy, and any amendments thereto, has been placed at the back of the code as Appendix A. (as amended by Ord. #19-67, Aug. 2019 *Ch12_12-06-21*)

CHAPTER 2

OCCUPATIONAL SAFETY AND HEALTH PROGRAM¹

SECTION

- 4-201. Title.
- 4-202. Purpose.
- 4-203. Coverage.
- 4-204. Standards authorized.
- 4-205. Variances from standards authorized.
- 4-206. Administration.
- 4-207. Funding the program.

4-201. Title. This section shall be known as "The Occupational Safety and Health Program Plan" for the employees of the City of Portland. (as added by Ord. #16-13, June 2016)

4-202. Purpose. The City of Portland in electing to update the established program plan will maintain an effective and comprehensive occupational safety and health program plan 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 the 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) Record, keep, preserve, and make available to the commissioner of labor and workforce development, or persons within the 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 commissioner of labor and workforce development with regard to the adequacy of the form and content of records.

¹The occupational safety and health program plan for the City of Portland, and any amendments thereto, may be found in the recorder's office.

(5) Consult with the 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 plan, 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 plan. (as added by Ord. #16-13, June 2016)

4-203. Coverage. The provisions of the Occupational Safety and Health Program Plan for the employees of the City of Portland shall apply to all employees of each administrative department, commission, board, division, or other agency whether part-time or full-time, seasonal or permanent. (as added by Ord. #16-13, June 2016)

4-204. Standards authorized. The occupational safety and health standards adopted by the City of Portland are the same as, but not limited to, the State of Tennessee Occupational Safety and Health Standards promulgated, or which may be promulgated, in accordance with section 6 of the Tennessee Occupational Safety and Health Act of 1972 (Tennessee Code Annotated, title 50, chapter 3). (as added by Ord. #16-13, June 2016)

4-205. Variances from standards authorized. Upon written application to the Commissioner of Labor and Workforce Development of the State of Tennessee, we may 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 and Health, VARIANCES FROM OCCUPATIONAL SAFETY AND HEALTH STANDARDS, CHAPTER 0800-01-02, as authorized by Tennessee Code Annotated, title 50. Prior to requesting such temporary variance, we will notify or serve notice to our 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 shall be deemed sufficient notice to employees. (as added by Ord. #16-13, June 2016)

4-206. Administration. For the purposes of this chapter, Thomas McCormick is designated as the safety director of occupational safety and health to perform duties and to exercise powers assigned to plan, develop, and administer this program plan. The safety director shall develop a plan of operation for the program plan in accordance with Rules of Tennessee

Department of Labor and Workforce Development Occupational Safety and Health, SAFETY AND HEALTH PROVISIONS FOR THE PUBLIC SECTOR, CHAPTER 0800-01-05, as authorized by Tennessee Code Annotated, title 50. (as added by Ord. #16-13, June 2016)

4-207. Funding the program plan. Sufficient funds for administering and staffing the program plan pursuant to this chapter shall be made available as authorized by the City of Portland. (as added by Ord. #16-13, June 2016)

CHAPTER 3

CODE OF ETHICS¹

SECTION

- 4-301. Applicability.
- 4-302. Definition of "personal interest."
- 4-303. Disclosure of personal interest by official with vote.
- 4-304. Disclosure of personal interest in non-voting matters.
- 4-305. Acceptance of gratuities, etc.
- 4-306. Use of information.
- 4-307. Use of municipal time, facilities, etc.
- 4-308. Use of position or authority.
- 4-309. Outside employment.
- 4-310. Ethics complaints.
- 4-311. Violations.

4-301. Applicability. This chapter is the code of ethics for personnel of the City of Portland. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the city. The words "municipal" and

¹State 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, chapter 10.

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

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

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

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

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

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

A brief synopsis of each of these laws appears in the appendix of the municipal code.

"city" or "City of Portland" include these separate entities. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

4-302. Definition of "personal interest." (1) For purposes of §§ 4-303 and 4-304, "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. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

4-303. Disclosure of personal interest by official with vote. 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 himself¹ from voting on the measure. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

4-304. Disclosure of personal interest in non-voting matters. An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the 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. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

¹Masculine pronouns include the feminine. Only masculine pronouns have been used for convenience and readability.

4-305. Acceptance of gratuities, etc. 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 city:

(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. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

4-306. Use of information. (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. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

4-307. Use of municipal time, facilities, etc. (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 city council to be in the best interests of the city. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

4-308. Use of position or authority. (1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the city.

(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 city. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

4-309. Outside employment. A full-time employee of the city may not accept any outside employment without written authorization from the mayor. The mayor may not grant such authorization if the work is likely to interfere with the satisfactory performance of the officer's or employee's duties, is incompatible with his/her municipal employment, or is likely to cast discredit upon or create embarrassment for the city. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

4-310. Ethics complaints. (1) The city attorney is designated as the ethics officer of the city. 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 city council 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 city council, the city council shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the city council determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or another individual or entity chosen by the city council.

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

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation 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. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

4-311. Violations. 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 city council. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action. (as added by Ord. #19-80, Sept. 2019 *Ch12_12-06-21*)

TITLE 5**MUNICIPAL FINANCE AND TAXATION¹****CHAPTER**

1. MISCELLANEOUS.
2. PROPERTY TAXES.
3. PRIVILEGE TAXES.
4. AMUSEMENT TAX.
5. PURCHASING POLICY.
6. UNCLAIMED PROPERTY.
7. AUDIT COMMITTEE.
8. HOTEL-MOTEL TAX.

CHAPTER 1**MISCELLANEOUS****SECTION**

5-101. Official depository for city funds.

5-101. Official depository for city funds. Farmer's Bank, Volunteer State Bank, Cumberland Bank of Portland, Tennessee, and the Local Government Investment Pool are hereby designated as the official depositories for all city funds. (1980 Code, § 6-301, modified, as amended by Ord. #07-09, March 2007)

¹Charter reference: art. XI.

CHAPTER 2

PROPERTY TAXES

SECTION

- 5-201. Annual property tax levy.
- 5-202. Tax statements.
- 5-203. When due and payable.
- 5-204. When delinquent--penalty and interest.
- 5-205. Notice of taxes due.
- 5-206. Certified list of delinquent taxes to county trustee or delinquent tax attorney.
- 5-207. Property tax freeze program.
- 5-208. Partial payments for real and personal property taxes.

5-201. Annual property tax levy. As soon as the assessment role for the City of Portland is complete the city recorder shall submit a certified statement of the total amount of the valuation or assessment of the taxable property within the municipal limits. Upon presentation of such statement by the city recorder, the city council shall proceed by separate ordinance to make the property levy to meet the expenses of the municipality for the current fiscal year. (1980 Code, § 6-101)

5-202. Tax statements. Statements for taxes on real property located in the City of Portland shall be prepared by the city recorder and forwarded by mail to all taxpayers as soon as possible following September 1st each year. (1980 Code, § 6-102)

5-203. When due and payable. Taxes levied by the City of Portland against real property shall become due and payable annually on the first Monday of October of the year for which levied. (1980 Code, § 6-103)

5-204. 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 Tennessee Code Annotated, § 67-5-2010(b)(2) for delinquent real property taxes.

ASSESSMENTS

- | | |
|-----------|--|
| January 1 | Tax assessor makes assessment as of this date. Assessed taxes become lien on property. |
| July 1 | Municipal tax rate established by ordinance along with adoption of budget. |

October 1	Taxes become due and payable. Prior to this date, notices sent to taxpayers of taxes due. City recorder will also give notice of any back-taxes due.
February 21	Reminder sent to taxpayers of taxes due.
February 28	Last day for paying taxes without penalty.

DELINQUENCIES

March 1	Taxes become delinquent. Penalties and interest (1.5 percent per month) accrue.
January 1 following year	City recorder prepares certified list of unpaid delinquent taxes. List forwarded to delinquent tax attorney by January 31 for initiation of tax suit.

TAX SUIT

February/April	Delinquent tax attorney must file suit for enforcement of tax liens during this period. Upon suit being filed, additional costs are added. These taxes are paid through chancery court clerk's office. (1980 Code, § 6-104)
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5-205. Notice of taxes due. With respect to any taxes and penalties remaining due and unpaid on the first day of March of the year following the year for which the taxes were assessed, it shall be the duty of the city recorder to give notice to such delinquent taxpayer in the current years tax statement, advising said taxpayer with the following: **IN ADDITION TO THIS AMOUNT, YOU OWE BACK TAXES. CONTACT THIS OFFICE IMMEDIATELY OR YOUR PROPERTY MAY BE SOLD.** (1980 Code, § 6-105)

5-206. Certified list of delinquent taxes to county trustee or delinquent tax attorney. In the event such taxes and penalties shall not be paid in full prior to the 1st day of March the year following the date specified in § 5-205, then it shall be the duty of the city recorder to deliver the delinquent list showing all unpaid taxes to the delinquent tax attorney, or to a special attorney appointed for such purpose, and to cause said attorney to prepare and file suits in the chancery and circuit courts for Sumner County, Tennessee, for the collection of all delinquent taxes and penalties thereon due the city. The suit shall provide for collection of unpaid taxes, interest, penalties, court costs, costs incurred in connection with any title search, and attorney fees which fees shall not exceed fifteen percent (15%) of the amount of unpaid taxes, interest and penalties. (1980 Code, § 6-106)

5-207. Property tax freeze program. (1) The property tax freeze program is provided for in chapter 581 of the Public Acts of 2007, codified in Tennessee Code Annotated, § 67-5-705, is hereby adopted by the legislative body of the City of Portland.

(2) The property tax freeze program shall be implemented and administered in accordance with Tennessee Code Annotated, § 67-5-705, and the rules promulgated by the State Board of Equalization through the Division of Property Assessments.

(3) The city recorder shall file a copy of the ordinance comprising this chapter with the Division of Property Assessments within forty-five (45) days of its adoption.

(4) The Sumner County Trustee is requested by the City of Portland to process all applications for a fee of ten dollars (\$10.00) per citizen application. (as added by Ord. #08-18, May 2008)

5-208. Partial payments for real and personal property taxes. Partial payments for real and personal property taxes are authorized in the City of Portland, Tennessee. (as added by Ord. #10-24, Oct. 2010)

CHAPTER 3

PRIVILEGE TAXES¹

SECTION

5-301. Tax levied.

5-302. License required.

5-301. Tax levied. Except as otherwise specifically provided in this code, there is hereby levied on all vocations, occupations, and businesses declared by the general laws of the state to be privileges taxable by municipalities, an annual privilege tax in the maximum amount allowed by said state laws. The taxes provided for in the state's "Business Tax Act" (Tennessee Code Annotated, title 67, chapter 4) are hereby expressly enacted, ordained, and levied on the businesses, business activities, vocations, and occupations carried on within the city at the rates and in the manner prescribed in the following classifications:

1. Items: Due November 30; delinquent February 1st.

PERCENT OF TAX

- | | | |
|----|---|---|
| a. | Retail food, beer | 1/15 of 1% of all retail sales |
| b. | Lumber, Hardware, Plumbing/ Heating/ Air Conditioning Equipment, Electrical Supplies, Farm Equipment; Gasoline and Other Sales by Service Stations. | 1/60 of 1% of Wholesale Sales of Item (a)

1/40 of 1% of Wholesale Sale of Item (b) |

2. Items: Due December 31; delinquent March 1st.

PERCENT OF TAX

- | | | |
|----|--|--------------------------------|
| a. | New & Used Cars, Boats, Parts & Supplies
Mobile Homes, Campers, Motorcycles | 1/10 of 1% of all retail sales |
|----|--|--------------------------------|

¹Fee to state: 15% of total gross receipts tax collected, including penalties and interest, but excluding city recorder's fee.

PERCENT OF TAX

- | | | |
|----|--|--------------------------------------|
| b. | Ready-made Clothing | |
| c. | Home Furnishings &
Equipment, Radios,
TV, Record Players | 1/40 of 1% of all wholesale
sales |
| d. | Drugs | |
| e. | Coal, Fuel, Oil, LP Gas | |
| f. | Tangible Personal Property,
Not described elsewhere | |
| g. | Prepared Food & Drinks,
including alcoholic beverages | |
| h. | Cut Flowers & Growing Plants | |
| i. | Advertising Specialties | |

3. Items: Due April 30; delinquent June 30th.

PERCENT OF TAX

- | | | |
|----|---|--------------------------------------|
| a. | Delicatessens, Candy | 1/8 of 1% of all retail sales |
| b. | Clothing Made to Order | |
| c. | Repealed | |
| d. | Antiques, Art | |
| e. | Books, Magazines, Office
Supplies | 1/40 of 1% of all wholesale
sales |
| f. | Sporting Goods, Bicycles | |
| g. | Mounted Jewelry | |
| h. | Tobacco | |
| i. | Repealed | |
| j. | Toys and Hobbies (except as
in "m") | |
| k. | Cameras, Film, Photo
Equipment | |
| l. | Gifts, Souvenirs, Greeting
Cards, Novelties | |
| m. | Artificial Flowers, Gemstones,
Leather Goods, Luggage,
Typewriters, Pets, Wigs,
Hearing Aids, Etc. | |

Each person making sales of services, except architectural, engineering, medical, dental, veterinary, legal, accounting, banking, insuring, educational & domestic services; leasing agricultural, airport, mining, oil & public utility property; conducting certain athletic matches; operating hotels & motels; etc.

4. Items: Due Nov. 30; delinquent Feb. 1st.

PERCENT OF TAX

- | | | |
|----|---|--|
| a. | Contractors, Exterminators | 1 / 1 5 of 1 % of Compensation under the contract, whether in form of contract price, commission, fee, or wage, of item (a). |
| b. | Sale of Livestock, Poultry, and other Farm Products by a Person other than the Producer | 1 / 4 0 of 1 % of gross commissions, margins, fees etc. of item (b) |

5. Items:

Taxed only by state.

The minimum tax to be levied under all classifications shall not be less than fifteen dollars (\$15.00). (1980 Code, § 6-201)

5-302. License required. No person shall exercise any such privilege within the city without a currently effective privilege license, which shall be issued by the recorder to each applicant therefor upon such applicant's compliance with all regulatory provisions in this code and payment of the appropriate privilege tax. (1980 Code, § 6-202)

CHAPTER 4**AMUSEMENT TAX****SECTION**

5-401. Privilege license required.

5-401. Privilege license required. It shall be unlawful for any person, firm, or corporation to operate a theater, motion picture or vaudeville show within the corporate limits of the City of Portland without first obtaining a privilege license from the city recorder. (1980 Code, § 6-401)

CHAPTER 5

PURCHASING POLICY

SECTION

- 5-501. Definitions.
- 5-502. Purchasing agent.
- 5-503. General procedures.
- 5-504. Rejection of bids.
- 5-505. Conflict of interest.
- 5-506. Purchasing from employee.
- 5-507. Sealed bid requirements greater than \$15,000.00.
- 5-508. Competitive bidding \$6,000.00 to \$15,000.00.
- 5-509. Purchases and contracts costing less than \$6,000.00.
- 5-510. Bid deposit.
- 5-511. Performance bond.
- 5-512. Record of bids.
- 5-513. Considerations in determining bid awards.
- 5-514. Award splitting.
- 5-515. Statement when award not given to low bidder.
- 5-516. Award in case of tie bids.
- 5-517. Back orders.
- 5-518. Emergency purchases.
- 5-519. Waiver of the competitive bidding process.
- 5-520. Goods and services exempt from competitive bidding.
- 5-521. Procedures upon taking delivery of purchased items.
- 5-522. Property control.
- 5-523. Disposal of surplus property.
- 5-524. Employee participation in disposal of surplus property.
- 5-525. Surplus property: items consumed in the course of work thought to be worthless.
- 5-526. Surplus property: items estimated to have monetary value.
- 5-527. Surplus property: city identification removed prior to sale.
- 5-528. Liability for excess purchases.
- 5-529. Additional forms and procedures.

5-501. Definitions. For the purpose of implementing this policy, 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 fails 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 two thousand five hundred dollars (\$2,500.00). 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 of Portland, 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) "F.O.B. destination." An abbreviation for the 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 Portland, Tennessee has received and signed for the goods.

(38) "Goods." All material, 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 Portland, Tennessee.

(44) "Material receiving report." A form used by the department head or supervisor to inform others of the receipt of goods 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) "Purchase requisition." A document from the department desiring item(s) or services to be purchased on their behalf that outlines the description, quantity, estimated cost and the account distribution for the item(s) or services being requested.

(51) "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.

(52) "Reject." Refuse to accept, recognize, or make use of; repudiate, to refuse to consider or grant.

(53) "Responsive bidder." One who has submitted a bid which conforms in all materials respects to the invitation for bids.

(54) "Sealed." Secured in any manner so as to be closed against the inspection of contents.

(55) "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.

(56) "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 items for delivery.

(57) "Standardization." The making, causing, or adapting of items to conform to recognized qualifications.

(58) "Using department." The city department seeking to purchase goods and services or which will be the ultimate user of the purchased goods and services.

(59) "Vendor." The person who transfers property, goods, or services by sale. (1980 Code, § 6-501, as replaced by Ord. #14-21, July 2014, and amended by Ord. #15-06, Feb. 2015)

5-502. Purchasing agent. The city recorder shall be the purchasing agent for the municipality. 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 (purchasing administrator). (1980 Code, § 6-502, as replaced by Ord. #14-21, July 2014)

5-503. General procedures. Our charter requires that the purchasing policy be established and implemented by ordinance with the bid limits established at an upper limit of no greater than twenty-five thousand dollars (\$25,000.00) and a lower limit at forty percent (40%) of the upper limit. As such this purchasing policy is establishing an upper limit of twenty-five thousand dollars (\$25,000.00) and the lower limit of forty percent (40%) of the upper limit, ten thousand dollars (\$10,000.00).

All purchases made from funds subject to the authority of this policy shall be made within the limits of the approved budget and/or the appropriations for the department, office or agency for which the purchase is made. The following procedures shall be followed by all city employees when purchasing goods or services on behalf of the city.

The department head of the using department shall deliver to the purchasing administrator a written or electronic purchase requisition 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), shall indicate whether the item(s) have been approved in the annual budget and the account distribution for the purchase. Additionally at least three (3) quotes should be obtained and included with the purchase requisition if practical. A minimum of two (2) quotes are required unless a single source purchase. A Department Head can approve a purchase that is within a budgeted line item up to a limit of five thousand dollars (\$5,000.00). Amounts over five thousand dollars (\$5,000.00) must be approved by the mayor unless they have been previously approved by action of the council.

The purchasing administrator shall review the purchase requisition for completeness and accuracy and proper approvals. A purchase order will be generated from the information and a purchase order package completed to be given to the purchasing agent (city recorder) for review and approval. Orders will be placed from approved purchase orders.

For specific dollar limits additional procedures will be followed as follows:

(1) Items expected to cost more than twenty-five thousand dollars (\$25,000.00). These item(s) or service(s) should have followed the additional procedures for sealed bid requirements.

(a) The person issuing the requisition should additionally include a copy of the resolution/ordinance number approving the bid.

(b) The purchasing administrator shall review that the respective board approved resolution or ordinance authorizing the acceptance of the bid for the respective item(s) or service(s) is attached.

(2) Items expected to cost ten thousand dollars (\$10,000.00) to twenty-five thousand dollars (\$25,000.00).

(a) The person issuing the requisition should additionally include the quotes, tally sheets or other quote information from at least two (2) suppliers for the item(s) being purchased. The normal should be three (3) quotes for all purchases, but three (3) will be acceptable if a third is not readily available. The lowest quote information should be used to generate the purchase requisition. If the lowest quote is not used then an explanation should be attached explaining the reasoning for the deviation. The requisition package should be presented to the mayor for approval before being delivered to the purchasing administrator for processing.

(b) The purchasing administrator shall review that the required quotes are attached and that either the lowest quote was accepted or that proper explanation for acceptance of the higher quote is included along with proper approval by the mayor. (1980 Code, § 6-503, as replaced by Ord. #14-21, July 2014, and amended by Ord. #15-06, Feb. 2015, and Ord. #17-87, Jan. 2018)

5-504. Rejection of bids. The purchasing agent shall have the authority to reject any and all bids, parts of bids, 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. (1980 Code, § 6-504, as replaced by Ord. #14-21, July 2014)

5-505. 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

Portland and shall not engage in or participate in any commercial transaction involving the city, in which they have a significant interest. (1980 Code, § 6-505, as replaced by Ord. #14-21, July 2014)

5-506. 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 mayor for purchases under one thousand dollars (\$1,000.00). Amounts over one thousand dollars (\$1,000.00) require board of alderman approval. (1980 Code, § 6-506, as replaced by Ord. #14-21, July 2014)

5-507. Sealed bid requirements greater than \$25,000.00. (1) On all purchases and contracts estimated to be in excess of twenty-five thousand dollars (\$25,000.00), except as otherwise provided in this policy, formal sealed bids shall be submitted at a specified time and place to the purchasing agent or the purchasing administrator. The purchasing agent and/or the respective department head 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 Sumner County, and at least five (5) days preceding the last day to receive bids. The newspaper notice shall contain a general description of the item(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. (1980 Code, § 6-507, as replaced by Ord. #14-21, July 2014, and amended by Ord. #15-06, Feb. 2015, and Ord. #17-87, Jan. 2018)

5-508. Competitive bidding \$10,000.00 to \$25,000.00. (1) All purchases of supplies, equipment, services, and contracts estimated to cost between ten thousand dollars (\$10,000.00) and twenty-five thousand dollars (\$25,000.00), shall be by competitive bidding and may be awarded to the lowest responsive bidder.

(2) Bids shall be requested from at least three (3) suppliers (preferably three (3)) of the goods or services to be purchased or leased; and these requests for bids shall be made by the representative department head and shall be submitted, along with the purchase requisition, for approval by the mayor and/or city recorder. A written record shall be required and available for public inspection showing that competitive bids were obtained by one (1) 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.
- (4) In the purchasing agent's absence, the mayor shall designate a suitable substitute to perform the purchasing agent's duties. (1980 Code, § 6-508, as replaced by Ord. #14-21, July 2014, and amended by Ord. #17-87, Jan. 2018)

5-509. Purchases and contracts costing less than \$10,000.00. The purchasing agent is expected to obtain the best prices and services available for purchases and contracts estimated to be less than ten thousand dollars (\$10,000.00), but are exempted from the formal bid requirements specified in §§ 5-507 and 5-508 of this policy. However, at least three (3) quotes should be obtained in order to assure the best pricing is being obtained when practical. The quotes should be attached to the purchase requisition. (as added by Ord. #14-21, July 2014, and amended by Ord. #17-87, Jan. 2018)

5-510. Bid deposit. 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 fifteen (15) 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 fifteen (15) days after the award. (as added by Ord. #14-21, July 2014)

5-511. Performance bond. 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 Tennessee Code Annotated. (as added by Ord. #14-21, July 2014)

5-512. 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 of 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. (as added by Ord. #14-21, July 2014)

5-513. Considerations in determining bid awards. 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. This should be documented evidence.
- (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. (as added by Ord. #14-21, July 2014)

5-514. Award splitting. If total savings generated is less than one thousand dollars (\$1,000.00), bids awards shall not be split among two (2) or more bidders. (as added by Ord. #14-21, July 2014)

5-515. Statement when award not given to low bidder. When the award for purchases and contracts in excess of ten thousand dollars (\$10,000.00) 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. (as added by Ord. #14-21, July 2014, and amended by Ord. #17-87, Jan. 2018)

5-516. Award in case of tie bids. 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, the criteria of § 5-513 will be used to award the bid. If the criteria of § 5-513 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, the criteria of § 5-513 will be used to award the bid.

If the criteria of § 5-513 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 shall be invited to observe. In no event shall such coin toss or drawing lots be performed with less than three (3) witnesses. (as added by Ord. #14-21, July 2014)

5-517. 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 non-delivered items shall be cancelled from the purchase order and the check will be issued to the equal amount of the amended purchase order. (as added by Ord. #14-21, July 2014)

5-518. Emergency purchases. When in the judgment of the mayor and/or purchasing agent that an emergency exists, the provisions of this policy 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. (as added by Ord. #14-21, July 2014)

5-519. Waiver of the competitive bidding process. Upon the recommendation of the mayor, and the subsequent approval of the board of mayor and aldermen through resolution, 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 the resolution:

(1) Single source of supply. 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. Purchase the product or service through or in conjunction with the State Department of General Services or via a state contract.

(3) Purchase from other governmental entities. Purchase of used or secondhand items from any other government. In addition the purchase of used or secondhand items can be purchased from any private individual or entity as long as the city documents the range of value of the purchased item through a nationally recognized publication or licensed appraiser and the price paid is no more than five percent (5%) higher than the documented range.

(4) Purchase on other governmental entities bid. Purchase equipment from a vendor under the same price and terms of a legal bid initiated by any other governmental unit of the state. This authorization does not apply to the purchase of new general purpose motor vehicles or purchases related to any

transportation infrastructure project. Special purpose vehicles are allowed under this provision.

(5) Cooperative purchasing agreements. Purchase of any supplies, services or joint construction with one (1) or more local governments under a cooperative purchasing agreement. An agreement must be entered into between the participants.

(6) Joint or multi-party agreements. Participation in a joint or multi-party master agreement by adopting a resolution accepting the terms of the master agreement. Documentation must be acquired and maintained showing that the procuring entity complied with its own purchasing requirements. This authorization does not apply to new motor vehicles, construction engineering or architectural services or construction materials. This provision applies to in-state and out-of-state organizations.

(7) Purchases from non-profit organizations. 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.

(8) Purchases from Tennessee state industries. A thorough effort was made to purchase the goods or services from Tennessee state industries (prison industries). (as added by Ord. #14-21, July 2014)

5-520. 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 department head shall make a reasonable effort to assure that such purchases are made efficiently and in the best interest of the city:

(1) Certain insurance. The city may purchase insurance (all forms), without competitive bidding, from 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 or request for proposal.

(2) Certain investments. The city may make investments of municipal funds in, or purchases from, the pooled investment fund established pursuant to Tennessee Code Annotated, § 9-17-105.

(3) Motor fuel products, or perishable commodities. Such commodities may be purchased without competitive bidding.

(4) Professional service contracts. Any services of a professional person or firm, including attorneys, accountants, physicians, architects, engineers, and other consultants required by the city may be hired without competitive bidding. In those instance where such professional service fees are expected to exceed one thousand dollars (\$1,000.00), 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. (as added by Ord. #14-21, July 2014, and amended by Ord. #17-87, Jan. 2018)

5-521. Procedures upon taking delivery of purchased items. 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 has 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. (as added by Ord. #14-21, July 2014)

5-522. Property control. A physical inventory of the city's fixed assets shall be taken at least once every three (3) years. The goals of the inventory shall be as follows:

- (1) To identify unneeded and duplicate assets.
- (2) To provide a basis for insurance claims, if necessary.
- (3) To deter the incidence of theft and negligence.
- (4) To aid in the establishment of replacement schedules for equipment.
- (5) To note transfers of surplus property.

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 two thousand five hundred dollars (\$2,500.00). Any property or equipment that meets these criteria shall be assigned an asset number (affixed with a property sticker) and have a completed property card. Such records shall be controlled and maintained by the city recorder. (as added by Ord. #14-21, July 2014)

5-523. Disposal of surplus property. The purchasing agent shall be in charge of the disposal of surplus property and 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. (as added by Ord. #14-21, July 2014)

5-524. Employee participation in disposal of surplus property. City employees shall only be permitted to bid on surplus property in a sealed bid process or auction process; and no surplus property shall be given to a city employee by the board of mayor and aldermen, the purchasing agent or any city department head. For the purposes of this policy, members of the board of mayor and aldermen cannot bid on or receive surplus property. This provision is not applicable to items of nominal value (less than twenty dollars (\$20.00)).

Additionally, no city employee is allowed to bid in any manner on items that they have been involved in the confiscation of or determination of surplus of the property. (as added by Ord. #14-21, July 2014)

5-525. Surplus property; items consumed in the course of work thought to be worthless. 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. (as added by Ord. #14-21, July 2014)

5-526. 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. (as added by Ord. #14-21, July 2014)

5-527. Surplus property; city identification removed prior to sale. 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 Portland have been removed or repainted. (as added by Ord. #14-21, July 2014)

5-528. Liability for excess purchases. 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. (as added by Ord. #14-21, July 2014)

5-529. 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. (as added by Ord. #14-21, July 2014)

CHAPTER 6

UNCLAIMED PROPERTY

SECTION

- 5-601. Purpose.
- 5-602. Definitions.
- 5-603. Policy.
- 5-604. Procedure.
- 5-605. Sanctions.

5-601. Purpose. The unclaimed property policy provides direction for reporting and disposing of unclaimed property. It is to ensure compliance with the laws of the State of Tennessee concerning the identification and disposition of unclaimed property while under the control of the City of Portland, improve internal controls, and establish unclaimed property procedures. (as added by Ord. #09-75, Jan. 2010)

5-602. Definitions. (1) "Dormancy period." The period in which the holder may hold the property interest before it is presumed to be abandoned. During this period, the unclaimed property is not required to be reported to the state. Most property falls under the five (5) years for dormancy with the exception of payroll checks which is one (1) year, and utility deposits/refunds which is two (2) years. During this time, the holder should perform due diligence in trying to locate the true owners of the unclaimed property. The holder of the unclaimed property does not have to wait until the dormancy period is over to report unclaimed property.

(2) "Due diligence." Tennessee Code Annotated, § 66-29-113 requires due diligence on all unclaimed property of fifty dollars (\$50.00) or more. All holders are legally bound to perform due diligence – a good faith effort to find the true owners of unclaimed property. Due diligence is performed by mailing a first-class or registered letter to the last known address of the property owner.

(3) "Due diligence period." Due diligence must take place no more than one hundred twenty (120) days or less than sixty (60) days to filing the report which is due May 1st. This would be the period after the year ended December 31st from January 1 to February 28th/29th.

(4) "Holder." The entity that is in possession or controls the property until it is transferred to the state on behalf of the lost owner.

(5) "Unclaimed property." Unclaimed property consists of funds or collateral in the city's possession that have gone unclaimed by, or undelivered to the true owner for the statutory period (dormancy period for most property is five (5) years in the State of Tennessee). Examples include, but are not limited to: outstanding checks, accounts receivable credit balances (utility, tax and court

overpayments), outstanding wage checks and vendor credit balances. This policy does not address lost and found items. (as added by Ord. #09-75, Jan. 2010)

5-603. Policy. The City of Portland is subject to the State of Tennessee's Uniform Disposition of Unclaimed Property Act in accordance with the Unclaimed Property Law, Tennessee Code Annotated, §§ 66-29-101 through 66-29-134 and Regulations 1700-2-1-.01 through 1700-2-1-.36. This act requires the city to exercise due diligence in attempting to locate owners of unwanted property in its custody and to annually report certain unclaimed property to the state. Tennessee law requires filing of an annual report of unclaimed property in accordance with the provisions of Tennessee Code Annotated, § 66-29-101, et. seq. Any unclaimed property will be written off the city's books and the funds will be deposited with the state treasurer as unclaimed property. These funds then become the property of the state. A claim from the original owner of the property must be made with the state treasurer's office in order to receive the funds.

The city recorder's office is responsible for the proper disposition of unclaimed property. The city will recognize unclaimed property as a general liability. (as added by Ord. #09-75, Jan. 2010)

5-604. Procedure. The city recorder is responsible for the proper disposition of unclaimed property. This process includes the identification, recognition, notification, reporting and remittance functions for all unclaimed property such as accounts receivable credit balances, outstanding vendor checks, and outstanding wage checks.

(1) At the end of the calendar year, December 31, each department within the city shall identify and report all property that meets the definition of unclaimed property to the city recorder's office. If departments are unclear or have questions about whether certain items meet the definition, contact the city recorder's office. The various responsible departments of the city shall maintain sufficient detailed accounting records. In particular, the utility, accounts payable, and payroll departments should report on unclaimed property to the city recorder.

(2) Prior to making a determination as to whether property such as credit accounts receivable balances or vendor credits is unclaimed, balances over fifty dollars (\$50.00) must be researched to determine validity. Once credits have been substantiated, they are treated as unclaimed property. If balances are not accurate, corrections and/or adjustments must be made and documented.

(3) If balances are below fifty dollars (\$50.00), research and due diligence is required. However, the property must be included on the report provided to the city recorder's office.

(4) Such department should determine the dormancy period for the type of property under review. The dormancy for most property is five (5) years. Some exceptions include wages (one (1) year) and utility deposits/refunds (two

(2) years). Departments should document the last transaction date. The city does not have to wait the full statutory period to report property items. The property may be reported at any time, provided due diligence has been exercised in attempting to notify the property owner to eliminate the city's accountability and responsibility.

(5) The city recorder's office is responsible for exercising due diligence in attempting to notify the property owner by sending notification of unclaimed property by first-class or registered mail to the last known address of the property owner.

(6) Mail returned as "undeliverable" is evidence that the owner cannot be located. If the owner cannot be located, the property should be considered abandoned and reported as unclaimed. Unreturned mail is considered a contact (i.e. the owner received the notification and is now aware of the property's location).

(7) If contact is established, the property is no longer considered to be abandoned and should not be reported to the state. If the owner does not claim the property or provide the city directions for disposing of the property within ninety (90) days of the date of contact, the city may then assume ownership of the property. Non-cash items may be sold or disposed of as surplus property in accordance with city policy. Cash items will revert back to the city.

(8) Each department will provide to the city recorder a report of all items determined to be unclaimed property with the name, mailing address, social security number, last transaction date, account and/or check number, property type, and amount. This report should be provided to the city recorder's office by March 15th.

(9) The city recorder's office will review and compile all information submitted by each department. After review, the recorder's office will record the appropriate accounting entries and ensure that reconciliation has occurred.

(10) The city recorder's office shall determine if any further due diligence is required prior to reporting property as unclaimed. Due diligence must be exercised not more than one hundred twenty (120) days and not less than sixty (60) days before filing a report with the state.

(11) The city shall file a report containing all property presumed abandoned and held as of December 31. At the time of filing such report, the city shall, with that report, pay or deliver to the state treasurer all unclaimed funds and intangible property specified in the report. The report must be filed on or before May 1 of each year. Property reports should be delivered to: Treasury Department, Unclaimed Property Division, P.O. Box 198649, Nashville, TN 37219-8649. The report shall include a notarized verification and affidavit under the signature of the Mayor of the City of Portland.

(12) This report shall contain detail sufficient to make a proper account and remittance to the state treasurer. The city shall elect to use the electronic media for reporting provided by the state at no cost to the city. The media is available at the website listed under "references."

(13) Lost and found items are not considered to be unclaimed property and should not be reported in the unclaimed property reporting. These items should be disposed of in accordance with city security procedures.

(14) Confiscated property will not be considered abandoned and should be treated as city surplus property for disposal purposes. Confiscated firearms and other hazardous items should be disposed of in accordance with local statutes. (as added by Ord. #09-75, Jan. 2010)

5-605. Sanctions. Failure to comply with this policy may result in disciplinary actions as set forth in the city's policies and procedures. (as added by Ord. #09-75, Jan. 2010)

CHAPTER 7

AUDIT COMMITTEE

SECTION

- 5-701. Established.
- 5-702. Members and terms of appointment.
- 5-703. Meetings.
- 5-704. Financial expert.
- 5-705. Duties and responsibilities of committee.
- 5-706. Funding.
- 5-707. Approval of comptroller and board of mayor and aldermen.

5-701. Established. Pursuant to the provisions of Tennessee Code Annotated, § 9-3-405, the Mayor and Board of Aldermen of the City of Portland does hereby establish an audit committee to provide independent review and oversight of the city's financial reporting processes and the city's internal controls, a review of the external auditor's report and follow up on management's corrective action, and compliance with laws, regulations and ethics. (as added by Ord. #15-25, April 2015)

5-702. Members and terms of appointment. The audit committee will consist of three (3) members, to be comprised of one (1) member from the standing board of alderman and two (2) citizens of the City of Portland. To insure the committee's independence and effectiveness, no audit committee member will be an employee, spouse of an official/employee or a person that comingles assets with an official/employee of the City of Portland. While committee members need not be accountants, they should possess sufficient knowledge and experience in finance, business and accounting to discharge the committee's duties. The members of the audit committee shall be appointed by the mayor and approved by resolution by the board of aldermen for staggered two (2) year terms. To establish staggered terms, the initial members of the committee shall be appointed so that one (1) citizen is appointed to a one (1) year term and one (1) citizen is appointed to a two (2) year term with the member of the board of aldermen appointed to a two (2) year term. Thereafter all members shall be appointed to serve two (2) year terms. All terms will commence on April 1. (as added by Ord. #15-25, April 2015)

5-703. Meetings. Meetings of the audit committee shall be held in accordance with the provisions of Tennessee Code Annotated, § 9-3-405. Meetings shall be subject to the open meetings provisions of Tennessee Code Annotated, title 8, chapter 44, except that upon a majority vote of those members in attendance for the public portion of a meeting, the audit committee

may hold confidential, nonpublic executive sessions to discuss the following items as authorized in Tennessee Code Annotated, § 9-3-405:

- (1) Items deemed not subject to public inspection under Tennessee Code Annotated, §§ 10-7-503 and 10-7-504, and all other matters designated as confidential or privileged;
- (2) Current or pending litigation and pending legal controversies;
- (3) Pending or ongoing audits or audit related investigations;
- (4) Information protected by federal law; and
- (5) Matters involving the reporting of illegal, improper, wasteful, or fraudulent activity under Tennessee Code Annotated, § 9-3-406, where the informant has requested anonymity.

The audit committee will follow Roberts Rules of Order. Each year at its first meeting, the committee will elect a chairman, vice-chairman and secretary. Meeting agendas will be prepared by the chairman and provided in advance to members along with appropriate briefing materials. Minutes of the audit committee meetings will be filed in the office of the city recorder. (as added by Ord. #15-25, April 2015)

5-704. Financial expert. The committee shall have access to the services of a financial expert, either through a committee member or an outside party engaged by the committee for this purpose. Such financial expert should, through both education and experience, and in a manner specifically relevant to the city government sector, possess

- (1) An understanding of generally accepted accounting principles and financial statements;
- (2) Experience in preparing or auditing financial statements of comparable entities;
- (3) Experience in applying such principles in connection with the accounting for estimates, accruals, and reserves;
- (4) Experience with internal accounting controls; and
- (5) An understanding of audit committee functions. (as added by Ord. #15-25, April 2015)

5-705. Duties and responsibilities of committee. The duties and responsibilities of the audit committee are:

- (1) To review the proposals from the external audit firms and make a recommendation to the mayor and board of aldermen on the firm that should be contracted with for the annual audit. Audit contracts will be for a three (3) year period.
- (2) To carefully review, upon completion of the city's annual audit, all audit findings in audit report and consult with the external auditors regarding any irregularities and deficiencies disclosed in the annual audit. The audit committee is empowered to meet with management to discuss audit findings and/or disagreements with the external auditors. The committee should satisfy

itself that appropriate and timely corrective action has been taken by management to remedy any identified weaknesses. The committee should determine what corrective action, if any, should be recommended to the mayor and board of aldermen.

(3) To consider the effectiveness of the internal control system, including information technology security and control, review the effectiveness of the system for monitoring compliance with laws and regulations, and review the process for communicating the city's ethics policies to the city's personnel and monitoring compliance therewith.

(4) To establish a process by which employees, taxpayers, or other citizens may confidentially report suspected illegal, improper, wasteful or fraudulent activity under provisions of Tennessee Code Annotated, § 9-3-406.

(5) To annually present a written committee report detailing how it discharged its duties and nay committee recommendations to the full board of alderman. (as added by Ord. #15-25, April 2015)

5-706. Funding. The audit committee will be adequately funded to carry out the duties and responsibilities as set out in this chapter and under applicable law. (as added by Ord. #15-25, April 2015)

5-707. Approval of comptroller and board of mayor and aldermen. This chapter creating the duties and responsibilities of the audit committee has been submitted to the comptroller prior to approval by this legislative body, and this chapter conforms with the report issued by the comptroller. (as added by Ord. #15-25, April 2015)

CHAPTER 8

HOTEL-MOTEL TAX

SECTION

5-801. Hotel-motel tax.

5-801. Hotel-motel tax. The governing body of the City of Portland, Tennessee, has approved that a two and one half percent (2.5%) hotel-motel tax shall be imposed. (as added by Ord. #17-57, Sept. 2017)

TITLE 6**LAW ENFORCEMENT****CHAPTER**

1. POLICE AND ARREST.
2. WORKHOUSE.
3. ALARM SYSTEMS.

CHAPTER 1**POLICE AND ARREST¹****SECTION**

- 6-101. Policemen subject to chief's orders.
- 6-102. Policemen to preserve law and order, etc.
- 6-103. Policemen to wear uniforms and be armed.
- 6-104. When policemen to make arrests.
- 6-105. Policemen may require assistance.
- 6-106. Disposition of persons arrested.
- 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. (1980 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. (1980 Code, § 1-402)

6-103. Policemen to wear uniforms and be armed. All policemen shall wear such uniform and badge as the city council shall authorize and shall

¹Municipal code reference

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

Ord. #446 (Dec. 7, 1992) created the position of public safety officer. Wherever this municipal code refers to the police chief, it shall be deemed to be a reference to the public safety officer. See title 20, chapter 5, for further reference to the department of public safety.

carry a service pistol and billy club at all times while on duty unless otherwise expressly directed by the chief for a special assignment. (1980 Code, § 1-403)

6-104. When policemen to make arrests.¹ 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. (1980 Code, § 1-404)

6-105. Policemen may require assistance. It shall be unlawful for any person willfully to refuse to aid a policeman in maintaining law and order or in making a lawful arrest when such person's assistance is requested by the policeman and is reasonably necessary. (1980 Code, § 1-405)

6-106. Disposition of persons arrested. Unless otherwise authorized by law, when any person is arrested he shall be brought before the city court for immediate trial or allowed to post bond. When the city judge is not immediately available and the alleged offender is not able to post the required bond, he shall be confined. (1980 Code, § 1-406)

6-107. Police department records. The police department shall keep a comprehensive and detailed daily record in permanent form, showing:

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

(2) All arrests made by policemen.

(3) All police investigations made, funerals convoyed, fire calls answered, and other miscellaneous activities of the police department. (1980 Code, § 1-407)

¹Municipal code reference

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

CHAPTER 2**WORKHOUSE****SECTION**

- 6-201. County workhouse to be used.
- 6-202. Inmates to be worked.
- 6-203. Compensation of inmates.

6-201. County workhouse to be used. The county workhouse is hereby designated as the municipal workhouse, subject to such contractual arrangement as may be worked out with the County of Sumner. (1980 Code, § 1-601)

6-202. Inmates to be worked. Any person found guilty of violating the provisions of this code and for which a fine has been assessed, who shall fail or neglect to pay such fine and costs shall be committed to the city workhouse there to be employed at labor to the extent of his physical condition for said violation until such fine and costs are paid in full. (1980 Code, § 1-602)

6-203. Compensation of inmates. Each workhouse inmate shall be allowed five dollars (\$5.00) per day as credit toward payment of the fines assessed against him. (1980 Code, § 1-603)

CHAPTER 3

ALARM SYSTEMS

SECTION

6-301. Definitions.

6-302. Violations.

6-303. Automatic dialing devices.

6-304. Response to false alarm - required reports of corrective action.

6-305. Enforcement.

6-306. Fines.

6-301. Definitions. For the purpose of this chapter, the following terms shall have the following meanings:

(1) "Activate" means to "set off" an alarm system indicating in any manner an incidence of burglary, robbery, panic, fire, water pressure or any other similar type situation.

(2) "Alarm system" means any mechanical or electrical/electronic or radio controlled device which is designed to be used for the detection of any fire or unauthorized entry into a building, structure or facility, or for alerting others of fire or of the commission of an unlawful act within a building, structure or facility, or both, or for indicating hold up, panic or water pressure alerting which emits a sound or transmits a signal or message when activated. Alarm systems include, but are not limited to, direct dial telephone devices, audible alarms and monitored alarms. Excluded from the definition of "alarm systems" are devices which are designed or used to register alarms that are audible or visible and emanate from any motor vehicle; auxiliary devices installed by telephone companies to protect telephone systems from damage or disruption of service and self-contained smoke detectors.

(3) "Automatic dialing device" means an alarm system which automatically sends over regular or cellular telephone lines, by direct connection or otherwise, a prerecorded voice message or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.

(4) "Commercial premises" means any structure or area which is not defined herein as residential premises.

(5) "False alarm" means the activation of an alarm system through mechanical failure, malfunction, improper installation, or the negligence or intentional misuse by the owner or lessee of an alarm system or his employees, servants or agents; or any other activation of the alarm system not caused by a fire or a forced entry or robbery or attempted robbery, or the emergency situation the system is designated to detect; such terminology does not include alarms caused by acts of nature such as hurricanes, tornadoes, other severe weather conditions, or alarms caused by telephone line trouble, or other alarms caused by utility company personnel. A maximum of three (3) false burglar

alarms; three (3) false robber/panic alarms; and three (3) false fire alarms, will be granted per alarm device within a calendar year. All false subsequent activation will be considered chargeable violations. Any alarm signal triggered as a result of police or fire response is not considered a "false alarm" for the purposes of accumulation. The tracking system for alarm responses shall be the call logs for the Sumner County Emergency Communications Center.

(6) "Fire officer" means the Fire Chief of the Portland Fire Department or his designated representatives.

(7) "Law enforcement officer" means the Chief of Police of the Portland Police Department or his designated representatives.

(8) "Panic alarm" means the activation of an alarm system by a device manually operated by the user to summon help. Any "panic alarm" that is not manually activated by a user will be considered a burglar alarm for the purposes of this chapter. A panic alarm activated by a user with the belief that an actual emergency situation did exist, at the time of the activation, will not be considered a false alarm.

(9) "Person" means any natural person, firm, partnership, association, corporation, company or organization of any kind, to exclude a government or governmental subdivision or agency thereof.

(10) "Residential premises" means structure or combination of structures which serve as dwelling units including single family as well as multi-family units.

(11) "Calendar year" means the period from January 1 until December 31 of any given year. (as added by Ord. #21-05, March 2021 *Ch12_12-06-21*)

6-302. Violations. (1) It shall be a violation of this chapter when any Portland Police Department or Fire Department officer responds to a false alarm after the allowable false alarms, set out in § 6-301(5), have been exhausted.

(2) It shall be a violation of this chapter for an alarm company to set off a false alarm while installing, repairing or doing maintenance work on an alarm system, without prior notification to the Sumner County Emergency Communications Center. If the Sumner County Emergency Communications Center is notified to cancel the call within three (3) minutes of the original call, it will not be considered a false alarm, unless the responding Portland officer arrives on the scene before the original call is cancelled, barring any undue delay in the dispatch of the cancellation. Three (3) cancellations will be granted within a calendar year.

(3) Any non-compliance with the requirements of this chapter shall constitute a violation and each incidence of non-compliance shall constitute a separate violation, punishable as provided in § 6-306. (as added by Ord. #21-05, March 2021 *Ch12_12-06-21*)

6-303. Automatic dialing devices. It shall be a violation of this chapter for any automatic dialing device to call into the Sumner County

Emergency Communications Center, either on regular business lines or on 911 emergency lines. (as added by Ord. #21-05, March 2021 *Ch12_12-06-21*)

6-304. Response to false alarm - required reports of corrective action. (1) The only alarms the Portland Police and Fire Departments will respond to are:

- (a) Burglary (residential and business).
- (b) Robbery/hold up (business only).
- (c) Kidnapping (residential and business).
- (d) Fire (residential and business).
- (e) Medical (residential).
- (f) Panic (residential only).

(2) Responsibility for a false alarm shall be borne by the owner, lessee, operator or user of the alarm system or his/her employee, servant or agent occupying and/or controlling the premises at the time of the occurrence of the false alarm.

(3) A response to an alarm shall result when any fire or police department officer is dispatched to or otherwise learns of the activation of any alarm system. If the user calls or the authorized agent calls the dispatcher back within three (3) minutes of the original call, it will not be considered a false alarm, unless the responding Portland officer has already arrived before the call to cancel has been made, barring any undue delay in the dispatch of the cancellation.

(4) After the allowable false alarms set out in § 6-301(5), each person who owns, operates, leases or controls any premises, commercial or residential, having an alarm system, may be cited to Portland Municipal Court for any response to a false alarm. The person shall show proof to the municipal court judge of the corrective action taken to remedy the situation. (as added by Ord. #21-05, March 2021 *Ch12_12-06-21*)

6-305. Enforcement. Portland police officers are specifically authorized to enforce this chapter. Any Portland police officer may lawfully issue a citation to an owner, lessee, operator or user of a functional alarm system whose alarm system has given a false alarm in excess of the number allowed under § 6-301(5). (as added by Ord. #21-05, March 2021 *Ch12_12-06-21*)

6-306. Fines. The first violation of this chapter, within a calendar year, shall result in a fine of twenty-five dollars (\$25.00). Each subsequent offense, within a calendar year, shall result in a fine of no less than twenty-five dollars (\$25.00), nor more than fifty dollars (\$50.00), per offense. No court fines will be assessed on the first offense. (as added by Ord. #21-05, March 2021 *Ch12_12-06-21*)

TITLE 7**FIRE PROTECTION AND FIREWORKS¹****CHAPTER**

1. FIRE DISTRICT.
2. FIRE CODE.
3. FIRE DEPARTMENT.
4. FIRE SERVICE OUTSIDE CITY LIMITS.
5. FIRE HYDRANTS OUTSIDE THE CITY LIMITS.
6. FIREWORKS.
7. OPEN BURN.

CHAPTER 1**FIRE DISTRICT****SECTION**

7-101. Fire limits described.

7-101. Fire limits described. The corporate fire limits shall be as follows: The local commercial districts as shown on the official municipal zoning map of Portland. (1980 Code, § 7-101)

¹Municipal code reference

Building, utility and housing codes: title 12.

CHAPTER 2

FIRE CODE¹

SECTION

- 7-201. Fire code adopted.
- 7-202. Amendments.
- 7-203. Existing ordinances.
- 7-204. Responsible official.
- 7-205. Enforcement.
- 7-206. Definition of "municipality."
- 7-207. Storage of explosives, flammable liquids, etc.
- 7-208. Gasoline trucks.
- 7-209. Variances.
- 7-210. Violations.

7-201. Fire code adopted. Certain documents, copies of which are on file in the office of the City Recorder, City of Portland, being marked and designated as the International Fire Code, 2018 edition and NFPA 101,² 2006 edition, including all appendices as published by the International Code Council and NFPA, be and is hereby adopted as the Fire Code of the City of Portland in the State of Tennessee regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said fire code on file in the office of the City of Portland are hereby referred to, adopted, and made a part hereof, as if fully set out in this section, with the additions, insertions, deletions and changes, if any, prescribed in § 7-202 of this chapter. (1980 Code, § 4-101, as amended by Ord. #567, April 1998, and Ord. #04-06, April 2004; replaced by Ord. #05-04, April 2005, and Ord. #09-36, Aug. 2009, and amended by Ord. #15-28, June 2015, and Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

¹Municipal code reference

Building, utility and housing codes: title 12.
Fireworks: title 7, chapter 6.

²Copies of this code are available from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213-1206.

7-202. Amendments. The following sections are hereby revised:

- (1) Section 101.1 Insert: "City of Portland"
- (2) Section 109.3 Insert: Fifty Dollars (\$50.00)
- (3) Section 111.4 Insert: Fifty Dollars (\$50.00) (1980 Code, § 4-102, and replaced by Ord. #09-36, Aug. 2009)

7-203. Existing ordinances. Any matters in the fire code which are contrary to existing ordinances of the City of Portland shall prevail. (1980 Code, § 4-103, modified)

7-204. Responsible official. Within the fire code, when reference is made to the duties of certain official named therein, that designated official of the City of Portland who has duties corresponding to those of the named official in the fire code shall be deemed to be the responsible official insofar as enforcing the provisions of the fire code are concerned. (1980 Code, § 4-104)

7-205. Enforcement. The fire prevention code herein adopted by reference shall be enforced by the fire inspector of the city. He shall have the same powers as the state fire marshal. (1980 Code, § 7-202)

7-206. Definition of "municipality." Whenever the word "municipality" is used in the fire prevention code herein adopted, it shall be held to mean the City of Portland, Tennessee. (1980 Code, § 7-203)

7-207. Storage of explosives, flammable liquids, etc. (1) The district referred to in § 1901.4.2 of the fire prevention 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 district referred to in § 902.1.1 of the fire prevention 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 district referred to in § 906.1 of the fire prevention 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 district referred to in § 1701.4.2 of the fire prevention 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. (1980 Code, § 7-204)

7-208. Gasoline trucks. 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. (1980 Code, § 7-205)

7-209. Variances. The chief of the fire department may recommend to the city council variances from the provisions of the fire prevention 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 governing body. (1980 Code, § 7-206)

7-210. Violations. It shall be unlawful for any person to violate any of the provisions of this chapter or the fire prevention 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 city council or by a court of competent jurisdiction, within the time fixed herein. The application of a penalty under the general penalty clause for the city code shall not be held to prevent the enforced removal of prohibited conditions. (1980 Code, § 7-207)

CHAPTER 3

FIRE DEPARTMENT¹

SECTION

- 7-301. Establishment, equipment, and membership.
- 7-302. Objectives.
- 7-303. Organization, rules, and regulations.
- 7-304. Records and reports.
- 7-305. Tenure and compensation of members.
- 7-306. Chief responsible for training and maintenance.
- 7-307. Chief to be assistant to state officer.
- 7-308. Fire hydrants within corporate limits.

7-301. Establishment, equipment, and membership. There is hereby established a fire department to be supported and equipped from appropriations by the city council. All apparatus, equipment, and supplies shall be purchased by or through the city and shall be and remain the property of the city. The fire department shall be composed of a chief appointed by the city council and such number of physically-fit subordinate officers and firemen as the council shall appoint. (1980 Code, § 7-301)

7-302. Objectives. The fire department shall have as its objectives:

- (1) To prevent uncontrolled fires from starting.
- (2) To prevent the loss of life and property because of fires.
- (3) To confine fires to their places of origin.
- (4) To extinguish uncontrolled fires.
- (5) To prevent loss of life from asphyxiation or drowning.
- (6) To perform such rescue work as its equipment and/or the training of its personnel makes practicable. (1980 Code, § 7-302)

7-303. Organization, rules, and regulations. The chief of the fire department shall set up the organization of the department, make definite

¹Municipal code reference

Offense of making a false alarm: § 11-503.

Offense of running over fire hose: § 15-204.

Right of way of fire equipment: § 15-501.

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

Ord. #446 (Dec. 7, 1992) created the position of public safety officer. Wherever this municipal code refers to the fire chief, it shall be deemed to be a reference to the public safety officer. See title 20, chapter 5, for further reference to the department of public safety.

assignments to individuals, and shall formulate and enforce such rules and regulations as shall be necessary for the orderly and efficient operation of the fire department. (1980 Code, § 7-303)

7-304. Records and reports. The chief of the fire department shall keep adequate records of all fires, inspections, apparatus, equipment, personnel, and work of the department. He shall submit a written report on such matters to the city council once each month, and at the end of the year a detailed annual report shall be made. (1980 Code, § 7-304)

7-305. Tenure and compensation of members. The chief shall hold office for one year subject to reappointment by the city council. However, so that adequate discipline may be maintained, the chief shall have the authority to suspend or discharge any other member of the fire department when he deems such action to be necessary for the good of the department. The chief may be suspended up to thirty (30) days by the mayor but may be dismissed only by the city council.

All personnel of the fire department shall receive such compensation for their services as the governing body may from time to time prescribe. (1980 Code, § 7-305)

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. The minimum training shall consist of having the personnel take the fire apparatus out for practice operations not less than once a month. (1980 Code, § 7-306)

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. (1980 Code, § 7-308)

7-308. Fire hydrants within corporate limits. All future water mains and fire hydrants shall be installed in such a manner to provide adequate fire flows. All water mains shall be at least six inches in diameter. However, larger mains shall be installed when necessary to insure that a minimum of 500 gallons per minute (gpm) at 20 pounds per square inch (psi) residual pressure is available at all fire hydrants.

Fire hydrants that currently exist on mains that will not flow at least 500 gallons per minute at 20 pounds per square inch of pressure will not be used by the fire department for connection to the pumper connection of the fire apparatus. Such fire hydrants shall be painted solid red in color to indicate to

firefighters that this hydrant will not flow adequate gallons per minute to be used in firefighting operations. All such fire hydrants shall be identified by the fire chief, color-coded, and a list of such fire hydrants shall be compiled and attached to a cover letter from the fire chief to the responsible water provider. The cover letter shall contain at least the following words. "The attached list of fire hydrants have been found to have inadequate fire flows and will not be used by the fire department for pumping operations except in the event of immediate and imminent threat of life safety." Such letter shall be generated annually with a copy to the mayor. (as added by Ord. #04-06, April 2004)

CHAPTER 4

FIRE SERVICE OUTSIDE CITY LIMITS

SECTION

7-401. Equipment to be used only within corporate limits generally.

7-401. Equipment to be used only within corporate limits generally. No equipment of the fire department shall be used for fighting any fire outside the corporate limits unless the fire is on city property or, in the opinion of the chief of the fire department, is in such hazardous proximity to property owned by or located within the city as to endanger the city property or unless expressly authorized in writing by the city council. Provided, however, and notwithstanding the above such equipment of the fire department may be used in fighting fires within an area and in a radius of eight (8) miles of the corporate limits of the city. (1980 Code, § 7-307)

CHAPTER 5**FIRE HYDRANTS OUTSIDE THE CITY LIMITS****SECTION**

7-501. Prohibited.

7-501. Prohibited. The installation of any fire hydrants beyond the existing city limits without the approval of the mayor and aldermen is prohibited. This action is taken because the Portland Utility System is unable to protect and control the fire hydrants located in the remote areas of the system. (1980 Code, § 7-401)

CHAPTER 6

FIREWORKS

SECTION

- 7-601. Permissible fireworks.
- 7-602. Permit required.
- 7-603. Period of time for sale.
- 7-604. Period of time for discharging fireworks.
- 7-605. Safe storage and sale of permissible fireworks.
- 7-606. Safe discharge of permissible fireworks.
- 7-607. Violations and penalties.

7-601. Permissible fireworks. (1) Generally, only those fireworks deemed as 1.4G Consumer Fireworks by the U.S. Department of Transportation, or those items that comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission and permitted for use by the general public under its regulations, are eligible for public sale and/or discharge;

(2) Any fireworks or pyrotechnic display not designed or designated for the general consumer must be under the control of a licensed pyrotechnics technician. (Ord. #572, § 1, June 1998, as replaced by Ord. #21-17, April 2021 *Ch12_12-06-21*)

7-602. Permit required. (1) Permit for a fireworks seasonal retailer is required to be obtained from the State of Tennessee, along with a permit from the City of Portland, Tennessee, to permit the seasonal sale of consumer class fireworks within the city limits.

(2) A fee of one thousand four hundred dollars (\$1,400.00) per fireworks stand shall be paid and this amount covers all associated city fees, such as any sign permit, transient vendor, or other; and all necessary insurance and licenses shall be supplied for permit approval. Each seasonal permit is valid for both selling periods within that season as defined in § 7-603;

(3) Each stand (season retailer) must have at least one (1) sign plainly visible to the public of not less than two hundred (200) square inches that details the hours and days that fireworks can be legally discharged (shot) in the city as detailed in § 7-604, in addition to the no smoking signs as detailed in § 7-605(2);

(4) Permits are not transferable;

(5) No sales may begin prior to issuance of permit;

(6) All necessary permissions, affidavits, insurance, and site certifications are required before the issuance of a permit, and are the responsibility of the retailer to ensure they have been obtained;

(7) All required signage within this chapter is the responsibility of the retailer. (Ord. #572, § 1, June 1998, as replaced by Ord. #21-17, April 2021 *Ch12_12-06-21*)

7-603. Period of time for sale. The period of time for the sale of permissible fireworks shall be from June 20th through July 5th and from December 10th through January 2nd as allowed in Tennessee Code Annotated, § 68-104-101(8). This time period defines the length of one (1) season covered under the annual permit. (Ord. #572, § 2, June 1998, as amended by Ord. #06-03, Oct. 2006, as replaced by Ord. #21-17, April 2021 *Ch12_12-06-21*)

7-604. Period of time for discharging fireworks. (1) Unless otherwise excluded, the permissible discharge dates and times are as follows: From June 25th to July 5th from 11:00 A.M. to 9:00 P.M.; with the exception of July 4th, where the time shall be 10:00 A.M. to 11:00 P.M.; and from December 24th to Jan 1st from 11:00 A.M. to 8:00 P.M.; with the exception of December 31st where the time shall be from 10:00 A.M. on December 31st until 12:30 A.M. on January 1st;

(2) Permitted festivals, events, and city functions are excluded. (as added by Ord. #21-17, April 2021 *Ch12_12-06-21*)

7-605. Safe storage and sale of permissible fireworks. (1) No person may smoke within a structure where fireworks are sold. No person selling fireworks may permit the presence of lighted cigars, cigarettes, or pipes within a structure where fireworks are offered for sale;

(2) At all places where fireworks are sold or stored, for the purpose of sale during the time periods set forth in this chapter, signs must be posted with the words "Fireworks-No Smoking" in letters not less than four inches (4") high;

(3) Each retail vendor must have at least one (1) properly rated fire extinguisher with a valid inspection tag on site at all times;

(4) Fireworks shall not be stored in residential districts, except for personal use;

(5) Fireworks shall not be sold from any property zoned residential, from the right-of-way, or from city owned property;

(6) All unsold product must be removed within five (5) days of the ending sales period set forth in this chapter;

(7) Fireworks shall not be stored or sold within fifty feet (50') of a fuel source;

(8) Each retail vendor is required to ensure that adequate parking is available so that customer vehicles do not create hazards for roadway traffic;

(9) Fireworks shall not be sold to anyone under sixteen (16) years of age, or to any intoxicated person;

(10) Fireworks shall not be sold from any property zoned residential, from the right-of-way, or from city owned property;

(11) Mobile retail vendors are not permitted; fireworks are only allowed to be sold from stationary permitted sites;

(12) Seasonal retail sites are subject to inspections from the city fire inspector and that of the state fire inspector to ensure safe operation. (as added by Ord. #21-17, April 2021 *Ch12_12-06-21*)

7-606. Safe discharge of permissible fireworks. (1) Fireworks shall not be discharged during any burn ban issued by the fire chief;

(2) Except for permitted or city functions, no fireworks can be discharged from, or launched onto, city property;

(3) Adequate provision for safety must be made to prevent possible fire caused by the discharging of fireworks from spreading to any structure, dry ground cover, mulch, or other property;

(4) The discharging of fireworks requires competent supervision at all times;

(5) Fire extinguishing equipment should be readily available for use such as a garden hose connected to the water supply, or a properly rated and working fire extinguisher;

(6) No accelerants, explosives, flammable gas, nor any hazardous material is allowed to be used during the discharge of fireworks;

(7) Fireworks shall not be ignited inside of, or thrown from, a vehicle whether moving or parked;

(8) Fireworks shall not be discharged from, or launched onto, property of persons who have not given permission;

(9) Fireworks shall not be discharged from any road, right-of-way, or sidewalk;

(10) Fireworks shall not be discharged in the direction of any person, animal, motor vehicle, train, airplane, business, building, electrical substation, or other equipment or machinery. (as added by Ord. #21-17, April 2021 *Ch12_12-06-21*)

7-607. Violations and penalties. It shall be unlawful for any person to violate any of the provisions of this chapter herein adopted, or fail to comply therewith, or violate or fail to comply with any other applicable order. Doing so may lead to city, county, state, or federal penalties. (as added by Ord. #21-17, April 2021 *Ch12_12-06-21*)

CHAPTER 7

OPEN BURN

SECTION

7-701. Open burning regulated.

7-702. Compliance.

7-703. Exceptions.

7-704. Burn regulations.

7-705. Prohibitions.

7-706. Violations and penalties.

7-701. Open burning regulated. The open burning of combustible material by any person, firm or corporation is hereby prohibited unless exempted. (as added by Ord. #21-06, March 2021 *Ch12_12-06-21*)

7-702. Compliance. It is the responsibility of anyone seeking to perform an open burn to ensure that they are meeting all the requirements of the EPA (Environmental Protection Agency), TDEC (Tennessee Department of Environmental Conservation), Tennessee Department of Agriculture/Forestry, and the City of Portland for which items are acceptable to burn, for all zoning and subdivision requirements, for all restrictive property covenants and HOA requirements, any current burn bans, or any weather conditions that may prohibit safe burning.

The person, or persons, whom shall be responsible for any consequences of action or for any damages, injuries or claims resulting from such burning, are responsible for seeing that all proper regulations, and safety precautions, are carried out. (as added by Ord. #21-06, March 2021 *Ch12_12-06-21*)

7-703. Exceptions. (1) Fire used for cooking food, ceremonial or recreational purposes, including barbecues and outdoor fireplaces/fire pits, shall be exempted from the requirements contained herein as long as reasonable precautions are being made;

(2) Open fires for the training and instruction of firefighting personnel;

(3) Open or contained fires conducted by the city;

(4) Heating on construction projects, provided the burning is in a suitable container and area;

(5) Commercial or industrial activities which are properly permitted;

(6) Small burn piles of leaves, limbs, and tree debris that are generated from the property on which they are burned;

(7) These exceptions do not include bon fires or commercial food preparation facilities and their operation;

(8) There may be extenuating circumstances where the fire chief allows a controlled burn of items or debris. (as added by Ord. #21-06, March 2021 *Ch12_12-06-21*)

7-704. Burn regulations. Unless the fire chief issues a burn ban, the regulations are as follows:

(1) All non-exempt burning shall be between the hours of 8:00 A.M. until sundown;

(2) No burning shall be kindled or maintained on any private land unless adequate provision is made to prevent fire from spreading to any structure, or other property;

(3) Open burning shall be constantly attended by a competent person, of at least eighteen (18) years old, until such fire is extinguished. Such person shall have a garden hose connected to the water supply, or other fire extinguishing equipment readily available for use;

(4) No gasoline or motor oils are to be used as an accelerator, or fire starter;

(5) No open burning of any kind should take place when winds are above fifteen (15) miles per hour;

(6) The fire department should be contacted before conducting a non-exempt open burn. (as added by Ord. #21-06, March 2021 *Ch12_12-06-21*)

7-705. Prohibitions. The following actions or burning of items are unlawful:

(1) Tires and rubber products;

(2) Vinyl siding and shingles;

(3) Asphalt shingles, other asphalt materials and demolition debris;

(4) Building material, construction debris and mobile homes;

(5) Plywood, oriented strand board and treated wood, including railroad ties;

(6) Any material containing asbestos, or other material identified as hazardous or caustic;

(7) Aerosol cans and food cans;

(8) Commercial or industrial waste;

(9) Explosive material, ammunition, or gun powder;

(10) Electrical, communication, or other wiring;

(11) Plastics and other synthetic material;

(12) Paper products, cardboard and newspaper;

(13) Household trash;

(14) Storage of prohibited combustible materials in a residential area;

(15) Commercial or industrial burn activities conducted within residential areas;

(16) Burning any material related to a business activity or for profit;

(17) Leaves, branches and trees that were not grown on site. (as added by Ord. #21-06, March 2021 *Ch12_12-06-21*)

7-706. Violations and penalties. It shall be unlawful for any person to violate any of the provisions of this chapter or the Standard Fire Prevention Code herein adopted, or fail to comply therewith, or violate or fail to comply with any order made thereunder. Doing so may lead to city, county, state, or federal penalties. (as added by Ord. #21-06, March 2021 *Ch12_12-06-21*)

TITLE 8**ALCOHOLIC BEVERAGES**¹**CHAPTER**

1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1**INTOXICATING LIQUORS****SECTION**

- 8-101. Alcoholic beverages subject to regulation.
- 8-102. Definitions.
- 8-103. Manufacturing prohibited within corporate limits.
- 8-104. Selling prohibited within corporate limits.
- 8-105. License required.
- 8-106. Application for certificate.
- 8-107. Applicant to appear before city council; duty to give information.
- 8-108. Action on application.
- 8-109. Applicants for certificate who have criminal record.
- 8-110. Limitations on issuance of certificate of compliance.
- 8-111. Limitations as to residency.
- 8-112. Bonds of licensees.
- 8-113. Retailer's license.
- 8-114. Display of license.
- 8-115. Transfer of license restricted.
- 8-116. Expiration date of license.
- 8-117. New license after revocation.
- 8-118. Federal license; effect of.
- 8-119. Inspection fee.
- 8-120. Regulations for purchase and sale of alcoholic beverages.
- 8-121. Solicitation.
- 8-122. Regulations of retail sales.
- 8-123. Failure to pay inspection fee.
- 8-124. Mayor to determine if provisions are being complied with.
- 8-125. Violation and penalty.
- 8-126. Visible possession prohibited.

¹State law reference

Tennessee Code Annotated, title 57.

8-127. Severability.

8-128. Limitations of the number of licenses.

8-101. Alcoholic beverages subject to regulation. It shall be unlawful to engage in the business of selling, storing, transporting, distributing, or to purchase or possess alcoholic beverages within the corporate limits of this municipality except as provided by Tennessee Code Annotated, title 57, by rules and regulations promulgated thereunder, and as provided in this chapter. (1980 Code, § 2-101, as replaced by Ord. #09-28, Sept. 2009)

8-102. Definitions. Whenever used herein unless the context requires otherwise:

(1) "Alcoholic beverages" or "beverage" 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, beer, or wine, where the latter two (2) contain an alcoholic content of five percent (5%) by weight, or less.

(2) "Certificate of compliance" means the certificate authorized under the provisions of Tennessee Code Annotated, § 57-3-208.

(3) "License" means the license issued herein and "licensee" means any person to whom such license has been issued.

(4) "Retailer" means any person who sells at retail any beverage for the sale of which a license is required under the provisions herein.

(5) "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale.

(6) "Manufacturer" means and includes distiller, vintner and rectifier. "Manufacture" means and includes distilling, rectifying and operating a winery.

(7) "Wholesale sale" or "sale at wholesale" means a sale to any person for purposes of resale.

(8) "Wholesaler" means any person who sells at wholesale beverage for the sale of which a license is required under the provisions of Tennessee Code Annotated, §§ 57-3-101 – 57-3-112.

(9) "Wine" means 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 predominantly produced, or an artificial or imitation wine; and

(10) The word "gallon" or "gallons" wherever used herein, shall be construed to mean a wine gallon or wine gallons, of one hundred and twenty-eight (128) ounces. The word "quart" whenever used herein will be

construed to mean one-fourth (1/4) of a wine gallon. The word "pint" wherever used shall be construed to mean one-eighth (1/8) of a wine gallon.

(11) Words importing the masculine gender shall include the feminine and the neuter, and singular shall include the plural.

(12) The term "federal license" as used herein shall not mean tax receipt or permit. (as added by Ord. #09-28, Sept. 2009)

8-103. Manufacturing prohibited within corporate limits. The manufacture of alcoholic beverages is prohibited within the corporate limits. (as added by Ord. #09-28, Sept. 2009)

8-104. Selling prohibited within corporate limits. No person, firm, or corporation shall engage in the business of selling alcoholic beverages at wholesale within the corporate limits except to a duly licensed local city retailer, as provided herein. (as added by Ord. #09-28, Sept. 2009)

8-105. License required. For the retail sale of alcoholic beverages a license may be issued as herein provided. Any person, firm or corporation desiring to sell alcoholic beverages to patrons or customers, in sealed packages only, and not for consumption on the premises, shall make application to the city recorder for a certificate of compliance, which application shall be in writing on forms prescribed and furnished by the city recorder; subject to the issuance of a retail license by the Alcoholic Beverage Commission, State of Tennessee. (as added by Ord. #09-28, Sept. 2009)

8-106. Application for certificate. (1) Before any certificate, as required by Tennessee Code Annotated, § 57-3-208, or a renewal as required by § 57-3-213, shall be signed by the mayor, or by any member of the city council, an application in writing shall be filed with the city recorder on a form to be provided by the city, together with a non-refundable application fee of seven hundred fifty dollars (\$750.00), giving the following information:

- (a) Name, age and address of the applicant.
- (b) Number of years of residence in Robertson or Sumner County.
- (c) Occupation or business and length of time engaged in such occupation or business.
- (d) Whether or not the applicant or any owner of the applicant has been convicted of a violation of any state or federal law or of the violation of this code or any city ordinance, and the details of any such conviction.
- (e) If employed, the name and address of employer.
- (f) If in business, the kind of business and location thereof.
- (g) The location of the proposed store for the sale of alcoholic beverages.

(h) The name and address of all owners of the store.

(i) If the applicant is a partnership, the name, age and address of each partner, and his occupation, business or employer. If the applicant is a corporation or limited liability company, the name, age and address of the stockholders or members and their percentage of ownership of the corporation or limited liability company.

(2) If the owners (individually, stockholders, partners, or members) exceed three (3) in number, the application fee shall be increased by fifty dollars (\$50.00) for each owner in excess of three (3).

(3) If a new certificate of compliance is required by the State of Tennessee Alcoholic Beverage Commission after the initial issuance of a certificate of compliance but before a renewal certificate of compliance is issued, or between the time of the issuance of the renewal certificate of compliance and subsequent renewals of compliance, an additional two hundred dollars (\$200.00) will become due and payable at time of the request.

(4) At the time of a request for a renewal certificate of compliance there will be a five hundred dollar (\$500.00) application fee due provided the number of owners (individually, stockholders, partners, or members) does not exceed three (3) in number. If the number of owners exceeds three (3) in number the application fee shall be increased by fifty dollars (\$50.00) for each owner in excess of three (3).

(5) The information in any application shall be verified by the oath of the applicant. If the applicant is a partnership, a corporation or a limited liability company, the application shall be verified by the oath of each owner of the entity. (as added by Ord. #09-28, Sept. 2009, and replaced by Ord. #10-32, Nov. 2010)

8-107. Applicant to appear before city council; duty to give information. An applicant for a certificate of compliance shall be required to appear in person before the city council for such reasonable examination as may be desired by the council. (as added by Ord. #09-28, Sept. 2009)

8-108. Action on application. Every application for a certificate of compliance shall be referred to the chief of police for investigation and to the city attorney for review, each of whom shall submit his findings to the city council within thirty (30) days of the date each application was filed.

The city council may issue a certificate of compliance to any applicant, which shall be signed by the mayor or by a majority of the city council

The meeting of the city council at which the certificate of compliance will be considered shall be advertised for two (2) consecutive weeks in a local newspaper having circulation within the municipal limits of the City of Portland. (as added by Ord. #09-28, Sept. 2009)

8-109. Applicants for certificate who have criminal record. No certificate of compliance for the manufacture or sale at wholesale or retail of alcoholic beverages, or for the manufacture or venting of wine, shall be issued to any person, (or if the applicant is a partnership, any partner, or if the applicant is a corporation, any stockholder), who, within ten (10) years preceding the application for such certificate of compliance, has been convicted of any felony or of any offense under the laws of the state or of the United States prohibiting the sale, possession, transportation, storage or otherwise handling of intoxicating liquors, or who has during such period been engaged in business, alone or with others, in violation of such laws. (as added by Ord. #09-28, Sept. 2009)

8-110. Limitations on issuance of certificate of compliance. (1) No certificate of compliance will be issued authorizing the storage, sale, or manufacture of beer or the location of a retail store for the sale of alcoholic beverages at places within five hundred feet (500') of any church, school, including a school with a pre-kindergarten curriculum, hospital, and public recreation parks, not including areas located within the city's greenway plan. Measurements shall be in a straight line and be conducted by the Public Works Department of the City of Portland under the supervision of the public works superintendent or his designate who shall use the most accurate measuring technology available to the City of Portland. The points to be measured from in a straight line will be the closest corner of the building of the establishment seeking the permit and the closest corner of the church building, school building, or hospital facility. In the case of a public recreation park the point of measurement is to the center of the park's closest roadway entrance. A certificate of compliance issued under this chapter shall not be valid except at the premises recited in the application, and any change of location of said business shall be cause for immediate revocation of said certificate executed by the mayor, unless the location is approved in writing by the mayor. Said approval by the mayor must be authorized by approval of a majority of the members of the city council.

(2) No license shall be granted for the operation of a retail store for the sale of alcoholic beverages which retail store is not located on a arterial road or located on property adjacent to a road having direct access to an arterial road within the City of Portland and which property is zoned General Commercial Services (GCS) or Interchange Service District (ISO).

(3) No certificate of occupancy shall be granted for the operation of a retail store for the sale of alcoholic beverages in a building structure that provides less than one thousand five hundred (1,500) square feet of floor space. The structure shall have an exterior design as approved by the Design Review Committee of the City of Portland, the signage to meet the requirements of Office and Professional Service District if located in the GCS zone and the location of the structure shall meet all provisions of Zoning Ordinance No. 387

of the city. No retail store shall be located anywhere on the premises in the city except on the ground floor thereof. Each such store shall have only one (1) main entrance; provided, that when a store is located on the corner of two (2) streets, such store may maintain a door opening on each such street. (as added by Ord. #09-28, Sept. 2009)

8-111. Limitations as to residency. No license shall be issued to any person or persons unless the legal residence of such person or persons has been within Sumner or Robertson Counties, Tennessee, one (1) year at the time of the issuance of the retail license. In the case of a corporation, partnership or limited liability company at least fifty-one percent (51%) of the stockholders, partners or members must have had a one (1) year residency within Sumner or Robertson Counties at the time of the issuance of the license. Thereafter any change in such residence by such persons or owners to be outside this community must be approved by a majority of the board of mayor and aldermen. This provision shall likewise apply to any corporation that may subsequently move or desires to move the principal office of the corporation. However, in any event, such person or persons, firm or corporation's legal residence, and in the case of a corporation, its principal place of business and office must be with the State of Tennessee. (as added by Ord. #09-28, Sept. 2009, and amended by Ord. #12-11, March 2012)

8-112. Bonds of licensees. Bonds required herein shall be executed by a surety company, duly authorized and qualified to do business in Tennessee; bonds of retailers shall be five hundred dollars (\$500.00). Said bond shall be conditioned that the principal thereof shall pay any fine which may be assessed against such principal. (as added by Ord. #09-28, Sept. 2009)

8-113. Retailer's license. (1) No retailer's license shall be issued to a person who is a holder of 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 commissioners where the boards or commissions on which such appointees serve have no duty to vote for, overlook, or in any manner superintend the sale of alcoholic beverages.

(2) 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 she is concerned with which he is connected shall receive a license; provided, however, 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 said 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.

(3) 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 of Tennessee or of any other state or of the United States prohibiting or regulating the sale, possession, transportation, storing, manufacturing, or otherwise handling alcoholic beverages or who has, during said period, been engaged in business alone or with others, in violation of any said laws or rules and regulations promulgated pursuant thereto, or as they existed or may exist thereafter.

(4) No manufacturer, brewer or wholesaler shall have any interest in the business or building containing licensed premises of any other person having a license hereunder, or in the fixtures of any such person.

(5) It shall be unlawful for any person to have ownership in, or participate, either directly or indirectly, in the profits of any retail business licensed, unless his interest in said 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 mayor and city council and approved by them. 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, signs or prepares the application, or whether the same is prepared by another; or if said interest is acquired after the issuance of the license, the burden of said disclosure of the acquisition of such interest shall be upon the seller and the purchaser.

(6) No person shall be employed in the sale of alcoholic beverages except a citizen of the United States.

(7) 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 said age on its place of business to engage in the storage, sale or distribution of alcoholic beverages.

(8) 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 so convicted, he shall immediately be discharged; provided, however, 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.

(9) The issuance of a license does not vest a property right to the licensee, but is a privilege subject to revocation or suspension according to this chapter.

(10) Misrepresentation of a material fact, or concealment of a material fact required to be shown in application for license shall be a violation of this chapter. (as added by Ord. #09-28, Sept. 2009)

8-114. Display of license. Persons granted a license to carry on the business or undertaking contemplated therein shall, before being qualified to do business, display and post, and keep displayed and posted, in the most conspicuous place in their premises, such license. (as added by Ord. #09-28, Sept. 2009)

8-115. Transfer of license restricted. The holder of a license may not sell, assign or transfer such license to any other person unless same is approved by a majority of the board of mayor and aldermen and the state alcoholic beverage commission and said license shall be good and valid only for the calendar year in which the same was issued. Provided, however, that licensees who are serving in the military force of the United States in the time of war may appoint an agent to operate under the 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. (as added by Ord. #09-28, Sept. 2009)

8-116. Expiration date of license. Licenses issued under this chapter shall expire and be renewed as provided by the rules and regulations of the State of Tennessee Alcoholic Beverage Commission. (as added by Ord. #09-28, Sept. 2009)

8-117. New license after revocation. Where a license is revoked, no new license shall be issued to permit the sale of alcoholic beverages on the same premises until after the expiration of one (1) year from the date said revocation becomes final and effective. (as added by Ord. #09-28, Sept. 2009)

8-118. Federal license, effect of. The possession of any federal license to sell alcoholic beverages without the corresponding requisite state license, shall in all cases be prima facie evidence that the holder of such federal license is selling alcoholic beverages in violation of the terms of this chapter. (as added by Ord. #09-28, Sept. 2009)

8-119. Inspection fee. The City of Portland hereby imposes an inspection fee in the maximum amount allowed by Tennessee Code Annotated, § 57-3-501 on all licensed retailers of alcoholic beverages located within the corporate limits of the city. (as added by Ord. #09-28, Sept. 2009)

8-120. Regulations for purchase and sale of alcoholic beverages.

(1) It shall be unlawful for any person in this city to buy any alcoholic beverages herein defined from any person who does not hold the appropriate license under this chapter authorizing the sale of said beverages to him.

(2) No retailer shall purchase any alcoholic beverages from anyone other than a licensed wholesaler, nor shall any wholesaler sell any alcoholic beverages to anyone other than a licensed retailer.

(3) No licensee shall sell alcoholic beverages at retail in connection with any other business or in the same store where any other business is carried on. (as added by Ord. #09-28, Sept. 2009)

8-121. Solicitation. No holder of a license issued shall employ any canvasser or solicitor for the purpose of receiving an order from a consumer for any alcoholic beverages at the residence or places of business of such consumer, nor shall any such license receive or accept any such order which shall have been solicited or received at the residence or place of business of such consumer. This section shall not be construed so as to prohibit the solicitation by a state licensed wholesaler of an order from any licensed retailer at the licensed premises. (as added by Ord. #09-28, Sept. 2009)

8-122. Regulation of retail sales. (1) No retailer shall directly or indirectly, operate more than one (1) place of business in this municipality for the sale of alcoholic beverages, and the word "indirectly" shall include and mean any kind of interest in another place of business, by way of stock ownership, loan, partner's interest, or otherwise.

(2) 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 to any person accompanied by a person who is drunk.

(3) No retailer shall sell, lend or give away any alcoholic beverages to a person under twenty-one (21) years of age.

(4) No retailer shall sell, lend or give away any alcoholic beverages between 11 o'clock P.M. on Saturday and 8 o'clock A.M. on Monday of each week, and between 11 o'clock P.M. and 8 o'clock A.M. Monday through Saturday.

(5) No retailer shall sell, lend or give away any alcoholic beverages upon Christmas Day, Thanksgiving Day, Labor Day, New Year's Day or the Fourth of July.

(6) No retailer of alcoholic beverages shall keep or permit to be kept upon the licensed premises any alcoholic beverages in any unsealed bottles or other unsealed containers.

(7) No retailer as herein defined shall own, store or possess upon the licensed premises any unstamped merchandise required by the laws of Tennessee to have affixed thereto revenue stamps of said state. (as added by Ord. #09-28, Sept. 2009)

8-123. Failure to pay inspection fee. Whenever any person licensed hereunder fails to account for or pay over to the city recorder any inspection fee, or defaults in any of the conditions of his bond, the mayor and/or city recorder shall report the same to the city attorney who shall immediately institute the necessary action for the recovery of any such inspection fee. (as added by Ord. #09-28, Sept. 2009)

8-124. Mayor to determine if provisions are being complied with. The mayor and/or designated agent thereof is authorized to examine the books, papers and records of any dealer for the purpose of determining whether the provisions of this chapter are being complied with. The refusal to permit the examination of any such books, papers, and records, or the investigation and examination of such premises, shall constitute, sufficient reason for the revocation of a license or the refusal to issue a license. (as added by Ord. #09-28, Sept. 2009)

8-125. Violation and penalty. Any violation of the terms of this chapter shall be punishable by a fine of not more than five hundred dollars (\$500.00); in such cases, suspension of said license by mayor for thirty (30) days shall be mandatory, and in the discretion of the board of mayor and aldermen may be cause for revocation of said license. (as added by Ord. #09-28, Sept. 2009)

8-126. Visible possession prohibited. Visible possession of alcoholic beverages in unsealed containers upon any public street or within any governmental building shall be a violation of this chapter. (as added by Ord. #09-28, Sept. 2009)

8-127. Severability. If any provision of this chapter is hereafter determined to be unenforceable or unconstitutional by a court of competent jurisdiction then the other provisions of this chapter shall not be effected and shall remain valid. (as added by Ord. #09-28, Sept. 2009)

8-128. Limitations of the number of licenses. The maximum number of licenses for retail liquor stores authorized to be issued within the municipal boundaries of the City of Portland is limited to four (4) and no new licenses shall be issued until the population of the city reaches the number of twenty thousand one (20,001) according to the latest legal census certified by the government. Thereafter the number of licenses authorized is one (1) license per five thousand (5,000) residents according to the latest legal census certified by government or the number of licenses authorized by the statutes of the State of Tennessee. (as added by Ord. #12-11, March 2012)

CHAPTER 2

BEER¹

SECTION

- 8-201. Alcoholic beverage board established.
- 8-202. Meetings of the alcoholic beverage board.
- 8-203. Record of alcoholic beverage board proceedings to be kept.
- 8-204. Requirements for alcoholic beverage board quorum and action.
- 8-205. Powers and duties of the alcoholic beverage board.
- 8-206. "Beer" defined.
- 8-207. Permit required for engaging in beer business.
- 8-208. Beer permits shall be restrictive.
- 8-209. Issuance of permits to aliens prohibited.
- 8-210. Interference with public health, safety, and morals prohibited.
- 8-211. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-212. Prohibited conduct or activities by beer permit holders.
- 8-213. Revocation of beer permits.
- 8-214. Privilege tax.
- 8-215. Civil penalty in lieu of suspension.
- 8-216. Beer to be sold only in original container.
- 8-217. Limitation on number of permits.
- 8-218. Loss of clerk's certification for sale to minor.

8-201. Alcoholic beverage board established. There is hereby established an alcoholic beverage board to be composed of the seven (7) members of the City Council of the City of Portland. A chairman shall be elected annually by the alcoholic beverage board from among its members. All members of the board shall serve without compensation. (1980 Code, § 2-201, as amended by Ord. #536, July 1997, and replaced by Ord. #05-05, April 2005, Ord. #05-34, Oct. 2005, and Ord. #09-49, Sept. 2009)

8-202. Meetings of the alcoholic beverage board. All meetings of the alcoholic beverage board shall be open to the public. The board shall hold advertised regular monthly meetings in the city hall at such times as it shall prescribe. When there is business to come before the alcoholic beverage board, a special meeting may be called by the chairman, provided he gives a reasonable notice thereof to each member. The board may adjourn a meeting at any time

¹State law reference

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

to another time and place. (1980 Code, § 2-202, as amended by Ord. #536, July 1997, and Ord. #05-11, July 2005)

8-203. Record of alcoholic beverage board proceedings to be kept.

The recorder shall make a record of the proceedings of all meetings of the alcoholic beverage board. The record shall be a public record and shall contain at least the following: The date of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions, etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. (1980 Code, § 2-203, as amended by Ord. #536, July 1997)

8-204. Requirements for alcoholic beverage board quorum and action.

The attendance of at least a majority of the members of the alcoholic beverage board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote. (1980 Code, § 2-204, as amended by Ord. #536, July 1997)

8-205. Powers and duties of the alcoholic beverage board. The alcoholic beverage board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this city in accordance with the provisions of this chapter. (1980 Code, § 2-205, as amended by Ord. #536, July 1997)

8-206. "Beer" defined. The term "beer" as used in this chapter shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight. (1980 Code, § 2-206)

8-207. Permit required for engaging in beer business. It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the alcoholic beverage board. The application shall be made on such form as the board shall prescribe and/or furnish and pursuant to Tennessee Code Annotated, § 57-5-101(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 Portland. The applicant shall also provide a statewide background check provided by TBI at the applicant's expense. Any new permits and any renewals shall be submitted for consideration. (1980 Code, § 2-207, as amended by Ord. #536, July 1997, Ord. #05-11, July 2005, and Ord. #09-41, Sept. 2009)

8-208. Beer permits shall be restrictive. All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. Beer permits for the retail sale of beer may be further restricted by the alcoholic beverage board so as to authorize sales only for off premises consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions which may be written into his permit by the alcoholic beverage board. (1980 Code, § 2-208, as amended by Ord. #536, July 1997)

8-209. Deleted. (1980 Code, § 2-209, as amended by Ord. #536, July 1997, and deleted by Ord. #05-11, July 2005)

8-210. Interference with public health, safety, and morals prohibited. No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with schools, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. In no event will a permit be issued authorizing the storage, sale, or manufacture of beer at places within 500 feet of any church, school, state licensed child care center, hospital, and public recreation parks having an area in size greater than five (5) acres. Measurements shall be in a straight line and be conducted by the public works department of the City of Portland under the supervision of the public works superintendent or his designate who shall use the most accurate measuring technology available to the City of Portland. The points to be measured from in a straight line will be the closest corner of the building of the establishment seeking the permit and the closest corner of the church building, school building, or hospital facility. In the case of a public recreation park the point of measurement is to the center of the park's closest roadway entrance. The foregoing restriction as to distance will not apply to those locations where a permit has been previously granted and issued for the sale of liquor by the drink by the Alcoholic Beverage Commission of the State of Tennessee. (1980 Code, § 2-210, modified, as amended by Ord. #05-11, July 2005, and Ord. #13-11, May 2013)

8-211. Issuance of permits to persons convicted of certain crimes prohibited. No beer permit shall be issued to any person who has been convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years. (1980 Code, § 2-211)

8-212. Prohibited conduct or activities by beer permit holders. It shall be unlawful for any beer permit holder to:

1. Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.
2. Employ any minor under the age of 18 in the sale, storage, distribution, or manufacture of beer. (This provision shall not apply to grocery stores selling beer for off-premises consumption only.)
3. Make or allow any sale of beer between the hours of 12:00 Midnight and 6:00 o'clock A.M. during any night of the week; at any time on Sunday.
4. Make or allow any sale of beer to a minor.
5. Allow any minor to loiter in or about his place of business.
6. Make or allow any sale of beer to any intoxicated person or to any otherwise mentally incapacitated person.
7. Allow drunk or disreputable persons to loiter about his premises.
8. Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content of more than five percent (5%) by weight.
9. Fail to provide and maintain separate sanitary toilet facilities for men and women.
10. To violate any state criminal statute or law where the violation results in adjudication of a misdemeanor or felony or the violation of any city ordinance which is a violation of state law or city ordinance occurring on or about the premises to which the beer permit is issued by the alcoholic beverage board applies. (1980 Code, § 2-213, modified, as amended by Ord. #05-11, July 2005, and Ord. #12-32, Aug. 2012)

8-213. Revocation of beer permits. The alcoholic beverage board shall have the power to revoke 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 until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation proceedings may be initiated by the police chief or by any member of the alcoholic beverage board.

Pursuant to Tennessee Code Annotated, § 57-5-608, the beer board shall not revoke or suspend the permit of a "responsible vendor" qualified under the requirements of Tennessee Code Annotated, § 57-5-606 for a clerk's illegal sale of beer to a minor if the clerk is properly certified and has attended annual meetings since the clerk's original certification, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. If the responsible vendor's certification has been revoked, the vendor shall be punished by the beer board as if the vendor were not certified as a responsible vendor. "Clerk" means any person working in a capacity to sell beer directly to consumers for off premises consumption. Under Tennessee Code

Annotated, § 57-5-608, the alcoholic beverage commission shall revoke a vendor's status as a responsible vendor upon notification by the beer board that the board has made a final determination that the vendor has sold beer to a minor for the second time in a consecutive twelve (12) month period. The revocation shall be for three (3) years. (1980 Code, § 2-214, as amended by Ord. #536, July 1997, and Ord. #07-36, Aug. 2007)

8-214. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a privilege tax of one hundred dollars (\$100). 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 Portland, Tennessee. At the time a new 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. (1980 Code, § 2-215)

8-215. Civil penalty in lieu of suspension. Definition. "Responsible vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006," Tennessee Code Annotated, § 57-5-601, et seq.

(2) Penalty, revocation or suspension. 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. (1980 Code, § 2-217, as amended by Ord. #536, July 1997, and replaced by Ord. #07-36, Aug. 2007)

8-216. Beer to be sold only in original container. No person, having obtained a permit from the alcoholic beverage board, shall offer beer for sale in any container other than the container in which it is received from the

manufacturer and distributor. (1980 Code, § 2-218, as amended by Ord. #536, July 1997)

8-217. Limitation on number of permits. The number of licenses for the sale of beer shall be limited to twenty-four (24). In calculating the limitation of the number of permits to be issued, those locations which have been issued a permit for the sale of liquor by the drink by the Tennessee Alcoholic Beverage Commission and retail establishment locations which have five thousand (5,000) square feet of retail space shall not be included in the total of permits to be authorized. Provided that all requirements of this chapter are complied with, all existing permits for the sale of beer within the corporate limits of the city at the date of the passage of the ordinance comprising this section shall continue to be renewed. A new permit may be issued to a qualified purchaser of an existing establishment in which a permit is now held for the sale of beer, and the permit used only within the establishment or building purchased. The number of additional permits hereafter allowed shall be increased by one (1) for each seven hundred fifty (750) citizens of the City of Portland which are added to the census of the city by any new verified census hereafter taken for the City of Portland. Any permit heretofore or hereafter issued by the Alcoholic Beverage Board of the City of Portland shall automatically terminate if not used or exercised by the permit holder within one hundred eighty (180) days of the date of issuance of permit or for any period of ninety (90) consecutive days after the expiration of six (6) months from the date of issuance of the permit. The failure of the alcoholic beverage board to enforce the termination of the permit immediately shall not operate as a waiver to enforce the termination of the permit at a subsequent time. A holder of a beer permit may submit a written application to the alcoholic beverage board for an extension of the time periods set forth herein setting forth in the application the reasons therefore but the reasons given must state with specific clarity the hardship providing the basis for the extension. (as added by Ord. #05-11, July 2005, and amended by Ord. #13-10, May 2013)

8-218. 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. (as added by Ord. #07-36, Aug. 2007)

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

1. PEDDLERS, SOLICITORS, ETC.
2. STREET SHOWS AND MEDICINE SHOWS.
3. SLAUGHTER HOUSES.
4. DELETED.
5. TAXICABS.
6. CABLE TELEVISION.
7. GARAGE SALES AND YARD SALES.
8. MISCELLANEOUS.
9. SEXUALLY ORIENTED BUSINESSES.
10. MOBILE FOOD VENDORS.

CHAPTER 1

PEDDLERS, SOLICITORS, ETC.

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. Restriction 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, business, place to place, or from street to street,

¹Municipal code references

Building, plumbing, wiring and housing regulations: title 12.

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

2. "Solicitor" means any person, firm or corporation who goes from dwelling to dwelling, business to business, place to place, or from street to street, taking or attempting to take orders for any goods, wares or merchandise, or personal property of any nature whatever for future delivery or placing documentation on premises regarding products or services for sale, except that the term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.

3. "Solicitor for charitable or religious purposes" means any person, firm, corporation or organization who or which solicits contributions from the public, either on the streets of the city or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who does not sell or offer to sell any single item at a cost to the purchaser in excess of ten dollars (\$10.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets one of the following conditions:

a. Has a current exemption certificate from the Internal Revenue Service issued under section 501(c)(3) of the Internal Revenue Service Code of 1954, as amended.

b. Is a member of a United Way or similar "umbrella" organization for charitable or religious organizations.

c. Has been in continued existence as a charitable or religious organization in Sumner 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 publications to magazines or other materials protected by provisions of the Constitution of the United States.

(5) "Transient vendor"¹ means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of

¹State law references

Tennessee Code Annotated, § 62-30-101 *et seq.* contains permit requirements for "transitory vendors."

The definition of "transient vendors" is taken from Tennessee Code Annotated, § 62-30-101(3). Note also 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 or 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 Tennessee Code Annotated, § 67-4-709(b).

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

(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. (1980 Code, § 5-101, as amended by Ord. #09-24, July 2009)

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. (1980 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. (1980 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 for 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 non-refundable fee of one hundred dollars (\$100.00). There shall be no fee for an application for a permit as a solicitor for charitable purposes or as a solicitor for subscriptions.

(3) Bond. Every permittee shall file with the city recorder a surety bond running to the city in the amount of five hundred dollars (\$500.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of this city and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the city that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the city doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability.

(4) Permit issued. 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.

(5) Submission of application form to the chief of police. 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 permit. (1980 Code, § 5-104, as amended by Ord. #02-32, Oct. 2002)

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 except in locations designated by the chief of police and at prescribed times set by the chief of police.

(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. (1980 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, cancelled 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. All permits granted to transient vendors shall be limited to the hours between 8:00 A.M. and 6:00 P.M. (1980 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. (1980 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) Suspension or revocation by the city council. The permit issued to any person or organization under this chapter may be suspended or revoked by the city council, after notice and hearing, for the causes set out in paragraph (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 the 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. (1980 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. (1980 Code, § 5-109)

9-110. Violation and penalty. 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. (1980 Code, § 5-110)

CHAPTER 2**STREET SHOWS & MEDICINE SHOWS****SECTION**

9-201. License required.

9-201. License required. It shall be unlawful for any kind of street show, medicine show, or circus or any other street amusement show to operate within the City of Portland without first obtaining a privilege license from the city recorder. (1980 Code, § 5-301)

CHAPTER 3

SLAUGHTER HOUSES

SECTION

9-301. Regulated.

9-301. Regulated. It shall be unlawful for any slaughter house to be located within 200 feet of any residence in the corporate limits of the City of Portland. (1980 Code, § 5-401)

CHAPTER 4

DELETED

(1980 Code, § 5-601, as deleted by Ord. #04-20, July 2004)

CHAPTER 5

TAXICABS

SECTION

- 9-501. Definitions.
- 9-502. Taxicab franchise required; application made to city recorder; issuance by the city council; and not applicable to busses, etc.
- 9-503. Limitation on number of taxicabs.
- 9-504. Requirement as to application.
- 9-505. Qualifications.
- 9-506. Conduct of drivers.
- 9-507. Transportation of more than one passenger at the same time.
- 9-508. Permit required of drivers.
- 9-509. Taxicabs to be kept clean and mechanically sound.
- 9-510. Drivers to comply with laws and ordinances.
- 9-511. Insurance required of franchisees.
- 9-512. Drivers prohibited from engaging in unlawful acts.
- 9-513. Public taxi stands authorized and regulated.
- 9-514. Transfer of franchise.
- 9-515. Suspension or revocation of franchise.

9-501. Definitions. (1) "Taxicab." The term "taxicab" as used in this chapter means any and all vehicles carrying passengers for hire, except busses and other common carriers operating over designated routes in and through the city.

(2) "Taxi franchise." Each individual taxicab shall constitute a single franchise separate and apart from all others. The City of Portland shall be the grantor while the person holding said franchise shall be the grantee.

(3) "Operate a taxi franchise." The term "operate a taxi franchise" as used in this chapter shall be held to mean the operating of one (1) taxicab within the corporate limits of Portland, Tennessee by the owner thereof, for the purpose of carrying passengers for hire, either by driving the same himself or having same driven by his agent or employee. Any grantee may operate one (1) or more taxicabs, but said grantee must secure a separate franchise for each and every taxicab in his fleet, and the grantee must otherwise comply with all the requirements of this chapter concerning each separate taxicab. (1980 Code, § 5-701)

9-502. Taxicab franchise required; application made to city recorder; issuance by the city council; and not applicable to busses, etc. No person shall operate any taxicab within the corporate limits of the city except under a franchise granted under this chapter.

The recorder shall take application from any person who gives satisfactory evidence of his compliance with the terms and conditions of this chapter, and shall present said application at the next regular or special called meeting of the Portland City Council, and upon a majority vote in favor thereof, the city recorder shall issue a franchise to the grantee to operate taxicabs within the corporate limits of the city, except as otherwise provided in this chapter.

This chapter shall not apply to busses or other passenger conveyances regulated by the State Public Service Commission. (1980 Code, § 5-702)

9-503. Limitation on number of taxicabs. Until conditions warrant otherwise, not more than six (6) vehicles shall be operated as taxicabs upon the public highways, streets, boulevards, or alleys of the city; provided that the number of taxicabs herein provided for may be increased or diminished as conditions may require, and upon the applications of interested parties when, in the discretion of the city council, the increase diminution of the number of taxicab vehicles is warranted by the safety and welfare requirements of the public. (1980 Code, § 5-703)

9-504. Requirement as to application. No person shall be eligible to apply for or to receive a taxicab franchise if he has been convicted of a felony within the past five (5) years. (1980 Code, § 5-704, modified)

9-505. Qualifications. No person shall be granted a franchise nor driver's permit to operate a taxicab unless he complies with the following to the satisfaction of the city recorder:

- (1) Makes written application to the city recorder.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (4) Produces affidavits of good character from two reputable citizens of this city who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
 - (5) (a) Has not been convicted of any felony within the past five (5) years.
 - (b) Has not been convicted of driving under the influence of an intoxicant or drug during a period of five (5) years immediately preceding the date of his application.
 - (c) Has not been convicted of three (3) or more traffic violations during a period of three (3) years immediately preceding the date of his application. (1980 Code, § 5-705, modified)

9-506. Conduct of drivers. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage

or beer, use profane or obscene language, shout or call to prospective passengers, unnecessarily blow the automobile horn, or to otherwise disturb the peace and tranquility of the city in any manner. (1980 Code, § 5-706)

9-507. Transportation of more than one passenger at the same time. No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (1980 Code, § 5-707)

9-508. Permit required of drivers. No person shall drive a taxicab other than the franchise owner, or his agent or employee, without being in possession of a City of Portland taxicab driver's permit issued by the city recorder. Said permit shall cost twenty-five dollars (\$25.00) and shall be issued by the city recorder only after the applicant's driving history has been thoroughly investigated and the applicant has otherwise complied with the requirements of this chapter. Said permit shall be valid and in effect until suspended by the city council for violation of this chapter and shall be renewable every two (2) years. (1980 Code, § 5-708)

9-509. Taxicabs to be kept clean and mechanically sound. All taxicabs operated in the city shall be kept in a clean and sanitary condition inside and out. They shall also be kept in such mechanical condition as is reasonably necessary to provide for their satisfactory operation and the safety of the public. They shall be equipped with such lights, brakes, and other mechanical equipment and devices as are required by state law and this code for motor vehicles generally. (1980 Code, § 5-709)

9-510. Drivers to comply with laws and ordinances. All taxicabs shall be operated in strict compliance with the code and ordinances of the city and the laws of the state. (1980 Code, § 5-710)

9-511. Insurance required of franchisees. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect, insurance for each vehicle authorized in the amount of twenty five thousand dollars (\$25,000.00) for bodily injury to any one person; in the amount of fifty thousand dollars (\$50,000.00) for injuries to more than one person which are sustained in the same accident; and ten thousand dollars (\$10,000.00) for property damage resulting from any one accident. Said insurance shall insure to the benefit of any person who shall be injured or who shall sustain damage to property proximately caused by the negligence of a franchise holder, his servants, or agents. Proof of said insurance shall be filed in the office of the city recorder and shall have as surety thereon a surety company authorized to do business in the State of Tennessee. (1980 Code, § 5-711)

9-512. Drivers prohibited from engaging in unlawful acts. No driver shall help, aid, assist, or use, or knowingly allow his taxicab to be used, or otherwise engage in, the commission of, or in the furtherance of, any unlawful act, nor to be used or driven in violation of any city ordinance of the City of Portland, or in violation of this chapter. (1980 Code, § 5-712)

9-513. Public taxi stands authorized and regulated. The city council may authorize public taxi stands in such place or places upon the streets of the city as it deems necessary for the use of taxicabs operated in the city. The city council shall not create a public taxi stand on the streets except when deemed necessary for the convenience of the general public. The city council shall prescribe the number of cabs that shall occupy such taxi stands. The city council shall not create a public taxi stand in front of any place of business where the abutting property owners object to the same or where such stand would tend to create a traffic hazard.

Public taxi stands shall be used by taxicab drivers on a first-come, first-served basis. Each driver shall pull on to the taxi stand from the rear shall advance forward as the cabs ahead pull off. Drivers shall stay within five feet (5') of their cabs. They shall not solicit passengers or engage in loud or boisterous talk while at the public taxi stand. Nothing in this chapter shall be construed as preventing a passenger from boarding any cab of his choice that is parked in a public taxi stand.

No vehicle other than a taxicab shall at any time occupy any space upon the streets that has been established as either a public taxi stand or a call box stand. (1980 Code, § 5-713)

9-514. Transfer of franchise. No franchise may be sold, assigned, mortgaged, or otherwise transferred without the consent of the city council. (1980 Code, § 5-714)

9-515. Suspension or revocation of franchise. The city council shall have the power to suspend a taxi franchise upon a public hearing, after which a ten (10) day notice has been given and when it has been established that such grantee has discontinued operation or has violated, refused, or neglected to observe any of the proper orders, rules, or regulations of this chapter, or willfully or persistently violated any of the laws of the State of Tennessee or ordinances of the City of Portland relative to the operation of such vehicles. If the city council should deem, after hearing that the offenses of the grantee have been so flagrant as to warrant such action, then it may revoke the franchise issued to the grantee. (1980 Code, § 5-715)

CHAPTER 6

CABLE TELEVISION¹

SECTION

9-601. Parts of Code of Federal Regulations adopted.

9-602. Definitions.

9-601. Parts of Code of Federal Regulations adopted. Pursuant to authority granted by the Cable Television and Consumer Protection Act of 1992 at 47 U.S.C. 543, and Federal Communications Commission action under the authority of said act certifying the city to regulate basic cable television service within the boundaries of the city; and for the purposes of regulating the rates charged to customers of any cable television operator franchised by the city, the regulations contained in Title 47 of the Code of Federal Regulations, Part 76, Subpart N, sections 76.900 through 76.985, are hereby adopted and incorporated by reference as a part of this code. (1980 Code, § 5-801)

9-602. Definitions. Whenever the regulations cited in § 9-601 refer to "franchising authority", it shall be deemed to be a reference to the city council of the city. (1980 Code, § 5-802)

¹For complete details relating to the cable television franchise agreement see Ord. #07-07, Feb. 2007, in the office of the recorder.

For the creation of a Cable TV Commission, see chapter 1 of title 2.

CHAPTER 7

GARAGE SALES AND YARD SALES

SECTION

- 7-101. Intent.
- 7-102. Definitions.
- 7-103. Exemptions from chapter.
- 7-104. Penalty for violation.
- 7-105. Right of entry--authority of inspector.
- 7-106. Property permitted to be sold.
- 7-107. Duration of sale.
- 7-108. Display of property.
- 7-109. Signs.
- 7-110. Responsibility for maintaining order.
- 7-111. Parking.
- 7-112. Yard and garage sales--registration required.
- 7-113. Means of advertisement of yard sales--obstructing traffic.

9-701. Intent. The council finds and declares that:

(1) The intrusion of non-regulated garage sales and yard sales is causing annoyance to the citizens in residential areas in the city and congestion of the streets in residential areas in the city.

(2) The provisions contained in this chapter are intended to prohibit the infringement of any businesses in any established residential areas by regulating the term and frequency of garage sales and yard sales, so as not to disturb or disrupt the residential environment of the area.

(3) The provisions of this chapter are designed to control the operation of garage sales and yard sales conducted in nonresidential areas where the sale is not carried on a daily basis but rather on an occasional basis.

(4) The provisions of this chapter do not seek to control sales by individuals selling a few of their household or personal items.

(5) The provisions and prohibitions contained in this chapter are enacted not to prevent garage sales or yard sales, but to regulate such sales for the safety and welfare of the city's citizens. (as added by Ord. #06-01, March 2006)

9-702. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The word "shall" is always mandatory and not merely directory.

(1) "Community yard sale" means the inclusion of five (5) or more surrounding neighbors in combination for the sole purpose of the sale of goods, wares, merchandise, personal property of such kind as household articles,

utensils, jewelry, clothing, furniture, or other articles of this kind and may be also known as a garage sale.

(2) "Garage sale" means and includes all general sales, open to the public, conducted from or on any premises in any residential or nonresidential zone as defined by the zoning ordinance, for the purpose of disposing of personal property, including but not limited to all sales entitled "garage," "lawn," "yard," "attic," "porch," "room," "backyard," "patio," "flea market" or "rummage" sale. This definition does not include the operation of such businesses carried on in a nonresidential zone where the person conducting the sales does so, on a regular day-to-day basis. This definition shall not include a situation where no more than five (5) specific items or articles are held out for sale and where all advertisement of such sale specifically names those items to be sold.

(3) "Personal property" means property which is owned, utilized and maintained by an individual or members of his residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment.

(4) "Yard sales" A yard sale is defined as a sale of goods, wares, merchandise, personal property of such kind as household articles, utensils, jewelry, clothing, furniture, or other articles of this kind and may be also known as a garage sale. Such a sale is usually held by a private citizen or citizens on property owned by the citizen and/or property occupied as rental property, and may be held on a space rented for the sale. (as added by Ord. #06-01, March 2006)

9-703. Exemptions from chapter. The provisions of this chapter shall not apply to or affect the following:

(1) Persons selling goods pursuant to an order of process of a court of competent jurisdiction.

(2) Persons acting in accordance with their powers and duties as public officials.

(3) Any sale conducted by any merchant or mercantile or other business establishment on a regular, day-to-day basis from or at the place of business wherein such sale would be permitted by zoning regulations of the city or under the protection of the nonconforming use provisions thereof, or any other sale conducted by a manufacturer, dealer or vendor in which sale would be conducted from properly zoned premises and which is not otherwise prohibited by other ordinances.

(4) Any bona fide charitable, eleemosynary, educational, cultural or governmental institution or organization when the proceeds from the sale are used directly for the institution or organization and the goods or articles are not sold on a consignment basis. (as added by Ord. #06-01, March 2006)

9-704. Penalty for violation of chapter. (1) Every article sold and every day a sale is conducted in violation of this article shall constitute a separate offense.

(2) Any person found guilty of violating the terms of this chapter shall be subject to punishment by a fine not less than fifty dollars (\$50) per day. (as added by Ord. #06-01, March 2006)

9-705. Right of entry--authority of inspector. A police officer or any other public official designated by any city ordinance to make inspections under the licensing or regulating ordinance, or to enforce the licensing or regulating ordinance, shall have the right of entry to any premises showing evidence of a garage sale for the purpose of enforcement or inspection, and may close the premises from such a sale or arrest any individual who violates the provisions of this chapter. (as added by Ord. #06-01, March 2006)

9-706. Property permitted to be sold. It shall be unlawful for any person to sell or offer for sale, under authority granted by this chapter, property other than personal property. (as added by Ord. #06-01, March 2006)

9-707. Duration of sale. Garage sales and yard sales shall be registered with the building official as provided for in § 9-712 of this chapter at no cost and shall be limited as follows:

(1) A period during a week not greater than three (3) consecutive days.

(2) Each property address shall be limited to three (3) yards sales annually with persons holding more than three (3) yard sales per year being subject to application for a license for the commissioner of finance and revenue under the Business Tax Act, shall be subject to sales tax, and may be required to keep an inventory of items on hand for the sale for inspection by the commissioner of finance and revenue, or his authorized agent with the following exceptions:

(a) One (1) additional sale is permitted, provided the occupant of a specified address is moving to another specified address.

(b) One (1) additional "community yard sale," as defined by this chapter or the annual Highway 52 yard sale shall be permitted.

(3) The hours of operation for any such sales shall be from 6:00 A.M. to 6:00 P.M. (as added by Ord. #06-01, March 2006)

9-708. Display of property. Personal property offered for sale pursuant to this chapter may be displayed within the residence in a garage or carport or in a front, side or rear yard, but only in such areas. No personal property offered for sale at a garage sale or yard sale shall be displayed in any public right-of-way. A vehicle offered for sale may be displayed on a permanently constructed driveway within such front or side yard. (as added by Ord. #06-01, March 2006)

9-709. Signs. Signs permitted. Only the following specified signs may be displayed in relation to a pending garage sale or yard sale; provided however, that such signs shall be subject to any other applicable ordinance of the City of Portland relating to the placement of signs:

(1) Two (2) signs of not more than four (4) square feet shall be permitted to be displayed on the property of the residence or nonresidential site where the garage sale or yard sale is being conducted.

(2) Directional signs of not more than two (2) square feet each are permitted, provided that the premises on which the garage sale or yard sale is conducted is not on a major thoroughfare and that written permission to erect such signs is received from the property owners on whose property such signs are to be placed.

(a) Time limitations. No sign or other form of advertisement shall be exhibited for more than two (2) days prior to the day such sale is to commence.

(b) Removal of signs. Signs must be removed at the conclusion of the garage sale or yard sale activities. (as added by Ord. #06-01, March 2006)

9-710. Responsibility for maintaining order. The individual to whom a permit is issued under this chapter and the owner or tenant of the premises on which such sale or activity is conducted shall be jointly and severally responsible for the maintenance of good order and decorum on the premises during all hours of such sale or activity. No such individual shall permit any loud or boisterous conduct on the premises or permit vehicles to impede the passage of traffic on any roads or streets in the area of such premises. All such individuals shall obey the reasonable orders of any member of the police or fire department of the city in order to maintain the public health, safety and welfare. (as added by Ord. #06-01, March 2006)

9-711. Parking. All parking of vehicles at sales regulated under this chapter shall be conducted in compliance with all applicable laws and ordinances. The police department may enforce such temporary controls as necessary to alleviate any special hazards and congestion created by any garage sale or yard sale. (as added by Ord. #06-01, March 2006)

9-712. Yard and garage sales--registration required. All persons who hold or engage in a garage sale or yard sale within the city limits of the City of Portland shall be residing at the time of the sale within the City of Portland either as a homeowner, renter of property, or both and shall register on a form provided by the Planning and Codes Department of the City of Portland which shall be approved by the building official. (as added by Ord. #06-01, March 2006)

9-713. Means of advertisement of yard sales--obstructing traffic.

It shall be unlawful for any person or persons holding or engaged in a garage sale or yard sale to cause congestion of traffic in the areas where the sale is being held. It shall be unlawful for any person or persons holding or intending to hold a garage sale or yard sale to post advertisement of the sale on telephone poles, utility poles, or in any manner anywhere except for temporary signs within the yard or space where the sale is being held or is to be held as set forth in other sections of this chapter. Advertising also may be given to the local news media for publication or other means of informing the public. (as added by Ord. #06-01, March 2006)

CHAPTER 8

MISCELLANEOUS

SECTION

9-801. Sales in city parks.

9-801. Sales in city parks. No person shall, in any park or to any person in any park, exhibit, sell or offer for sale, hire or lease any object or merchandise, or service of commercial nature, without prior approval from the parks department. (as added by Ord. #08-31, Aug. 2008)

CHAPTER 9**SEXUALLY ORIENTED BUSINESSES****SECTION**

- 9-901. Title.
- 9-902. Definitions.
- 9-903. Prevention of sexual activity.
- 9-904. Involvement of minors.
- 9-905. Specified criminal activity by operators, employees, entertainers and others.
- 9-906. Prohibited hours of operation.
- 9-907. Duties and responsibilities of operators, employees and entertainers.
- 9-908. Prohibited activities.
- 9-909. Reports.
- 9-910. Inspections.
- 9-911. Applicability.
- 9-912. Violations.

9-901. Title. This chapter shall be known and may be cited as "The Sexually Oriented Business Ordinance." (as added by Ord. #17-75, Nov. 2017)

9-902. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

(2) "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, computer software or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or

(b) Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one (1) of the principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(3) "Adult cabaret" means an establishment that features as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers;

(4) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, that has as a principal or predominant theme, emphasis, or portion of such performance, any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

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

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

(7) "Codes department" means the department or division of the city which is authorized to enforce building codes and other provisions of this municipal code of ordinances.

(8) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated as an employee, independent contractor, agent, or otherwise and whether or not the person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the

premises or equipment on the premises or for the delivery of goods to the premises.

(9) "Entertainer" means any person who provides entertainment within a sexually oriented business as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

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

(11) "Family recreation center" means any facility, which is oriented principally toward meeting the athletic or recreational needs of families and whose targeted customer is a minor child, including, but not limited to, the provision of one (1) or more of the following:

- (a) Ice skating;
- (b) Roller skating;
- (c) Skateboarding;
- (d) Paintball;
- (e) Mini-golf;
- (f) Bowling;
- (g) Go-carts;
- (h) Climbing facilities;
- (i) Athletic fields or courts; or
- (j) Other similar athletic or recreation activities.

(12) "Massage parlor" means an establishment or place primarily in the business of providing massage or tanning services where one (1) or more of the employees exposes to public view of the patrons within said establishment, at any time, "specified anatomical areas."

(13) "Nude model studio" means a commercial establishment where a person appears semi-nude or in a state of nudity, or displays "specified anatomical areas," and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio as defined herein shall not include a proprietary school licensed by the State of Tennessee or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or a structure:

- (a) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
- (b) Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
- (c) Where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.

(14) "Nudity" or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

(15) "Operator" means a person operating, conducting, or maintaining a sexually oriented business or a person who is identified in any report filed with the city as the operator of a sexually oriented business.

(16) "Sauna" means an establishment or place primarily in the business of providing, for purposes of sexual stimulation:

- (a) A steam bath or dry heat sauna; or
- (b) Massage services.

(17) "Semi-nude" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed in whole or in part.

(18) "Sexual conduct" means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttocks, or female breast of a person for the purpose of arousing or gratifying the sexual desire of that person or another person.

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

- (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) Physical contact between male and female persons or persons of the same sex when one (1) or more of the persons is in a state of nudity or semi-nude or exposes to view of the persons within such establishment, at any time, "specified anatomical areas";

(20) "Sexually oriented business" includes, but is not limited to, an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude model studio, sexual encounter center, massage parlor, or sauna, and further means any premises to which patrons or members of the public are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or other adult entertainment, or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member, when such is held, conducted, operated or maintained for a profit, direct or indirect.

(21) "Sexual stimulation" means to excite or arouse the prurient interest or to offer or solicit acts of "sexual conduct" as defined in this chapter.

(22) "Specified anatomical areas" means:

(a) Less than completely and opaquely covered:

(i) Human genitals;

(ii) Pubic region;

(iii) Buttocks; or

(iv) Female breasts below a point immediately above the top of the areola; or

(b) Human male genitals in a discernibly turgid state, even if completely opaquely covered.

(23) "Specified criminal acts" means the following criminal offenses as defined by the Tennessee Code Annotated or the corresponding violation of another state or country:

(a) Aggravated rape;

(b) Rape;

(c) Rape of a child;

(d) Aggravated sexual battery;

(e) Sexual battery by an authority figure;

(f) Sexual battery;

(g) Statutory rape;

(h) Public indecency;

(i) Prostitution;

(j) Promoting prostitution;

(k) Distribution of obscene materials;

(l) Sale, loan or exhibition to a minor of material harmful to minors;

(m) The display for sale or rental of material harmful to minors;

(n) Sexual exploitation of a minor;

(o) Aggravated sexual exploitation of a minor; and

(p) Especially aggravated sexual exploitation of a minor;

The fact that a conviction is being appealed shall have no effect whatsoever on the provisions of this chapter.

(24) "Specified services" means massage services, private dances, private modeling, or acting as an "escort" as defined in this chapter, and any other live adult entertainment as defined in this section.

(25) "Specified sexual activities" means:

(a) Human genitals in a state of sexual arousal;

(b) Acts of human masturbation, oral copulation, sexual intercourse, or sodomy; or

(c) Fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts. (as added by Ord. #17-75, Nov. 2017)

9-903. Prevention of sexual activity. No person who owns, operates or manages a sexually oriented business shall permit "specified sexual activities," as defined in this chapter, to occur on the premises. No commercial building, structure, premises or portion thereof shall be designed for or used to promote high-risk sexual conduct. No person who owns, operates, causes to be operated or manages a sexually oriented business, which exhibits on the premises in any one (1) or more viewing rooms or booths of less than one hundred fifty (150) square feet of floor space, a film, video cassette, other reproduction or live entertainment which depicts "specified sexual activities" or "specified anatomical areas," shall cause or allow any deviation from the following requirements:

(1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. No manager's station may exceed thirty two (32) square feet of floor area. If the premises has two (2) or more manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one (1) of the manager's stations. Each such area shall remain unobstructed by doors, curtains, partitions, walls, merchandise, display racks or other materials. All viewing rooms and booths shall have at least one (1) side open so that the area inside is visible from a manager's station. The view required in this subsection must be by direct line of sight from the manager's station;

(2) No alteration in the configuration or location of a manager's station may be made without the prior approval of the codes department;

(3) At least one (1) employee shall be on duty and situated in each manager's station at all times that any patron is present inside the premises;

(4) No viewing room or booth may be occupied by more than one (1) person at any time;

(5) Each viewing room or booth shall be lighted in such a manner that persons within are visible from a manager's station. The illumination level of each viewing room or booth, when not in use, shall be a minimum of ten (10) footcandles at all times, as measured from the floor. The illumination level of all other portions of the premises open to the public shall be a minimum of ten (10) footcandles at all times;

(6) No patron shall be permitted access to any area which has been designated as an area in which patrons will not be allowed;

(7) Each viewing room or booth shall be totally separated from adjacent viewing rooms and booths and any nonpublic areas by walls. All such walls shall be solid and extended from the floor to a height of not less than six feet (6') and shall be of light colored, nonporous, nonabsorbent, smooth textured and easily cleanable material. No such wall may be constructed of plywood or

composition board. No opening or aperture of any kind shall be allowed to exist between viewing rooms or booths. No person shall make or attempt to make an opening or aperture of any kind between viewing rooms or booths;

(8) All floor coverings in viewing rooms or booths shall be light colored, nonporous, nonabsorbent, smooth textured, easily cleanable surfaces, with no rugs or carpeting;

(9) The premises shall be maintained in a clean and sanitary manner at all times; and

(10) No occupant of a viewing room or booth shall be allowed to damage or deface any portion therein, engage in any type of sexual activity, cause any bodily discharge, or litter while inside. (as added by Ord. #17-75, Nov. 2017)

9-904. Involvement of minors. An operator of a sexually oriented business is in violation of this chapter if:

(1) The operator is less than eighteen (18) years of age, if an individual;

(2) Any officer, director, partner, stockholder or other individual having a direct or beneficial financial interest in the operator is less than eighteen (18) years of age, if the operator is a corporation, partnership or other form of business organization;

(3) Any employee of the sexually oriented business is less than eighteen (18) years of age;

(4) Any entertainer at the sexually oriented business is less than eighteen (18) years of age; or

(5) Any patron, customer, visitor, vendor, or other person inside the premises is less than eighteen (18) years of age. (as added by Ord. #17-75, Nov. 2017)

9-905. Specified criminal activity by operators, employees, entertainers and others. (1) No person may own or operate a sexually oriented business within the city if:

(a) He has a record of "specified criminal activity," as defined in this chapter, if the owner or operator is an individual; or

(b) Any officer, director, partner or other individual having at least a ten percent (10%) direct or beneficial financial interest in the operator has a record of "specified criminal activity," as defined in this chapter, if the owner or operator is a corporation, partnership or other form of business organization.

(2) No operator of a sexually oriented business may allow any employee who has a record of "specified criminal activity," as defined in this chapter, to work on the premises of the business.

(3) No operator of a sexually oriented business may allow any entertainer who has a record of "specified criminal activity," as defined in this chapter, to perform on the premises of the business.

(4) No operator, employee, or entertainer of a sexually oriented business may knowingly allow any "specified criminal activity" to occur on the premises of the business.

(5) No operator or employee of a sexually oriented business may allow any patron or customer who has carried out any "specified criminal activity" on the premises of the business to re-enter the premises.

(6) The police department may at any time investigate the criminal record of any person identified pursuant to § 9-909(4) of this chapter or of any employee of a sexually oriented business or of any entertainer performing at a sexually oriented business. (as added by Ord. #17-75, Nov. 2017)

9-906. Prohibited hours of operation. No sexually oriented business shall open to do business before eight o'clock A.M. (8:00 A.M.), Monday through Saturday; and no such establishment shall remain open after twelve o'clock (12:00) midnight, Monday through Saturday. No sexually oriented business shall be open for business on any Sunday or a legal holiday as designated in Tennessee Code Annotated, § 15-1-101. (as added by Ord. #17-75, Nov. 2017)

9-907. Duties and responsibilities of operators, employees, and entertainers. (1) The operator of each sexually oriented business shall maintain a register of all employees, showing the name, all aliases, home address, age, birth date, sex, weight, color of hair and eyes, telephone number, social security number, driver license or other state identification number and state of issuance, date of employment and termination, and duties of each employee. The above information for each employee shall be maintained on the premises during his or her employment and for a period of three (3) years following termination.

(2) The operator shall make such information available for inspection immediately upon request by the mayor, the mayor's authorized representative, the police department, or the codes department. Alternatively, if the mayor, the mayor's authorized representative, the police department, or the codes department requests that copies of any such information be delivered to them, the operator shall have such copies delivered within three (3) days of the request.

(3) An operator shall be responsible for the conduct of all employees and entertainers on the premises of the sexually oriented business and any act or omission of any employee or entertainer constituting a violation of a provision of this chapter shall be deemed to be the act or omission of the operator.

(4) There shall be posted and conspicuously displayed in the common areas of each sexually oriented business a list of any and all entertainment and services provided on the premises. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the mayor, the mayor's authorized representative, the police department, or the codes department.

(5) No operator, employee, or entertainer of a sexually oriented business shall allow any person under the age of eighteen (18) years on the premises of a sexually oriented business.

(6) A sign shall be conspicuously displayed in the common area of the premises of each sexually oriented business, and shall read as follows:

This sexually oriented business is regulated by the City of Portland, Tennessee. Employees, entertainers, or customers are not permitted to engage in any type of sexual conduct.

(7) Operators of sexually oriented businesses that provide "specified services," as defined in this chapter, for customers or patrons shall comply with the following requirements:

(a) For each "specified service," such customers or patrons shall be provided with written receipts. Operators shall keep copies of such receipts for at least three years, showing:

- (i) "Specified service" provided;
- (ii) Cost of "specified service";
- (iii) Date and time of service provided;
- (iv) Name of person providing the "specified service"; and
- (v) Method of payment for service;

(b) Copies of all published advertisements for the business shall be kept for at least three (3) years; and

(c) Copies of the receipts and advertisements required under this section shall be made available immediately upon request by the mayor, the mayor's authorized representative, the police department, or the codes department.

(8) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that the line of sight between the manager's station(s) and each viewing room or booth remains unobstructed by doors, curtains, partitions, walls, merchandise, display racks or other materials.

(9) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that the illumination required by this chapter is maintained at all times during business hours.

(10) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that no openings of any kind exist between viewing rooms or booths.

(11) The operator or his/her agent shall, during each business day, regularly inspect the walls of all viewing rooms and booths to determine if any openings or holes exist. If such openings exist, it is the duty of the operator to immediately repair the damage. No patron shall be permitted access to a viewing room or booth where such an opening exists. It shall be the duty of the operator and all employees on the premises to ensure that such rooms or booths are unoccupied by patrons until the opening is repaired and covered. (as added by Ord. #17-75, Nov. 2017)

9-908. Prohibited activities. (1) No operator, employee, or entertainer of a sexually oriented business shall perform or offer to perform any specified sexual activities on the premises of the business, or allow or encourage any person on the premises to perform or participate in any specified sexual activities.

(2) No operator, employee, entertainer, or customer shall be permitted to have any physical contact with any other person on the premises during any performance and all performances shall only occur upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest entertainer, employee, and/or customer.

(3) No business shall advertise that it offers or provides any entertainment or services which would fall under the definitions of "sexual conduct," "sexual stimulation" or "specified sexual activities" as defined in this chapter.

(4) No operator, employee, or entertainer shall serve or allow to be served or consumed any intoxicating liquor, wine, beer, or other malt beverage on the premises of a sexually oriented business.

(5) No operator, employee, or entertainer shall knowingly allow possession, use, or sale of controlled substances on the premises of a sexually oriented business.

(6) The possession of weapons by any patron or customer on the premises of a sexually oriented business shall be prohibited. Notice of such prohibition shall be posted on the premises. No operator, employee, or entertainer shall knowingly allow a patron or customer on the premises of a sexually oriented business to have a weapon in his possession. (as added by Ord. #17-75, Nov. 2017)

9-909. Reports. Any person operating or desiring to operate a sexually oriented business shall file a report with the codes department at least thirty (30) days prior to the opening of the business and no later than November 1 of each year thereafter. The report shall be filed in triplicate with and dated by the codes department upon receipt. One (1) copy of the dated report shall be returned to the operator and one (1) copy shall be promptly provided to the police department. The report shall be upon a form provided by the codes department and shall include the following information, which shall be sworn by the operator to be true and correct under oath:

(1) The name under which the sexually oriented business is or will be operated;

(2) The location and all telephone numbers for the sexually oriented business;

(3) The type of sexually oriented business which is being or will be operated, using the terms included in the definition of "sexually oriented business" provided in this chapter, if applicable, and a complete description of

all types of entertainment and services provided or to be provided by the business;

(4) If the operator is an individual, or for any individual who owns or will own at least a ten percent (10%) direct or beneficial interest in the business:

(a) Legal name and any other names or aliases used by the individual;

(b) Mailing address and residential address and telephone number;

(c) Business address and telephone number;

(d) A recent photograph of the individual;

(e) Age, date and place of birth;

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

(g) Date, issuing state and number of the individual's driver's license or other state identification card information;

(h) Social security number;

(i) Proof that the individual is at least eighteen (18) years of age; and

(j) The business, occupation or employment of the individual for five (5) years immediately preceding the date of the report.

(5) If the operator is a partnership:

(a) The partnership's complete name;

(b) The names of all partners and the information required above for all individuals who own or will own at least a ten percent (10%) direct or beneficial interest in the business;

(c) Whether the partnership is general or limited; and

(d) A copy of any printed partnership agreement.

(6) If the operator is a corporation:

(a) The corporation's complete name, address, and telephone number;

(b) The date and state of incorporation;

(c) The corporation's federal tax identification number;

(d) Evidence that the corporation is in good standing under the laws of the state of incorporation;

(e) The names and capacity of all officers, directors and principal stockholders and the information required above for all individuals who own or will own at least a ten percent (10%) direct or beneficial interest in the business; and

(f) The name and address of the registered corporate agent for service of process.

(7) The sexually oriented business or similar business history of the operator and of each individual listed under § 9-909(4) above, including:

(a) The name and location of each sexually oriented business or similar business currently or previously owned or operated by such operator or individual;

(b) If the operator or individual is or was a partner, officer, or director or holds or held at least a ten percent (10%) direct or beneficial interest in a partnership, corporation or other business entity which operates or operated or is or was majority owner of any sexually oriented business or similar business, the name and location of each such business and the owning or operating business entity;

(c) Whether such operator or individual, has had any license or permit issued to a sexually oriented business or similar business denied, suspended or revoked; and

(d) The name and location of each sexually oriented business or similar business for which the license or permit was denied, suspended or revoked, and the dates and reasons for each such suspension or revocation.

(8) Whether the operator or any of the operator's officers or directors or any individual listed under § 9-909(4) above has a record of any "specified criminal activity" as defined in this chapter, and, if so, the "specified criminal activity" or activities involved and the date, place and jurisdiction of each;

(9) If the premises are leased or being purchased under contract, a copy of such lease or contract;

(10) A sketch or diagram showing the configuration of the premises, including the total amount of floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6"). The codes department may waive this requirement if the report adopts a sketch or diagram that was previously submitted and the operator certifies that the configuration of the premises has not been altered since it was prepared. This requirement does not excuse the operator from compliance with all other applicable requirements for approval of building plans;

(11) For the initial report, a current certificate and straight-line drawing prepared within thirty (30) days prior to the filing of the report by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand feet (1,000') of the property of the business filing the report; the boundary lines of any residential zoning district within one thousand feet (1,000') of said property; and the property lines of any parcel which includes an established religious facility, child care or educational facility, public park or recreation area, family recreation center, liquor store or residence within one thousand feet (1,000') of said property. For purposes of this section, a use shall be considered existing or established if it is in existence at the time a report is submitted;

(12) A signed statement by the operator that the operator is familiar with the provisions of this chapter and is and will continue to be in compliance therewith, provided that if the operator is not an individual, such statement

shall be signed by each individual who owns or will own at least a ten percent (10%) direct or beneficial interest in the operator; and

(13) Any other reasonably available information necessary in determining whether the operator and the sexually oriented business meet the requirements of this chapter as determined by the mayor, the mayor's authorized representative, the police department, or the codes department. (as added by Ord. #17-75, Nov. 2017)

9-910. Inspections. In order to effectuate the provisions of this chapter, the mayor, the mayor's authorized representative, the police department, and the codes department are empowered to:

(1) Conduct investigations of the premises of any sexually oriented business or any business believed by any of them to be a sexually oriented business at any time such business is occupied or open for business;

(2) Inspect all licenses and records of any sexually oriented business and its operators and employees for compliance with this chapter at any time such business is occupied or open for business; and

(3) Conduct investigations of persons engaged or believed to be engaged in the operation of any sexually oriented business. (as added by Ord. #17-75, Nov. 2017)

9-911. Applicability. The provisions of this chapter are not intended to supersede any obligations or requirements of statutes, laws, rules, regulations, or ordinances, including licensing requirements and zoning restrictions, imposed by the State of Tennessee or the City of Portland and shall be in addition thereto. (as added by Ord. #17-75, Nov. 2017)

9-912. Violations. (1) Each of the following acts and omissions shall be considered a civil offense against the city:

(a) Failure to file any report required under this chapter at the time required or submittal of false or misleading information or omission of any material facts in any report required under this chapter;

(b) Any operator, employee, or entertainer violates any provision of this chapter;

(c) Any operator, employee, or entertainer denies access to the mayor, the mayor's authorized representative, the police department, or the codes department to any portion of the premises of the sexually oriented business at any time it is open for business; or

(d) Any operator fails to maintain the premises of a sexually oriented business in a clean, sanitary, and safe condition.

(2) Upon a second or subsequent violation by an operator, entertainer, or employee of a sexually oriented business, of any part of this chapter, or of any state statute regarding nudity, sexually oriented businesses, or adult entertainment, such business shall be deemed a nuisance and shall be subject

to an order of closure and/or to cease and desist by chancery court action seeking injunctive relief to enforce the provisions of this chapter, provided that such second or subsequent violation occurs after a conviction or plea of nolo contendere has been obtained for the previous such violation. (as added by Ord. #17-75, Nov. 2017)

CHAPTER 10

MOBILE FOOD VENDORS

SECTION

- 9-1001. Purpose.
- 9-1002. Definitions.
- 9-1003. Applicability.
- 9-1004. Limited exemptions.
- 9-1005. Mobile food vendor permit.
- 9-1006. Operation of mobile food vendors.
- 9-1007. Indemnity for benefit of the city and insurance.

9-1001. Purpose. The city has determined that regulation of Mobile Food Vendors (MFVs) is necessary in order to protect the health, safety, and welfare of the public, as well as to promote the public interest by regulating the areas and methods of operation. To meet these ends, the city has determined that all persons or entities that desire to vend from MFVs within the city must be issued a permit pursuant to the requirements of this chapter. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1002. Definitions. The following words, terms and phrases, when used in this chapter, shall have the following meanings ascribed to them in this section:

(1) "Edible food products." Edible food products are those products that are ready for immediate consumption, including prepackaged food, prepared food, and on-site prepared food. The term "edible food products" does not include fresh produce so long as the produce has not been packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption.

(2) "Outside preparation." Any external preparation of food or drink using external appliances, grills, or smokers that can safely be operated outside the MFV unit.

(3) "Ice cream vending unit." A motor vehicle containing a commercial freezer from which a vendor sells or gives away frozen food products such as ice cream, frozen yogurt, frozen custard, flavored frozen water, and similar desserts, whether prepackaged, prepared, or prepared on-site typically known as an ice cream truck. Such frozen food products are typically sold on city streets at intermittent locations. A pedestrian vendor selling frozen desserts shall not be considered an "ice cream vending unit."

(4) "Mobile food vendor." Generally, a Mobile Food Vendor ("MFV") is an enclosed unit, truck, or trailer, or similar vehicle-mounted unit that:

- (a) Is mobile or capable of being moved by a licensed motor vehicle;

(b) Any unit, such as hotdog, ice cream, or food cart, that is unloaded or delivered to an area for the purpose of vending to walk up customers, and is not easily moved from location to location without motorized help;

(c) May or may not be independent with respect to water, waste water, and power utilities;

(d) Is used for the preparation and/or sale of food;

(e) Does not exceed thirty-five feet (35') in length and nine feet (9') in width;

(5) "Operate." To "operate" or "operation" shall mean all activities associated with the conduct of business, including, but not limited to, set up, take down, and actual hours where the MFV is open for business.

(6) "Prepackaged food." Any properly labeled and processed food or beverage, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an off-site approved source, and that may be purchased at the MFV for immediate or later consumption.

(7) "Prepared food." Any food or beverage that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared by persons off-site from a MFV that may be purchased at the MFV for immediate or later consumption.

(8) "Public property." Any property owned or maintained by the city.

(9) "Right-of-way." For the purposes of this chapter, "right-of-way" shall mean streets where public parking is allowed and includes marked or unmarked parking spaces thereon. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1003. Applicability. The provisions of this chapter shall apply to mobile food vendors engaged in the business of preparing, cooking, and distributing food with or without charge on or in public or private property within the city limits. This chapter shall also apply to vendors selling prepared or prepackaged food if the vendor desires to exceed the exemption provided for the vendor herein. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1004. Limited exemptions. (1) Ice cream vending units. This chapter shall not apply to an ice cream vending unit so long as the unit is stationary in the same location for no more than fifteen (15) minutes at a time. An ice cream vending unit may sell or attempt to sell items that are frozen only on local streets where the speed limit is thirty (30) miles per hour or less. An ice cream vending unit shall not stop within twenty feet (20') of an intersection when attempting a sale or making a sale; and must have lights that are visible to oncoming traffic.

(2) Food donations. Public food donations are exempted, as long as no product is being sold in conjunction with a food give-a-way. All edible food

products must still follow safe food handling guidelines as directed by the Tennessee State Health Department. Food donation vendors must still receive permission to set up and distribute, and must not hinder pedestrian, vehicular, or public safety traffic or access.

(3) Compliance with chapter. Any vendor who is granted an exemption under this section and who desires to operate beyond the terms of the limited exemption described in this section shall comply with the provisions of this chapter that are applicable to MFVs.

(4) Community events. Certain city and chamber events may be exempt. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1005. Mobile food vendor permit. (1) Application and permit required. Unless exempted, every vendor desiring to engage in mobile food vending shall submit an application, along with all necessary information and inspections, to the business office along with the appropriate fees before a permit shall be issued. The permit application shall not be considered complete until a safety inspection is completed and the business office receives full payment for the type of permit desired. Permits are only valid during the calendar year in which they were issued; and each year the permitting process must be followed. Permits are non-transferrable.

(2) Applicable MFV permits. As with all MFV permits, if the MFV does not meet the requirements of the city, the MFV shall not receive a permit and it shall not be permitted to operate. The following MFV permit types are available:

(a) Special event permit. Vendors that wish to operate within the city during a single event may apply for a permit that is valid up to three (3) consecutive days; and this permit can only be issued three (3) times in a calendar year for the same MFV. City and chamber sponsored events may require additional fees and conditions.

(b) Test market permit. Vendors wishing to better understand the potential profitability of the area may apply. This permit can only be issued once in a calendar year and the permit has a duration of twenty-one (21) days; but it can be upgraded to either a limited access permit or a full access permit within the same calendar year by paying only the difference between the test market fee and the desired permit upgrade.

(c) Limited access permit. Vendors that wish to operate more frequently within the city may apply for the authorization to open their MFV business up to three (3) days per week during the year.

(d) Full access permit. Vendors wishing to maintain a constant presence in the city with their MFV business may apply for daily operation.

(3) Fees. A non-refundable application fee in the amount of twenty-five dollars (\$25.00) is required to receive an application for a MFV permit. There

shall be no proration of fees; and fees are non-refundable once a permit has been issued. The following fees apply:

- (a) Special event MFV permit fee - \$25.00
- (b) Test market MFV permit fee - \$50.00
- (c) Limited access MFV permit fee - \$275.00
- (d) Full access MFV permit fee - \$675.00

(4) Inspections after permitting. Permitted operations may be inspected periodically and without notice by representatives of various city departments to ensure compliance with this chapter.

(5) Operation without permit. Any MFV operating without a valid permit shall be deemed a public safety hazard and may be ticketed and impounded.

(6) Revocation of permit. The city may revoke a permit if it discovers that:

- (a) An applicant obtained the permit by knowingly providing false information on the application;
- (b) The continuation of the vendor's use of the permit presents a threat to public health or safety, or if the vendor otherwise presents a threat to public health or safety; or
- (c) The vendor violates regulations of this chapter or any other city ordinance.

(7) Revocation. Following the revocation of a permit, a vendor must wait six (6) months before reapplying for a new permit. Upon reapplication, the vendor must pay the full permit fee. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1006. Operation of mobile food vendors. The following requirements apply to all MFVs and vendors operating at any location, whether on city property, the right-of-way, or on private property within the city. Private property owners may seek additional requirements for MFVs operating on their property.

(1) Additional structures. When vending on public property or right-of-way outside of a special event authorized by the city or chamber, vendors shall not provide any dining area. The term "additional structures" does not include the waste containers required by this section. When vending on private property or within a special event authorized by the city or chamber, permission from the property owner is required before the vendor provides or allows any dining area, including, but not limited to, tables, chairs, booths, bar stools, benches and standup counters. Under no circumstances shall these dining areas encroach into the public right-of-way. The vendor shall remove all additional structures when the vendor ends its operations for the day.

(2) Compliance with laws. Except as provided herein, MFV placement and operation must adhere to federal, state, and local laws, regulations, and policies. Local laws, regulations, and policies include, but are not limited to, the

city's zoning ordinances, noise ordinances, stormwater regulations, and fire code. The vendor must comply with all safe food handling rules as described by the Tennessee Department of Health.

(3) Distance between MFVs. While operating, MFVs shall be at least ten feet (10') from other MFVs; except for approved events.

(4) District restrictions. (a) Residential districts. MFVs are generally restricted in all areas zoned residential. MFVs in residential zones are allowed only as part of an event that is sponsored or hosted by a neighborhood association, by a homeowners' association, a non-profit corporation, by the city, the chamber, or another governmental entity and each event is limited to one (1) day per calendar year for that particular neighborhood.

(b) Commercial districts. Generally, mobile vending on private property is permitted only in commercially zoned districts with improved lots except for city and chamber approved events.

(c) City property. Use of city property is generally not available except for city and chamber events. Certain city parking lots may allow MFVs, but that permission will be granted by the parks department at their discretion according to policies dealing with the use of city property.

(d) Unimproved lots. MFVs are not allowed to operate on unimproved lots.

(5) Electrical requirements. Any MFV under this chapter shall comply with the requirements of the National Electrical Code, and any other rules and regulations which may apply.

(6) Electrical service. Any power required for a MFV on a public right-of-way or public property should be self-contained. MFVs operating on private property may use electrical power from the property being occupied or an adjacent property only when permission has been given by an operator of the property to hook-up to electricity from the property. No power cord, cable, or equipment shall be extended at or across any public right-of-way, alley, sidewalk, or other public property. For the purposes of this section, "operator" refers to either the property owner or tenant where there is one (1) occupant of the parcel, or refers to the property owner where there are multiple occupants or tenants on a parcel. The owner/operator of the MFV may be responsible for any damage caused to the electrical system.

(7) Fire safety and inspection. Any vendor operating a MFV under this chapter shall comply with requirements of the International Fire Code as adopted, along with any other regulatory fire code as adopted. An inspection by the fire department must be passed before any permit is issued; and random inspections by city staff may be made any time after a permit is issued. All MFV operators are to adhere to the following:

(a) Vendors must have the appropriate fire suppression and/or fire extinguishers available at all times for their type of combustibles; such as described in NFPA 10.

(b) All gasoline and propane must be properly stored and secured according to acceptable best practices, standards, and codes; such as that of the NFPA.

(c) Each mobile unit must contain a fire/carbon monoxide alarm.

(d) No trash or combustible material shall accumulate or be located within three feet (3') of an open flame or fuel supply.

(e) Gasoline generators shall only be filled when the generator is cool to the touch and not in operation.

(8) Hours of operation. Generally, MFVs are allowed to operate between the hours of 7:00 A.M. and 10:00 P.M.; but may be shortened by the property owner. Certain approved events may dictate longer or shorter hours of operation as well.

(9) Items for sale. Generally, only food and beverage items may be sold from MFVs; a vendor may sell or distribute merchandise from the MFV only if the merchandise bears the logo of the vendor or the MFV; all other merchandise sales are prohibited. The sale or distribution of alcoholic beverages is prohibited specifically.

(10) Letter of permission. Vendors operating on private property shall obtain a letter from an operator of the property stating that the vendor has permission to vend on the property and, if applicable, has permission to serve the operator's employees and/or customers. The vendor shall keep a copy of the permission letter on the MFV at all times and while operating, the vendor shall produce the letter upon the request of any city official acting in an enforcement capacity. For the purposes of this section, "operator" refers to either the property owner or tenant where there is one (1) occupant of the parcel, or refers to the property owner where there are multiple occupants or tenants on a parcel.

(11) Maximum number of units per parcel. While operating on private property, except for approved events by the city or chamber, the number of MFVs allowed is limited by the size of the parcel as follows: For a lot that is one-half (1/2) acre or smaller, a maximum of one (1) MFVs is allowed; for a lot that is one-half to one (1/2-1) acre, a maximum of two (2) MFVs is allowed; for a lot that is larger than one (1) acre in size, a maximum of three (3) MFVs is allowed.

(12) Methods of support. MFVs shall be free-standing and shall not use stakes, rods, or any method of support that must be drilled, driven, or otherwise fixed, into or onto asphalt, pavement, curbs, sidewalks, or buildings.

(13) Mobile vending on city property. MFVs wishing to operate on city property must schedule places and times through the park department. A minimum notice of fourteen (14) business days must be given to allow for scheduling; and schedules cannot be made for those who do not have an active permit. Scheduling times and places are limited, and are on a first come first serve basis. All city functions take precedence over MFVs; and MFVs may be asked at any time to move to another location on city property, or off of city

property all together. The use, marking, or designation of spaces for mobile food vending does not grant vendors a vested right, property interest, or privilege in any specific space. City space for MFVs may be adjusted, modified, or removed if such adjustment, modification, or removal is determined to be in the interest of the public health, safety, welfare, and operation of the city.

(14) Obstruction of vehicular and pedestrian traffic. Placement of MFVs and any devices related to the MFV shall not obstruct or impede pedestrian or vehicular traffic, access to driveways or any egress or ingress, alley way, sight distance for drivers, loading bays, handicap parking spaces or access, or block fire hydrants or fire lanes.

(15) Operation on unimproved lots. MFVs shall not operate on unimproved non-commercial lots. For the purposes of this chapter, an "unimproved lot" is a lot without the following: paved surface for the MFV and its customers, paved driveway access to a city street, and adequate lighting for the paved area. This prohibition regarding unimproved lots shall not be applicable to properties owned by the city or to events coordinated by the city and the chamber.

(16) Outside preparation. Any food and beverage preparation outside of the MFV shall not obstruct vehicular or pedestrian traffic, and such preparation shall not create safety hazards for the public. Vendors shall not serve food to customers directly from any outside preparation unit. Any barbecue, smoker, or cooking device that is external to the MFV shall be blocked by sufficient barriers so as to protect, and alert, pedestrians from possible injury.

(17) Parking direction. When allowed, MFVs operating on public streets shall park in the same direction as traffic, with no more than eighteen inches (18") between the curb face or edge of pavement and with the service window, and the service window of the MFV must be facing the curb.

(18) Service to pedestrians. MFVs shall serve pedestrians only; a drive-thru or drive-in service for vehicular customers is prohibited. MFVs should use traffic cones to prevent vehicles from driving through the area where pedestrians would line up for service.

(19) Signs and flashing lights. A MFV is limited to signs mounted to the exterior of the mobile food vendor's unit and one (1) detached sandwich board sign. Sandwich board signs shall not obstruct or impede pedestrian or vehicular traffic. MFVs signs shall not contain flashing lights or flashing light-emitting diodes (LED), nor shall the MFV use flashing lights or flashing LED as an embellishment on the MFV to attract attention.

(20) Sound amplification. MFVs or vendors shall not use sound amplification equipment in a way that may create a nuisance to others.

(21) Spills. To prevent discharges into the storm drain system, each MFV shall comply with the stormwater regulations of the city. In addition, each MFV should have a spill response plan and kit onboard to contain and remediate any discharge from the MFV.

(22) Waste storage and disposal. Vendors shall supply, in a prominent location, trash containers sufficient in size to collect all waste generated by customers and staff of the MFV. The vendor shall keep the area around the MFV clear of litter and debris at all times. All trash and debris generated by customers and staff shall be collected by the vendor and deposited in their trash or recycling container and removed from the site by the vendor. Vendors shall not pour waste water or grease on the ground. Vendors shall not place food waste or grease into city owned trash receptacles. Vendors shall not place food, waste, or grease into any part of city's sewer system. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1007. Indemnity for benefit of the city and insurance. Any vendor operating under this chapter shall comply with all requirements of the city with regard to risk management, including the provision of insurance in accordance with the standards set by the city and the execution of an indemnity agreement in favor of the city when operating on city property. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

TITLE 10**ANIMAL CONTROL****CHAPTER**

1. IN GENERAL.
2. DOGS AND CATS.
3. VICIOUS ANIMALS.
4. DOMESTICATED FOWL REGULATIONS.

CHAPTER 1**IN GENERAL****SECTION**

- 10-101. Running at large prohibited.
- 10-102. Pen or enclosure to be kept clean.
- 10-103. Adequate food, water, and shelter, etc., to be provided.
- 10-104. Keeping in such manner as to become a nuisance prohibited.
- 10-105. Cruel treatment prohibited.
- 10-106. Seizure and disposition of cows, swine, sheep, horses, mules or goats, chickens, ducks, geese, turkeys or other domestic fowl, cattle or livestock.
- 10-107. Inspections of premises.

10-101. Running at large prohibited. It shall be unlawful for any person owning or being in charge of any cows, swine, sheep, horses, mules or goats, or any chickens, ducks, geese, turkeys, or other domestic fowl, cattle, or livestock, to knowingly or negligently permit any of them to run at large in any street, alley, or unenclosed lot within the corporate limits. (1980 Code, § 3-101)

10-102. 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. (1980 Code, § 3-102)

10-103. Adequate food, water, and shelter, etc., to be provided. No animal or fowl shall be kept or confined in any place where the food, water, shelter, and ventilation are not adequate and sufficient for the preservation of its health, safe condition, and wholesomeness for food is so intended.

All feed shall be stored and kept in a rat-proof and fly-tight building, box, or receptacle. (1980 Code, § 3-103)

10-104. Keeping in such manner as to become a nuisance prohibited. No animal or fowl shall be kept in such a place or condition as to become a nuisance either because of noise, odor, contagious disease, or other reason. (1980 Code, § 3-104)

10-105. Cruel treatment prohibited. It shall be unlawful for any person to beat or otherwise abuse or injure any dumb animal or fowl. (1980 Code, § 3-105)

10-106. Seizure and disposition of cows, swine, sheep, horses, mules or goats, chickens, ducks, geese, turkeys or other domestic fowl, cattle or livestock. Any cow, swine, sheep, horse, mule, goat, chicken, duck, goose, turkey or other domestic fowl, cattle or livestock 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 city council. If the owner is known, he shall be given notice in person, by telephone, or by a postcard addressed to his last-known mailing address. If the owner is not known or cannot be located, a notice describing the impounded cow, swine, sheep, horse, mule, goat, chicken, duck, goose, turkey or other domestic fowl, cattle or livestock 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 cow, swine, sheep, horse, mule, goat, chicken, duck, goose, turkey or other domestic fowl, cattle or livestock shall be sold or humanely destroyed, or it may otherwise be disposed of as authorized by the city council.

The pound keeper shall collect from each person claiming an impounded animal or fowl, a reasonable fee to cover the costs of impoundment and maintenance. (1980 Code, § 3-106)

10-107. Inspections of premises. For the purpose of making inspections to insure compliance with the provisions of this title, the health officer, or any police officer shall be authorized to enter, at any reasonable time, any premises where he has reasonable cause to believe an animal or fowl is being kept in violation of this chapter. (1980 Code, § 3-107)

CHAPTER 2

DOGS AND CATS

SECTION

- 10-201. Regulations applicable.
- 10-202. Rabies vaccination and registration required.
- 10-203. Dogs to wear tags.
- 10-204. Cats to have proof of vaccination.
- 10-205. Running at large prohibited.
- 10-206. Vicious dogs or cats to be securely restrained.
- 10-207. Noisy dogs or cats prohibited.
- 10-208. Confinement of dogs or cats suspected of being rabid.
- 10-209. Seizure and disposition of dogs and cats.
- 10-210. Abuse or mistreatment of dog, cat, or any animal.
- 10-211. Enforcement and penalties.

10-201. Regulations applicable. Anyone owning or keeping a dog or cat within the corporate limits of the City of Portland, Tennessee, must abide by the following. (1980 Code, § 3-201)

10-202. Rabies vaccination and registration required. It shall be unlawful for any person to own, keep, or harbor any dog or cat without having the same duly vaccinated against rabies and registered in accordance with the provisions of the "Tennessee Anti-Rabies Law" (Tennessee Code Annotated, §§ 68-8-101 through 68-8-114). (1980 Code, § 3-202)

10-203. Dogs to wear tags. 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. (1980 Code, § 3-203)

10-204. Cats to have proof of vaccination. It shall be unlawful for any person to own, keep, or harbor any cat which does not have proof evidencing the vaccination and registration required by § 10-202. (1980 Code, § 3-204)

10-205. Running at large prohibited.¹ It shall be unlawful for any person knowingly to permit any dog or cat owned by him unless under adult control to run at large within the corporate limits. (1980 Code, § 3-205)

¹State law reference

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

10-206. Vicious dogs or cats to be securely restrained. It shall be unlawful for any person to own or keep any dog or cat known to be vicious or dangerous unless such dog or cat is confined and/or otherwise securely restrained as to reasonably provide for the projection of other animals and persons. (1980 Code, § 3-206)

10-207. Noisy dogs or cats prohibited. No person shall own, keep, or harbor any dog or cat which, by loud and frequent barking, whining, screeching, or howling, annoys, or disturbs the peace and quiet of any neighborhood. (1980 Code, § 3-207)

10-208. Confinement of dogs or cats suspected of being rabid. If any dog or cat has bitten any person or is suspected of having bitten any person or is for any reason suspected of being infected with rabies, the health officer or chief of police may cause such dog or cat to be confined or isolated for such time as he reasonably deems necessary to determine if such dog or cat is rabid. (1980 Code, § 3-208)

10-209. Seizure and disposition of dogs and cats. Any dog found running at large may be seized by the health officer or any police officer and placed in a pound provided or designated by the governing body. If said dog is wearing a tag the owner shall be notified in person, by telephone, or by a post card addressed to his last-known mailing address to appear within five (5) days and redeem his dog by paying a reasonable pound fee, to be fixed by the pound keeper, 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 two (2) days. No dog shall be released in any event from the pound unless or until such dog has been vaccinated and a tag placed on its collar.

Any cat found running at large may be seized by the health officer or any police officer and placed in a pound provided or designated by the governing body. If said cat is wearing a name 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 cat by paying a reasonable pound fee, to be fixed by the pound keeper, or the cat will be humanely destroyed or sold. If said cat is not wearing a name tag it shall be humanely destroyed or sold unless legally claimed by the owner within two (2) days. No cat shall be released in any event from the pound unless or until such cat has been vaccinated and proof kept with the owner.

When, because of its viciousness or apparent infection with rabies, any cat found running at large cannot be safely impounded it may be summarily destroyed by the health officer or any policeman. (1980 Code, § 3-209)

10-210. Abuse or mistreatment of dog, cat, or any animal. Any owner knowingly mistreating or abusing any animal, by not feeding, watering

or sheltering in a responsible manner may be subject to the penalties set forth in § 10-211. (1980 Code, § 3-210)

10-211. Enforcement and penalties. Any owner or keeper of a dog or cat violating this chapter or any part of it shall, upon conviction, pay a fine of not less than \$2.00 nor more than \$50.00 for each offense. (1980 Code, § 3-211)

CHAPTER 3

VICIOUS ANIMALS

SECTION

- 10-301. Definitions.
- 10-302. Restraint.
- 10-303. Impoundment and violation notice.
- 10-304. Animal care.
- 10-305. Nuisance animal.
- 10-306. Animal waste.
- 10-307. Compliance.
- 10-308. Enforcement.
- 10-309. Penalties.

10-301. Definitions. (1) "Animal." Any live, vertebrate or invertebrate creature, domestic, or wild, warm or cold blooded, other than a human being.

(2) "Animal control officer." Any person designated by the mayor with primary responsibility in the area of animal control.

(3) "Animal shelter." Any facility operated by the city or other governmental entity for the purpose of impounding animals held under the authority of the city or state.

(4) "Confined" shall mean securely confined indoors, within an automobile or other vehicle, or confined in a securely enclosed and locked pen or structure upon the premises of the owner of such animal. Such pen or structure must have secure sides and a secure top and provide for appropriate shading. If the pen or structure has no bottom secured to the sides, the sides must be embedded into concrete no less than eighteen (18) inches into the ground and inspected and approved by the animal control officer or the codes and health administrator. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition and the size of the pen must be sufficient to house and shelter the animal comfortably but be no smaller than ten (10) feet by ten (10) feet.

(5) "Nuisance animal." Any animal or animals which:

- (a) Molests passersby or passing vehicles;
- (b) Attacks other animals;
- (c) Trespasses on school grounds;
- (d) Damages private or public property; or
- (e) Barks, whines or howls in an excessive, continuous or

untimely fashion, or adversely affects the health or disturbs the repose of any neighbor or disturbs the peace and quiet of a neighborhood.

(6) "Owner." Any person, association, partnership, corporation or other entity owning, keeping or harboring one (1) or more animals. An animal shall

be deemed to be harbored if it is fed or sheltered for three (3) consecutive days or more.

(7) "Pet." Any animal kept for pleasure rather than commercial use.

(8) "Restraint." Any animal secured by a leash or lead, or under the control of a responsible person and obedient to that person's commands, or within the real property limits of its owner, or confined within a vehicle.

(9) "Vicious animal." Any animal or animals that attacks, bites, or injures or poses a threat to human beings or other animals without adequate provocations or approaches any person in an aggressive, menacing or terrorizing manner or in an apparent attitude of attack if such person is upon any public ways or private property; or any animal which, because of temperament, conditioning or training, has a known propensity to attack, bite or injure human beings or other animals; or any animal which is trained for dog fighting or which is owned or kept primarily for the purpose of dog fighting or any animal fighting. Provided, however, no animal shall be declared vicious if the threat, injury, or damage by the animal was sustained by a person who was committing a crime or willfully trespassing upon the premises occupied by the owner of the animal, or the person injured was teasing, tormenting, abusing, assaulting, or provoking the animal, or if the animal was protecting or defending another human being, or other animal, or itself against unjustified attack or assault.

(10) "Wild animal." Any live monkey (nonhuman primate), raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx or any other warm-blooded animal which can normally be found in the wild state. (as added by Ord. #06-57, Feb. 2007)

10-302. Restraint. (1) Running at large prohibited. It shall be unlawful for the owner of any animal, or any person having an animal in his care, custody or possession to suffer or allow it to run at large unattended on or about the streets and highways of the City of Portland, or on the property of another person without permission of the owner or occupant of that property, or of the person in possession of that property.

(2) Duty to keep animal under restraint while off property. (a) It shall be the duty of the owner of any animal or anyone having an animal in his care, custody or possession to keep said animal under control at all times while the animal is off the real property limits of the owner, possessor or custodian. For the purposes of this section, an animal is deemed "under control" when it is confined within a vehicle, parked or in motion, is secured by a leash or other device held by a competent person, is under voice command of a competent person with said person being present with said animal, is properly confined within an enclosure with permission of the owner of the property where the enclosure is located.

(b) No person shall permit a vicious animal to go outside its kennel or pen unless such animal is securely leashed with a leash no longer than four (4) feet in length. No person shall permit a vicious

animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person of suitable age and discretion is in physical control of the leash. Such animals may not be leashed to inanimate objects such as trees, posts, buildings or structures. In addition a muzzling device sufficient to prevent such animal from biting persons or other animals shall muzzle all vicious animals on a leash outside the animal's kennel.

(3) Vicious animals. As determined by the animal control officer, each vicious animal will be confined by the owner or custodian of the animal within a building or secure enclosure and shall be securely muzzled and restrained or caged whenever off the premises of its owner.

(4) Procedure for determining a vicious animal. The animal control officer upon his or her complaint or allegation alleging an animal to be vicious shall hold a hearing within five (5) days of serving notice to the animal owner. In making his decision whether the animal is vicious, the animal control officer shall consider, but is not limited to, the following criteria:

- (a) Provocation;
- (b) Severity of attack;
- (c) Previous aggressive history;
- (d) Observable behavior;
- (e) Site and circumstances of the incident;
- (f) Age of the victim;
- (g) Statements from witnesses;
- (h) Reasonable enclosures already in place;
- (i) Height and weight of animal.

Within five (5) days of hearing, the animal control officer shall determine whether to declare the animal vicious and shall within five (5) days after the hearing notify the owner by certified mail of the animal's designation as a vicious animal and the specific restrictions and conditions for keeping the animal. If declared vicious, the animal owners must notify all abutting property owners by certified mail, with return receipt requested, and such notification shall be at owner's expense. (as added by Ord. #06-57, Feb. 2007)

10-303. Impoundment and violation notice. (1) Unrestrained and nuisance animals shall be taken by the animal control officer and impounded in an animal shelter and there confined in a humane manner.

(2) If by a license, tag or other means, the owner of an impounded animal can be identified, the animal control officer shall immediately upon impoundment notify the owner by telephone or mail or other appropriate and reasonable means.

(3) An owner reclaiming an impounded animal will pay a fee of thirty dollars (\$30.00) plus five dollars (\$5.00) per day the animal has been impounded and the costs of all medical treatment or other cost or expense incurred as deemed necessary by the animal control officer. If the animal control officer determines the animal has vicious tendencies, the owner may be required as a

condition to reclaiming the animal to provide evidence of insurance in an amount not less than one hundred thousand dollars (\$100,000.00) to insure the owner against claims for personal injuries that may be inflicted by the animal.

(4) Any animal not reclaimed by its owner within three (3) days will become the property of the city and will be placed for adoption in a suitable home or humanely euthanized. An owner of an unclaimed animal, whether licensed or not, will be charged with having an unrestrained animal.

(5) In addition to, or in lieu of, impounding an animal found at large, the animal control officer or police officer may issue to the known owner of such animal a notice of ordinance violation. Such notice, if uncontested, shall impose upon the owner a penalty of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) which may, at the discretion of the animal owner, be paid to the animal control center within seventy-two (72) hours (excluding Saturday and Sunday) in full satisfaction of the assessed penalty. In the event such penalty is not paid within the seventy-two (72) hour time period prescribed, a citation or warrant will be issued and additional costs assessed for the same.

(6) The city judge may order the impoundment and destruction of a vicious animal where:

(a) The vicious animal has attacked, bitten or injured a human being or domestic animal or;

(b) The animal is a vicious animal as defined herein and the owner has failed to comply with the requirements and conditions for keeping a vicious animal as defined herein, or;

(c) All fines or costs imposed under this ordinance have become final orders, and remain unpaid or

(d) The vicious animal poses a threat of serious harm to the public health or safety.

Within five (5) days after impoundment, the animal control officer shall notify the vicious animal's owner in writing of the impoundment.

The owner of an impounded vicious animal shall have the right to file, within five (5) days after receiving notice, a written request for a hearing to contest the impoundment. The hearing shall be before the city judge within fifteen (15) business days after receipt of the request. The animal control officer shall provide notice of the date, time and location of the hearing to the owner of the vicious animal by certified mail, and to the complainant by regular mail. The hearing shall be informal and strict rules of evidence shall not apply. The owner may be represented by counsel, present oral and written evidence and cross-examine witnesses.

After considering all of the relevant evidence, the city judge shall issue a decision and may order the destruction of the vicious animal or may release the vicious animal to its owner conditioned on the owner complying with the requirements set forth in this chapter or with any other requirements necessary to protect the public health or safety. If the owner of an impounded vicious animal fails to appear at a hearing, or fails to request a hearing within the

allotted time, the animal may be destroyed. The city judge may issue an order that the matter be transferred to the General Sessions Court of Sumner County for disposition or the matter referred to the District Attorney of Sumner County for further proceedings and if a referral is made the vicious animal shall be impounded pending a decision from the General Sessions Court or the Circuit Court for Sumner County, Tennessee. (as added by Ord. #06-57, Feb. 2007)

10-304. Animal care. (1) No owner or custodian shall fail to provide his or her animals with sufficient good and wholesome food and water, proper shelter and protection from the weather and veterinary care when needed to prevent suffering, and shall provide such animals with humane care and treatment.

(2) No person shall beat, cruelly ill treat, torment, overload, overwork or otherwise abuse an animal, or cause, instigate, suffer or permit any dogfight, cockfight, bullfight or other combat between animals or between animals and humans.

(3) No owner of an animal shall abandon such animal.

(4) No person except a licensed veterinarian shall crop a dog's ears nor dock a dog's tail.

(5) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be reasonable and shall immediately report such injury or death to the animal's owner; in the event the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency. (as added by Ord. #06-57, Feb. 2007)

10-305. Nuisance animal. It shall be unlawful to keep or harbor any animal which barks, howls, or whines in an excessive, continuous or untimely fashion; creates a nuisance; or adversely affects the health or disturbs the repose of any neighbor, or disturbs the peace and quiet of a neighborhood. Owners of such animals will receive one (1) warning from the police or animal control to correct the situation, a citation will be issued if the police or animal control have to respond to repeated complaints. (as added by Ord. #06-57, Feb. 2007)

10-306. Animal waste. The owner of every animal shall be responsible for the removal of any excreta deposited by his or her animal(s), or animals in his or her custody, on public walks, recreation areas, private property and public parks. (as added by Ord. #06-57, Feb. 2007)

10-307. Compliance. (1) It shall be unlawful for the owner, keeper, or possessor of a vicious animal within the City of Portland to fail to comply with the provision of this chapter. Any animal found to be subject of a violation of this chapter shall be subject to immediate seizure and impoundment. In addition

failure to comply will result in the revocation of the license of such animal resulting in the immediate removal of the animal from the City of Portland.

(2) No owner, lessee, tenant or subtenant of any property, public or private, located within the city shall keep, maintain or cause to be kept any horses, mules, donkeys, cattle, swine, chickens, turkeys, ducks, geese, goats, sheep, hares or similar animals or fowl either domesticated or non-domesticated except under conditions set forth in the provisions of the municipal code of the city. (as added by Ord. #06-57, Feb. 2007)

10-308. Enforcement. The civil provisions of this chapter shall be enforced by those persons or agencies designated by the mayor. It shall be a violation of this chapter to interfere with an animal control officer in the performance of his or her duties. (as added by Ord. #06-57, Feb. 2007)

10-309. Penalties. Any person violating any provision of this chapter will be punished in accordance with the appropriate provisions of the charter and ordinances of the city and the statutes of Tennessee and shall be guilty of a misdemeanor and may be punished by a fine not to exceed fifty dollars (\$50.00) per day for each violation in addition to other penalties that may be imposed by the city judge. Each separate day during which an offense occurs under this chapter shall constitute a separate chargeable offense. (as added by Ord. #06-57, Feb. 2007)

CHAPTER 4

DOMESTICATED FOWL REGULATIONS

SECTION

- 10-401. Definitions.
- 10-402. Prohibitions.
- 10-403. Waste disposal.
- 10-404. Lot restrictions.
- 10-405. Regulations applicable.

10-401. Definitions. (1) "Domesticated fowl," for this chapter are described as female chickens, ducks, pheasants, etc.

(2) "Fowl waste," includes excrement, uneaten feed, feathers, or other waste items. (as added by Ord. #19-87, Oct. 2019 *Ch12_12-06-21*)

10-402. Prohibitions. (1) Roosters are not allowed.

(2) No breeding or slaughtering of domesticated fowl are allowed.

(3) No domesticated fowl may be raised, trained, and/or used for the purpose of fighting, amusement, sport, financial gain, or feed for other animals.

(4) Neither domesticated fowl, nor any housing for such, may be kept in the front yard.

(5) Domesticated fowl are not allowed on lots with multi-family dwellings such as duplexes, apartments, townhomes, etc.

(6) Domesticated fowl for any commercial use are not allowed in residential districts.

(7) Domesticated fowl for personal use are not allowed in any commercial, industrial, or mixed use zones.

(8) Domesticated fowl are not allowed on any residential lot with a minimum lot size less than seven thousand (7,000) square feet as allowed by the Zoning District in the City of Portland Zoning Ordinance. (as added by Ord. #19-87, Oct. 2019 *Ch12_12-06-21*)

10-403. Waste disposal. (1) Adequate provision must be made for the storage and removal of domesticated fowl manure and waste.

(2) All manure for composting or fertilizing shall be contained in a well-aerated garden compost pile. All other manure and waste requires removal.

(3) The domesticated fowl house, cage, and surrounding area must be kept free from trash and accumulated droppings. Domesticated fowl manure, and other waste, is not to be placed within fifteen feet (15') of any property line; neither is it allowed in the front yard.

(4) Any animal that dies must be properly disposed of. Dead animals are not allowed to be thrown into the trash. (as added by Ord. #19-87, Oct. 2019 *Ch12_12-06-21*)

10-404. Lot restrictions. (1) No more than three (3) domesticated fowl are allowed on residential lots with a minimum lot size of seven thousand to ten thousand (7,000-10,000) square feet as allowed by the Zoning District in the City of Portland Zoning Ordinance.

(2) No more than six (6) domesticated fowl are allowed on residential lots with a minimum lot size of ten thousand one to twenty thousand (10,001-20,000) square feet as allowed by the Zoning District in the City of Portland Zoning Ordinance. (as added by Ord. #19-87, Oct. 2019 *Ch12_12-06-21*)

10-405. Regulations applicable. Regulations contained within this chapter are in addition to Chapter 1 of Title 10 of the municipal code; and further restrictions from state and federal may apply. (as added by Ord. #19-87, Oct. 2019 *Ch12_12-06-21*)

TITLE 11

MUNICIPAL OFFENSES¹

CHAPTER

1. ALCOHOL.
2. FORTUNE TELLING, ETC.
3. OFFENSES AGAINST THE PERSON.
4. OFFENSES AGAINST THE PEACE AND QUIET.
5. INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL.
6. FIREARMS, WEAPONS AND MISSILES.
7. TRESPASSING, MALICIOUS MISCHIEF AND INTERFERENCE WITH TRAFFIC.
8. MISCELLANEOUS.
9. EPHEDRINE AND EPHEDRINE RELATED PRODUCTS.
10. HANDBILL ORDINANCE.

CHAPTER 1

ALCOHOL²

SECTION

- 11-101. Drinking beer, etc., on streets, etc.
 11-102. Minors in beer places.

11-101. Drinking beer, etc., on streets, etc. It shall be unlawful for any person to drink or consume, or have an open can or bottle of beer in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground or other public place unless the place has a beer permit and license for on premises consumption. (1980 Code, § 10-229)

¹Municipal code references

- Animals and fowls: title 10.
- Housing and utilities: title 12.
- Fireworks and explosives: title 7.
- Traffic offenses: title 15.
- Streets and sidewalks (non-traffic): title 16.

²Municipal code reference

- Sale of alcoholic beverages, including beer: title 8.

State law reference

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

11-102. Minors in beer places. No person under twenty-one (21) years of age shall loiter in or around, or otherwise frequent any place where beer is sold at retail for consumption on the premises. (1980 Code, § 10-222, modified)

CHAPTER 2**FORTUNE TELLING, ETC.****SECTION**

11-201. Fortune telling, etc.

11-201. 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. (1980 Code, § 10-234)

CHAPTER 3

OFFENSES AGAINST THE PERSON

SECTION

11-301. Assault and battery.

11-301. Assault and battery. It shall be unlawful for any person to commit an assault or an assault and battery. (1980 Code, § 10-201)

CHAPTER 4

OFFENSES AGAINST THE PEACE AND QUIET

SECTION

11-401. Disturbing the peace.

11-402. Anti-noise regulations.

11-403. Disorderly conduct.

11-401. Disturbing the peace. 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. (1980 Code, § 10-202)

11-402. Anti-noise regulations. 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) Miscellaneous prohibited noises enumerated. 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 other vehicle while not in motion except as a danger signal if another vehicle is approaching, apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.

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

(c) 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 municipal 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.

(h) Building operations. The erection (including excavation), demolition, alteration, or repair of any building in any residential area or section or the construction or repair of streets and highways in any residential area or section, other than between the hours of 7:00 A.M. and 6:00 P.M. on 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.

(1) 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) Exceptions. None of the terms or prohibitions hereof shall apply to or be enforced against:

(a) Municipal 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 recorder. Hours for the use of an amplifier or public address system will be designated in the permit so issued and the use of such systems shall be restricted to the hours so designated in the permit. (1980 Code, § 10-233)

11-403. Disorderly conduct. It shall be unlawful for any person to be so boisterous, loud, or disorderly as to disturb the peace and quietude of the City of Portland, or to obstruct the free passage along its streets or sidewalks, or having loud speakers so as to disturb the peace and quietude of same. (1980 Code, § 10-238)

CHAPTER 5

INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL

SECTION

11-501. Escape from custody or confinement.

11-502. Impersonating a government officer or employee.

11-503. False emergency alarms.

11-504. Resisting or interfering with city personnel.

11-505. Coercing people not to work.

11-501. Escape from custody or confinement. It shall be unlawful for any person under arrest or otherwise in custody of or confined by the city to escape or attempt to escape, or for any other person to assist or encourage such person to escape or attempt to escape from such custody or confinement. (1980 Code, § 10-209)

11-502. Impersonating a government officer or employee. 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. (1980 Code, § 10-211)

11-503. False emergency alarms. It shall be unlawful for any person intentionally to 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. (1980 Code, § 10-217)

11-504. Resisting or interfering with city personnel. It shall be unlawful for any person knowingly to resist or in any way interfere with or attempt to interfere with any officer or employee of the city while such officer or employee is performing or attempting to perform his city duties. (1980 Code, § 10-210)

11-505. Coercing people not to work. It shall be unlawful for any person in association or agreement with any other person to assemble, congregate, or meet together in the vicinity of any premises where other persons are employed or reside for the purpose of inducing any such other person by threats, coercion, intimidation, or acts of violence to quit or refrain from entering a place of lawful employment. It is expressly not the purpose of this section to prohibit peaceful picketing. (1980 Code, § 10-230)

CHAPTER 6

FIREARMS, WEAPONS AND MISSILES

SECTION

11-601. Fire bombs.

11-602. Throwing missiles.

11-603. Weapons and firearms generally.

11-601. Fire bombs. It shall be unlawful for any person or persons to throw, explode, place, or have in his possession, a fire bomb, molotov cocktail, or any other device used for malicious destruction. (1980 Code, § 10-213)

11-602. Throwing missiles. It shall be unlawful for any person to throw any stone, snowball, bottle, or any other missile maliciously upon or at any vehicle, building, tree, or other public or private property or upon or at any person. (1980 Code, § 10-214)

11-603. Weapons and firearms generally. It shall be unlawful for any person to carry in any manner whatever, with the intent to go armed, any razor, dirk, knife, blackjack, brass knucks, pistol, revolver, or any other dangerous weapon or instrument except the army or navy pistol which shall be carried openly in the hand. However, the foregoing prohibition shall not apply to members of the United States Armed Forces carrying such weapons as are prescribed by applicable regulations nor to any officer or policeman engaged in his official duties, in the execution of process, or while searching for or engaged in arresting persons suspected of having committed crimes. Furthermore, the prohibition shall not apply to persons who may have been summoned by such officer or policeman to assist in the discharge of his said duties, nor to any conductor of any passenger or freight train of any steam railroad while he is on duty. It shall also be unlawful for any unauthorized person to discharge a firearm within the city. (1980 Code, § 10-212)

CHAPTER 7

**TRESPASSING, MALICIOUS MISCHIEF AND INTERFERENCE
WITH TRAFFIC****SECTION**

- 11-701. Trespassing.
- 11-702. Trespassing on trains.
- 11-703. Malicious mischief.
- 11-704. Interference with traffic.

11-701. Trespassing. The owner or person in charge of any lot or parcel of land or any building or other structure within the corporate limits may post the same against trespassers. It shall be unlawful for any person to go upon any such posted lot or parcel of land or into any such posted building or other structure without the consent of the owner or person in charge.

It shall be unlawful and deemed to be a trespass for any peddler, canvasser, solicitor, transient merchant, or other person to fail to leave promptly the private premises of any person who requests or directs him to leave. (1980 Code, § 10-226)

11-702. Trespassing on trains. It shall be unlawful for any person to climb, jump, step, stand upon, or cling to, or in any other way attach himself to any locomotive engine or railroad car unless he works for the railroad corporation and is acting the scope of his employment or unless he is a lawful passenger or is otherwise lawfully entitled to be on such vehicle. (1980 Code, § 10-221)

11-703. Malicious mischief. It shall be unlawful and deemed to be malicious mischief for any person willfully, maliciously, or wantonly to damage, deface, destroy, conceal, tamper with, remove, or withhold real or personal property which does not belong to him. (1980 Code, § 10-225)

11-704. Interference with traffic. It shall be unlawful for any person to stand, sit, or engage in any activity whatever on any public street, sidewalk, bridge, or public ground in such a manner as to prevent, obstruct, or interfere unreasonably with the free passage of pedestrian or vehicular traffic thereon. (1980 Code, § 10-232)

CHAPTER 8

MISCELLANEOUS

SECTION

11-801. Abandoned refrigerators, etc.

11-802. Caves, wells, cisterns, etc.

11-803. Posting notices, etc.

11-804. Curfew for minors.

11-805. Wearing masks.

11-806. Water tank.

11-807. Riding fire engine.

11-808. Pinball machines.

11-801. Abandoned refrigerators, etc. It shall be unlawful for any person to leave in any place accessible to children any abandoned, unattended, unused, or discarded refrigerator, icebox, or other container with any type latching or locking door without first removing therefrom the latch, lock, or door. (1980 Code, § 10-223)

11-802. Caves, wells, cisterns, etc. It shall be unlawful for any person to permit to be maintained on property owned or occupied by him any cave, well, cistern, or other such opening in the ground which is dangerous to life and limb without an adequate cover or safeguard. (1980 Code, § 10-231)

11-803. Posting notices, etc. No person shall fasten, in any way, any show-card, poster, or other advertising device upon any public or private property unless legally authorized to do so. (1980 Code, § 10-227)

11-804. Curfew for minors. It shall be unlawful for any person under the age of eighteen (18) years to be abroad at night between 12:00 Midnight and 5:00 A.M. unless going directly to or from a lawful activity or upon a legitimate errand for, or accompanied by, a parent, guardian, or other adult person having lawful custody of such minor. (1980 Code, § 10-224)

11-805. Wearing masks. It shall be unlawful for any person to appear on or in any public way or place while wearing any mask, device, or hood whereby any portion of the face is so hidden or covered as to conceal the identity of the wearer. The following are exempted from the provisions of this section:

(1) Children under the age of ten (10) years.

(2) Workers while engaged in work wherein a face covering is necessary for health and/or safety reasons.

(3) Persons wearing gas masks in civil defense drills and exercises or emergencies.

(4) Any person having a special permit issued by the city recorder to wear a traditional holiday costume. (1980 Code, § 10-235)

11-806. Water tank. It shall be unlawful for any person to climb upon, disfigure, deface, or injure any water tank maintained by the City of Portland as a part of its municipal water system. (1980 Code, § 10-237)

11-807. Riding fire engine. It shall be unlawful for any person, other than a member of the fire department, to mount or ride upon a fire engine when on duty. (1980 Code, § 10-239)

11-808. Pinball machines. It shall be unlawful for any pinball machine to be operated in a public place within the corporate limits of the City of Portland. The city council is empowered to have the city police remove any other machines used for games of chance which the city council deems a menace to the community. (1980 Code, § 10-240)

CHAPTER 9

EPHEDRINE AND EPHEDRINE RELATED PRODUCTS

SECTION

- 11-901. Sales regulated.
- 11-902. Definitions.
- 11-903. Accessibility of products.
- 11-904. Exemptions.
- 11-905. Employee training.
- 11-906. Registration of purchases.
- 11-907. Penalties for failure to comply.

11-901. Sales regulated. 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 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. (as added by Ord. #04-11, April 2004)

11-902. Definitions. (1) The use of the terms "ephedrine," "pseudoephedrine," or "phenylpropanolamine" in this chapter shall include the salts, optical isomers, or salts of optical isomers of ephedrine, pseudoephedrine and phenylpropanolamine.

(2) The use of the term "retail establishment" in this chapter 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.

(3) The use of the term "consumer accessible shelving" in this chapter shall mean any area of a retail establishment other than a product display area behind a counter where the public is not permitted, or within a locked display case or within 6 feet of a register located on a checkout counter. (as added by Ord. #04-11, April 2004)

11-903. Accessibility of products. 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 and offered for sale in any retail establishment on consumer-accessible shelving. (as added by Ord. #04-11, April 2004)

11-904. Exemptions. This chapter shall not apply as follows:

- (1) To any products labeled pursuant to federal regulation for use only in children under twelve years of age;
- (2) 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;
- (3) To any animal feed products containing ephedrine, or naturally occurring or herbal ephedra or extract of ephedra, pseudoephedrine, or phenylpropanolamine; and
- (4) To the sale or deliver of any products containing ephedrine, pseudoephedrine, or phenylpropanolamine pursuant to the lawful prescription of a person authorized by state law to prescribe such products. (as added by Ord. #04-11, April 2004)

11-905. Employee training. Any person who is considered the general owner or operator of a retail establishment where products containing ephedrine, pseudoephedrine, or phenylpropanolamine are available for sale who violates §§ 11-901 or 11-902 of this chapter shall not be penalized pursuant to this chapter if such 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. (as added by Ord. #04-11, April 2004)

11-906. Registration of purchases. (1) 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.

(2) The register described in subsection (1) shall be created by any retail establishment that sells a product or products described in subsection (1) and shall require at least the following information:

- (a) The specific quantity of ephedrine, pseudoephedrine or phenylpropanolamine purchased;
- (b) The signature of the purchaser;
- (c) The name and residential or mailing address of the purchaser; other than a post office box number;
- (d) The number of the purchaser's motor vehicle operator's license or other proper identification at the time of the purchase;
- (e) The date of such purchase; and
- (f) The signature of an employee of the retail establishment as witness to the purchase and identification of the purchase.

(3) 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.

(4) 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 good legitimate medical purpose. (as added by Ord. #04-11, April 2004)

11-907. Penalties for failure to comply. It is a civil offense to fail to comply with the foregoing regulations. Any violation of these sections is punishable by civil penalty of up to \$50.00. Each day a violation continues under § 11-902 above shall constitute a separate offense. (as added by Ord. #04-11, April 2004)

CHAPTER 10

HANDBILL ORDINANCE

SECTION

- 11-1001. Intent and purpose.
- 11-1002. Definitions.
- 11-1003. Posting notice, placard, bill, etc., prohibited.
- 11-1004. Throwing handbills in public places prohibited.
- 11-1005. Placing handbills in or upon vehicles prohibited.
- 11-1006. Distribution of handbills on uninhabited or vacant private premises prohibited.
- 11-1007. Distribution of handbills where prohibition properly posted.
- 11-1008. Distribution of unsolicited written material.
- 11-1009. Handbills depiction certain matter prohibited.
- 11-1010. Existing ordinances not affected.
- 11-1011. Exemptions.
- 11-1012. Penalty.
- 11-1013. Severability.

11-1001. Intent and purpose. The City Council of the City of Portland finds and declares that to protect the people against the nuisance of and incident to the promiscuous distribution of handbills and circulars, with the resulting detriment and danger to public health and safety, the public interest, convenience and necessity requires in their regulation and to that end the purposes of this ordinance are specifically declared to be as follows:

(1) To protect local residents against trespassing by solicitors, canvassers, or handbill distributors upon the private property of residents if they have given reasonable notice that they do not wish to be solicited by those persons or do not desire to receive handbills or advertising matter;

(2) To protect the people against the health and safety menace and the expense incident to the littering of the streets and public places by the promiscuous and uncontrolled distribution of advertising matter and commercial and non-commercial handbills; and

(3) To preserve the people's constitutional right to receive and disseminate information. (as added by Ord. #09-56, Nov. 2009)

11-1002. Definitions. The following words, terms and phrases, when used in this ordinance, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Commercial, handbill" means any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet, and/or other printed or otherwise reproduced original or copies of any matter or literature:

(a) That advertises for sale any merchandise, product, commodity, or thing;

(b) That directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interests by sales;

(c) That directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause do not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to the meeting, theatrical performance, exhibition, or event of any kind, when either is held, given, or takes place in connection with the dissemination of information that is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order. Nothing in this ordinance authorizes the holding, giving, or taking place of any meeting, theatrical performance, exhibition, or event of any kind without a license, where a license is or may be required by any law of this state, or under any ordinance of this city;

(d) That while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person engaged as advertiser or distributor.

(2) "Newspaper" means any newspaper of general circulation as defined by general law, any newspaper duly entered with the United States Postal Service, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law. "In addition" means any periodical or current magazine regularly published with not fewer than four (4) issues per year, and sold to the public.

(3) "Non-commercial handbill" means any printed or written matter, any sample or device, circular, leaflet, pamphlet, newspaper, magazine, paper booklet, or any other printed or otherwise reproduced original or copies of any matter or literature not included in the procedure definitions of a commercial handbill or a newspaper.

(4) "Obscene" means material that depicts or describes sexual conduct that is objectionable or offensive to accepted standards of decency that the average person, applying contemporary community standards would find, taken as a whole, appeals to prurient interests or material that depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, that taken as a whole, lacks serious literary, artistic, political, or scientific value.

(5) "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.

(6) "Private premises" means any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential

purposes, whether inhabited, uninhabited or vacant, and includes any yard, grounds, walk, driveway, porch, steps, vestibule, or mailbox belonging or appurtenant to that dwelling, house, building, or other structure.

(7) "Public place" means any streets, boulevard, avenues, lanes, alleys, or other public way and public park, square, space, plaza, grounds or buildings. (as added by Ord. #09-56, Nov. 2009)

11-1003. Posting notice, placard, bill, etc., prohibited. It is unlawful to post, stick, stamp, paint or otherwise affix, any notice, placard, bill, card, poster, advertisement, or other paper or device calculated to attract the attention of the public, to or upon any sidewalk, crosswalk, curb or curbstone, flagstone, or any other portion or part of any public way or public place; or any lamp post, electric light, telegraph, telephone, or trolley line pole; railway structure; hydrant; shade tree or tree-box; or upon the piers, columns, trusses, railings, gates, or other parts of any public bridge or viaduct; or other public structure or building; or so cause this to be done, except authorized or required by the laws of the United States, or the State of Tennessee, and the ordinances of the city. (as added by Ord. #09-56, Nov. 2009)

11-1004. Throwing handbills in public places prohibited. It is unlawful for any person to deposit, place, throw, scatter, or cast any commercial or noncommercial handbill in or upon any public place within the city. It is not unlawful for any person to hand out or distribute, without charge to the recipient any commercial or non-commercial handbill in any public place to any person willing to accept the handbill. (as added by Ord. #09-56, Nov. 2009)

11-1005. Placing handbills in or upon vehicles prohibited. It is unlawful for any person to distribute, deposit, place, throw, scatter, or cast any commercial or non-commercial handbill in or upon any automobile or other vehicle. The handing, transmitting, or distribution of any commercial or non-commercial handbill to the owner or other occupant of any automobile or other vehicle, who is willing to accept it, is not unlawful. (as added by Ord. #09-56, Nov. 2009)

11-1006. Distribution of handbills on uninhabited or vacant private premises prohibited. It is unlawful for any person to distribute, deposit, place, throw, scatter, or cast any commercial or non-commercial handbill in or upon any private premises that are uninhabited or vacant. (as added by Ord. #09-56, Nov. 2009)

11-1007. Distribution of handbills where prohibition properly posted. It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or non-commercial handbill upon any premises, if requested by the owner or occupant not to do so, or if there is placed, on the

premises in a conspicuous position near its entrance a sign bearing the words: "No Trespassing," "No Peddlers or Agents," "No Advertisements," or any similar notice, indicating in any manner that the occupants of this premises do not desire to be molested or to have their right of privacy disturbed, or to have any such commercial or non-commercial handbills left upon its premises. (as added by Ord. #09-56, Nov. 2009)

11-1008. Distribution of unsolicited written materials. (1) It is unlawful to throw, deposit, or distribute any unsolicited written materials in or upon a private premises except by handing or transmitting the written material directly to the owner, occupant, or other person then present in or upon the private premises.

(2) Except where the premises are posted as provided in this section or where anyone upon the premises requests otherwise, unsolicited written materials shall be placed at the premises in:

- (a) A distribution box located on or adjacent to the premises;
 - (b) On a porch nearest the front door;
 - (c) To a place where the materials are securely attached to the front door;
 - (d) Through a mail slot on the front door of the main structure;
- or
- (e) Between the exterior front door, if existent and unlocked, and the interior front door.

(3) Unsolicited written materials shall be contained in a plastic bag ventilated with air holes throughout the surface of the bag or in unventilated plastic bags no greater than six inches (6") in width. The unsolicited materials shall be placed or deposited in a manner preventing the materials from being blown or drifting about the premises or on sidewalks and public streets.

(4) Unsolicited written materials placed at a premises creates a rebuttable presumption that the materials were placed at the premises by the owner, agent, manager, and/or authorized distributor of the business, product, goods, service message, or idea, which is being advertised, promoted, endorsed or conveyed in such materials. (as added by Ord. #09-56, Nov. 2009, and replaced by Ord. #12-12, April 2012)

11-1009. Handbills depiction certain matter prohibited. It is unlawful for any person to post, hand out, distribute or transmit any signs or any handbill:

- (1) That is reasonably likely to incite or to produce imminent lawless action; or
- (2) That is obscene or unlawful. (as added by Ord. #09-56, Nov. 2009)

11-1010. Existing ordinances not affected. This ordinance does not repeal, amend, or modify any ordinance ever ordained, either prohibiting,

regulating, or licensing canvassers, hawkers, peddlers, transient merchants, or any person using the public streets or places for any private business or enterprise, or for commercial sales, not otherwise covered. (as added by Ord. #09-56, Nov. 2009)

11-1101. Exemptions. The terms of this chapter shall not apply to persons working for utility companies in the course of posting notices regarding electric or utility service or those charitable organizations having a current exemption certificate from the Internal Revenue Service issued under section 501(c)(3) of the Internal Revenue Service Code of 1954, as amended, or persons who are members of a United Way or similar "umbrella" organization for charitable or religious organizations. This chapter shall also not apply to persons exercising legitimate First Amendment rights. (as added by Ord. #09-56, Nov. 2009)

11-1012. Penalty. Any person who violates any provision of this ordinance, upon conviction shall be punished by a fine or penalty of not more than fifty dollars (\$50.00) for each offense each day in which an offense continues is a separate offense. (as added by Ord. #09-56, Nov. 2009)

11-1013. Severability. If any provision, or portion of a provision, of this ordinance, or its application to any person or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the ordinance, or the application of the provision to other person or circumstances, shall not be affected. (as added by Ord. #09-56, Nov. 2009)

TITLE 12**BUILDING, UTILITY, ETC. CODES****CHAPTER**

1. BUILDING CODE.
2. PLUMBING CODE.
3. FUEL GAS CODE.
4. MECHANICAL CODE.
5. ENERGY CONSERVATION CODE.
6. PROPERTY MAINTENANCE CODE.
7. RESIDENTIAL CODE.
8. ASHRAE ADOPTED.
- 9.-13. [DELETED]
14. ABATING PUBLIC NUISANCES.
15. PLANNING AND ZONING FEES.
16. EXISTING BUILDING CODE.
17. SWIMMING POOL AND SPA CODE.

CHAPTER 1**BUILDING CODE¹****SECTION**

- 12-101. Building code adopted.²
 12-102. Modifications.
 12-103. Enforcement official.

¹Municipal code references

- Fire protection, fireworks, and explosive: title 7.
- Planning and zoning: title 14.
- Streets and other public ways and places: title 16.
- Utilities and services: titles 18 and 19.
- Cross connections: title 18.
- Street excavations: title 16.
- Wastewater treatment: title 18.
- Water and sewer system administration: title 18.
- Fire protection, fireworks and explosives: title 7
- Gas system administration: title 19, chapter 2
- Street excavations: title 16

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

12-101. Building code adopted. A certain document, a copy of which is on file in the office of the City Recorder, City of Portland, being marked and designated as the International Building Code, 2018 edition, excluding all appendices published by the International Code Council, be and is hereby adopted as the Building Code of the City of Portland in the State of Tennessee for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said property maintenance code on file in the office of the City of Portland City Recorder's Office are hereby referred to, adopted, and made a part thereof, as if fully set out in this chapter, with the following additions, insertions, deletions and changes, prescribed in § 12-102 of this chapter. (1980 Code, § 4-101, as amended by Ord. #567, April 1998, replaced by Ord. #05-48, Jan. 2006, and Ord. #09-33, Aug. 2009, and amended by Ord. #15-28, June 2015, and Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

12-102. Modifications. The following sections are hereby revised:

Delete Chapter 11 in its entirety (accessibility) and replace it with the 2010 edition of the Americans with Disabilities Act.

Delete all appendices. (1980 Code, § 4-102, as replaced by Ord. #05-48, Jan. 2006, and Ord. #09-33, Aug. 2009, and amended by Ord. #15-28, June 2015, Ord. #16-39, Sept. 2016, and replaced by Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

12-103. Enforcement official. Within said codes, when reference is made to the duties of certain official named therein, that designated official, of the City of Portland who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of said code are concerned. (1980 Code, § 4-103, as replaced by Ord. #05-48, Jan. 2006)

CHAPTER 2

PLUMBING CODE

SECTION

12-201. Plumbing code adopted.

12-202. Modifications.

12-201. Plumbing code adopted. A certain document, a copy of which is on file in the office of the City Recorder, City of Portland, being marked and designated as the International Plumbing Code,¹ 2018 edition, including all appendices published by the International Code Council, be and is hereby adopted as the Plumbing Code of the City of Portland in the State of Tennessee for regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of plumbing systems as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said plumbing code on file in the office of the City of Portland City Recorder's Office are hereby referred to, adopted, and made a part thereof, as if fully set out in this chapter, with the following additions, insertions, deletions and changes, prescribed in § 12-202 of this chapter. (as deleted by Ord. #05-48, Jan. 2006, added by Ord. #09-38, Aug. 2009, and amended by Ord. #15-28, June 2015, and Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

12-202. Modifications. The following sections are hereby revised:

- (1) Section 101.1. Insert: City of Portland.
- (2) 106.6.2. Fee schedule. The fees for all plumbing work shall be as indicated in the City of Portland fee schedule.
- (3) Section 106.6.3 Delete: Item 2 & 3. (as added by Ord. #09-38, Aug. 2009, and amended by Ord. #16-39, Sept. 2016)

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

CHAPTER 3

FUEL GAS CODE

SECTION

12-301. Fuel gas code adopted.

12-302. Modifications.

12-301. Fuel gas code adopted. A certain document, a copy of which is on file in the office of the City Recorder, City of Portland, being marked and designated as the International Fuel Gas Code,¹ 2018 edition, as published by the International Code Council, be and is hereby adopted as the Fuel Gas Code of the City of Portland in the State of Tennessee for regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of mechanical systems in the City of Portland; providing for the issuance of permits and collection of fees therefor; and each and all the regulations, provisions, penalties, conditions and terms of said fuel gas code on file in the office of the City of Portland are hereby referred to, adopted, and made a part thereof, as if fully set out in this chapter, with the following additions, insertions, deletions and changes, prescribed in § 12-302 of this chapter. (as deleted by Ord. #05-48, Jan. 2006, added by Ord. #09-40, Aug. 2009, and amended by Ord. #15-28, June 2015, and Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

12-302. Modifications. The following sections are hereby revised:

- (1) Section 101.1 Insert: "City of Portland."
- (2) Section 106.5.21: Delete.
- (3) Section 106.6.3: Delete. (as added by Ord. #09-40, Aug. 2009)

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

CHAPTER 4

MECHANICAL CODE

SECTION

12-401. Mechanical code adopted.

12-402. Modifications.

12-401. Mechanical code adopted. A certain document, a copy of which is on file in the office of the City Recorder, City of Portland, being marked and designated as the International Mechanical Code,¹ 2018 edition, including all appendices published by the International Code Council, be and is hereby adopted as the Mechanical Code of the City of Portland in the State of Tennessee for regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of mechanical systems as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said mechanical code on file in the office of the City of Portland City Recorder's Office are hereby referred to, adopted, and made a part thereof, as if fully set out in this chapter, with the following additions, insertions, deletions and changes, prescribed in § 12-402 of this chapter. (as deleted by Ord. #05-48, Jan. 2006, added by Ord. #09-37, Aug. 2009, and amended by Ord. #15-28, June 2015, and Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

12-402. Modifications. The following sections are hereby revised:

- (1) Section 101.1. Insert: City of Portland.
- (2) Delete entire text of Section 106.6.2 Fee schedule. and replace with the following: 106.5.2. Fee schedule. The fees for all mechanical work shall be as indicated in the City of Portland fee schedule.
- (3) DOES NOT EXIST IN CODE. (as added by Ord. #09-37, Aug. 2009 and replaced by Ord. #16-39), Sept. 2016)

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

CHAPTER 5**ENERGY CONSERVATION CODE****SECTION**

12-501. Energy conservation code adopted.

12-502. Modifications.

12-501. Energy conservation code adopted. A certain document, a copy of which is on file in the office of the City Recorder, City of Portland, being marked and designated as the International Energy Conservation Code,¹ 2018 edition, as published by the International Code Council, be and is hereby adopted as the Energy Conservation Code of the City of Portland in the State of Tennessee for regulating and governing energy efficient building envelopes and installation of energy efficient mechanical, lighting and power systems as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all regulations, provisions, penalties, conditions and terms of said energy conservation code on file in the office of the City of Portland City Recorder's Office are hereby referred to, adopted, and made a part thereof, as if fully set out in this chapter, with the following additions, insertions, deletions and changes, prescribed in § 12-502 of this chapter. (as deleted by Ord. #05-48, Jan. 2006, added by Ord. #09-35, Aug. 2009, and amended by Ord. #15-28, June 2015, and Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

12-502. Modifications. The following sections are hereby revised:

Section R402.4.1.2 Testing is deleted and replaced with Section 402.4.2.1 Testing Option and Section 402.4.2.2 Visual Inspection Option from 2009 IECC.

Section R403.3.3 Duct Testing (Mandatory) and Section R403.3.4 Duct Leakage (Prescriptive) are Optional.

Table 402.1.2 Insulation and Fenestration Requirements by Component and Table R402.1.4 Equivalent U-Factors are deleted and replaced with Table 402.1.1 Insulation and Fenestration Requirements by Component and Table 402.1.3 Equivalent U-Factors from 2009 IECC. (as added by Ord. #09-35, Aug. 2009, and replaced by Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

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

CHAPTER 6

PROPERTY MAINTENANCE CODE

SECTION

12-601. Property maintenance code adopted.

12-602. Modifications.

12-601. Property maintenance code adopted. A certain document, a copy of which is on file in the office of the City Recorder, City of Portland, being marked and designated as the International Property Maintenance Code,¹ 2018 edition, as published by the International Code Council, be and is hereby adopted as the Property Maintenance Code of the City of Portland in the State of Tennessee for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each all of the regulations, provisions, penalties, conditions and terms of said property maintenance code on file in the office of the City of Portland City Recorder's Office are hereby referred to, adopted, and made a part thereof, as if fully set out in this chapter, with the following additions, insertions, deletions and changes, prescribed in § 12-602 of this chapter. (as deleted by Ord. #05-48, Jan. 2006, added by Ord. #09-34, Aug. 2009, amended by Ord. #15-28, June 2015, replaced by Ord. #17-02, Feb. 2017, and amended by Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

12-602. Modifications. The following sections are hereby revised:

(1) 101.1 Title. These regulations shall be known as the International Property Maintenance Code of The City of Portland hereinafter referred to as "this code."

(2) 101.5. References to International Zoning Code. All references to the International Zoning Code are hereby deleted and replaced with the City of Portland Zoning Ordinance.

(3) In Section 102.3, the reference to the International Zoning Code shall be deleted and the term "City of Portland Zoning Ordinance No. 387" shall be inserted in lieu thereof.

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

(4) 103.1 General. The department of property maintenance inspection is hereby created and The City of Portland Planning and Codes Director or his/her designee shall be known as the code official.

(5) 103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as indicated in the City of Portland Fee Schedule¹.

(6) Add subsection 106.3.1 Authority to Include Administrative Costs. The enforcing office shall add an additional administrative charge of fifteen percent (15%) to the cost of the work to abate the violation(s), and the city recorder shall add an administrative charge of ten percent (10%) to set up the file(s), add the cost to the tax statement(s) of each parcel involved, and the same shall result in a tax lien against the property as set forth by city and state laws.

(7) 106.5 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises. Abatement shall include demolition of the structure where necessary in accordance with Section 110.

(8) 107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate including address if applicable and map and parcel number.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing stating the maximum amount of time allowed to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner or owner's authorized agent of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

(9) 107.3 Method of service. Such notice shall be deemed to be properly served by one or more of the following methods:

1. Delivered personally;
2. Sent by certified or first-class mail addressed to the last known address;

¹Property maintenance administrative fees, and any amendments thereto, may be found in the recorder's office.

3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure or property affected by such notice.

(10) Section 109.3 shall be amended to read as follows: Closing streets. When necessary for public safety, the City of Portland Police Department shall close, or order the authority having jurisdiction over same to close, sidewalks, streets, public ways and places adjacent to unsafe structures and prohibit the same from being utilized.

(11) 110.1 General. The code official shall order the owner or owner's authorized agent of any premises upon which is located any structure, which in the code official's or owner's authorized agent judgment is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary. The structure shall be immediately boarded up for a period not to exceed (6) six months. If a building permit has not been applied for and approved within the (6) six-month time frame, the code official shall order the owner or owner's authorized agent to immediately demolish and remove such structure.

(12) 111.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within (10) ten calendar days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

(13) 111.2.4 Secretary. The code official shall designate a qualified person to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of Construction and Development Services.

(14) 111.2.5 Compensation of members. Compensation of members shall be determined by City of Portland Ordinance.

(15) 111.3 Notice of meeting. The board shall meet on the second Monday of every month.

(16) 111.5 Postponed Hearing. Deleted.

(17) Add: Section 112 Maintenance of Vacant and Boarded Structures

112.1 Vacant Structures – If the structure is vacant, the owner shall post a placard stating the owner's name and telephone number and shall secure a building permit from the City to board the structure securely to Board-Up Standards provided in Section 112.7.

112.2 Enforcement and Remedies for Violation. A building that is boarded or vacant for more than one (1) year in violation of this section is a public nuisance. In addition to the provisions in this section the City is authorized to use the remedies set forth in Section 106 of this code, state law and the City of

Portland applicable ordinances. The remedies, procedures and penalties provided by this section are cumulative to each other and to any others available under state law and/or city ordinances.

112.3 Owner Responsibilities. No person shall allow a building designed for human use or occupancy to stand vacant for more than thirty (30) days unless the owner established by substantial evidence to the reasonable satisfaction of the code official one of the following applies.

112.3.1 Permits. The building is the subject of an active building permit for repair or rehabilitation.

112.3.2 Sale or Lease. The building meets all applicable codes, does not contribute to blight and is ready for occupancy and is actively being offered for sale, lease or rent.

112.3.3 Maintained. The building does not contribute to and is not likely to contribute to blight because the owner is actively maintaining and monitoring the building so it does not contribute to blight. Active maintenance and monitoring shall include:

1. Maintenance of landscaping and plant material in good condition.
2. Maintenance of exterior of the building including but not limited to roofing, paint, windows and other exterior finishes in good condition.
3. Prompt and regular removal of all exterior trash, debris and graffiti.
4. Maintenance of the building in continuing compliance with all applicable codes and regulations.
5. Prevention of criminal activity on the premises including but not limited to loitering or trespassing.

112.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than \$75.00 dollars per violation per day and per violation.

112.7 Standards for Boarding a Vacant Building. The boarding of a vacant building shall be according to the specifications approved by the code official at the time of permit issuance. At a minimum the materials used to board-up the building shall be similar in color as used on the existing exterior facade.

112.8 Notice Procedures for Vacant, Unsecured, or Board Buildings. Whenever the code official determines that a vacant, unsecured, or boarded building exists, a notice shall be sent to the owner or responsible party in accordance with Section 107.

112.9 Continuing Nuisance. When the owner of a boarded or vacant building fails to maintain the property in accordance with this section or when repeated violations of this section occur for the same property, the code official may seek other remedies as provided by this code, local ordinances or state law including but not limited to demolition of the structure.

112.10 Emergency Hazard Abatement. When any building, structure or site constitutes such an imminent threat to life, limb or property such that it must be secured or barricaded and compliance with other provisions of this Code becomes infeasible as determined by the code official, the code official may summarily secure, close, or barricade the building without prior notice to the property owner. All costs of boarding shall be recovered pursuant to the procedures in Section 108.2.

(18) 113 Owner Responsibilities. No person shall allow a building designed for human use or occupancy to stand vacant for more than thirty (30) days unless the owner established by substantial evidence to the reasonable satisfaction of the code official one of the following applies.

113.1 Permits. The building is the subject of an active building permit for repair or rehabilitation.

113.2 Sale or Lease. The building meets all applicable codes, does not contribute to blight and is ready for occupancy and is actively being offered for sale, lease or rent.

113.3 Maintained. The building does not contribute to and is not likely to contribute to blight because the owner is actively maintaining and monitoring the building so it does not contribute to blight. Active maintenance and monitoring shall include:

1. Maintenance of landscaping and plant material in good condition.
2. Maintenance of exterior of the building including but not limited to roofing, paint, windows and other exterior finishes in good condition.
3. Prompt and regular removal of all exterior trash, debris and graffiti.
4. Maintenance of the building in continuing compliance with all applicable codes and regulations.
5. Prevention of criminal activity on the premises including but not limited to loitering or trespassing.

(19) 114 Continuing Nuisance. When the owner of a boarded or vacant building fails to maintain the property in accordance with this code and when repeated violations of this code occur for the same property, the code official may seek other remedies as provided by this code, local ordinances or state law including but not limited to demolition of the structure.

(20) 115 Vacant Structures. If the structure is vacant, the owner shall post a placard stating the owner's name and telephone number and shall secure a building permit from the City to board the structure securely to Board-Up Standards provided in Appendix A.

(21) Section 201.3, the reference to the International Zoning Code shall be deleted and the term "City of Portland Zoning Ordinance No. 387" shall be inserted in lieu thereof.

(22) Section 202 - General Definitions add the following:

(a) "Building" means any structure including but not limited to any residential, commercial, industrial or assembly structure approved for occupancy.

(b) "Vacant Building" means any structure or building that is unoccupied or occupied by unauthorized persons; and is unsecured or boarded.

(23) Section 302.3 shall be amended to read as follows: All private sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

(24) 302.4 Weeds. Premises and exterior property shall be maintained free from weeds or plant growth in excess of (8) eight inches. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens. Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 106.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property.

(25) 302.4.1 Repeated Nuisance. If a property has been cited more than (1) one time in a calendar year, the City of Portland shall charge an escalated administrative fee as provided in the City of Portland fee schedule.

(26) 302.8 Motor vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exceptions:

1. A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

2. Any motor vehicle held in conjunction with a business enterprise lawfully licensed by the City for the storage, servicing and repair of motor vehicles and properly operated in an appropriate business zone pursuant to the zoning ordinances of the City.

(27) 304.14 Insect screens. During the period from March 1st to October 1st, every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting

screens of minimum 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

Exceptions:

1. Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

2. Screens shall not be required where the building is equipped with a functioning and approved central heating, ventilating and air conditioning system.

(28) Section 304.18.1 is deleted.

(29) 307.1 General. Every exterior and interior flight of stairs having four (4) or more risers shall have a handrail on one side of the stair and every open portion of the stair, landing, balcony, porch, deck, ramp or other walking surface that is more than 30 inches above the floor or grade shall have guardrails. Handrails shall be not less than 34 inches in height or more than 38 inches in height measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guardrails shall be not less than 36 inches in height above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.

Exception:

1. Guardrails shall not be required where exempted by the adopted building code.

(30) Section 307.2.2 is amended as follows: Refrigerators. Refrigerators and similar equipment shall not be discarded, abandoned or stored on exterior premises.

(31) 602.3 Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from October 1st to April 1st to maintain a minimum temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms.

(32) 602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from October 1st to April 1st to maintain a minimum temperature of 65°F during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.

2. Areas in which persons are primarily engaged in vigorous physical activities.

(33) Appendix A "Boarding Standard" is hereby added to this document.

(34) In Chapter 8, the reference to the International Zoning Code shall be deleted and the term "City of Portland Zoning Ordinance No. 387" shall be inserted in lieu thereof. (as added by Ord. #09-34, Aug. 2009, and amended by Ord. #16-07, March 2016, and 17-02, Feb. 2017)

CHAPTER 7

RESIDENTIAL CODE

SECTION

12-701. Residential code adopted.

12-702. Modifications.

12-701. Residential code adopted. A certain document, a copy of which is on file in the office of the City Recorder, City of Portland, being marked and designated as the International Residential Code,¹ 2018 edition, excluding all appendices published by the International Code Council, be and is hereby adopted as the Residential Code of the City of Portland in the State of Tennessee for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said residential code on file in the office of the City of Portland City Recorder's Office are hereby referred to, adopted, and made a part thereof, as if fully set out in this chapter, with the following additions, insertions, deletions and changes, prescribed in § 12-702 of this chapter. (as deleted by Ord. #05-48, Jan. 2006, added by Ord. #09-32, Aug. 2009, and amended by Ord. #15-28, June 2015, Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

12-702. Modifications. The following sections are hereby revised:

Amend Portland Municipal Code, starting with Chapter 1, 12-101 by removing all references to the 2009 Edition and replacing with 2018 in all Chapters.

Section R108.2 Schedule of permit fees. Amend to reflect the Portland fee schedule as shown in the Portland Municipal Code, Chapter 1, Section 12-102. Also, fees as shown in Portland Municipal Code Chapter 7, 12-702.

Section R313.1 Townhome automatic fire sprinkler systems amend per State Fire Marshall's rule 0780-02-23. Shall not be required in three or fewer stories with less than 5,000 gross square feet and three or fewer stories if each unit is separated by a two-hour fire wall.

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

Section R313.2 One and Two Family automatic sprinkler systems. Delete per Tennessee Code Annotated, § 68-120-101.

Section R302.13 Fire protection of floors - Delete the wording "or electric-powered heating."

Section N1102.4.1.2 (R402.4.1.2) Testing is replaced with Section N1102.4.2.1 Testing Option and Section N1102.4.2.2 Visual Inspection from the 2009 IRC

Section N1103.3.3 (R403.3.3) Duct Testing (Mandatory) and Section 1103.3.4 (R403.3.4) Duct Leakage (Prescriptive) are Optional.

Table N1102.1.2 (R402.1.2) Insulation and Fenestration Requirement by Component and Table N1102.1.4 (R402.1.4) Equivalent U-Factors from 2018 IRC are hereby replaced with Table N1102.1 Insulation and Fenestration Requirements by Component and Table N1102.1.2 Equivalent U-Factor from the 2009 IRC.

Section N1102.4.4 (R402.4.4) Rooms Containing Fuel-Burning Appliances is deleted in its entirety.

Section N1103.5 (R403.5) Service Hot Water Systems (Mandatory) is hereby Optional.

Delete Chapters 34-43 relating to Electrical of the 2018 IRC. - Electrical Standards adopted in 0780-02-01 Electrical Installations are enforced by the State Fire Marshall's Office (2017 NEC).

Delete all Appendices.

In cases of natural disaster, including but not limited to, tornado, lightning, flood, fire, sink hole, ice storms, and other serious acts of nature, fees for the issuance of a residential building permit may be waived by the building inspector, at the sole discretion of the building inspector. (as added by Ord. #09-32, Aug. 2009, amended by Ord. #15-28, June 2015, Ord. #16-39, Sept. 2018, replaced by Ord. #20-40, Sept. 2020 **Ch12_12-06-21**, and amended by Ord. #21-11, April 2021 **Ch12_12-06-21**)

CHAPTER 8

ASHRAE ADOPTED

SECTION

12-801. ASHRAE Standard adopted.

12-801. ASHRAE Standard adopted. The City of Portland hereby adopts by reference as though they were copied herein fully the 2018 ASHRAE Standard 90.1. (as added by Ord. #15-28, June 2015, and amended by Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

CHAPTERS 9 - 13

[DELETED]

(as deleted by Ord. #05-48, Jan. 2006)

CHAPTER 14

ABATING PUBLIC NUISANCES

SECTION

12-1401. Action concerning absentee property owners.

12-1402. Provisions for abating certain other public nuisances defined and prohibited.

12-1403. Notice of violations.

12-1404. Hearing before city council.

12-1405. Recorder to keep files and records.

12-1406. Authority to include administrative costs.

12-1401. Action concerning absentee property owners. To allow for nuisance abatement in the city limits when the property owner resides out of the effective enforcement of the city judge to act on affidavits of complaint filed by the codes officer. (as added by Ord. #584, § 1, Sept. 1998)

12-1402. Provisions for abating certain other public nuisances defined and prohibited. The growth of grass or weeds to a height of over one (1) foot (Ordinance #138); premises to be kept clean (Ordinance #401); and Standard Housing Code 1997 Edition (Ordinance #567) various standards for minimum facilities. (as added by Ord. #584, § 1, Sept. 1998)

12-1403. Notice of violations. If the codes officer determines that conditions exist in violation of preceding section 12-1401, he shall notify the recorded owner of the property in writing, at his last known mailing address, of the conditions on the property that constitute a menace to life, property, the public health, the public welfare and/or create a fire hazard, and demand that the owner cause such condition or conditions to be remedied immediately. Such notice shall include a description of the property owner's right and time for appeal, and an estimate of costs. The mailing of such notices shall be sufficient proof thereof, and the delivery of notice shall be equivalent to mailing. If the mailing address of the owner is unknown, and the property is unoccupied and the owner has no agent in the city, the notice shall be posted upon said property as notice to the owner. (as added by Ord. #584, § 1, Sept. 1998)

12-1404. Hearing before the city council. If the condition(s) described in the notice have not been corrected within ten (10) days from the date of mailing of the notice required in section 12-1403 hereof, and no proper request for an appeal by the owner has been received or, after any hearing and city council order of correction having been issued and not complied with, the sewer/street/sanitation department head shall cause said condition(s) to be corrected by the city at the expense of the property owner. After correction by

the sewer/street/sanitation department head, the sewer/street/sanitation department head shall submit in writing to the city recorder, with a copy to the property owner, the total cost of correction with a copy of the notice originally required in section 12-1403. The expense shall thereupon become and constitute a lien and charge upon the property which shall be payable with interest at the rate of six percent (6%) per annum from the date of such certification, until paid, collectable at the time ad valorem taxes on said property become due and payable to the city. Such expense and charge shall be first and prior lien against the property, subject only to the lien for taxes to the county and of the same character as the lien of the city for municipal taxes. Upon failure of the owner of the property to pay the lien, it may be enforced in the same manner as tax liens in favor of the city, and shall be certified by the city recorder to the delinquent tax attorney, along with the certification of ad valorem taxes assessed against the property in the city, and not paid when due. Any property owner shall have the right to have a hearing before the city council to show cause, if any, why such expense should not constitute a lien against his property. Such owner shall also have the right at this hearing to have determined the reasonableness of the expense or charge made by the city in remedying the condition(s) existing upon the owner's property. (as added by Ord. #584, § 1, Sept. 1998)

12-1405. Recorder to keep files and records. The city recorder shall keep a complete set of files and records relating to such liens, and shall include the amounts of such liens in tax statements for ad valorem taxes, thereafter submitted to the owners of lots, tracts, or parcels of land subject to such liens. (as added by Ord. #584, § 1, Sept. 1998)

12-1406. Authority to include administrative costs. The department head of streets/sewer/sanitation shall add an additional administrative charge of fifteen percent (15%) to the cost of the work to abate the violation(s), and the city recorder shall add an administrative charge of ten percent (10%) to set up the file(s), add the cost to the statement(s) of each parcel involved, and the same shall result and affect as set forth in prior selections of this chapter. (as added by Ord. #584, § 1, Sept. 1998)

CHAPTER 15

PLANNING AND ZONING FEES

SECTION

12-1501. Planning and zoning fees.

12-1501. Planning and zoning fees. Planning and zoning fees shall be charged by the City of Portland as indicated below:

Item	Additional Description	Fee
Billboard	Initial permit	\$500.00
	Billboard license	\$250.00
Billboard - Electronic Messaging Sign	Initial permit	\$1000.00
	Billboard license	\$500.00
Wall or Pole Sign	Less than 32 sq. feet	\$50.00
	Over 32 sq. feet	\$100.00
Sign face change out		\$50.00
Temporary sign		\$25.00
Temp fireworks sales tent		\$1,250 per year
Special event permit		\$25.00
Sketch Plat		\$150.00 + \$5.00 per lot
Preliminary Plat		\$150.00 + \$5.00 per lot
Final Plat		\$150.00 + \$5.00 per lot
Site Plan		\$150.00 up to 10,000 s/f + 0.05 per sq. ft. thereafter (\$500.00 max)
Preliminary PUD		\$250.00 + \$5.00 per acre over acres
Final PUD		\$150.00 + \$5.00 per acre over 5 acres
Re-zoning request	Up to .99 acres	\$100.00
	1- 9 acres	\$150.00
	10 – 19 acres	\$200.00
	20 – 49 acres	\$300.00
	50- 99 acres	\$400.00
	100 acres or more	\$500.00
Administrative Fees		
Technician fee	Permit Processing	\$10.00
Record Plat with Sumner Co.		\$50.00
Fee to file and release liens		\$50.00

(as added by Ord. #01-30, Dec. 2001, amended by Ord. #03-10, July 2003, and replaced by Ord. #16-39, Sept. 2016)

CHAPTER 16

EXISTING BUILDING CODE

SECTION

12-1601. Existing building code adopted.

12-1601. Existing building code adopted. The International Existing Building Code,¹ 2018 edition, is adopted. (as added by Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

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

CHAPTER 17

SWIMMING POOL AND SPA CODE

SECTION

12-1701. Swimming pool and spa code adopted.

12-1701. Swimming pool and spa code adopted. The International Swimming Pool and Spa Code,¹ 2018 edition, is adopted. (as added by Ord. #20-40, Sept. 2020 *Ch12_12-06-21*)

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

TITLE 13

PROPERTY MAINTENANCE REGULATIONS¹

CHAPTER

1. MISCELLANEOUS.
2. JUNKYARDS.
3. ABANDONED MOTOR VEHICLES.
4. OVERGROWN AND UNSIGHTLY LOTS.

CHAPTER 1

MISCELLANEOUS

SECTION

- 13-101. Health officer.
- 13-102. Smoke, soot, cinders, etc.
- 13-103. Stagnant water.
- 13-104. Weeds.
- 13-105. Dead animals.
- 13-106. Health and sanitation nuisances.
- 13-107. House trailers.

13-101. Health officer. The "health officer" shall be such municipal, county, or state officer as the city council shall appoint or designate to administer and enforce health and sanitation regulations within the city. (1980 Code, § 8-401)

13-102. 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. (1980 Code, § 8-405)

13-103. Stagnant water. 1. It shall be unlawful for any person to knowingly allow any pool of stagnant water to accumulate and stand on his property without treating it so as to effectively prevent the breeding of mosquitoes.

¹Municipal code references

Animal control: title 10.

Littering streets, etc.: § 16-107.

Toilet facilities in beer places: § 8-212(11).

2. It shall be unlawful for any person to permit unmounted tires to accumulate water leading to possible breeding places for mosquitoes. (1980 Code, § 8-406, as amended by Ord. #552, Nov. 1997)

13-104. Weeds. Every owner or tenant of property shall periodically cut the grass and other vegetation commonly recognized as weeds on his property, and it shall be unlawful for any person to fail to comply with an order by the city recorder or chief of police to cut such vegetation when it has reached a height of over one (1) foot. (1980 Code, § 8-407)

13-105. Dead animals. Any person owning or having possession of any dead animal not intended for use as food shall promptly bury the same or notify the health officer and dispose of such animal in such manner as the health officer shall direct. (1980 Code, § 8-408)

13-106. Health and sanitation nuisances. 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. (Ord. #552, Nov. 1997)

13-107. House trailers. It shall be unlawful for any person to park, locate, or occupy any house trailer or portable building unless it complies with all plumbing, electrical, sanitary, and building provisions applicable to stationary structures and the proposed location conforms to the zoning provisions of the city and unless a permit therefor shall have been first duly issued by the building official, as provided for in the building code. (1980 Code, § 8-404)

CHAPTER 2**JUNKYARDS****SECTION**

13-201. Junkyards.

13-201. Junkyards.¹ 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 (6) feet 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. (Ord. #552, Nov. 1997)

¹State law reference

The provisions of this section were taken substantially from the Bristol ordinance upheld by the Tennessee Court of Appeals as being a reasonable and valid exercise of the police power in the case of Hagaman v. Slaughter, 49 Tenn. App. 338, 354 S.W.2d 818 (1961).

CHAPTER 3

ABANDONED MOTOR VEHICLES

SECTION

- 13-301. Definitions.
- 13-302. Violations a civil offense
- 13-303. Exceptions.
- 13-304. Enforcement.
- 13-305. Penalty.

13-301. Definitions. For the purpose of the interpretation and application of this chapter, the following words and phrases shall have the indicated meanings:

(1) "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 own power if self-propelled, or while being towed or pushed, if not self-propelled:

(a) Flat tires, missing tires, missing wheels, or missing or partially or totally disassembled tires and wheels;

(b) Missing or partially or totally disassembled essential part or parts of the vehicle's drive train, including, but no limited to, engine transmission, transaxle, drive shaft, differential, or axle;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) Unlicensed vehicle or out of date license plate.

(2) "Person" shall mean any natural person, or any firm, partnership, association, corporation or other organization of any kind and description.

(3) "Private property" shall include all property that is not public property, regardless of how the property is zoned or used.

(4) "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.

(5) "Vehicle" shall mean any machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, self, laying tracks, runners, slides or skids, including but not limited to automobiles, trucks, motorcycles, motor scooters, go carts, campers, tractors, trailers, tractor-trailers, buggies, wagons, and earth-moving equipment, and any part of the same. (Ord. #552, Nov. 1997)

13-302. Violations a civil offense. It shall be unlawful and a civil offense for any person:

(1) To park and or in any other manner place and leave unattended on the traveled portion of any public street or highway a junk vehicle for any period of time, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle.

(2) To park or in any other manner place and leave unattended on the untraveled portion of any street or highway, or upon any other public property, a junk vehicle for more than forty-eight (48) continuous hours, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle.

(3) To park, store, keep, maintain on private property a junk vehicle for more than sixty (60) days. (Ord. #552, Nov. 1997)

13-303. 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 nor any part of it is visible from the street or from any other abutting property. However, this exception shall not exempt the owner or person in possession of the property from any zoning, building, housing, property maintenance, and other regulations governing the building in which such vehicle is enclosed.

(b) The junk vehicle is parked or stored on property lawfully zoned for business engaged in wrecking, junking or repairing vehicles. However, this exception shall not exempt the owner or operator of any

such business from any other zoning, building, 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. (Ord. #552, Nov. 1997)

13-304. Enforcement. Pursuant to Tennessee Code Annotated, § 7-63-101, the codes enforcement officer is authorized to issue ordinance summons for violations of this chapter on private property. The codes 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 codes enforcement officer 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 codes enforcement officer may (1) request the city judge to issue a summons, or (2) request a police officer to witness the violation. The police officer who witnesses the violation may issue the offender a citation in lieu of arrest as authorized by Tennessee Code Annotated, § 7-63-101 et seq., or if the offender refuses to sign the citation, may arrest the offender for failure to sign the citation in lieu of arrest. (Ord. #552, Nov. 1997)

13-305. Penalty. Any person violating this chapter shall be subject to a civil penalty of \$500 for each separate violation of this chapter. Each day the violation of this chapter continues shall be considered a separate violation. (Ord. #552, Nov. 1997)

CHAPTER 4

OVERGROWN AND UNSIGHTLY LOTS

SECTION

- 13-401. Prohibition.
- 13-402. Designation of public officer or department
- 13-403. Notice to property owner.
- 13-404. Clean-up property owner's expense.
- 13-405. Appeal.
- 13-406. Judicial review.
- 13-407. Supplemental nature of this section.
- 13-408. General requirements.

13-401. Prohibition. Pursuant to the authority granted to municipalities under Tennessee Code Annotated, § 6-54-113, it shall be unlawful for any owner of record of real property to create, maintain, or permit to be maintained on such property the growth of trees, vines, grass, underbrush and/or the accumulations of debris, trash, litter, or garbage or any combination of the preceding elements so as to endanger the health, safety, or welfare of other citizens or to encourage the infestation of rats and other harmful animals. (as added by Ord. #06-39, July 2006)

13-402. Designation of public officer or department. The mayor shall designate an appropriate department or person to enforce the provisions of this section. (as added by Ord. #06-39, July 2006)

13-403. Notice to property owner. It shall be the duty of the department or person so designated to enforce this section to serve notice upon the owner of record in violation of § 13-401 above, a notice in plain language to remedy the condition within ten (10) days (or twenty (20) days if the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), excluding Saturdays, Sundays, and legal holidays. The notice shall be sent by registered or certified United States mail, addressed to the last known address of the owner of record. The notice shall state that the owner of the property is entitled to a hearing, and shall, at the minimum, contain the following additional information:

(1) A brief statement that the owner is in violation of the City of Portland Municipal Code, which has been enacted under the authority of Tennessee Code Annotated, § 6-54-113, and that the property of such owner may be cleaned-up at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;

- (2) The person, office, address, and telephone number of the department or person giving the notice;
- (3) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the city; and
- (4) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing. (as added by Ord. #06-39, July 2006)

13-404. Clean-up property owner's expense. If the property owner of record fails or refuses to remedy the condition within ten (10) days after receiving the notice (twenty (20) days if the owner 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), the department or person designated by the city administrator to enforce the provisions of this chapter shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards, and the cost thereof shall be assessed against the owner of the property. Upon the filing of the notice with the office of the register of deeds in Sumner or Robertson 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. (as added by Ord. #06-39, July 2006)

13-405. Appeal. The owner of record who is aggrieved by the determination and order of the public officer may appeal the determination of the order to the Mayor of the City of Portland. The appeal shall be filed with the city recorder within ten (10) days following the receipt of the notice issued pursuant to § 13-403 above. The failure to appeal within the time shall, without exception, constitute a waiver of the right to a hearing. (as added by Ord. #06-39, July 2006)

13-406. Judicial review. Any person aggrieved by an order or act of the mayor under 13-405 above may seek judicial review of the order or act. The time period established in 13-404 above shall be stayed during the pendency of judicial review. (as added by Ord. #06-39, July 2006)

14-407. Supplemental nature of this section. The provisions of this chapter 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. (as added by Ord. #06-39, July 2006)

14-408. General requirements. Weeds and other similar regulated vegetation which has attained the height of twelve (12) inches or more shall be presumed to be detrimental to the public health and therefore a public nuisance. Such vegetation shall be controlled on property as set forth below:

(1) The entire area of any lot, parcel or tract containing two (2) acres or less.

(2) Within twenty-five (25) feet of any street right-of-way, and within twenty-five (25) feet on any building on any lot, parcel, or tract containing more than two (2) acres.

(3) Within twenty-five (25) feet of an adjacent property line at the request of the owner, regardless of acreage.

(4) Two (2) or more contiguous lots shall be treated as one (1) lot by this section.

(a) Nothing in this chapter shall preclude the use of a parcel for agricultural purposes such as gardens, compost piles, orchards, vineyards, silage, or specific domesticated plants, which normally tend to exceed twelve (12) inches. In addition, nothing herein shall preclude the use of a parcel as a natural wooded area or the maintenance of natural screening provided that the health, safety, and welfare not be impaired.

(b) Nothing in this chapter shall prevent the open storage of items of inventory within a fenced area of any commercial or industrial activity such as lumber in a lumberyard, unless otherwise limited; nor shall this section prevent the open storage of building materials on an active construction site. Firewood stacked in an orderly manner shall not be considered a violation of this chapter provided it does not constitute a fire or health hazard.

(c) All enforcement actions with respect to this chapter shall commence upon receipt of a written signed complaint. All complaints should be appropriately documented, including photographic evidence of violation, and reflect the specific nature and location of the complaint. (as added by Ord. #06-39, July 2006)

CLAIM OF LIEN FORM

STATE OF TENNESSEE

COUNTY OF SUMNER

BEFORE ME, the undersigned Notary Public, personally appeared _____ who duly says that (he/she) is the agent of the lienor herein whose address is 100 South Russell, Portland, Tennessee 37148 and that in accordance with the City of Portland Municipal Code Sections _____ through _____, the City of Portland Code Department, exercise the right to attach a lien to the interest in the real property. The City of Portland Public Works Department furnished labor, services or materials consisting of _____ hours mowing on **date:** _____ on the following described real property in Sumner County, State of Tennessee, described as **Book:** _____, **Page** _____ and **owner of tax record** _____, **physical street address** _____, **Sumner County Map** _____, **Parcel** _____ of a total value of dollars (\$_____) of which there remains **unpaid** \$ _____.

Prepared By:

City of Portland
100 South Russell Street
Portland, Tennessee 37148

Agent:

Prepared By: _____
Signature

On _____ before me _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ My Commission Expires: _____

Affiant _____ Known _____ Unknown

ID Produced _____

TITLE 14

ZONING AND LAND USE CONTROL¹

CHAPTER

1. MUNICIPAL PLANNING COMMISSION.
2. ZONING ORDINANCE.
3. ANNEXATION PLAN OF SERVICES.
4. PROVISIONS GOVERNING PORTABLE SIGNS.
5. TRAILER PARKS.
6. DESIGN REVIEW COMMITTEE.

CHAPTER 1

MUNICIPAL PLANNING COMMISSION

SECTION

- 14-101. Creation and membership.
 14-102. Organization, powers, duties, etc.
 14-103. Additional powers.

14-101. Creation and membership. Pursuant to the provisions of Tennessee Code Annotated, § 13-4-101, there is hereby created a municipal planning commission, hereinafter referred to as the planning commission. The planning commission shall consist of ten (10) members. One (1) of the members shall be the mayor, or a member designated by the mayor, and one (1) of the members shall be a member of the city council selected by the city council. The other eight (8) members shall be appointed by the mayor, two (2) of which must reside within the regional area outside of the municipal boundaries of the City of Portland. All members of the planning commission, except any elected official who serves as a member or a member who also serves as a member of the City of Portland Board of Zoning and Appeals, shall be paid one hundred dollars (\$100.00) for each regularly called meeting of the commission that the member attends. The terms of the appointive members shall be provided by resolution of the governing body; provided, that they shall be so arranged so that the term of one (1) member will expire each year. The terms of the mayor and the member selected by the city council shall run concurrently with their terms of office. Any vacancy in the appointed membership shall be filled for the unexpired term by the mayor, who shall also have authority to remove any appointed member at the mayor's pleasure. (1980 Code, § 11-101, as replaced

¹Municipal code reference

Planning and zoning fees: § 12-1501.

by Ord. #606, July 1999, and amended by Ord. #07-35, Aug. 2007, Ord. #18-10, Feb. 2018, and Ord. #21-40, Sept. 2021 *Ch12_12-06-21*)

14-102. Organization, powers, duties, etc. The planning commission shall be organized and shall carry out its powers, functions, and duties in accordance with Tennessee Code Annotated, title 13. (1980 Code, § 11-102)

14-103. Additional powers. Having been designated as a regional planning commission, the municipal planning commission shall have the additional powers granted by, and shall otherwise be governed by the provisions of the state law relating to regional planning commissions. (1980 Code, § 11-103)

CHAPTER 2

ZONING ORDINANCE

SECTION

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

14-201. Land use to be governed by zoning ordinance. Land use within the City of Portland shall be governed by Ordinance #387, titled "Zoning Ordinance, Portland, Tennessee," and any amendments thereto.¹

¹Ordinance #387, 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

ANNEXATION PLAN OF SERVICES

SECTION

14-301. Annexation plan of services.

14-302. Individualized plans of service.

14-301. Annexation plan of services. When any new territory shall be annexed into the City of Portland, Tennessee, municipal services shall be afforded that particular annexed territory in accordance with the schedule listed below:

- (1) Water--If not already provided; within six months, with no inside city limit water rate reduction until annexed property is placed on the tax roll;
- (2) Police protection--Immediately following annexation;
- (3) Fire protection--Immediately following annexation;
- (4) Garbage pickup--Immediately;
- (5) Street lighting--Within twelve (12) months of annexation;
- (6) Natural gas--If not already provided, within twelve (12) months of annexation, with no inside city limit gas rate reduction until said annexed property is placed on the tax rolls;
- (7) Sewers--Whenever state, county, municipal and federal funds are available to extend sewer lines to the newly annexed territory and to make any alterations to the sewer plant as may be necessary to extend said lines. (1980 Code, § 11-301, as amended by Ord. #563, Feb. 1998, replaced by Ord. #02-06, March 2002; and amended by Ord. #03-28, Jan. 2004)

14-302. Individualized plans of service. The mayor and board of aldermen of the City of Portland, Tennessee reserve the right to consider each area considered for annexation to the city limits of the City of Portland on its own feasibility and submit individualized plans of service for any area it deems necessary to do so. (Ord. #563, Feb. 1998, as replaced by Ord. #02-06, March 2002)

CHAPTER 4

PROVISIONS GOVERNING PORTABLE SIGNS

SECTION

14-401. Provisions governing portable signs.

14-401. Provisions governing portable signs. Portable signs may be permitted subject to the following:

(1) All such signs shall be set back from the right-of-way, a minimum of the distance indicated in TABLE 4-205.3 of the Portland Zoning Ordinance.

(2) No portable sign shall be located so as to infringe upon or obstruct in any manner, the vision clearance area(s) required by subsection 4-208.4 of the Portland Zoning Ordinance.

Zoning Dist.	Freestanding and Projection Sq. Footage	Bldg. and Canopy Signs Sq. Footage	Billboards Sq. Footage	Min Ht.	Max Ht.	Base Setback
All Residential Districts	4*	4*	0	0	25	7'***
MPO	20	40*	0	0	25	7'***
CSO	40*	100	0	0	50	0'
CBD	20	40	0	0	50	7'***
GCS	150	150	300	0	50	7'***
HSD	200	200	300	0	50	7'***
IR	200	200	300	0	50	7'***
IG	200	200	300	0	50	7'***
IS	200	200	300	0	50	7'***

*Any church or school will be allowed sixty-four (64) square feet freestanding sign, one thirty-two (32) square foot building sign and one thirty-two (32) foot directory or bulletin board.

**In any instance where a portable sign may be permitted under provisions established in § 14-401, of the Municipal Code of Portland, the setback for such sign shall be reduced to zero, as provided in said code provision. In no instance, however, shall any such sign violate the vision clearance areas required in subsection 4-208.4, of the Portland Zoning Ordinance.

Freestanding Signs. For purposes herein a side of a freestanding sign is any plane or flat surface included in the calculation of the total sign surface area as provided in subsection 4-205.2 of the Portland Zoning Ordinance. For example, wall signs typically have two (2) sides (back to back), although four-sided and other multi-sided signs are also common.

Number of Signs. Except as authorized by this section, no development may have more than one (1) freestanding sign.

If a development is located on a corner lot that has at least one hundred (100) feet of frontage on each of the two (2) intersecting public streets, then the development may have not more than one (1) freestanding sign along each side of the development bordered by such streets.

(3) All portable signs when wired for lights shall be equipped with a ground fault interruption device and shall in all regards comply with the provisions of Article 600, (Electric Signs and Outdoor Lighting) of the National Electrical Code. All such signs shall be inspected for compliance with this provision. The owner of any sign found to be in violation of this provision shall be provided with notice of such violation if not corrected within thirty (30) days following such notice, the building inspector shall initiate action to remove the sign.

(4) Any portable sign not wired for lights shall have all electric cords and connection devices removed. Failure to comply with this provision following thirty (30) days notice of same, shall constitute grounds for the building inspector to initiate action to remove the sign.

(5) All portable signs shall be adequately anchored. The building inspector will adjudge the adequacy of all anchoring. The owner of any sign found to be in violation of this provision shall be provided with notice of such violation which shall specifically include the actions required to bring the sign into compliance. In any event, where such violation is not corrected within thirty (30) days, following such notice, the building inspector shall initiate action to remove the sign.

(6) All portable signs shall be maintained in a safe and structurally sound condition. The owner of any sign found to be in violation of this provision, as determined by the building inspector, shall be provided with notice of such violation which shall specifically include the actions required to bring the sign into compliance. In any event, where such violation is not corrected within thirty (30) days, following such notice, the building inspector shall initiate action to remove the sign.

(7) In any event, where the principal activity to which onsite portable signs are accessory is terminated for a period of ninety (90) days, all portable signs shall be removed from such site, following thirty (30) days notice. (1980 Code, § 11-401)

CHAPTER 5

TRAILER PARKS

SECTION

- 14-501. Permit required.
- 14-502. General provisions.
- 14-503. General regulations.
- 14-504. Change of ownership.
- 14-505. Changes in existing parks.
- 14-506. Standards.
- 14-507. Enforcement.

14-501. Permit required. It shall be unlawful for any person, persons, or firm to establish a trailer park within the City of Portland without first notifying the city recorder and filing therewith a written application for a permit. (1980 Code, § 5-501)

14-502. General provisions. (1) "Occupancy of trailers." Any trailer used for living or sleeping purposes must comply with certain restrictions.

(2) "Management." No trailer park shall be maintained without proper management.

(3) "Register." Every person who owns or operates a trailer park or court shall keep a register in which shall be entered:

(a) Name and address of each lessee for which space is rented.

(b) Any additional information concerning registration of vehicles that city deems advisable.

(4) "Illumination." Every trailer park shall have installed and kept burning from sunset to sunrise sufficient artificial light to illuminate every building and trailer space.

(5) "Animals." No animals or poultry shall be permitted to run at large in any trailer court or park.

(6) "Occupancy regulations." It shall be unlawful for any person in a trailer court or park to use or permit to be used for occupancy:

(a) Any inhabited trailer which is not connected to the park sanitary sewer system or disposal facilities approved by the city plumbing and sewer inspector.

(b) Any trailer in an unsanitary condition; structurally unsound or not protecting its inhabitants against the elements. (1980 Code, § 5-502)

14-503. General regulations. (1) Trailer site. A trailer site in a trailer park shall not be occupied as a living quarter unless a single trailer is parked on the site and there shall not be more trailers occupied in a trailer park than there are approved trailer sites.

(2) Restrooms. All restrooms and shower houses shall be kept in a clean and sanitary condition.

(3) Garbage, refuse disposal. Adequate garbage cans and collection service shall be provided.

(4) Sewage disposal. No waste water or material from sinks, plumbing fixtures, or waste lines shall be deposited upon the surface of the ground. Where possible, said trailer park or court shall be connected to the city's sewer system.

(5) Streets and drives. All streets and driveways shall be maintained in good condition by the owner.

(6) Water supply. Every trailer park must have an approved water supply.

(7) Fire prevention regulations. An approved fire extinguisher will be properly maintained and located within 50 feet for every five (5) trailers occupied in said parks. (1980 Code, § 5-503)

14-504. Change of ownership. A use permit issued to operate a trailer park in a given location shall not give the right to everyone to operate a trailer park in that location. (1980 Code, § 5-504)

14-505. Changes in existing parks. All additions or repairs undertaken by an existing park must conform with the specifications of the City of Portland building codes. (1980 Code, § 5-505)

14-506. Standards. Any trailer park within the corporate limits of Portland must comply with certain standards. (1980 Code, § 5-506)

14-507. Enforcement. License certificate to operate a trailer park must be conspicuously posted in the office or on the premises of every trailer park. Failure to do so shall be deemed a misdemeanor. (1980 Code, § 5-507)

CHAPTER 6

DESIGN REVIEW COMMITTEE¹

SECTION

- 14-601. Established.
- 14-602. Membership and appointments.
- 14-603. Term of office.
- 14-604. Vacancy.
- 14-605. Removal from office.
- 14-606. Meetings.
- 14-607. Duties.
- 14-608. Projects requiring design review.
- 14-609. Application.
- 14-610. Notice of decision.
- 14-611. Appeal.
- 14-612. Planning commission acting as DRC.

14-601. Established. The mayor and city council hereby establish the Portland Community Design Review Committee, hereinafter referred to as the "DRC," and ordain that it be governed by the following provisions. (as added by Ord. #09-25, July 2009)

14-602. Membership and appointments. The DRC shall be composed of the chairperson of the Planning Commission of the City of Portland, or his or her designee from the membership of the planning commission, and six (6) members appointed by the mayor of the city, one (1) of whom shall be a member of the City Council of the City of Portland. All members shall be residents of the city and meet the criteria for appointment as set out in Tennessee Code Annotated, § 6-54-133. (as added by Ord. #09-25, July 2009, and replaced by Ord. #11-42, Dec. 2011)

14-603. Term of office. The term of office for all members shall be two (2) years, such term to expire concurrently with the reorganization of the city council after the bi-annual general municipal election, and until their successors are appointed and qualified. (as added by Ord. #09-25, July 2009)

14-604. Vacancy. Vacancies of the DRC shall be filled by appointment of the mayor and city council, and such appointments shall be only for the unexpired portion of the term. (as added by Ord. #09-25, July 2009)

¹The Design Review Standards, Ord. #19-68, adopted September 2019, is of record in the recorder's office.

14-605. Removal from office. Members of the DRC shall be removed from office or their office declared vacant in the following manner and for the following reasons:

- (1) By majority vote of, the entire city council;
- (2) If a member shall be absent from three (3) consecutive regular meetings of the design committee, removal shall be automatic and no action by the city council shall be necessary.
- (3) If a member shall no longer meet the requirements for composition. (as added by Ord. #09-25, July 2009)

14-606. Meetings. (1) A quorum shall consist of four (4) members and/or appointed alternates and a majority vote of any quorum shall govern.

(2) Meetings of the DRC shall be held at such time, date and place as called by the chairperson of the DRC, or by the mayor, after giving adequate public notice of the meeting. Interested persons shall be given an opportunity to be heard according to procedures adopted from time to time by the DRC.

(3) The DRC shall not be required to hold noticed public hearings, but any interested persons shall be afforded a reasonable opportunity to be heard, and the meetings of the committee shall be open to the public. Any applicant shall be entitled to attend and testify or present evidence on their behalf. (as added by Ord. #09-25, July 2009, and amended by Ord. #11-42, Dec. 2011)

14-607. Duties. The DRC shall have the following duties, responsibilities, authority, and limitations to its authority:

(1) The DRC shall review submittals for construction or development in all industrial, commercial and multi-family zone districts.

(2) The DRC shall be authorized to act on all design plans.

(3) The DRC shall be authorized to review minor site plans and make recommendations for these submittals that may consist of rehabilitation of existing sites and may include improvements such as painting, roofing, signage, doors, entrance remodels, windows, facades, handicapped accessibility, landscaping, awning and canopies, dumpster screening, paving and other similar items.

(4) The DRC will assist in developing specific procedures and standards for commercial and industrial design criteria. The DRC will provide their recommendation to the planning commission and city council for review and possible implementation action. (as added by Ord. #09-25, July 2009)

14-608. Projects requiring design review. All projects involving the issuance of a building permit for construction, reconstruction, renovation or use of occupancy permit request. (as added by Ord. #09-25, July 2009)

14-609. Application. Application for approval by the committee for the construction, reconstruction, alteration, restoration or certificate of occupancy of any building shall be submitted to the planner of the city accompanied by:

(1) Plans of all building and structures showing elevations and style of architecture. An architectural rendering visual aids and samples of materials to be used may be submitted and can be required by the committee. All colors, materials and finishes shall be shown by notation or by use of accepted architectural symbols.

(2) Five (5) sets of proposed site plan drawn to scale meeting Zoning Ordinance No. 387 criteria for site plan requirements. (as added by Ord. #09-25, July 2009)

14-610. Notice of decision. Written notice of the DRC's review/decision shall be available within five (5) working days after the decision is rendered. (as added by Ord. #09-25, July 2009)

14-611. Appeal. An appeal of this decision may be made to the planning commission no later than ten (10) days after the committee's action. Said appeal shall be in writing and shall be filed with the planning and codes department. (as added by Ord. #09-25, July 2009)

14-612. Planning commission acting as DRC. The mayor and city council may name the planning commission as the DRC. If planning commission is named as the DRC the membership, appointment, term length, removal from office, etc. shall be the same as required for the planning commission. Appeals of the planning commission's DRC decisions shall be made to the city council pursuant to Tennessee Code Annotated, § 6-54-133. (as added by Ord. #19-31, April 2019 *Ch12_12-06-21*)

TITLE 15

MOTOR VEHICLES, TRAFFIC AND PARKING¹

CHAPTER

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

CHAPTER 1

MISCELLANEOUS²

SECTION

- 15-101. Motor vehicle requirements.
- 15-102. Driving on streets closed for repairs, etc.
- 15-103. Careless driving.
- 15-104. One-way streets.
- 15-105. Unlaned streets.
- 15-106. Laned streets.
- 15-107. Yellow lines.
- 15-108. Miscellaneous traffic-control signs, etc.
- 15-109. General requirements for traffic-control signs, etc.
- 15-110. Unauthorized traffic-control signs, etc.
- 15-111. Presumption with respect to traffic-control signs, etc.
- 15-112. School safety patrols.

¹Municipal code reference

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

²State law references

Under Tennessee Code Annotated, § 55-10-307, the following offenses are exclusively state offenses and must be tried in a state court or a court having state jurisdiction: driving while intoxicated or drugged, as prohibited by Tennessee Code Annotated, § 55-10-401; failing to stop after a traffic accident, as prohibited by Tennessee Code Annotated, § 55-10-101, et seq.; driving while license is suspended or revoked, as prohibited by Tennessee Code Annotated, § 55-7-116; and drag racing, as prohibited by Tennessee Code Annotated, § 55-10-501.

- 15-113. Driving through funerals or other processions.
- 15-114. Clinging to vehicles in motion.
- 15-115. Riding on outside of vehicles.
- 15-116. Backing vehicles.
- 15-117. Projections from the rear of vehicles.
- 15-118. Causing unnecessary noise.
- 15-119. Vehicles and operators to be licensed.
- 15-120. Passing.
- 15-121. Damaging pavements.
- 15-122. Bicycle riders, etc.
- 15-123. Compliance with financial responsibility law required.
- 15-124. Adoption of state traffic statutes.
- 15-125. Use of engine compression braking devices.
- 15-126. Heavy truck traffic.

15-101. Motor vehicle requirements. It shall be unlawful for any person to operate any motor vehicle within the corporate limits unless such vehicle is equipped with properly operating muffler, lights, brakes, horn, and such other equipment as is prescribed and required by Tennessee Code Annotated, title 55, chapter 9. (1980 Code, § 9-101)

15-102. Driving on streets closed for repairs, etc. Except for necessary access to property abutting thereon, no motor vehicle shall be driven upon any street that is barricaded or closed for repairs or other lawful purpose. (1980 Code, § 9-106)

15-103. Careless driving. Every person operating a vehicle upon the streets within the City of Portland shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic and use of these streets and all other attendant circumstances, so as not to endanger the life, limb or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this chapter.

Work zones in or near city streets/roads are to be marked for the safety of drivers and workers in accordance with state law. Failure to heed "Caution," "Slow," "Workers Ahead," speed limit restriction and/or other cautionary signage shall be considered careless driving and in violation of this chapter, and drivers will be subject to citation for the same. (1980 Code, § 9-107, as replaced by Ord. #17-79, Feb. 2018, and amended by Ord. #19-37, May 2019 *Ch12_12-06-21*)

15-104. One-way streets. On any street for one-way traffic with posted signs indicating the authorized direction of travel at all intersections offering access thereto, no person shall operate any vehicle except in the indicated direction. (1980 Code, § 9-109)

15-105. Unlaned streets. 1. Upon all unlaned streets of sufficient width, a vehicle shall be driven upon the right half of the street except:

(a) When lawfully overtaking and passing another vehicle proceeding in the same direction.

(b) When the right half of a roadway is closed to traffic while under construction or repair.

(c) Upon a roadway designated and signposted by the municipality for one-way traffic.

(2) All vehicles proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven as close as practicable to the right hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn. (1980 Code, § 9-110)

15-106. Laned streets. On streets marked with traffic lanes, it shall be unlawful for the operator of any vehicle to fail or refuse to keep his vehicle within the boundaries of the proper lane for his direction of travel except when lawfully passing another vehicle or preparatory to making a lawful turning movement.

On two (2) lane and three (3) lane streets, the proper lane for travel shall be the right hand lane unless otherwise clearly marked. On streets with four (4) or more lanes, either of the right hand lanes shall be available for use except that traffic moving at less than the normal rate of speed shall use the extreme right hand lane. On one-way streets either lane may be lawfully used in the absence of markings to the contrary. (1980 Code, § 9-111)

15-107. Yellow lines. On streets with a yellow line placed to the right of any lane line or center line, such yellow line shall designate a no-passing zone, and no operator shall drive his vehicle or any part thereof across or to the left of such yellow line except when necessary to make a lawful left turn from such street. (1980 Code, § 9-112)

15-108. Miscellaneous traffic-control signs, etc.¹ It shall be unlawful for any pedestrian or the operator of any vehicle to violate or fail to comply with any traffic-control sign, signal, marking, or device placed or erected by the state or the city unless otherwise directed by a police officer.

It shall be unlawful for any pedestrian or the operator of any vehicle to willfully violate or fail to comply with the reasonable directions of any police officer. (1980 Code, § 9-113)

¹Municipal code references

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

15-109. General requirements for traffic-control signs, etc. All traffic-control signs, signals, markings, and devices shall conform to the latest revision of the Manual on Uniform Traffic Control Devices for Streets and Highways,¹ published by the U. S. Department of Transportation, Federal Highway Administration, and shall, so far as practicable, be uniform as to type and location throughout the city. This section shall not be construed as being mandatory but is merely directive. (1980 Code, § 9-114)

15-110. Unauthorized traffic-control signs, etc. No person shall place, maintain, or display upon or in view of any street, any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control sign, signal, marking, or device or railroad sign or signal, or which attempts to control the movement of traffic or parking of vehicles, or which hides from view or interferes with the effectiveness of any official traffic-control sign, signal, marking, or device or any railroad sign or signal. (1980 Code, § 9-115)

15-111. Presumption with respect to traffic-control signs, etc. When a traffic-control sign, signal, marking, or device has been placed, the presumption shall be that it is official and that it has been lawfully placed by the proper municipal authority. All presently installed traffic-control signs, signals, markings and devices are hereby expressly authorized, ratified, approved and made official. (1980 Code, § 9-116)

15-112. School safety patrols. All motorists and pedestrians shall obey the directions or signals of school safety patrols when such patrols are assigned under the authority of the chief of police and are acting in accordance with instructions; provided, that such persons giving any order, signal, or direction shall at the time be wearing some insignia and/or using authorized flags for giving signals. (1980 Code, § 9-117)

15-113. Driving through funerals or other processions. Except when otherwise directed by a police officer, no driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated. (1980 Code, § 9-118)

15-114. Clinging to vehicles in motion. It shall be unlawful for any person traveling upon any bicycle, motorcycle, coaster, sled, roller skates, or any

¹This manual may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402.

other vehicle to cling to, or attach himself or his vehicle to any other moving vehicle upon any street, alley, or other public way or place. (1980 Code, § 9-120)

15-115. Riding on outside of vehicles. It shall be unlawful for any person to ride, or for the owner or operator of any motor vehicle being operated on a street, alley, or other public way or place, to permit any person to ride on any portion of such vehicle not designed or intended for the use of passengers. This section shall not apply to persons engaged in the necessary discharge of lawful duties nor to persons riding in the load-carrying space of trucks. (1980 Code, § 9-121)

15-116. Backing vehicles. The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic. (1980 Code, § 9-122)

15-117. Projections from the rear of vehicles. Whenever the load or any projecting portion of any vehicle shall extend beyond the rear of the bed or body thereof, the operator shall display at the end of such load or projection, in such position as to be clearly visible from the rear of such vehicle, a red flag being not less than twelve (12) inches square. Between one-half ($\frac{1}{2}$) hour after sunset and one-half ($\frac{1}{2}$) hour before sunrise, there shall be displayed in place of the flag a red light plainly visible under normal atmospheric conditions at least two hundred (200) feet from the rear of such vehicle. (1980 Code, § 9-123)

15-118. Causing unnecessary noise. It shall be unlawful for any person to cause unnecessary noise by unnecessarily sounding the horn, "racing" the motor, or causing the "screeching" or "squealing" of the tires on any motor vehicle. (1980 Code, § 9-124)

15-119. Vehicles and operators to be licensed. It shall be unlawful for any person to operate a motor vehicle in violation of the "Tennessee Motor Vehicle Title and Registration Law" or the "Uniform Motor Vehicle Operators' and Chauffeurs' License Law." (1980 Code, § 9-125)

15-120. Passing. Except when overtaking and passing on the right is permitted, the driver of a vehicle passing another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the street until safely clear of the overtaken vehicle. The driver of the overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

When the street is wide enough, the driver of a vehicle may overtake and pass upon the right of another vehicle which is making or about to make a left turn.

The driver of a vehicle may overtake and pass another vehicle proceeding in the same direction either upon the left or upon the right on a street of sufficient width for four (4) or more lanes of moving traffic when such movement can be made in safety.

No person shall drive off the pavement or upon the shoulder of the street in overtaking or passing on the right.

When any vehicle has stopped at a marked crosswalk or at an intersection to permit a pedestrian to cross the street, no operator of any other vehicle approaching from the rear shall overtake and pass such stopped vehicle.

No vehicle operator shall attempt to pass another vehicle proceeding in the same direction unless he can see that the way ahead is sufficiently clear and unobstructed to enable him to make the movement in safety. (1980 Code, § 9-126)

15-121. Damaging pavements. No person shall operate or cause to be operated upon any street of the city any vehicle, motor propelled or otherwise, which by reason of its weight or the character of its wheels, tires, or track is likely to damage the surface or foundation of the street. (1980 Code, § 9-119)

15-122. Bicycle riders, etc. Every person riding or operating a bicycle, motorcycle, or motor driven cycle shall be subject to the provisions of all traffic ordinances, rules, and regulations of the city applicable to the driver or operator of other vehicles except as to those provisions which by their nature can have no application to bicycles, motorcycles, or motor driven cycles.

No person operating or riding a bicycle, motorcycle, or motor driven cycle shall ride other than upon or astride the permanent and regular seat attached thereto, nor shall the operator carry any other person upon such vehicle other than upon a firmly attached and regular seat thereon.

No bicycle, motorcycle, or motor driven cycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

No person operating a bicycle, motorcycle, or motor driven cycle shall carry any package, bundle, or article which prevents the rider from keeping both hands upon the handlebar.

No person under the age of sixteen (16) years shall operate any motorcycle or motor driven cycle while any other person is a passenger upon said motor vehicle.

All motorcycles and motor driven cycles operated on public ways within the corporate limits shall be equipped with crash bars approved by the state's commissioner of safety.

Each driver of a motorcycle or motor driven cycle and any passenger thereon shall be required to wear on his head a crash helmet of a type approved by the state's commissioner of safety.

Every motorcycle or motor driven cycle operated upon any public way within the corporate limits shall be equipped with a windshield of a type

approved by the state's commissioner of safety, or, in the alternative, the operator and any passenger on any such motorcycle or motor driven cycle shall be required to wear safety goggles of a type approved by the state's commissioner of safety for the purpose of preventing any flying object from striking the operator or any passenger in the eyes.

It shall be unlawful for any person to operate or ride on any vehicle in violation of this section and it shall also be unlawful for any parent or guardian to knowingly permit any minor to operate a motorcycle or motor driven cycle in violation of this section. (1980 Code, § 9-127)

15-123. Compliance with financial responsibility law required.

(1) Every vehicle operated within the corporate limits must be in compliance with the financial responsibility law.

(2) At the time the driver of a motor vehicle is charged with any moving violation under title 55, chapters 8 and 10, parts 1-5, chapter 50; any provision in this title of this municipal code; or at the time of an accident for which notice is required under Tennessee Code Annotated, § 55-10-106, the officer shall request evidence of financial responsibility as required by this section. In case of an accident for which notice is required under Tennessee Code Annotated, § 55-10-106, the officer shall request such evidence from all drivers involved in the accident, without regard to apparent or actual fault.

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

(b) A certificate, valid for one (1) year, issued by the commissioner of safety, stating that a cash deposit or bond in the amount required by the Tennessee Financial Responsibility Law of 1977, compiled in Tennessee Code Annotated, chapter 12, title 55, has been paid or filed with the commissioner, or has qualified as a self insurer under Tennessee Code Annotated, § 55-12-111; or

(c) The motor vehicle being operated at the time of the violation was owned by a carrier subject to the jurisdiction of the Department of Safety or the Interstate Commerce Commission, or was owned by the United States, the state of Tennessee or any political subdivision thereof, and that such motor vehicle was being operated with the owner's consent.

(4) Civil offense. It is a civil offense to fail to provide evidence of financial responsibility pursuant to this ordinance. Any violation of this ordinance is punishable by a civil penalty of up to fifty dollars (\$50.00). The civil penalty prescribed by this ordinance shall be in addition to any other penalty prescribed by the laws of this state or by the city's municipal code of ordinances.

(5) Evidence of compliance after violation. On or before the court date, the person charged with a violation of this section may submit evidence of compliance with this section in effect at the time of the violation. If the court is satisfied that compliance was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility may be dismissed. (as added by Ord. #02-10, March 2002, amended by Ord. #02-37, Nov. 2002, and replaced by Ord. #09-59, Dec. 2009)

15-124. Adoption of state traffic statutes. By the authority granted under Tennessee Code Annotated, § 16-18-302, the City of Portland adopts by reference as if fully set forth in this section, the "Rules of the Road," as codified in Tennessee Code Annotated, §§ 55-8-101 through 55-8-131, and §§ 55-8-133 through 55-8-180. Additionally, the City of Portland adopts Tennessee Code Annotated, §§ 55-4-101 through 55-4-133, §§ 55-4-135 through 55-4-137, §§ 55-8-181 through 55-8-191, §§ 55-8-193, §§ 55-8-199, §§ 55-9-601 through 55-9-606, § 55-12-139, § 55-21-108, and § 55-50-351, by reference as if fully set forth in this section. (as added by Ord. #02-14, May 2002, and replaced by Ord. #19-46, May 2019 *Ch12_12-06-21*)

15-125. Use of engine compression braking devices. (1) All truck tractor and semi-trailers operating within the City of Portland shall conform to the visual exhaust system inspection requirements, 40 CFR 202.22, of the Interstate Motor Carriers Noise Emission Standards.

(2) A motor vehicle does not conform to the visual exhaust system inspection requirements referenced in (1) of this section if inspection of the exhaust system of the motor carrier vehicle discloses that the system:

(a) Has a defect that adversely affects sound reduction, such as exhaust gas leaks or alteration or deterioration of muffler elements. (Small traces of soot on flexible exhaust pipe sections shall not constitute a violation.);

(b) Is not equipped with either a muffler or other noise dissipative device, such as a turbocharger (supercharger driven by exhaust by gases); or

(c) Is equipped with a cut out, bypass, or similar device, unless such device is designed as an exhaust gas driven cargo unloading system.

(3) Violations of this section shall subject the offender to a fine of fifty dollars (\$50.00) per offense. (as added by Ord. #06-84, Jan. 2007)

15-126. Heavy truck traffic. (1) As used in this section, the term "truck" shall mean any vehicle equipped with three (3) or more axles.

(2) Unless otherwise posted, it shall be unlawful for any truck fitting this description to operate in the left-hand lane, on roads, streets or highways with two (2) lanes allowing for movement in the same direction, except when the truck is actually preparing for a left turn or avoiding a hazardous condition.

(3) The city may designate specific roads and lanes that either prohibit or allow trucks. Where truck usage has been so designated and indicated as such by proper signage, it shall be unlawful for any truck to operate in any lanes or on any roads or streets other than as designated.

(4) Any person driving, or in charge, or in control of a "truck," as defined in the preceding section when upon roads, streets or lanes other than those designated as truck routes or allowed in this code, shall be prepared to present for inspection by police officers the log book, weight slips, delivery slips, or other written evidence of the destination and point of origin to justify the presence of the restricted vehicle on a street other than a designated truck route or lane.

(5) All trucks must obey the height, width, length and weight restrictions for all areas within the city.

(6) If any designated truck route, or portion thereof, shall be under repair or otherwise temporarily out of use, restricted vehicles shall use other temporary truck routes as may be designated by the city. (as added by Ord. #19-37, May 2019 *Ch12_12-06-21*)

CHAPTER 2

EMERGENCY VEHICLES

SECTION

15-201. Authorized emergency vehicles defined.

15-202. Operation of authorized emergency vehicles.

15-203. Following emergency vehicles.

15-204. Running over fire hoses, etc.

15-201. Authorized emergency vehicles defined. Authorized emergency vehicles shall be fire department vehicles, police vehicles, and such ambulances and other emergency vehicles as are designated by the chief of police. (1980 Code, § 9-102)

15-202. Operation of authorized emergency vehicles. (1) The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, subject to the conditions herein stated.

(2) The driver of an authorized emergency vehicle may park or stand, irrespective of the provisions of this title; proceed past a red or stop signal or stop sign, but only after slowing down to ascertain that the intersection is clear; exceed the maximum speed limit and disregard regulations governing direction of movement or turning in specified directions so long as he does not endanger life or property.

(3) The exemptions herein granted for an authorized emergency vehicle shall apply only when the driver of any such vehicle while in motion sounds an audible signal by bell, siren, or exhaust whistle and when the vehicle is equipped with at least one (1) lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(4) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others. (1980 Code, § 9-103)

15-203. Following emergency vehicles. No driver of any vehicle shall follow any authorized emergency vehicle apparently travelling in response to an emergency call closer than five hundred (500) feet or drive or park such vehicle

within the block where fire apparatus has stopped in answer to a fire alarm. (1980 Code, § 9-104)

15-204. Running over fire hoses, etc. It shall be unlawful for any person to drive over any hose lines or other equipment of the fire department except in obedience to the direction of a fireman or policeman. (1980 Code, § 9-105)

CHAPTER 3

SPEED LIMITS

SECTION

15-301. In general.

15-302. At intersections.

15-303. In school zones.

15-304. In congested areas.

15-301. In general. It shall be unlawful for any person to operate or drive a motor vehicle upon any highway or street at a rate of speed in excess of thirty (30) miles per hour except where official signs have been posted indicating other speed limits, in which cases the posted speed limit shall apply. (1980 Code, § 9-201)

15-302. At intersections. It shall be unlawful for any person to operate or drive a motor vehicle through any intersection at a rate of speed in excess of fifteen (15) miles per hour unless such person is driving on a street regulated by traffic-control signals or signs which require traffic to stop or yield on the intersecting streets. (1980 Code, § 9-202)

15-303. In school zones. It shall be unlawful for any person to operate or drive a motor vehicle at a rate of speed in excess of fifteen (15) miles per hour when passing a school during recess or while children are going to or leaving school during its opening or closing hours. (1980 Code, § 9-203)

15-304. In congested areas. It shall be unlawful for any person to operate or drive a motor vehicle through any congested area at a rate of speed in excess of any posted speed limit when such speed limit has been posted by authority of the city. (1980 Code, § 9-204)

CHAPTER 4

TURNING MOVEMENTS

SECTION

15-401. Generally.

15-402. Right turns.

15-403. Left turns on two-way roadways.

15-404. Left turns on other than two-way roadways.

15-405. U-turns.

15-401. Generally. No person operating a motor vehicle shall make any turning movement which might affect any pedestrian or the operation of any other vehicle without first ascertaining that such movement can be made in safety and signaling his intention in accordance with the requirements of the state law.¹ (1980 Code, § 9-301)

15-402. Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right hand curb or edge of the roadway. (1980 Code, § 9-302)

15-403. Left turns on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center lines thereof and by passing to the right of the intersection of the center lines of the two roadways. (1980 Code, § 9-303)

15-404. Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left hand lane lawfully available to traffic moving in such direction upon the roadway being entered. (1980 Code, § 9-304)

15-405. U-turns. U-turns are prohibited. (1980 Code, § 9-305)

¹State law reference

Tennessee Code Annotated, § 55-8-143.

CHAPTER 5

STOPPING AND YIELDING

SECTION

- 15-501. Upon approach of authorized emergency vehicles.
- 15-502. When emerging from alleys, etc.
- 15-503. To prevent obstructing an intersection.
- 15-504. At railroad crossings.
- 15-505. At "stop" signs.
- 15-506. At "yield" signs.
- 15-507. At traffic-control signals generally.
- 15-508. At flashing traffic-control signals.
- 15-509. At pedestrian control signals.
- 15-510. Stops to be signaled.

15-501. Upon approach of authorized emergency vehicles.¹ Upon the immediate approach of an authorized emergency vehicle making use of audible and/or visual signals meeting the requirements of the laws of this state, the driver of every other vehicle shall immediately drive to a position parallel to, and as close as possible to, the right hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. (1980 Code, § 9-401)

15-502. When emerging from alleys, etc. The drivers of all vehicles emerging from alleys, parking lots, driveways, or buildings shall stop such vehicles immediately prior to driving onto any sidewalk or street. They shall not proceed to drive onto the sidewalk or street until they can safely do so without colliding or interfering with approaching pedestrians or vehicles. (1980 Code, § 9-402)

15-503. To prevent obstructing an intersection. No driver shall enter any intersection or marked crosswalk unless there is sufficient space on the other side of such intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of traffic in or on the intersecting street or crosswalk. This provision shall be effective notwithstanding any traffic-control signal indication to proceed. (1980 Code, § 9-403)

¹Municipal code reference

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

15-504. At railroad crossings. Any driver of a vehicle approaching a railroad grade crossing shall stop within not less than fifteen (15) feet from the nearest rail of such railroad and shall not proceed further while any of the following conditions exist:

(1) A clearly visible electrical or mechanical signal device gives warning of the approach of a railroad train.

(2) A crossing gate is lowered or a human flagman signals the approach of a railroad train.

(3) A railroad train is approaching within approximately fifteen hundred (1500) feet of the highway crossing and is emitting an audible signal indicating its approach.

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing. (1980 Code, § 9-404)

15-505. At "stop" signs. The driver of a vehicle facing a "stop" sign shall bring his vehicle to a complete stop immediately before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, then immediately before entering the intersection, and shall remain standing until he can proceed through the intersection in safety. (1980 Code, § 9-405)

15-506. At "yield" signs. The drivers of all vehicles shall yield the right of way to approaching vehicles before proceeding at all places where "yield" signs have been posted. (1980 Code, § 9-406)

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

(1) Green alone, or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow alone, or "Caution":

(a) Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter, and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(3) Steady red alone, or "Stop":

(a) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone.

(b) Pedestrians facing such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(4) Steady red with green arrow:

(a) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.

(b) Pedestrians facing such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(5) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made a vehicle length short of the signal. (1980 Code, § 9-407)

15-508. At flashing traffic-control signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal placed or erected in the city it shall require obedience by vehicular traffic as follows:

(a) Flashing red (stop signal). When a red lens is illuminated with intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) Flashing yellow (caution signal). When a yellow lens is illuminated with intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules set forth in § 15-504 of this title. (1980 Code, § 9-408)

15-509. At pedestrian control signals. Wherever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" have been placed or erected by the city, such signals shall apply as follows:

(1) "Walk." Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) "Wait or Don't Walk." No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to the nearest sidewalk or safety zone while the wait signal is showing. (1980 Code, § 9-409)

15-510. Stops to be signaled. No person operating a motor vehicle shall stop such vehicle, whether in obedience to a traffic sign or signal or otherwise, without first signaling his intention in accordance with the requirements of the state law,¹ except in an emergency. (1980 Code, § 9-410)

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

CHAPTER 6

PARKING

SECTION

- 15-601. Illegal parking.
- 15-602. Disposition of fines.
- 15-603. Notice to appear in court.
- 15-604. Presumption of guilt in violations of parking regulations.
- 15-605. Validity of citations and warrants.
- 15-606. Applicability of chapter.
- 15-607. Generally; within commercially zoned areas; repairing parked vehicles.
- 15-608. Stopping, standing or parking prohibited in specific places; exceptions for disabled veterans and handicapped persons.
- 15-609. Obstructing traffic.
- 15-610. Parking for certain purposes prohibited.
- 15-611. Parking adjacent to schools.
- 15-612. Parking on narrow streets.
- 15-613. Stopping, standing or parking at hazardous or congested places.
- 15-614. Manner of parking generally.
- 15-615. Occupancy of more than one space.
- 15-616. Parking prohibited at all times on certain streets.
- 15-617. Reserved parking for handicapped drivers.
- 15-618. Parking on city property.

15-601. Illegal parking. Whenever any motor vehicle with or without a driver is found parked or stopped in violation of any of the restrictions imposed by this code, the officer finding such vehicle shall take its license number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a citation for the driver and/or owner to answer for the violation during the hours and at a place specified in the citation. The offender may waive his right to a judicial hearing and have the charges disposed of out of court, provided that the penalty for the violation is paid within ten (10) days of the date of the citation. Penalties for violating the provisions of this section shall not exceed fifty dollars (\$50.00) per citation. (1980 Code, § 9-501, as replaced by Ord. #13-30, Sept. 2013, and amended by Ord. #19-26, March 2019 *Ch12_12-06-21*)

15-602. Disposition of fines. All fines and forfeitures collected upon conviction or upon forfeiture of bail of any person charged with a violation of any of the provisions of this chapter shall be paid into the city treasury and deposited in the general fund and be expendable as provided by the city charter. (1980 Code, § 9-502, as replaced by Ord. #13-30, Sept. 2013)

15-603. Notice to appear in court. (1) Whenever a person is charged by a police officer or another properly designated security officer with a violation of any provision of this chapter and such person is not immediately taken before the city judge the police officer shall prepare in duplicate written notice to appear in court containing the name and address of such person, the license number of his vehicle, if any, the offense charged, and the time and place when and where such person shall appear in court.

(2) The time specified in the notice to appear must be fixed by the police officer unless the person charged obtains an alternative approved hearing date.

(3) The person charged to appear in court must sign at least one (1) copy of the written notice prepared by the police officer. The officer shall deliver a copy of the notice to the person promising to appear. Thereupon, the officer shall forthwith release the person charged from custody.

(4) It shall be unlawful for any person to violate his written promise to appear given to an officer upon the issuance of a traffic citation, regardless of the disposition of the charge for which such citation was originally issued. A written promise to appear in court may be complied with by an appearance by counsel.

(5) If any person fails to comply with a traffic citation given to such person or attached to a vehicle, or fails to make appearance pursuant to a summons directing an appearance in the municipal court, the clerk of the municipal court shall issue such process as directed by the city judge as may be authorized by the laws of the State of Tennessee. (1980 Code, § 9-503, as replaced by Ord. #13-30, Sept. 2013)

15-604. Presumption of guilt in violations of parking regulations. In all prosecutions for alleged violations of the provisions of this chapter relating to parking regulations, the owner of the vehicle involved shall be prima facie presumed to have been the operator or in control thereof at the time the alleged offense was committed. (1980 Code, § 9-504, as replaced by Ord. #13-30, Sept. 2013)

15-605. Validity of citations and warrants. No traffic citation or warrant shall be declared void by reason of the fact that the incorrect ordinance or section number was cited, so long as the complaint or warrant states a cause of action sufficient to place the defendant on notice of the charge he is called upon to defend against. (1980 Code, § 9-505, as replaced by Ord. #13-30, Sept. 2013)

15-606. Applicability of chapter. (1) The provisions of this chapter prohibiting the stopping, standing or parking of a vehicle shall apply at all times or at those times specified in this chapter or as indicated on official signs, except

when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

(2) The provisions of this chapter imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times. (1980 Code, § 9-506, as replaced by Ord. #13-30, Sept. 2013)

15-607. Generally; within commercially zoned areas; repairing parked vehicles. (1) No person shall leave any motor vehicle unattended on any street without first setting the brakes thereon, stopping the motor, removing the ignition key, and turning the front wheels of such vehicle toward the nearest curb or gutter of the street.

(2) Except as hereinafter provided, every vehicle parked upon a street within the city shall be so parked that its right wheels are approximately parallel to and within eighteen inches (18") of the right edge or curb of the street.

(3) Notwithstanding anything else in this code to the contrary, no person shall park or leave a vehicle parked on any public street or alley within a commercially zoned area, or on any other public street or alley for more than forty-eight (48) consecutive hours without the prior approval of the chief of police.

(4) No person shall wash, grease or work on any vehicle, except to make repairs necessitated by an emergency, while such vehicle is parked on a public street. (1980 Code, § 9-507, as replaced by Ord. #13-30, Sept. 2013)

15-608. Stopping, standing or parking prohibited in specific places; exceptions for disabled veterans and handicapped persons.

(1) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:

- (a) On a sidewalk;
- (b) In front of a public or private driveway;
- (c) Fire lanes or spaces on private or public property;
- (d) Within an intersection;
- (e) Within fifteen feet (15') of a fire hydrant;
- (f) On a crosswalk;
- (g) Within twenty feet (20') of a crosswalk at an intersection;
- (h) Within thirty feet (30') upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway;
- (i) Within fifty feet (50') of the nearest rail of a railroad crossing;

(j) Within twenty feet (20') of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet (75') of such entrance when properly signposted.

(k) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(l) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(m) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(n) At any place where official signs prohibit stopping;

(o) In a parking space clearly identified by an official sign as being reserved for the physically handicapped, unless, however, the person driving the vehicle is physically handicapped or parking such vehicle for the benefit of a physically handicapped person. A vehicle parking in such a space shall display a certificate or placard as set forth in Tennessee Code Annotated, § 55-21-101, et seq., or a disabled veteran's license plate issued under Tennessee Code Annotated, § 55-4-237.

(2) No person shall move a vehicle not lawfully under such person's control into any such prohibited area or away from a curb such distance as is unlawful.

(3) The provisions of this section shall not apply to:

(a) The driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a road, street or highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such vehicle in such position.

(b) The driver of any vehicle operating as a carrier of passengers for hire and holding a certificate of convenience and necessity or interstate permit issued by the public service commission authorizing the operation of such vehicle upon the roads, streets or highways in this state, while taking passengers on such vehicle, or discharging passengers therefrom, provided, the vehicle is stopped so that a clear view of such vehicle shall be obtained from a distance of two hundred feet (200') in each direction, upon such roads, streets or highways.

(c) A solid waste vehicle while on the paved or improved main traveled portion of a road, street or highway in such manner and to such extent as is necessary for the sole purpose of collecting municipal solid waste, as defined by Tennessee Code Annotated, § 68-211-802(a)(10); provided, that such vehicle shall maintain flashing hazard lights at all times while it is stopping or standing; provided further, that the vehicle is stopped so that a clear view of such stopped vehicle shall be available from a distance of two hundred feet (200') in either direction upon the highway. The provisions of this subsection do not preclude any claimant from pursuing such claimant's common law claim for recovery pursuant

to common law negligence. (1980 Code, § 9-508, as replaced by Ord. #13-30, Sept. 2013)

15-609. Obstructing traffic. No person shall park any vehicle upon a street in such a manner or under such conditions as to leave available less than fifteen feet (15') of the width of the roadway for free movement of vehicular traffic. (1980 Code, § 9-509, as replaced by Ord. #13-30, Sept. 2013)

15-610. Parking for certain purposes prohibited. No person shall park a vehicle upon any roadway for the principal purpose of:

- (1) Displaying such vehicle for sale;
- (2) Washing, greasing, or repairing such vehicle, except for repairs necessitated by an emergency;
- (3) Displaying advertising or commercial messages;
- (4) Storing such vehicle for a continuous period of time longer than twenty-four (24) hours. (1980 Code, § 9-510, as replaced by Ord. #13-30, Sept. 2013)

15-611. Parking adjacent to schools. (1) The chief of police or his designee is hereby authorized to erect signs indicating no parking upon either or both sides of any street adjacent to any school property when such parking would, in its opinion, interfere with traffic or create a hazardous situation.

(2) When official signs are posted indicating no parking upon either side of a street adjacent to any school property as authorized in this section, no person shall park a vehicle in any such designated place. (1980 Code, § 9-511, as replaced by Ord. #13-30, Sept. 2013)

15-612. Parking on narrow streets. (1) The chief of police or his designee is hereby authorized to erect signs indicating no parking upon any street when the width of the roadway does not exceed twenty feet (20'), or upon one (1) side of a street when the width of the roadway does not exceed thirty feet (30').

(2) When official signs prohibiting parking are erected upon narrow streets as authorized in this section, no person shall park a vehicle upon any such street in violation of any such sign. (as added by Ord. #13-30, Sept. 2013)

15-613. Stopping, standing or parking at hazardous or congested places. (1) The mayor or his designee is hereby authorized to determine and designate by proper signs places not exceeding one hundred fifty feet (150') in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

(2) When official signs are erected at hazardous or congested places as authorized in this section, no person shall stop, stand or park a vehicle in any such designated place. (as added by Ord. #13-30, Sept. 2013)

15-614. Manner of parking generally. Every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the righthand wheels parallel to and within twelve inches (12") of the righthand curb or as close as practicable to the right edge of the righthand shoulder. (as added by Ord. #13-30, Sept. 2013)

15-615. Occupancy of more than one space. No person shall park a vehicle in any designated parking space so that any part of such vehicle occupies more than one (1) such space or protrudes beyond the official markings on the street or curb designating such space unless the vehicle is too large to be parked within a single designated space. (as added by Ord. #13-30, Sept. 2013)

15-616. Parking prohibited at all times on certain streets. (1) The mayor or his designee is hereby authorized to erect signs prohibiting parking at all times on streets as may become necessary based on an engineering and traffic investigation.

(2) When signs are erected giving notice thereof, no person shall park a vehicle at any time upon any street or portion thereof so signed. (as added by Ord. #13-30, Sept. 2013)

15-617. Reserved parking for handicapped drivers. (1) The mayor or his designee is hereby authorized to designate, by the installation of appropriate signs, parking spaces for the exclusive use of handicapped drivers in those areas where a significant demand for parking by such persons may exist.

(2) Any merchant or owner of a privately owned parking lot for use by the general public is hereby authorized to designate, by the installation of appropriate signs, parking spaces for the exclusive use of handicapped drivers.

(3) Where signs bearing an official symbol are erected designating reserved parking spaces for handicapped drivers, no person except handicapped drivers or qualified operators in the presence of and acting under the express direction of a handicapped driver shall stand or park a vehicle in any such space.

(4) Violators of this section may be issued a parking ticket attached to the vehicle or a citation to court.

(5) Anyone who violates the provisions of this section shall be guilty of a misdemeanor. (as added by Ord. #13-30, Sept. 2013)

15-618. Parking on city property. The mayor or his designee is hereby authorized to establish and enforce policies, rules and regulations for parking at city parks and buildings and all other municipally owned property and to erect signs prohibiting parking at such locations except in accordance with such policies, rules and regulations.

(1) The policies, rules and regulations established in accordance with this section by the mayor or his designee may include requirements for parking permits in designated areas during certain times.

(2) Any vehicle parking in violation of such policies, rules or regulations shall be towed away upon the request of the mayor or his designee or any law enforcement officer. The owner of any such vehicle shall be responsible for all towing charges and resulting storage charges. The towing of any such vehicle shall be in addition to the issuance of a citation or other penalty imposed on the owner or driver of the vehicle. (as added by Ord. #13-30, Sept. 2013)

CHAPTER 7

ENFORCEMENT

SECTION

- 15-701. Issuance of traffic citations.
- 15-702. Failure to obey citation.
- 15-703. Illegal parking.
- 15-704. Impoundment of vehicles.
- 15-705. Disposal of abandoned motor vehicles.
- 15-706. Violation and penalty.

15-701. Issuance of traffic citations.¹ When a police officer halts a traffic violator other than for the purpose of giving a warning, and does not take such person into custody under arrest, he shall take the name, address, and operator's license number of said person, the license number of the motor vehicle involved, and such other pertinent information as may be necessary, and shall issue to him a written traffic citation containing a notice to answer to the charge against him in the city court at a specified time. The officer, upon receiving the written promise of the alleged violator to answer as specified in the citation, shall release such person from custody. It shall be unlawful for any alleged violator to give false or misleading information as to his name or address. (1980 Code, § 9-601)

15-702. Failure to obey citation. It shall be unlawful for any person to violate his written promise to appear in court after giving said promise to an officer upon the issuance of a traffic citation, regardless of the disposition of the charge for which the citation was originally issued. (1980 Code, § 9-602)

15-703. Illegal parking. Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by this code, the officer finding such vehicle shall take its license number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a citation for the driver and/or owner to answer for the violation within a time specified in the citation. (1980 Code, § 9-603, modified)

15-704. Impoundment of vehicles. Members of the police department are hereby authorized, when reasonably necessary, to prevent obstruction of traffic, to remove from the streets and impound any vehicle whose operator is

¹State law reference

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

arrested or any vehicle which is illegally parked, abandoned, or otherwise parked so as to constitute an obstruction or hazard to normal traffic. Any impounded vehicle left parked on any street or alley for more than seventy-two (72) consecutive hours without permission from the chief of police shall be presumed to have been abandoned if the owner cannot be located after a reasonable investigation. Such an impounded vehicle shall be stored until the owner claims it, gives satisfactory evidence of ownership and pays all applicable fines and costs. (1980 Code, § 9-604)

15-705. Disposal of abandoned motor vehicles. "Abandoned motor vehicles," as defined in Tennessee Code Annotated, §§ 55-16-101 to 55-16-111, shall be impounded and disposed of by the police department in accordance with the provisions of Tennessee Code Annotated, §§ 55-16-101 through 55-16-111. (Ord. #552, Nov. 1997)

15-706. Violation and penalty. Any violation of this title shall be a civil offense punishable as follows:

(1) Traffic and parking citations. Traffic and parking citations shall be punishable by a civil penalty up to fifty dollars (\$50.00) for each separate offense.

(2) Parking citations. (a) Parking meter. If the offense is a parking meter violation, the offender may, within the designated time, have the charge against him disposed of by paying to the city recorder a fine, provided he waives his right to a judicial hearing.

(b) Other parking violations. For other parking violations, the offender may, within ten (10) days, have the charge against him disposed of by paying to the city recorder a fine of three dollars (\$3.00), provided he waives his right to a judicial hearing. If he appears and waives his right to a judicial hearing after ten (10) days but before a warrant is issued for his arrest, his civil penalty shall be five dollars (\$5.00). (1980 Code, § 9-603, modified, as amended by Ord. #19-45, May 2019 *Ch12_12-06-21*)

CHAPTER 8

IMPOUNDMENT OF VEHICLES

SECTION

15-801. Impoundment of vehicles by police department.

15-802. Impoundment of vehicles by the codes department.

15-801. Impoundment of vehicles by police department. Members of the police department are hereby authorized, when reasonably necessary for the security of the vehicle or to prevent obstruction of traffic, to remove from the streets and impound any vehicle whose operator is arrested or any unattended vehicle which is parked, so as to constitute an obstruction or hazard to normal traffic. Any impounded vehicle shall be stored until the owner or other person entitled thereto claims it, gives satisfactory evidence of ownership or right to possession, and pays all applicable fees and costs or until it is otherwise lawfully disposed of. The fee for impounding a vehicle shall be equal to the fee charged by the wrecker service who tows the vehicle. The storage cost of the impounded vehicle shall be twenty-five dollars (\$25.00) dollars per day for each motor vehicle stored in the impoundment lot. Any part of a day shall count as a whole day.

The owner or authorized agent shall pay the City of Portland all outstanding fees for towing and storage in order to claim the vehicle. The City of Portland will reimburse cost for towing associated with having the vehicle moved to the impound lot for storage. (as added by Ord. #16-44, Oct. 2016)

15-802. Impoundment of vehicles by the codes department. Code enforcement officers are hereby authorized to impound inoperative or unlicensed motor vehicles in accordance with the International Property Maintenance Code. Any impounded vehicle shall be stored until the owner or other entitled person claims it, gives satisfactory evidence of ownership or right to possession, and pays all applicable fees and associated cost until it is otherwise lawfully disposed of. A storage fee for the impounded vehicle of twenty-five dollars (\$25.00) per day for each motor vehicle stored in the impoundment lot. Any part of a day shall count as a whole day.

The owner or authorized agent shall pay the City of Portland all outstanding fees for towing and storage in order to claim the vehicle. The City of Portland will reimburse cost for towing associated with having the vehicle moved to the impound lot for storage. (as added by Ord. #16-44, Oct. 2016)

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. Operation of trains at crossings regulated.
- 16-112. Animals and vehicles on sidewalks.
- 16-113. 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. (1980 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 (14) feet or over any sidewalk at a height of less than eight (8) feet. (1980 Code, § 12-102)

16-103. Trees, etc., obstructing view at intersections prohibited. It shall be unlawful for any property owner or occupant to have or maintain on

¹Municipal code reference

Related motor vehicle and traffic regulations: title 15.

his property any tree, shrub, sign, or other obstruction which prevents persons driving vehicles on public streets or alleys from obtaining a clear view of traffic when approaching an intersection. (1980 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.¹ (1980 Code, § 12-104)

16-105. Banners and signs across streets and alleys restricted. It shall be unlawful for any person to place or have placed any banner or sign across any public street or alley except when expressly authorized by the city council after a finding that no hazard will be created by such banner or sign. (1980 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 statute. (1980 Code, § 12-106)

16-107. Littering streets, alleys, or sidewalks prohibited. It shall be unlawful for any person to litter, place, throw, blow, 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, drainage areas, and places for their intended purposes; and it shall be unlawful for any person to allow grass or leaves to be placed or blown onto any street, alley, sidewalk, or drainage area. (1980 Code, § 12-107, as replaced by Ord. #19-59, July 2019 *Ch12_12-06-12*)

16-108. Obstruction of drainage ditches. It shall be unlawful for any person to permit or cause the obstruction of any drainage ditch in any public right of way. From and after June 19, 1984, all drain tile utilized in the construction of new driveways, or reconstruction of existing driveways, shall be not less than twelve inches (12") in diameter, and that in areas of the city prone to flooding in times of heavy rainfall the city, through the director of public works, may require such drain tile to exceed twelve inches (12") in diameter. All drainage tiles utilized in the construction of new driveways, or used in the reconstruction of existing driveways shall be not less than 16 feet in length. (1980 Code, § 12-108)

¹Municipal code reference
Building code: title 12, chapter 1.

16-109. Abutting occupants to keep sidewalks clean, etc. 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. (1980 Code, § 12-109)

16-110. Parades, etc., regulated. It shall be unlawful for any club, organization, or similar group to hold any meeting, parade, demonstration, or exhibition on the public streets without some responsible representative first securing a permit from the recorder. No permit shall be issued by the recorder unless such activity will not unreasonably interfere with traffic and unless such representative shall agree to see to the immediate cleaning up of all litter which shall be left on the streets as a result of the activity. Furthermore, it shall be unlawful for any person obtaining such a permit to fail to carry out his agreement to clean up the resulting litter immediately. (1980 Code, § 12-110)

16-111. Operation of trains at crossings regulated. No person shall operate any railroad train across any street or alley without giving a warning of its approach as required by state law. It shall be unlawful to stop a railroad train so as to block or obstruct any street or alley for a period of more than five (5) consecutive minutes. (1980 Code, § 12-111, modified)

16-112. 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 unreasonably interferes with or inconveniences pedestrians using the sidewalk. It shall also be unlawful for any person knowingly to allow any minor under his control to violate this section. (1980 Code, § 12-112)

16-113. Fires in streets, etc. It shall be unlawful for any person to set or contribute to any fire in any public street, alley, or sidewalk. (1980 Code, § 12-113)

CHAPTER 2

EXCAVATIONS AND CUTS¹

SECTION

- 16-201. Permit required.
- 16-202. Applications for permits.
- 16-203. Fee.
- 16-204. Cutting of road.
- 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. Enforcement and penalties.

16-201. Permit required. It shall be unlawful for any person, firm, corporation, association, or others, to make any excavation in any street, alley, or public place, or to tunnel under any street, alley, or public place without 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 any 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 offices of the public works superintendent and the recorder are open for business, and said permit shall be retroactive to the date when the work was begun. (1980 Code, § 12-201)

16-202. Applications for permits. Applications for such permits shall be made to the public works superintendent, 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

¹State law reference

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

ordinances and laws relating to the work to be done. Such application shall be rejected or approved by the public works superintendent within three (3) days of its filing. (1980 Code, § 12-202)

16-203. Fee. The fee for such permits shall be ten dollars (\$10.00) for all excavations or tunnels, and permits shall not be issued until a surety bond has been received by the city recorder, for not less than \$1,000.00 and not to exceed \$5,000.00. This bond will insure the proper restoration of the ground and laying of the pavement, and amount of bond will be determined by the public works superintendent, to correspond with the type of work being done. (1980 Code, § 12-203)

16-204. Cutting of road. (1) If any blacktop should have to be cut, it must be back filled with crushed stone, within 2" of the top surface, and 2" of asphalt on top.

(2) Any gravel road that has to be cut, must be completely refilled with crushed stone.

(3) At no time shall more than one half of any road be cut, and cause traffic to be blocked.

(4) City of Portland Street Department will furnish a supervisor to inspect any road to be cut and the repair to specifications.

(5) Proper caution signs will be furnished by each utility and contractor to insure safety of the public. (1980 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. (1980 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 shall restore it to its original condition. This shall be paid for by such person, firm, corporation, association, or others promptly upon the completion of the work for which the excavation or tunnel was made. In case of unreasonable delay in restoring the street, alley, or public place, the recorder shall give notice, on advice of the public works superintendent, to the person, firm, corporation, association, or others that unless the excavation or tunnel is refilled properly within a specified reasonable period of time, the municipality will do the work and charge the expense of doing the same to such person, firm, corporation, association, or others. If within the specified time the conditions

of the above notice have not been complied with, the work shall be done by the 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. (1980 Code, § 12-206)

16-207. Insurance. The applicant for a permit under this chapter shall submit satisfactory evidence that he has sufficient assets or insurance to indemnify the city for any costs, losses or liabilities that it may incur by reason of such excavation, and to satisfy any judgements or liabilities arising out of the excavation. (1980 Code, § 12-207)

16-208. Time limits. 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 pavement, or until the refill is made ready for the pavement to be put on by the municipality if the municipality restores such surface pavement. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the superintendent of public works. (1980 Code, § 12-208)

16-209. Enforcement and penalties. Any person or persons violating this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00). (1980 Code, § 12-209)

TITLE 17**SOLID WASTE¹****CHAPTER****1. SOLID WASTE.****CHAPTER 1****REFUSE****SECTION**

- 17-101. Purpose.
- 17-102. Definitions.
- 17-103. Storage.
- 17-104. Rules and regulations to implement chapter.
- 17-105. Brush hauling.
- 17-106. Manner of loading, moving, and carrying material, garbage, etc., and tracking of foreign material.
- 17-107. Accumulation of decaying vegetables or fruits in railroad cars is prohibited, and debris from railroad cars must be disposed of in approved containers.
- 17-108. Miscellaneous prohibited dispositions of refuse.
- 17-109. Exclusive collection.
- 17-110. Premises to be kept clean and containers required.
- 17-111. Authority of city to confiscate, etc. unsatisfactory containers.
- 17-112. Proximity of other personal effects.
- 17-113. Residential containers, storage, and requirements.
- 17-114. Nonresidential establishment containers, storage, and requirements.
- 17-115. Residential collection practices: garbage collection frequency, placement, etc.
- 17-116. Residential collection practices: trash collection frequency, placement, and producer's responsibility.
- 17-117. Nonresidential collection practices: garbage and trash collection frequency, placement, etc.
- 17-118. Industrial waste.
- 17-119. Hazardous refuse.
- 17-120. Cardboard boxes and cartons.
- 17-121. Containers.
- 17-122. Disturbing containers.
- 17-123. Collection service.

¹Municipal code reference

Property maintenance regulations: title 13.

- 17-124. Failure to comply.
- 17-125. Bulky and nonburnable items.
- 17-126. Property partially within city limits.
- 17-127. Disposal - at Sumner County Resource Authority.
- 17-128. Refuse collection fee.

17-101. Purpose. This chapter is determined and declared to be a sanitary measure for the protection and promotion of the health, safety, and welfare of the citizens of Portland, hereinafter referred to as the city. (1980 Code, § 8-101, as replaced by Ord. #18-19, April 2018)

17-102. Definitions. For the purpose of this chapter, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory.

(1) "Ashes." All residues resulting from the combustion of coal, coke, wood, or any other material or substances in domestic, industrial or commercial stoves, furnaces, or boilers.

(2) "Authorized residential container." Shall mean ninety-six (96) gallon roll-out cart used in semiautomatic or automated collection which are provided by the City of Portland. Residential customers must purchase from the City of Portland Utility Office a city cart (ninety-six (96) gallon roll-out cart) at the prevailing rate.

(3) "Building materials." Any material such as lumber, brick, block, stone, plaster, concrete, asphalt, roofing shingles, gutters, or any other substances accumulated as the result of repairs or additions to existing buildings or structures, constructions of new buildings or structures.

(4) "Bulk container." Shall mean and include enclosed, metal or plastic, dumpster-type containers having a capacity of no less than two (2) than cubic yards.

(5) "Cuttings." All tree limbs, trimmings, shrubbery, etc.

(6) "Garbage." Putrescible animal and vegetable waste, liquid, or otherwise resulting from the handling, processing, preparation, cooking, and consumption of food and all cans, bottles, and other containers originally used for food stuffs.

(7) "Garden refuse." All accumulations of plants, stems, roots, vegetables, and fruits remaining after harvest.

(8) "Hazardous refuse." Any chemical, compounds, mixture, substances, or article which may constitute a hazard to health or may cause damage to property by reason of being explosive, flammable, poisonous, corrosive, unstable, irritating, radioactive, or otherwise harmful. The following is a list of substances which should not be placed with solid waste collected by the city.

- (a) Flammable liquids, solids, or gases such as gasoline, benzene alcohol, or other similar substances;
- (b) Any material that could be hazardous or injurious to city employees or which could cause damage to city equipment and/or facilities;
- (c) Hazardous waste as defined in Tennessee Code Annotated, § 68-212-104(7) and household hazardous waste as defined in Tennessee Code annotated, § 68-211-802(a)(7);
- (d) Construction waste consisting of materials from construction, demolition, remodeling, construction site preparation including, but not limited to, rocks, bricks, dirt, debris, fill, plaster, guttering and all types of scrap materials;
- (e) Human or animal excrement;
- (f) Hot materials such as ashes, cinders, etc.;
- (g) Infectious waste including, but not limited to, those classified by the following:
 - (i) Isolation wastes - Wastes contaminated by patients who are isolated due to communicable disease as provided in the U.S. Centers for Disease Control Guidelines for Isolation Precautions in Hospitals (July 1983).
 - (ii) Cultures and stocks of infectious agents and associated biological cultures and stocks of infectious agents, including specimen cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, waste from the production of biological, discarded lice and attenuated vaccines;
 - (iii) Laboratory waste which has come into contact with cultures and stocks of etiologic agents or blood specimens. Such wastes include, but are not limited to, culture dishes, blood specimen tubes, devices used to transfer, inoculate and mix cultures, paper and cloth which has come into contact with cultures, and stock of etiologic agents;
 - (iv) Human blood and blood products - Waste human blood and blood products such as serum, plasma, and other blood components;
 - (v) Pathological waste - Pathological waste such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;
 - (vi) Discarded sharps - All discarded sharps, e.g., hypodermic needles, syringes, pasteur pipettes, broken glass, scalpel blades, etc., used in patient care, medical research, or industrial laboratories;
 - (vii) Contaminated animal carcasses, body parts and bedding of animals that were intentionally exposed to pathogens

in research, in the production of biological or in vitro testing of pharmaceuticals.

(h) Human and/or animal remains.

(9) "Industrial waste." All waste peculiar to industrial, manufacturing, or processing plants.

(10) "Litter." All garbage, refuse, and trash and all other waste material which, if thrown, deposited, or left unattended as herein prohibited, tends to create a danger to public health, safety, and welfare.

(11) "Nonresidential establishments." Any establishment except those defined under residential establishments. Nonresidential establishments shall be divided into the following categories:

(a) Commercial - which shall include restaurants, motels, hotels, private cemeteries, retail and wholesale business establishments, and offices where a product is not manufactured.

(b) Industrial - which shall include all manufacturing and fabricating businesses.

(c) Governmental - which shall include local, state, and federal governmental agencies.

(d) Educational facilities - which shall include all public schools and universities.

(e) Religious - which shall include all churches, synagogues, church-operated or affiliated agencies.

(f) Fraternal, social, and professional clubs and organizations - which shall include lodges, social clubs, labor unions.

(g) Professional - which shall include all hospitals, doctors' offices and clinics, lawyers' offices, animal hospitals and clinics.

(h) Private educational facilities - which shall include all nonpublic schools, colleges, and universities.

(12) "Park." A park, reservation, playground, recreation center, or any other public area in the city, and devoted to active or passive recreation.

(13) "Private premises." Any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule, or mailbox belonging or appurtenant to such dwelling, house, building, or other structure.

(14) "Producer." Either the person responsible for the ashes, garbage, refuse, trash, industrial waste, and any other waste material or the occupant of the place or building in which such is produced or in which the person responsible for such has a place of business or residence.

(15) "Public place." Any and all streets, sidewalks, boulevards, alleys, or other public ways and any and all public parks, squares, spaces, grounds, and buildings.

(16) "Refuse." All putrescible and nonputrescible solid wastes (except body waste) including garbage, trash, industrial waste, ashes, street cleanings, dead animals, and abandoned automobiles.

(17) "Residential establishments." Shall include single - or multiple-family dwelling units up to and including apartment's complexes, condominiums, or mobile home parks of four units or less.

(18) "Trash." Non-putrescible solid wastes consisting of both combustible and noncombustible wastes such as paper, boxes, cloth, wrappings, crates, grass clippings, cuttings, leaves, glass, and similar material. It shall not include bulky refuse meaning stoves, refrigerators, water tanks, washing machines, furniture, automotive parts, tires, bedding, furnaces, or similar bulky material having weight greater than fifty (50) pounds and/or a volume greater than thirty (30) gallons. Trash shall be divided into three (3) categories:

(a) Household trash - waste accumulation of paper, sweepings, dust, rags, bottles, cans or other matter of any kind, other than garbage, which is usually attendant to housekeeping.

(b) Yard trash - cuttings, leaves, grass clippings, etc. resulting from normal maintenance and care of landscaped, manicured grounds and lawns but does not include cuttings and leaves from that portion of grounds that have been left in its natural state without annual maintenance.

(c) Business trash - shall mean any waste accumulation of dust, paper, cardboard, excelsior, rags, or other accumulations other than garbage, household trash, or industrial waste which are usually attendant to the operation of stores, offices, and similar businesses.

(19) "Vacant property." Shall mean all parcels of land without any permanent dwelling or business structure that have remained vacant for a period of two (2) year without routine maintenance to the yard and grounds. This shall also include portions of grounds and/or yards left in their natural state. (1980 Code, § 8-102, as replaced by Ord. #18-19, April 2018)

17-103. Storage. Each owner, occupant, or other responsible person using or occupying any building within the city where refuse, except brush, accumulates or is likely to accumulate is required to store such refuse in closed containers suitable for pickup and disposal by private or public means in compliance with federal, state, and local laws and regulations that are approved by the city. (1980 Code, § 8-103, as replaced by Ord. #18-19, April 2018)

17-104. Rules and regulations to implement chapter. The public works director may make such necessary or desirable rules and regulations as are not inconsistent with the provisions of this chapter in order to aid in its administration and in order to insure compliance and enforcement. (1980 Code, § 8-104, as replaced by Ord. #18-19, April 2018)

17-105. Brush hauling. (1) The city may schedule periodic pickup of brush and limbs generated from the premises of owners or occupants of real property located within the city limits.

(2) If the property owner cuts or trims shrubs on their property the City of Portland, in accordance with the current policy, will haul off the cuttings; if the Portland property owner hires/contracts anyone to cut or trim their trees or shrubs, it will be the contractor's responsibility to dispose of the cuttings. (1980 Code, § 8-105, as replaced by Ord. #18-19, April 2018)

17-106. Manner of loading, moving and carrying materials, garbage, etc., and tracking of foreign material. The owner, lessee, or operator of every vehicle engaged in hauling any sand, gravel, dirt, stone, rock, brick, coal, limestone, limestone dust, asphalt, garbage, trash, or any material which may, as a result of such vehicle's movement, be likely to blow, fall, or be scattered on or along city streets and alleys shall maintain such a vehicle in a secure condition and shall direct and supervise the loading of said vehicle in such a manner as to prevent any portion of such materials, products, or substances from falling, blowing, or being scattered on city streets or alleys as per current TDOT standards. Nor shall garbage or other materials offensive to the sight or smell be removed or carried on or along the streets and alleys of the city unless it be in trucks having watertight beds or boxes with proper cover. (1980 Code, § 8-106, as replaced by Ord. #18-19, April 2018)

17-107. Accumulation of decaying vegetables or fruits in railroad cars is prohibited, and debris from railroad cars must be disposed of in approved containers. It shall be unlawful for any person having possession and control of any decaying or damaged vegetables or fruits to permit the same to remain in any railroad car or elsewhere within the city for twelve (12) hours after such fruit and vegetables shall be found to be in decaying or damaged condition. If any such vegetables or fruits are not removed immediately upon notice to a dumping area previously designated as such by the public works director, the police chief shall have the same removed at the cost of the person having possession of the same. Debris from railroad cars must be disposed of in approved containers. (1980 Code, § 8-107, as replaced by Ord. #18-19, April 2018)

17-108. Miscellaneous prohibited dispositions of refuse. No person shall place any refuse in any street, alley, or other public place or upon any private property, whether owned by such person or not, within the city except it be in proper containers for collection or under express approval granted by the public works director. Nor shall any person throw or deposit any refuse in any stream, drainage way, or body of water.

Any unauthorized accumulation of refuse on any premises is hereby declared to be a nuisance and is prohibited. Failure to remove any existing

accumulation of refuse within fourteen (14) days after the effective date of this chapter shall be deemed violation of this chapter.

No person shall cast, place, sweep, or deposit anywhere within the city any refuse in such a manner that it may be carried or deposited by the elements upon any street, sidewalk, alley, drainage way, sewer, parkway, or other public place, or into any occupied premises, within the city. (1980 Code, § 8-108, as replaced by Ord. #18-19, April 2018)

17-109. Exclusive collection. It shall be unlawful for any person other than the city or its authorized contractor to engage in the business of collecting, removing, and disposing of refuse in the city except those private collectors specifically authorized by the city. The city shall establish rules and regulations to be adopted by the city council to govern the activities of such private collectors. This does not prohibit establishments from collecting and hauling their own refuse so long as such refuse is stored, collected, and hauled as prescribed in this chapter. (1980 Code, § 8-109, as replaced by Ord. #18-19, April 2018)

17-110. Premises to be kept clean and containers required.

All persons within the city are required to keep their premises in a clean and sanitary condition, free from the accumulation of refuse except when stored as provided in this chapter.

It shall be the duty of every person in possession, charge, or control of any premises of a residential establishment, where garbage or trash containers, specified herein, for the deposit of garbage and trash generated on the premises. (1980 Code, § 8-110, as replaced by Ord. #18-19, April 2018)

17-111. Authority of city to confiscate, etc. unsatisfactory containers. Containers used for the deposit of garbage in a city purchased ninety-six (96) gallon roll-away cart, business trash, and/or household trash shall be in such good condition that collection thereof shall not injure the person collecting the contents nor be unsuitable for the healthful and sanitary storage of refuse substances. The city is hereby authorized to confiscate or to remove unsatisfactory containers from the premises of residential establishments that do not comply with the requirements of this article; city shall replace damaged carts in accordance with Resolution #12-70 at no charge to the customer. (1980 Code, § 8-111, as replaced by Ord. #18-19, April 2018)

17-112. Proximity of other personal effects. Garbage and trash shall not be stored in close proximity to other personal effects which are not desired to be collected but shall be reasonably separated in order that the collector can clearly distinguish between what is to be collected and what is not to be collected. Personal effects stored or placed within three feet of a container or

pile of trash shall be prima facie presumed to be to be garbage or trash. (as added by Ord. #18-19, April 2018)

17-113. Residential containers, storage, and requirements.

Authorized residential containers shall be as defined in § 17-102 herein. Lids or covers of such containers shall be kept tightly closed and water tight at all times other than when refuse is being deposited therein or removed therefrom. Refuse may be stored for collection in the following manner: Garbage and household trash shall be stored in a city purchased ninety-six (96) gallon roll-away cart.

(1) Small limbs and twigs, grass clipping, small amounts of leaves and vines shall be stored in disposable containers such as plastic bags with no container exceeding fifty (50) pounds in weight when full.

(2) Leaves may be placed in plastic bags or paper at the curbside for collection.

(3) Cuttings of brush, limbs, and shrubbery shall be stored in neat piles with large ends toward the street. Each tree and shrubbery branch and limb shall be cut in lengths of not more than four feet (4'); and stumps, branches, and limbs shall weigh no more than twenty-five (25) pounds each.

(4) Items of trash too large to place in a container but weighing no more than fifty (50) pounds and/or having a volume of no more than thirty (30) gallons shall be stored in neat piles for collection.

(5) Cold ashes shall be stored in containers not to exceed ten (10) gallons in volume separate from other garbage and trash and shall be collected on a schedule developed by the public works director. (as added by Ord. #18-19, April 2018)

17-114. Nonresidential establishment containers, storage, and requirements. Refuse produced by keepers and/or owners of nonresidential establishments shall be stored for collection in the following manner:

(1) A bulk container as defined in § 17-102(4), required for all nonresidential establishments as defined in § 17-102(11), which produce garbage and/or trash. Those nonresidential establishments using authorized residential containers prior to the adoption of this ordinance are exempted from using a bulk container so long as the accumulation of their garbage and trash between scheduled pickups can be stored in two (2) or less residential containers. A need for more than one (1) container will require that establishment to acceptable bulk container.

(2) The minimum facilities for any bulk container(s) will be a paved pad with the size determined by the public works director.

(3) The public works director may exempt nonresidential establishments from use of bulk containers if the volume of garbage and trash does not justify such use (volume which can be contained by two (2) or less

ninety-six (96) gallon containers) and/or if no suitable site for bulk container(s) can be found.

(4) Appeal procedure for disputes between owner and the public works director. Within ten (10) days after the mailing of the notice, or the service thereof, of the public works director's decision, the keepers or owners of the nonresidential establishment may appeal to the City of Portland Council for a hearing to contest the decision. (as added by Ord. #18-19, April 2018)

17-115. Residential collection practices: garbage collection frequency, placement, etc. (1) Ashes, garbage, and household trash shall be collected from each residential establishment at least once a week. The public works director is authorized and directed to prepare schedules for regular collection of refuse.

(2) Residential collection shall be made from curbside and approved city alleys. Where there is no alley or curbside, containers shall be located at pavement edge or as indicated by the public works director. Alley collection service may be denied to residential establishments by the public works director if such alley is not easily accessible to the city garbage truck.

(3) Domestic producers of ashes, garbage, and household trash shall provide sufficient container space to hold one week's accumulation of refuse not to exceed two (2) authorized residential containers.

(4) All residents, except those approved for special assistance due to age, disability, or illness (or as listed in (5) below), shall place their wheeled containers at curbside or street side no later than 6:00 A.M. on the date of anticipated collection. Where streets are used by the refuse collectors, containers shall be placed adjacent to and back of the curb, or adjacent to and back of the street pavement 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, but no later than 7:30 P.M., after such containers have been emptied, they shall be removed by the owner or occupant to within, or to the rear of, the premises and away from the street line until the next scheduled time for collection.

(5) Application for exemption to the requirements of (4) above may be made by any resident who is unable to push the container to the curb due to age, infirmity, illness, or disability and who does not have an able-bodied person in the residence. A doctor's statement may be required by the solid waste division for backyard pickup.

(6) Failure to comply. Any person or agent thereof, who shall fail, neglect, or refuse to comply with the provisions of this chapter, specifically §§ 17-103 and 17-104, shall be deemed to be guilty of a misdemeanor and shall be punishable under § 17-115. (as added by Ord. #18-19, April 2018)

17-116. Residential collection practices: trash collection frequency, placement, and producer's responsibility. (1) Trash shall be

collected from each residential establishment on a schedule developed by the public works director.

(2) Trash collection shall be made from curbside only. Where there is no curb, containers and/or refuse shall be located as indicated in § 17-115(2).

(3) Leaves placed in plastic bags for collection shall be collected at curbside only. The placing of leaves in public streets, gutters or over storm drains is expressly prohibited. Collection of leaves, during the leaf season, shall be provided to each residential establishment as often as possible.

(4) Trash or any other refuse not stored and placed as provided in §§ 17-110 through 17-116 shall be removed from the premises by producer at his expense. The following items of refuse shall also be removed by the owner and/or producer at their expense:

(a) Building material as defined in § 17-102, whether generated by the contractor or the owner or any other person.

(b) Garden refuse as defined in § 17-102.

(c) Refuse including brush, leaves, stumps, vines, or any materials resulting from the cleaning or the clearing of vacant property as defined in § 17-102, whether such cleaning or clearing was done by a contractor or by the owner or any other person.

(d) Any refuse so resulting from the maintenance of yard, grounds, and residences such as refuse removed from the property after the owner was ordered to remove such refuse by the city health inspector or any other authorized city official.

(e) Automobile, truck, tractor, and other vehicle tires and any other motor vehicle parts shall be disposed of by owner or producer.

(f) Any trash pushed or pulled into piles by mechanical means shall be disposed of by owner or producer.

(g) Any trash resulting from work performed by contractors or any other person for economic gain, whether such gain is in the form of cash or barter, shall be removed by the owner, occupant, or producer all landlord, clean-outs or evictions shall be removed at owners expense as defined in §§ 17-103 and 17-104.

(h) Any other trash or refuse, except certain household items and appliances weighing in excess of fifty (50) pounds or having a volume of more than thirty (30) gallons, shall be removed by the producer. (as added by Ord. #18-19, April 2018)

17-117. Nonresidential collection practices: garbage and trash collection frequency, placement, etc. The City of Portland does not provide nonresidential collection (outside city limits customers). (as added by Ord. #18-19, April 2018)

17-118. Industrial waste. The collection and disposal of industrial waste shall be the responsibility of the owner, lessee, occupant, or producer. The

city does not provide service to industrial businesses. (as added by Ord. #18-19, April 2018)

17-119. Hazardous refuse. No hazardous refuse, as defined in § 17-102, shall be placed in any receptacle, container, or unit used for refuse collection by the city. The collection and disposal of such refuse shall be the responsibility of the owner, lessee, occupant, or producer. (as added by Ord. #18-19, April 2018)

17-120. Cardboard boxes and cartons. Prior to being deposited as refuse for collection in approved containers, all cardboard boxes, cartons, and crates shall be completely collapsed. (as added by Ord. #18-19, April 2018)

17-121. Containers. (1) The city will offer suitable new ninety-six (96) gallon containers for sale at the prevailing rate, payable to the City of Portland Utility Office. Presentation of a valid receipt to the public works director will cause the container to be delivered to the city address shown on the receipt. The cart purchased is the responsibility of the customer for any loss or stolen issues.

(2) It shall be mandatory that all refuse picked up by the city be first placed in wheeled refuse containers approved by the city as follows:

(a) Each owner, occupant, or other responsible person, as aforesaid, shall be responsible for keeping the refuse container clean and sanitary in compliance with health and sanitation requirements and shall keep container lids closed at all times. The container shall not be filled to overflowing. No refuse shall be placed in the container until such refuse has been drained of all free liquids.

(b) The city shall be responsible for replacing the refuse container if it becomes damaged or dilapidated to the point where it cannot be safely dumped by equipment used by the city for that purpose.

(c) Each owner, occupant, or other responsible person using or occupying any dwelling and/or building within the city limits shall be limited to a maximum of two (2) ninety-six (96) gallon wheeled refuse containers, except as allowed in § 17-123(4) and shall pay the most recent price paid by the city for each wheeled refuse container purchased from the city. (as added by Ord. #18-19, April 2018)

17-122. Disturbing containers. 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. (as added by Ord. #18-19, April 2018)

17-123. Collection service. (1) Supervision and control. Collection, conveyance, and disposal of refuse by the city shall be done regularly in

accordance with an announced schedule under the supervision of the superintendent of public works or his designee.

(2) A refuse collection fee at the prevailing rate per month for two (2) refuse container for commercial customers receiving refuse collection service from the City of Portland, Tennessee, is hereby established. Said refuse collection fee shall be billed to each such owner, occupant, and entity monthly on the utility billing from the City of Portland, Tennessee. Failure to pay said refuse collection fee shall result in discontinuance of water and gas service pursuant to §§ 18-113 and 18-114 of the Portland Municipal Code and the procedures set out in Tennessee Code Annotated, § 65-32-104 and 105 which are hereby adopted and incorporated herein by reference.

(3) Collection of excess refuse. Each owner, occupant, or other responsible person using or occupying any building or other premises where more refuse accumulates each week than can be stored in two (2) wheeled containers must make other arrangements for collection and disposal of such excess refuse in a manner conforming with provisions of this chapter.

(4) Multifamily dwellings may purchase and use additional wheeled refuse containers not to exceed a maximum of twenty (20) wheeled refuse containers. This provision is to serve small apartment complexes of twenty (20) or less units. Such multifamily dwellings shall be provided once per week pickup service with all refuse containers to be brought to a central pickup point as designated by the public works director. (as added by Ord. #18-19, April 2018)

17-124. Failure to comply. Any person, persons, firm, association, corporation, or agent thereof who shall fail, neglect, or refuse to comply with the provisions of this chapter, specifically §§ 17-103 and 17-104, shall be deemed to be guilty of a misdemeanor and shall be punishable under the general penalty clause of this code. (as added by Ord. #18-19, April 2018)

17-125. Bulky and nonburnable items. The city will, on a regular route, pick up bulky and no burnable, nonbusiness items such as furniture, refrigerators, mattresses, and any other items that are not accepted by the Sumner County Resource Authority. (as added by Ord. #18-19, April 2018)

17-126. Property partially within the city limits. In the event real property is located partially within the city limits of Portland with a residential building thereon which is located outside of the city limits of Portland, the owner thereof can receive refuse and brush/limb collection service for the residential building in strict accordance with this chapter, upon the owner paying to the City of Portland an advance fee of two hundred dollars (\$200.00) for each year or portion of a year refuse and brush/limb collection service is provided. This fee shall be in addition to all other fees and charges set out in this chapter applicable to refuse and brush/limb collection service. The term

residential building herein shall be limited to single-family dwellings only. (as added by Ord. #18-19, April 2018)

17-127. Disposal - at a proper resource recovery energy production facility. All solid waste collected by any person, firm, or entity within the boundaries of the city shall be delivered to the proper resource recovery for processing. (as added by Ord. #18-19, April 2018)

17-128. Refuse collection fee. A refuse collection fee shall be charged at the prevailing rate per month per refuse container for all owners, occupants, and entities receiving refuse collection service from the city is hereby established. Said refuse collection fee shall be billed to each such owner, occupant, and entity monthly on the utility billing from the city. Failure to pay said refuse collection fee shall result in discontinuance of water and gas service pursuant to §§ 18-113 and 18-114 of the Portland Municipal Code and the procedures set out in Tennessee Code Annotated, §§ 65-32-104 and 65-32-105 which are hereby adopted and incorporated herein by reference. (as added by Ord. #18-19, April 2018)

TITLE 18

WATER AND SEWERS¹

CHAPTER

1. WATER AND SEWERS.
2. SEWER USE ORDINANCE.
3. SEWAGE AND HUMAN EXCRETA DISPOSAL.
4. CROSS CONNECTIONS, AUXILIARY INTAKES, ETC.
5. STORMWATER MANAGEMENT.
6. STORMWATER UTILITY.

CHAPTER 1

WATER AND SEWERS²

SECTION

- 18-101. Application and scope.
- 18-102. Definitions.
- 18-103. Obtaining service.
- 18-104. Application and contract for service.
- 18-105. Service charges for temporary service.
- 18-106. Connection charges.
- 18-107. Fluoridation of public water.
- 18-108. Water and sewer main extensions.
- 18-109. Variances from and effect of preceding section as to extensions.
- 18-110. Meters.
- 18-111. Meter tests.
- 18-112. Multiple services through a single meter.
- 18-113. Billing.
- 18-114. Discontinuance or refusal of service.
- 18-115. Reconnection of services and fees.
- 18-116. Termination of service by customer.

¹Ordinance No. 07-24 (June 4, 2007) adopts by reference the Water and Sewer Specifications approved by the Tennessee Department of Environment and Conservation, Division of Water Supply.

Ord. #08-45 (Sept. 15, 2008) adopting a program for grease management for new and remodeled facilities is available in the city recorder's office.

²Municipal code references

Building, utility and housing codes: title 12.

Refuse disposal: title 17.

- 18-117. Access to customers' premises.
- 18-118. Inspections.
- 18-119. Customer's responsibility for system's property.
- 18-120. Customer's responsibility for violations.
- 18-121. Supply and resale of water.
- 18-122. Unauthorized use of or interference with water supply.
- 18-123. Limited use of unmetered private fire line.
- 18-124. Damages to property due to water pressure.
- 18-125. Liability for cutoff failures.
- 18-126. Restricted use of water.
- 18-127. Interruption of service.
- 18-128. Schedule of rates.
- 18-129. [Deleted.]
- 18-130. Water shortage.

18-101. Application and scope. The provisions of this chapter are a part of all contracts for receiving water and/or sewer service from the city and shall apply whether the service is based upon contract, agreement, signed application, or otherwise. (1980 Code, § 13-101)

18-102. Definitions. (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) "Household" means any two (2) or more persons living together as a family group.

(3) "Service line" shall consist of the pipe line extending from any water or sewer main of the city to private property. Where a meter and meter box are located on private property, the service line shall be construed to include the pipe line extending from the city's water main to and including the meter and meter box.

(4) "Discount date" shall mean the date ten (10) days after the date of a bill, except when some other date is provided by contract. The discount date is the last date upon which water and/or sewer bills can be paid at net rates.

(5) "Dwelling" means any single structure, with auxiliary buildings, occupied by one or more persons or households for residential purposes.

(6) "Premises" 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. (1980 Code, § 13-102)

18-103. Obtaining service. A formal application for either original or additional service must be made and be approved by the city before connection or meter installation orders will be issued and work performed. (1980 Code, § 13-103)

18-104. Application and contract for service. Each prospective customer desiring water and/or sewer service will be required to sign a standard form of contract before service is supplied. If, for any reason, a customer, after signing a contract for service, does not take such service by reason of not occupying the premises or otherwise, he shall reimburse the city for the expense incurred by reason of its endeavor to furnish said service.

The receipt of a prospective customer's application for service, regardless of whether or not accompanied by a deposit, shall not obligate the city to render the service applied for. If the service applied for cannot be supplied in accordance with the provisions of this chapter and general practice, the liabilities of the city to the applicant shall be limited to the return of any deposit made by such applicant. (1980 Code, § 13-104)

18-105. 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. (1980 Code, § 13-105)

18-106. Connection charges. 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 municipality.

Before a new water or service line will be laid by the city, the applicant shall make a deposit equal to the estimated cost of the installation.

This deposit shall be used to pay the cost of laying such new service line and appurtenant equipment. If such cost exceeds the amount of the deposit, the applicant shall pay to the city the amount of such excess cost when billed therefor. If such cost is less than the amount of the deposit, the amount by which the deposit exceeds such cost shall be refunded to the applicant.

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. (1980 Code, § 13-106)

18-107. Fluoridation of public water. The water department of the City of Portland is hereby authorized and instructed to make plans for the fluoridation of the water supply of the city; to submit such plans to the Department of Health of the State of Tennessee for approval, and upon approval to add such chemical as fluoride to the water supply in accord with such as will adequately provide for the fluoridation of said water supply. (1980 Code, § 13-107)

18-108. Water and sewer main extensions.¹ Persons desiring water and/or sewer main extensions must pay all of the cost of making such extensions.

For water main extensions cement-lined cast iron pipe, class 150 American Waterworks Association Standard or other construction approved by the city council, not less than six (6) inches in diameter shall be used to the dead end of any line and to form loops or continuous lines, so that fire hydrants may be placed on such lines at locations no farther than 1,000 feet from the most distant part of any dwelling structure and no farther than 600 feet from the most distant part of any commercial, industrial, or public building, such measurements to be based on road or street distances; cement-lined cast iron pipe or other construction approved by the superintendent of waterworks two (2) inches in diameter, to supply dwellings only, may be used to supplement such lines. For sewer main extensions eight-inch pipe of vitrified clay or other construction approved by the superintendent shall be used.

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 city 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. (1980 Code, § 13-108)

18-109. Variances from and effect of preceding section as to extensions. Whenever the city council 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 city council.

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. (1980 Code, § 13-109)

¹Municipal code reference

Construction of building sewers: title 18, chapter 2.

18-110. Meters. (1) All meters shall be installed, tested, repaired, and removed only by the city.

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

(3) Tampering with utility equipment or stealing service will be grounds for discontinuance of utility service. Theft of service shall include, but not be limited to the following:

(a) Opening valves at the curb or meter that have been turned off by utility personnel;

(b) Breaking, picking or damaging cutoff locks;

(c) By-passing meters in any way;

(d) Taking unmetered water from hydrants by anyone other than an authorized official of a recognized fire department, fire insurance company or utility for any purpose other than fire fighting, testing or flushing of hydrants;

(e) Use of sprinkler system water service for any purpose other than fire protection;

(f) Removing, disabling or adjusting meter registers, or transmitters;

(g) Connecting to or intentionally damaging water lines, valves or other appurtenances for the purpose of stealing or damaging utility equipment;

(h) Moving the meter or extending service without permission of the utility;

(i) Any other intentional act of defacement, destruction or vandalism to utility property or act that affects utility property;

(j) Any intentional blockage or obstruction of utility equipment.

(4) A "notice of violation" may be mailed or otherwise delivered at the discretion of the public works director if:

(a) Evidence suggests the possibility of theft of utility service at the customer's premises;

(b) The violation does not constitute an immediate threat of safety or equipment integrity to the system.

The customer will be ordered to immediately cease any unlawful practice.

(5) No "notice of violation" will be mailed or delivered and customer service is subject to immediate cutoff in any of the following situations:

(a) In the opinion of the public works director, theft of service is definitely evident on the customer's premises;

(b) When in the opinion of the public works director a situation exists that may endanger public health.

(6) In addition, the customer will be subject to a five hundred dollar (\$500.00) violation payment as well as service call charges, labor and replacement of parts as detailed by the utility; and

(7) If the utility determines theft of service has occurred, it reserves the right to adjust the customer's current bill and the bills for the past twelve (12) months' usage. If the approximate amount of service that was stolen cannot be reasonably determined, the customer's usage will be set at two to four (2--4) times the minimum bill, as set on a case by case basis by the governing board of the utility according to the facts of each case.

(8) Service will not be restored until all payments for the following are received by the utility:

- (a) Adjusted payment for utility service;
- (b) Violation payment (see section (6) above);
- (c) All service call charges;
- (d) Labor;
- (e) Replacement parts;
- (f) Reinstatement of service charge. (1980 Code, § 13-110, as amended by Ord. #12-08, March 2012, Ord. #19-75, Aug. 2019 *Ch12_12-06-21*, and Ord. #21-58, Nov. 2021 *Ch12_12-06-21*)

18-111. Meter tests. The city will, at its own expense, make routine tests of meters when it considers such tests desirable.

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

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

The city will also change meters and make tests or inspections of its meters at the request of the customer at no cost to the customer. (1980 Code, § 13-111, as amended by Ord. #544, Sept. 1997; and Ord. #595, § 1, Feb. 1999)

18-112. Multiple services through a single meter. No customer shall supply water or sewer service to more than one 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 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/or sewer 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 rates 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. (1980 Code, § 13-113)

18-113. Billing. Bills for residential water and sewer service will be rendered monthly.

Bills for commercial and industrial service may be rendered weekly, semimonthly, or monthly, at the option of the city.

Both charges shall be collected as a unit; no city employee shall accept payment of water service charges from any customer without receiving at the same time payment of all sewer service charges owed by such customer. Water service may be discontinued for non-payment of the combined bill.

Water and sewer bills must be paid on or before the due date shown thereon; otherwise, a penalty of ten percent (10%) for each delinquent month shall be charged on each such bill. Failure to receive a bill will not release a customer from payment obligation, nor extend the discount date.

In the event a bill is not paid on or before five (5) days after the due date, a written notice shall be mailed to the customer. The notice shall advise the customer that his service may be discontinued without further notice if the bill is not paid in full on or before ten (10) days after the due date. The city shall not be liable for any damages resulting from discontinuing service under the provisions of this section, even though payment of the bill is made at any time on the day that service is actually discontinued.

Should the final date of payment of bill at the net rate fall on Sunday or a holiday, the business day next following the final date will be the last day to obtain the net rate. A net remittance received by mail after the time limit for payment at the net rate will be accepted by the city if the envelope is date-stamped on or before the final date for payment of the net amount.

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. (1980 Code, § 13-114)

18-114. Discontinuance or refusal of service. The municipality shall have the right to discontinue water and/or sewer service or to refuse to connect service for a violation of, or a failure to comply with, any of the following:

- (1) These rules and regulations.
- (2) The customer's application for service.

(3) The customer's contract for service.

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

Discontinuance of service by the city for any cause stated in these rules and regulations shall not release the customer from liability for service already received or from liability for payments that thereafter become due under other provisions of the customer's contract. (1980 Code, § 13-115)

18-115. Reconnection of services and fees. Services will be reinstated only during times listed below:

Monday through Friday: 8:00 A.M. to 4:30 P.M. at \$30.00 fee.

Monday through Friday: 4:30 P.M. to 7:00 P.M. at \$90.00 fee.

Saturday and Sunday (including holidays): 8:00 P.M. to 4:30 P.M. at \$125.00 fee. (1980 Code, § 13-116, as replaced by Ord. #19-75, Aug. 2019 *Ch12_12-06-21*)

18-116. Termination of service by customer. Customers who have fulfilled their contract terms and wish to discontinue service must give at least three (3) days written notice to that effect unless the contract specifies otherwise. Notice to discontinue service prior to the expiration of a contract term will not relieve the customer from any minimum or guaranteed payment under such contract or applicable rate schedule.

When service is being furnished to an occupant of premises under a contract not in the occupant's name, the city reserves the right to impose the following conditions on the right of the customer to discontinue service under such a contract:

(1) Written notice of the customer's desire for such service to be discontinued may be required; and the city shall have the right to continue such service for a period of not to exceed ten (10) days after receipt of such written notice, during which time the customer shall be responsible for all charges for such service. If the city should continue service after such ten (10) day period subsequent to the receipt of the customer's written notice to discontinue service, the customer shall not be responsible for charges for any service furnished after the expiration of the ten (10) day period.

(2) During the ten (10) day period, or thereafter, the occupant of premises to which service has been ordered discontinued by a customer other than such occupant, may be allowed by the city to enter into a contract for service in the occupant's own name upon the occupant's complying with these rules and regulations with respect to a new application for service. (1980 Code, § 13-117)

18-117. 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. (1980 Code, § 13-118)

18-118. Inspections. 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 meeting standards fixed by city ordinances regulating building and plumbing, or not in accordance 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. (1980 Code, § 13-119)

18-119. Customer's responsibility for system's property. 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 same, the cost of necessary repairs or replacements shall be paid by the customer. (1980 Code, § 13-120)

18-120. Customer's responsibility for violations. 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. (1980 Code, § 13-121)

18-121. Supply and resale of water. 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. (1980 Code, § 13-122)

18-122. Unauthorized use of or interference with water supply. 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. (1980 Code, § 13-123)

18-123. Limited use of unmetered private fire line. 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. (1980 Code, § 13-124)

18-124. Damages to property due to water pressure. 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. (1980 Code, § 13-125)

18-125. Liability for cutoff failures. 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. (1980 Code, § 13-126)

18-126. 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. (1980 Code, § 13-127)

18-127. Interruption of service. The city will endeavor to furnish continuous water and sewer service, but does not guarantee to the customer any fixed pressure or continuous service. The city shall not be liable for any damage for any interruption of service whatsoever.

In connection with the operation, maintenance, repair, and extension of the city 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 damage from such interruption of service or for damages from the resumption of service without notice after any such interruption. (1980 Code, § 13-128)

18-128. Schedule of rates. All water and sewer service shall be furnished under such rate schedules as the city may from time to time adopt by appropriate ordinance or resolution.¹ (1980 Code, § 13-112)

18-129. [Deleted.] This section was deleted by Ord. #01-21, July 2001. (1980 Code, § 13-129, as amended by Ord. #553, Dec. 1997, and deleted by Ord. #01-21, July 2001)

18-130. Water shortage. (1) Declaration of policy, purpose, and intent. Purpose: To achieve the greatest public benefit from domestic water use, sanitation, and fire protection, and to provide water for other purposes in an equitable manner, the City of Portland, Tennessee adopts the following regulations and restrictions on the delivery and consumption of water.

This section is hereby declared necessary for the preservation of public health, safety, and welfare and shall take effect upon its passage by the council of the City of Portland, Tennessee.

Whenever, in the judgment of the governing body of the City of Portland, Tennessee, it becomes necessary to conserve water in the service area, due to drought, the mayor of Portland, Tennessee is authorized to issue a Declaration that existing conditions prevent fulfillment of the usual water-use demands. The Declaration will be an attempt to prevent depleting the water supply to the extent that water-use for human consumption, sanitation, fire protection, and other essential needs become endangered. Immediately upon the issuance of such a Declaration, regulations and restrictions set forth under this section shall become effective and remain in effect until the water shortage is terminated and the Declaration rescinded.

Water uses, regulated or prohibited under this section are considered to be non-essential and continuation of such uses during times of water shortage are deemed to constitute a waste of water, subjecting the offender(s) to penalties (§ 18-130(8)).

The provisions of this section shall apply to customers of the City of Portland, Tennessee.

¹Administrative ordinances and resolutions are of record in the recorder's office.

(2) Definitions. For the purposes of this section, the following definitions shall apply:

(a) "Conservation." Reduction in water use to prevent depletion or waste of the resource.

(b) "Customer." Any person, company, or organization using water supplied by the City of Portland, Tennessee.

(c) "Domestic water use." Water use for personal needs or for household purposes such as drinking, bathing, heating, cooking, sanitation, including employees' use in business, industry, or institution.

(d) "Management phases."

(i) "Conservation." A conservation phase exists when specific factors or conditions, such as deficiencies in rainfall and runoff, a decline in soil moisture, lower ground water levels, increasing daily water demands, reduced storage, below normal water supply and/or inadequate water quality conditions, and possible-conflicts among various water user groups. Water use would be reduced by fifteen (15) percent and has been verified by best available information.

(ii) "Restrictions." A restrictions phase exists when characterized by a continued decline in available water supplies and water quality. Water use would be reduced by thirty (30) percent use during this phase, and has been verified by best available information.

(iii) "Emergency." An emergency phase exists when a water supply shortage situation characterized by severe water supply and water quality problems due to serious resource limitations which are well below the level needed to meet economically and socially important needs. Water use would be reduced by sixty (60) percent or more to alleviate these shortages. In addition to drought induced, a water supply emergency may be caused by a tornado, storm, flood, wind, earthquake, landslide, snowstorm, fire, explosion, civil disorder, dam failure, hazardous materials spill, power failure, nuclear attack or other catastrophes.

(e) "Even numbered address." Street addresses, box numbers or rural route numbers ending in 0, 2, 4, 6, 8, or letters A-M; and locations without addresses.

(f) "Institutional water use." Water used by government, public and private educational institutions, public medians and rights of way, churches and places of worship, water utilities, and other lands, buildings, and organizations.

(g) "Landscape water use." Water used to maintain gardens, trees, lawns, shrubs, flowers, athletic fields, rights of way and medians.

(h) "Odd numbered address." Street addresses, box numbers or rural route numbers ending in 1, 3, 5, 7, 9, or letters N-Z.

(i) "Water Management Advisory Group." A committee composed of local representatives, created for the purpose of coordinating responses to water shortages.

(j) "Water shortage." Lack of adequate available water to meet normal demands due to lower than normal precipitation, reduced stream flows or soil moisture, water levels in wells which cause water supplies to be less than usual, major water line breaks, chemical spills, etc., resulting in reduced water supplies.

(3) Water use classification system. (a) First class essential water uses. ("First Class Essential Water Uses" should correspond to the classification system established in the system's drought and emergency management plan.)

(b) Second class essential water uses. ("Second Class Essential Water Uses" should correspond to the classification system established in the system's drought or emergency management plan.)

(c) Third class essential water uses. ("Third Class Essential Water Uses" should correspond to the classification system established in the system's drought or emergency management plan.)

(d) Non-essential water uses. ("Non-Essential Water Uses" should correspond to the classification system established in the system's drought and emergency management plan.)

(4) Management phases. Three levels of water management are established: "Conservation," "Restrictions," and "Emergency." Declarations issued by the City of Portland shall specify the water management phase in effect and undertake the appropriate water management activities.

(a) Drought alert provisions and implementation. When a local, regional or statewide "Drought Alert" is issued by the Tennessee Office of Water Management, the City of Portland will begin, if not already underway, regular monitoring of supply and demand conditions applicable to the City of Portland. Users of the system will be alerted to the activation possibility of the water shortage management plan. Notice will be made to a newspaper of general circulation within the affected community or area. In addition, the City of Portland will encourage water users to assess their use of water.

(b) Conservation phase provisions. If conditions indicate that a moderate water shortage condition is present and is expected to persist, the City of Portland shall activate those requirements outlined in this section to reduce water use.

(i) Goal. (A) An overall water use reduction of fifteen (15) percent. Voluntary water use reductions would be requested for essential, economic, and social uses.

(B) Non-essential water uses would be banned.

(ii) General response. Issue a declaration of water shortage in a newspaper of general circulation within the affected

community and region. This statement shall specify that conservation phase measures are necessary and shall include the list of non-essential water uses.

(iii) Restrictions applying to non-essential uses.

(A) Outdoor noncommercial. Water use for irrigating gardens (except handheld), lawns, parks, golf courses (except greens), playing fields and other recreation areas, and street washing.

(B) Ornamental. Water use for fountains, reflecting pools, and artificial waterfalls.

(C) Swimming pools. Water use for private pools serving less than 25 dwelling units.

(D) Motor vehicle washing. Water use for the washing of privately owned cars and trucks.

(c) Restrictions phase provisions. If conditions indicate that a severe water shortage condition is present and is expected to persist the City of Portland shall activate those requirements outlined in this section to curtail water uses.

(i) Goal. An overall water use reduction of thirty (30) percent. Voluntary water use reductions would be requested for essential uses. Non-essential water uses would be banned, resulting in a 100 percent overall class reduction. Curtailments in a second and third class essential water uses would be required resulting in a seventeen (17) percent combined class reduction.

(ii) General responses.

(A) Issue a declaration of water shortage in a newspaper of general circulation within the affected community and region. This statement shall specify that a restrictions phase is in effect and shall include the list of banned uses, and the list of restricted water uses.

(B) Require customers of the City of Portland to comply with the listed water-use bans and restrictions in all categories while severe drought conditions exist.

(iii) Restrictions applying to second and third class essential water uses:

PHASED RESPONSES TO WATER SUPPLY SHORTAGES

<u>General Water-Use Class</u>	<u>Conservation</u>	<u>Restrictions</u>	<u>Emergency</u>
Essential	Voluntary	Voluntary	Mandatory or
First Class	Cutbacks	Cutbacks	Voluntary Cutbacks

Essential Second Class	Voluntary Cutbacks	Mandatory or Voluntary Cutbacks	Mandatory Bans
Essential Third Class	Voluntary Cutbacks	Mandatory Bans	Mandatory Bans
Nonessential	Mandatory Cutbacks or Bans	Mandatory Bans	Mandatory Bans

(d) Emergency phase provisions. If conditions indicate that an extreme water shortage condition is present the City of Portland shall activate the provisions outlined in this section to curtail water use.

Water-use restrictions imposed during extreme water shortage conditions are mandatory.

(i) Goal.

(A) An overall water use reduction of sixty (60) percent; only first class essential water uses would be allowed.

(B) All other water uses would be prohibited.

(ii) General responses.

(A) Issue a declaration of water shortage in a newspaper of general circulation within the affected community and region. This statement shall specify that an emergency phase is in effect. It shall include the list of banned water uses.

(B) Require customers of the City of Portland to comply with the listed water-use restrictions in all categories while extreme water shortage conditions exist.

(iii) Restrictions applying to second and third class essential water uses.

PHASED RESPONSES TO WATER SUPPLY SHORTAGES

General Water-Use Class	Emergency
Essential Second Class	Mandatory Bans
Essential Third Class	Mandatory Bans
Nonessential	Mandatory Bans

(5) Water management advisory group. The Water Management Advisory Group shall consist of five (5) members, representing various local interest groups. The representatives shall be appointed by administrative body

and serve a term of five years. Terms should be staggered, beginning on October 1 of each year. Regular, annual meetings should be held to review the plan, meeting more frequently as necessary upon the onset of each drought.

The Water Management Advisory Group shall evaluate water supply conditions to determine if conditions satisfy water shortage management, triggering points as identified in the local drought management plan. The advisory group shall consider:

- (a) The effectiveness of the local water shortage ordinance and plan in protecting and insuring adequate water supplies;
- (b) Water supply conditions (existing and forecasted); and
- (c) Other relevant information.

The Water Management Advisory Group shall consult with and invite participation by the general public affected, as well as with interest group representatives.

(6) Shortage water rates (stand-by rates). Upon the declaration of a water shortage, the City of Portland shall utilize shortage water rates to water conservation of water supplies. (Such rates may provide for, but not be limited to:

- (a) Higher charges per unit for increasing usage (increasing block rates);
- (b) Uniform charges for water usage per unit of use (uniform unit rate);
- (c) Extra charges for use in excess of a specified level (excess demand surcharge; or
- (d) Discounts for conserving water beyond specified levels. This section includes an example of an "excess use or surcharge" structure.)

In the event of a water shortage and activation of the "restrictions" phase, the City of Portland is hereby authorized to monitor water use and limit households to 70 gallons per household member per day. Domestic water use above this limit will be subject to a surcharge of \$25.00 per 1,000 gallons. The City of Portland is hereby authorized to monitor water use and limit households to 40 gallons per household member per day under an "emergency" phase. Domestic water use above this limit will be subject to a surcharge of \$50.00 per 1,000 gallons. Institutional, commercial, industrial, and recreational water users will be subject to water use surcharges of \$100.00 per 1,000 gallons of water used if the City of Portland deems that adequate conservation measures have not been implemented.

(7) Rationing. (Water Supply Systems relying on rationing to reduce water use will need to include a section in their ordinance dealing with rationing.)

In the event of a declared drought the City of Portland issues a declaration of water shortage specifying either a restrictions phase or

Emergency phase. The City of Portland is hereby authorized to ration water in accordance with the following conditions:

(a) Residential water customers and allotments.

(i) The number of permanent residents in each dwelling unit (household) will determine the amount of water that each household will be allowed.

(ii) Each dwelling unit (household) shall be allotted 70 gallons per day for each resident of the household under "restrictions" and 40 gallons per day for each resident of the household under "emergency" conditions. Households with only one permanent resident will have a daily allotment of 55 gallons per day under "emergency" conditions.

(iii) Residential water customers are required to provide city utility personnel with reasonable access to read meters as necessary to this rationing declaration. Where access is not readily available, all reasonable efforts to contact customers in order to arrange for access to read meters shall be made. In the event a water customer does not allow entry to read the meter after reasonable efforts to arrange for such access, the dwelling unit (household) allotment will be reduced to 55 gallons per day.

(iv) (A) Where the residential water allotment provided under this section would create an "extraordinary hardship," as in the case of special health-related requirements, the water customer may apply to the water system for an exemption or variance from these requirements. If it is found that the allotment provided in this section would impose an extraordinary hardship, a revised allotment for the particular customer may be established.

(B) Any person aggrieved by a decision relating to such an exemption or variance rendered by the municipality rendering water service, may file a complaint with the city attorney. (The procedures for such a complaint may be described as):

A short, concise letter giving details as to why the water allotment is not sufficient, and why the extraordinary hardship exists so the information will be investigated.

(b) Non-residential water customers and allotments.

Non-residential customers include commercial, industrial, institutional, and public and all other such users, with the exception of hospitals and health care facilities.

Non-residential water customers shall further reduce their water usage to fifty (50) percent of use levels of _____ (month, year).

It is the primary responsibility of each non-residential water customer to meet its mandated water use reduction goal in whatever manner possible.

The City of Portland will establish a water allotment for each non-residential water customer, based upon a required further reduction of water usage from the rate of water used by the customer in effect on _____, or the last recorded use level if no meter readings record the rate of the customer's use on _____.

Each non-residential water user shall provide access to water system personnel for purposes of meter reading and monitoring of compliance with this section. All reasonable efforts will be made to contact customers to arrange for access.

If the mandated further reduction in water usage cannot be obtained without imposing extraordinary hardship which threatens health and safety, the nonresidential customer may apply to the water system for a variance. For these purposes "extraordinary hardship" means a permanent damage to property or economic loss which is substantially more severe than the sacrifices borne by other water users subject to this water rationing ordinance. If the further reduction would cause an extraordinary hardship or threaten health or safety, a variance may be granted and a revised water use reduction requirement for the particular customer may be established.

(Any person aggrieved by a decision relating to such a variance rendered by a public utility may need to file a complaint with the appropriate body. The procedures for such a complaint may be described as follows:)

A letter addressed to the director of public works, with a copy to the mayor and city attorney, setting out in detail the reasons for variance from the restrictions. These reasons will be investigated.

(c) Water use rationing for hospitals and health care facilities. Hospitals and health care facilities shall comply with all restrictions imposed on residential and non-residential water customers as may be applicable to each individual institution, to the extent compliance will not endanger the health of its patients or residents to achieve a further reduction in the institution's water usage.

(8) Fines and penalties (failure to comply). Except as otherwise stated herein, violators of any provision of this section shall be penalized. The penalty for a person's first offense shall be \$100. The penalty for a person's second offense shall be \$200. Persons violating the section a third or more times within the same drought period will have water service disconnected for a period of five (5) days with a \$300 reconnection fee.

The aforementioned fines and penalties may be in lieu of, or in addition to, any other penalty provided by law.

Services disconnected under such circumstances shall be restored only upon payment of a reconnection charge.

(9) Monitoring and enforcement. Law officers of the City of Portland police force shall, in addition to duties imposed by law, diligently enforce the provisions of this section.

Employees of the City of Portland, Department of Public Works, and Fire Department have the duty, and are hereby authorized to enforce the provisions of the section and shall have the power and authority to issue citations when violations of this section occur during any declared drought.

(10) Exemptions (relief from compliance). Customers not capable of reducing water use immediately, because of equipment damage or other extreme circumstances, shall reduce water use within twenty-four hours of a declaration of a water shortage, where provisions of this section apply to them and shall apply for and exemption from curtailment.

Customers requesting exemption from the provisions of this section shall file a petition for exemption with the City for Portland within three (3) days after such curtailment becomes effective.

When the section has been invoked by the mayor, all petitions for exemption shall be reviewed by the mayor. The City of Portland shall respond to requests for exemption within five (5) days of receipt of information or within twenty (20) days of declarations for the curtailment, whichever comes first. Petitions shall contain the following:

- (a) Name and address of the petitioner(s).
- (b) Purpose of water use.
- (c) Specific provision from which the petitioner is requesting relief.
- (d) Detailed statement as to how the declaration adversely affects the petitioner.
- (e) Description of the relief desired.
- (f) Period of time for which the exemption is sought.
- (g) Economic value of the water use.
- (h) Damage or harm to the petitioner or others if petitioner complies with section.
- (i) Restrictions with which the petitioner is expected to comply and the compliance date.
- (j) Steps the petitioner is taking to meet the restrictions from which exemption is sought and the expected date of compliance.
- (k) Other pertinent information.

In order for an exemption to be granted, petitioner must show one or more of the following conditions:

- (i) Compliance with the section cannot be technically accomplished during the duration of the water shortage.
- (ii) Alternative methods can be implemented which will achieve the same level of reduction in water use.

(iii) An extraordinary hardship can be shown.

The City of Portland may, in writing, grant temporary exemptions for existing water uses otherwise prohibited under the section if it is a condition adversely affecting health, sanitation, or fire protection for the public or the petitioner and if one or more of the aforementioned conditions is met. The governing body of the City of Portland shall ratify or revoke any such exemption at their next scheduled meeting. Any such exemption so ratified may be revoked by later action of the governing body of the City of Portland.

No exemption shall be retroactive or otherwise justify any violation of this section occurring prior to the issuance of the exemption.

Exemptions granted by the _____ shall be subject to the following conditions, unless waived or modified by the ____.

(A) Exemptions granted shall include a timetable for compliance.

(B) Exemptions granted shall expire when the water shortage no longer exists.

(11) Activation and deactivation of management phases.

(a) Declaration of a drought. Whenever the City of Portland finds that a potential shortage of water supply is indicated, it shall be empowered to declare a drought exists, and that the water superintendent shall, daily, monitor the supply and demands upon that supply. In addition, the mayor is authorized to specify the management phase in effect and the measures to be employed by the system's customers. This Declaration shall be published in an official city newspaper, and may be publicized through the general news media or any other appropriate method for making such resolutions public.

(b) Termination of drought phases. Whenever the City of Portland finds that water supplies have returned to normal, it shall be empowered to replace or declare as ended by resolution any phase enacted. Such a declaration shall follow the same guidelines used for declaring a drought. (1980 Code, § 13-130)

CHAPTER 2**SEWER USE ORDINANCE**¹**SECTION**

- 18-201. Purposes and policy.
- 18-202. Definitions.
- 18-203. Requirements for proper wastewater disposal.
- 18-204. Physical connection to public sewer.
- 18-205. Grease interceptor requirements.
- 18-206. Inspection of connections.
- 18-207. Maintenance of building sewers.
- 18-208. Availability of public sewer.
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- 18-210. Requirements for satellite POTWs and inter-municipal agreements.
- 18-211. Holding tank waste disposal.
- 18-212. Holding tank haulers waste disposal permit.
- 18-213. Fees for holding tank waste disposal permits.
- 18-214. Underground fuel storage tank wastewaters.
- 18-215. Domestic wastewater discharge permits.
- 18-216. Industrial Wastewater Discharge Permits (hereafter IWDP).
- 18-217. Confidential information.
- 18-218. Prohibited discharge standards.
- 18-219. Restrictions on wastewater strength.
- 18-220. Protection of WWTP.
- 18-221. Categorical pretreatment standards.
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- 18-223. Dilution.
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- 18-233. Administrative orders.
- 18-234. Submission of time schedule.
- 18-235. Appeals and enforcement hearings.

¹Municipal code reference
Plumbing code: title 12.

- 18-236. Legal action.
- 18-237. Emergency termination of sewer service.
- 18-238. Public nuisances.
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- 18-250. Validity.
- 18-251. Ordinances in force.
- 18-252. [Deleted.]
- 18-253. [Deleted.]
- 18-254. [Deleted.]

18-201. Purposes and policy. This ordinance sets forth uniform requirements regulating the use of public sewers and private wastewater disposal means; the installation and connection of building sewers; the discharge of wastewater into the Publicly Owned Treatment Works (POTW) of the City of Portland, Tennessee (City); and establishes mechanisms for the collection of fees from customers to offset expenses incurred for the privilege of using the POTW, a valuable and limited asset. This ordinance shall supersede and replace ordinance No. 299 passed December 7, 1981; ordinance No. 328 passed January 15, 1985; ordinance No. 465 passed March 7, 1994; and ordinance No. 00-26 passed June 4, 2001.

The objectives of this ordinance are:

- (1) To protect both city personnel, who may be affected by wastewater and sludge in the course of their employment, and the general public;
- (2) To protect the public health;
- (3) To provide problem free wastewater collection and treatment services;
- (4) To prevent the introduction of pollutants into the POTW that will interfere with its operation;
- (5) To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into waters of the state, or otherwise be incompatible with the POTW;
- (6) To provide for full and equitable distribution of the cost of operation, maintenance, and improvement of the POTW;

(7) To provide a mechanism for the city to follow in the development of agreements with inter-municipal and satellite POTWs;

(8) To enable the city to comply with the objectives of the "Management, Operations, and Maintenance" Program, as adopted by the city and mandated by federal or state laws;

(9) To enable the city to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the POTW is subject;

(10) To enable the city to comply with the provisions of the Clean Water Act (33 United States Code (U.S.C.) section 1251, *et seq.*), the General Pretreatment Regulations (40 Code of Federal Regulations (C.F.R.) part 403), including the city's "Enforcement Response Plan (ERP)" and "Industrial Pretreatment Program," and other applicable federal and state laws;

(11) To enable the city to improve its opportunity to recycle and reclaim wastewater, sludge, and other by-products of the POTW;

(12) To enable the city to comply with the provisions of "The Standard for the Use or Disposal of Sewage Sludge" -- 40 C.F.R. part 503, the city's "Biosolids Management Program," and other applicable federal and state laws; and

(13) To provide a mechanism for the city to assess and collect sewer fees for discharges into the POTW.

To meet these objectives, this ordinance sets forth the requirement that all persons in the service area of the city must have adequate wastewater collection for treatment, either in the form of a connection to the POTW or, where this connection is not practical, an appropriate private disposal system. This ordinance authorizes the issuance of permits to users of the POTW; sets limitations on user wastewater discharge volume and constituents; allows for monitoring, compliance, and enforcement activities; requires user reporting; and provides for the setting of fees for the full and equitable distribution of costs resulting from the programs established by the city in accordance to federal and state laws and/or mandates.

This ordinance shall apply to the City of Portland, Tennessee, and to users inside and/or outside the city who are, by contract or agreement with the city, users of the POTW. Except as otherwise provided herein, the superintendent shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the superintendent may be delegated by the superintendent to duly authorized city employees. This ordinance shall be enforced in full force in accordance to city, state, and federal laws, including an approved ERP as mandated by 40 C.F.R. part 403. (1980 Code, § 13-201, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-202. Definitions. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereafter designated:

(1) "Act" or "the Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

(2) "Approval authority." The Commissioner of the Tennessee Department of Environment and Conservation (TDEC) or the administrator of the EPA.

(3) "Authorized or duly authorized representative of the user."

(a) If the user is a corporation:

(i) The president, secretary, treasurer, or vice-president of the corporation in charge of a principal business making function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(ii) The manager of one (1) or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(c) If the user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(d) A duly authorized representative of the individual described in subsections (a), (b) and (c) of this section if:

(i) The authorization is made in writing by the individual described in subsections (a), (b) and (c) of this section;

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company; and

(iii) The written authorization is submitted to the city.

(4) "Available non-user." Any person who has availability to connect to the city's POTW but has been granted waiver by the supervisor of collection.

(5) "Baseline monitoring report." A report submitted by industrial users to the city, used by the city to identify those users in need of pretreatment to come into compliance with categorical pretreatment standards.

(6) "Best Management Practices (BMPs)." The schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions and limitations listed in §§ 18-218 through 18-221 of this chapter (40 C.F.R. 403.5(a)(1) and (b)). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

(7) "Biochemical Oxygen Demand (BOD)." The quantity of oxygen utilized in the biochemical oxidation of the organic matter under standard laboratory procedures for five (5) days at twenty (20°) C (degrees centigrade), expressed as concentration (milligrams per liter (mg/L)).

(8) "Building drain." The part of the lower horizontal piping of a drainage system that receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (5') outside the face of the building wall.

(9) "Building sewer." The extension from the building drain to the public sewer or other place of disposal.

(10) "Categorical industrial user." An industrial user subject to a categorical pretreatment standard or categorical standard.

(11) "Categorical pretreatment standard" or "categorical standard." Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of users and that appear in 40 C.F.R. chapter I, subchapter N, parts 405-471.

(12) "Chain of custody." A record of each person involved in the possession of a sample from the person who collects the sample to the person who analyzes the sample in the laboratory.

(13) "Chemical Oxygen Demand (COD)." A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

(14) "City." The City of Portland, Tennessee, or the Mayor and the City Council of the City of Portland, or a duly authorized representative of the city.

(15) "Conventional pollutants." Defined in 40 C.F.R. 401.16 pursuant to section 304(a)(4) of the Act to be BOD, TSS, pH, fecal coliform bacteria, and Oil and Grease (O&G).

(16) "Control authority." The City of Portland, as a TDEC delegated control authority.

(17) "Daily maximum limit." The maximum allowable discharge limit of a pollutant during a calendar day. Where daily maximum limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum limits are expressed in terms of a

concentration, the daily discharge is the arithmetic average measurement of the pollutant concentrations derived from all measurements taken that day.

(18) "Direct discharge." The discharge of wastewater directly into the waters of the State of Tennessee.

(19) "Domestic wastewater." Wastewater from normal residential activities including, but not limited to, wastewater from kitchen, bath and laundry facilities, or wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, non-commercial sinks, and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics which are similar to those of wastewater from normal residential activities, free from stormwater and industrial wastewaters.

(20) "Environmental Protection Agency (EPA)." The U.S. Environmental Protection Agency or, where appropriate, the term may also be used as designation for the administrator or other duly authorized official of the said agency.

(21) "Garbage." Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

(22) "Grab sample." An individual sample that is taken from a wastestream without regard to the flow in the wastestream and over a period not to exceed fifteen (15) minutes.

(23) "Grease interceptor." A device with a capacity greater than seven hundred fifty (750) gallons designed and installed, in accordance with the city's plumbing code, to separate and retain for removal, by passive means, fats, oils, and grease. These devices are typically installed underground, exterior to the building.

(24) "Grease management program." A program developed by the city and administered by the industrial pretreatment coordinator with the overall aim of reducing the amount of Fats, Oils, and Greases (FOG) being discharged into the POTW. Requirements may include, but are not limited to, the use of grease interceptors, BMPs, prohibitions, general good housekeeping, and other educational and enforcement activities.

(25) "Holding tank waste." Any wastewater from holding tanks that have no direct connection to the POTW and is brought and discharged into the POTW, such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

(26) "Indirect discharge." The introduction of pollutants into the POTW from any non-domestic source.

(27) "Industrial Pretreatment Coordinator (IPC)." The individual designated by the city to implement the state approved industrial pretreatment program and grease management program. The IPC is responsible for handling all aspects of these programs, as directed by the superintendent.

(28) "Industrial user." A source of indirect discharge.

(29) "Industrial wastewater." The wastewater from an industrial process, trade, or business that is distinct from domestic wastewater.

(30) "Influent technical review study." Investigation that may be initiated in the event analysis of WWTP influent for any pollutant listed in Table B of this ordinance exceeds eighty percent (80%) of the concentration value listed.

(31) "Instantaneous limit." The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

(32) "Interference." A discharge which, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal, or exceeds the design capacity of the treatment works or the collection system.

(33) "Local Hearing Authority (LHA)." The LHA for the city is a body appointed to hear appeals from orders, penalties, and other enforcement activities issued by the superintendent. This body shall be appointed by the mayor and may be made up of either the mayor and city council or a group of no more than five (5) people selected to act as duly authorized representatives of the aforementioned board. A quorum of this authority is understood to be two-thirds (2/3) of its total members.

(34) "Management, Operations, and Maintenance (MOM)." Program mandated by the approval authority to bring the POTW into full compliance with the Act by eliminating sanitary sewer overflows. The city fully intends to implement and document a formal MOM program specific to its POTW. The city also understands that this program needs to continuously evolve to meet changing system needs.

(35) "Monthly average limit." The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

(36) "National Pollutant Discharge Elimination System (NPDES)." The federal program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing discharge permits to direct discharges into the waters of the state, and imposing and enforcing pretreatment requirements under sections 307, 318, 402, 405 of the Act as amended.

(37) "New source." (a) Any building, structure, facility or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

(i) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(b) Construction of a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsections (a)(ii) or (iii) above but otherwise alters, replaces, or adds to existing process or production equipment.

(c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has begun, or caused to begin, as part of a continuous on-site construction program:

(i) Any placement, assembly, installation of facilities or equipment; or

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities or equipment; or

(iii) Entered into a binding contractual obligation for the purchase of facilities or equipment that is intended for use in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(38) "Noncontact cooling water." Water used for cooling which does not come into direct contact with any raw material, intermediate product, water product, or finished product.

(39) "Non-conventional pollutants." Those pollutants which do not fall under the conventional or toxic pollutant categories defined in this section, and include such parameters as ammonia, nitrogen, phosphorus, COD, and Whole Effluent Toxicity (WET).

(40) "North American Classification System (NAICS)." An industrial classification system that was developed by governments of Mexico, Canada, and the United States of America to provide common industrial definitions. This is a comprehensive system that groups establishments into industries based on their activities, production, and non-production.

(41) "Pass through." A discharge which exits the POTW into waters of the state or waters of the United States in quantities or concentrations which,

alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit, including an increase in the magnitude or duration of a violation.

(42) "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; the singular shall include the plural where indicated by the context.

(43) "pH." A measure of the acidity or alkalinity of a solution, expressed in standard units.

(44) "Phenols." The total of the phenolic compounds as measured by the procedure listed in 40 C.F.R. 136.

(45) "Plant protection criteria." A set of calculated values for various pollutants (see Table B of this ordinance) that are determined to protect the POTW and its treatment processes.

(46) "Pollutant." Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, and agricultural wastes discharged into water, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, odor, etc.).

(47) "Pollution." The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(48) "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 prior to, or in lieu of, introducing such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except as prohibited by § 18-223 of this chapter.

(49) "Pretreatment requirements." Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

(50) "Pretreatment standards" or "standards." Prohibited discharge standards, categorical pretreatment standards, and other specific discharge limits (§ 18-219 of this chapter) developed by the city to meet local, state, and federal ordinances and regulations.

(51) "Process wastewater." See wastewater.

(52) "Prohibited discharge standards" or "prohibited discharges." Absolute prohibitions against the discharge of certain substances; these prohibitions appear in § 18-218 of this chapter.

(53) "Public sewer." A sewer in which all owners of abutting properties have equal rights and is controlled by the city.

(54) "Public works office." The city department administered by the superintendent that is authorized with the duty to manage the daily operations of all public works for the city, i.e., water, sewer, gas, and street departments.

(55) "Publicly Owned Treatment Works (POTW)." A treatment works, as defined by section 212 of the Act (33 U.S.C. 1292), which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances that convey wastewater to the POTW. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

(56) "Sanitary sewer." A pipeline or conduit that carries wastewater and into which stormwater, surface water, and groundwater are not intentionally admitted.

(57) "Sanitary Sewer Overflow (SSO)." The discharge of wastewater from any portion of the POTW into the environment other than through permitted outfalls.

(58) "Satellite POTW." A POTW owned and operated by another municipality, utility district, or private entity connected to the city's POTW and not possessing its own NPDES permit.

(59) "Sewage." Human excrement and gray water (household showers, dishwashing operation, etc.).

(60) "Shall" or "will" is mandatory; may is permissive.

(61) Significant Industrial User (SIU)."

(a) An industrial user subject to categorical pretreatment standards; or

(b) An industrial user that:

(i) Has a reasonable potential in the opinion of the city to adversely affect the POTW's operation or for violating any pretreatment standard or requirement;

(ii) Contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the WWTP; or

(iii) Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater).

(62) "Slug load" or "slug discharge." Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in § 18-218 of this chapter. A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the pretreatment

standards, IWDP conditions, and local, state, and federal ordinances and regulations.

(63) "Standard Industrial Classification (SIC)." A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987, or subsequently amended.

(64) "State." State of Tennessee or TDEC, as a duly authorized representative of the state.

(65) "Stormwater." Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, such as snowmelt.

(66) "Storm sewer" or "storm drain." A pipe or conduit which carries stormwater and surface waters, excluding wastewaters; it may, however, carry noncontact cooling waters and unpolluted waters upon approval of the superintendent.

(67) "Superintendent." The duly authorized representative of the city in all matters regarding the POTW. The superintendent has complete oversight responsibility for all POTW operations, including the public works office, and to see that all local, state, and federal ordinances, regulations, and requirements are met. The superintendent's management authority includes but is not limited to: the supervisor of collections, the supervisor of wastewater treatment, and the industrial pretreatment coordinator. The superintendent may designate person(s) to serve in his absence when he is unable to perform his duties. Such instances shall include, but not be limited to, the superintendent being ill or on vacation.

(68) "Supervisor of collections." The individual designated by the city to oversee, manage, and operate the POTW collection system. The supervisor of collections is charged with certain duties and responsibilities, including the administration of the MOM program, by the superintendent, by this ordinance, and by certification of regulations stipulated in any state and/or federal credentials required to hold this position.

(69) "Supervisor of wastewater treatment." See WWTP chief operator.

(70) "Time proportional composite sample." A sample consisting of a series of equal volume sample portions collected at consistent time intervals, not less than fifteen (15) minutes, during which time the flow does not vary by more than ten percent (10%) of the average flow rate over the sampling period.

(71) "Total Kjeldahl Nitrogen (TKN)." The sum of organic nitrogen and ammonia in a water body, usually expressed as concentration (milligrams per liter (mg/L)).

(72) "Total Suspended Solids" or "suspended solids (TSS)." The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

(73) "Toxic pollutants." Those pollutants defined in section 307(a)(1) (33 U.S.C. 1317) of the Act that include metals and man-made organic compounds.

(74) "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 the sample are proportioned to the flow and combined to form a representative sample.

(75) "User." Any person who contributes, causes, or permits the contribution of wastewater into the city's POTW.

(76) "Wastewater." The liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial facilities, and institutions, whether treated or untreated, which are contributed into the POTW.

(77) "Wastewater discharge permit." A legal mechanism issued by the city, to a user, to control the character of the user's wastewater discharge such as, but not limited to, pollutant and flow limitations, and any other prohibitions and limitations the city deems necessary to protect the POTW, any by-products of its processes, and waters of the state.

(78) "Wastewater Treatment Plant (WWTP)." That portion of the city's POTW designed to provide treatment to wastewater.

(79) "WWTP chief operator." The individual designated by the city to oversee, manage, and operate the WWTP. In holding this position, the WWTP chief operator is charged with certain duties and responsibilities by the superintendent, by this ordinance, and by certification of regulations stipulated in any state and/or federal credentials required to hold this position.

(80) "Waters of the state." All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof. (1980 Code, § 13-202, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010, and amended by Ord. #16-49, Nov. 2016, and Ord. #19-19, March 2019 *Ch12_12-06-21*)

18-203. Requirements for proper wastewater disposal.

(1) It shall be unlawful for any person to place, deposit, or permit to be deposited any wastewater, human or animal excrement, garbage, or other objectionable waste, in any unsanitary manner on public or private property within the city.

(2) It shall be unlawful to discharge any wastewater, human or animal excrement, garbage, or other objectionable waste into any waters of the state, except when suitable treatment has been provided in accordance with provisions of this ordinance.

(3) Except as hereinafter provided, it shall be unlawful to construct or maintain within the city any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

(4) Except as provided in subsection (6) of this section, the owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the service area and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer, is hereby required at his expense to install suitable sanitary facilities therein, and to connect such facilities directly with the POTW in accordance with the provisions of this ordinance, within ninety (90) days after date of official notice to do so, provided that said public sanitary sewer is within three hundred feet (300') of the property line.

(5) The owner of a manufacturing facility may discharge wastewater to the waters of the state provided that the facility obtains an NPDES permit and meets all requirements of the Act, the NPDES permit, and any other applicable local, state, and federal laws and regulations.

(6) Where a public sanitary sewer is not available, the building sewer shall be connected to a private sewage disposal system complying with the provisions of §§ 18-208 and 18-209 of this chapter.

(7) The city shall develop a set of standard specifications for the construction of new sanitary sewers with the approval of the superintendent and the state. (1980 Code, § 13-203, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010, and amended by Ord. #16-49, Nov. 2016)

18-204. Physical connection to public sewer. (1) No person shall uncover, make any connections with or openings into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining written authorization from the city as required by §§ 18-215 or 18-216 of this chapter.

(2) Any person given permission by the city to uncover, make connection with or openings into, use, alter, or disturb any part of the POTW or appurtenance thereof that requires entrance into said POTW must adhere to all current federal, state, and local safety regulations, including but not limited to the city's "Confined Space Entry" Program requirements.

(3) All costs sustained from 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 caused by the aforementioned activities.

(4) 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 a rear building through an adjoining alley, court, yard, or driveway. When an exception is approved by the supervisor of collections, the building sewer from the building may be extended to a rear building and the whole considered as one (1) building sewer. The city accepts no responsibility for any injury or damage caused by this type of building sewer installation.

(5) Old building sewers may be used in connection with new buildings only when they are found, on examination and tested by the supervisor of

collections, to meet all requirements of this ordinance. All others must be sealed in accordance to the specifications of the city.

(6) Building sewers shall conform to the following requirements:

(a) The minimum size of a gravity-building sewer shall be four inches (4").

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

(c) Four inch (4") gravity-building sewers shall be laid on a grade of one-fourth inch (1/4") 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.

(d) Slope and alignment of all building sewers shall be neat and regular.

(e) Building sewers shall be constructed only of:

(i) Schedule 40 polyvinyl chloride pipe with solvent welded or with rubber compression joints;

(ii) Ductile iron pipe with push on joints; or

(iii) Such other materials of equal or superior quality as may be approved by the supervisor of collections.

Under no circumstances will cement mortar joints be acceptable.

(f) A cleanout shall be located three feet (3') outside of the building, at the tap to the POTW, and at each change of direction of the building sewer that 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 four inch (4") nominal diameter and not more than one hundred feet (100') apart for larger pipes. Cleanouts shall extend to within six inches (6") of the finished grade level and shall be protected by a plastic meter box with cast iron reader lid. A "T" (long sweep) or "Y" (wye and one-eighth (1/8) bend) shall be used for the cleanout base. Cleanouts shall not be smaller than four inches (4") on a four inch (4") pipe.

(g) Connections of building sewers to the POTW shall be made to the appropriate existing wye or tee branch using compression type couplings or collar type rubber joint with corrosion resisting or 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 or cutting a clean opening in the existing public sewer and installing a tee-saddle or tee-insert of a type approved by the supervisor of collections. Where connections are made with pipe of different inside or outside diameter, proper watertight gasketed or sleeved transition connections shall be used. All such connections shall be made gastight and watertight.

(h) The building sewer may be brought into the building below the basement floor when gravity flow from the building to the POTW is

at a grade of one-fourth inch (1/4") per foot (two percent (2%)) or more if possible. In cases where basement or floor levels are lower than the ground elevation at the point of connection to the POTW, the owner shall provide adequate precautions by installation of check valves or backflow prevention devices to protect against flooding. In all buildings in which any building drain is too low to permit gravity flow to the POTW, a private sewage pumping station, as approved by the supervisor of collections, shall be installed at the expense of the owner. Said pumping station installation 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 Federation Manual of Practice No. 9.

(i) The building sewer shall be laid in a ditch no less than twelve inches (12") in width. The pipe shall have no less than eight inches (8") of #57 crushed stone as bedding. The building sewer shall be laid according to grade and checked with rod and level or laser leveling device. The person installing the building sewer may be asked to provide proof of grade upon request by the supervisor of collections.

(j) 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 Federation Manual of Practice No. 9. The supervisor of collections must approve any deviation from the prescribed procedures and materials before installation.

(k) An installed building sewer shall be gas tight and watertight. Tightness testing shall be performed in accordance with the city's standard specifications for wastewater construction.

(7) All excavations for building sewer installations shall follow current federal, state and local safety requirements including, but not limited to, safety jacks, shores, and/or proper excavations; and 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 supervisor of collections.

(8) No person shall make connection to roof downspouts, exterior foundation drains, areaway drains, basement drains, or other sources of stormwater or groundwater to building sewer or building drain that in turn is connected directly or indirectly to the POTW. (1980 Code, § 13-204, as replaced by Ord. #566, § 1, April 1998, Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-205. Grease interceptor requirements. (1) Upon construction or renovation, all commercial, industrial, institutional, and all other non-residential establishments (e.g., restaurants, cafeterias, motels, hospitals, garages, nursing homes, schools, grocery stores, prisons, churches, caterers, manufacturing facilities) that discharge FOG bearing wastewaters shall properly install, operate, and maintain grease interceptors in accordance with the city's grease management program.

(2) All existing commercial, industrial, institutional, and all other non-residential establishments (e.g., restaurants, cafeterias, motels, hospitals, garages, nursing homes, schools, grocery stores, prisons, churches, caterers, manufacturing facilities) that discharge FOG bearing wastewaters shall be expected to conduct their operations in such a manner that FOG is captured on the user's premises and properly disposed in accordance with the city's grease management program.

(3) Grease interceptors shall be designed in accordance with the requirements outlined in the city's grease management program. The cost of the installations shall be borne by the user.

(4) All grease interceptors shall be maintained by the user at the user's expense, in continuously efficient operation at all times, and according to the city's grease management program. In the maintenance of these interceptors, the owner shall be responsible for the proper removal and disposal of the captured material and shall maintain records of the dates and means of disposal; records are subject to review by the IPC. The frequency of removal shall be in accordance with the city's grease management program. The removal and/or disposal of collected materials must be performed by licensed waste disposal firms. Under no circumstances shall the collected materials ever be returned to the wastewater system.

(5) The IPC shall have the right to enter all properties subject to this program, at any time and without prior notification, for the purpose of inspection, observation, measurement, sampling, testing, or record review. Fees may be collected from users to compensate the city for the inspections and other administrative duties of the grease management program. The user shall reimburse the city for all expenses incurred including, but not limited to, labor, equipment, and materials if the city is required to clean out the public sewer, as a consequence of a blockage resulting from an improperly maintained grease interceptor of the user. (1980 Code, § 13-205, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-206. Inspection of connections. (1) All building sewers shall be inspected by the supervisor of collections or his duly authorized representative and subject to inspection and testing before the underground portion is covered.

(2) The applicant shall notify the city's public works office that the building sewer is ready for inspection. The public works office shall verify that all fees have been paid. If all fees have been paid, the public works office will

contact the supervisor of collections and inform him that the building sewer is ready for inspection.

(3) The inspection result, pass or fail, shall be indicated by a sticker attached to the cleanout closest to the POTW. The applicant may cover up subsurface building sewer lines that pass inspection. The supervisor of collections will report subsurface building sewer lines that fail inspection to the public works and utility offices. Once the applicant has corrected the failed building sewer lines and is ready for re-inspection, the requirements set forth in subsection (2) of this section shall be followed. (1980 Code, § 13-206, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-207. Maintenance of building sewers. The POTW is a costly but valuable asset for all of its users. The capacity and cost of this service is directly affected by the regular building sewer maintenance conducted by the users of the POTW. Each user of the POTW shall be entirely responsible for the maintenance of the building sewer located on private property. This maintenance will include repair or replacement of the sewer line on private property up to the property line as deemed necessary by the supervisor to meet specifications of the city. If, upon smoke testing and/or visual inspection by the city, roof downspout connections; exterior foundation drains; basement drains; or other sources of stormwater, surface water, or groundwater entry into the POTW are identified on a user's private property, the city may take any of the following actions:

(1) Notify the user in writing of the nature of the problem(s) identified on the user's building sewer and the specific steps required to bring the building sewer into compliance with the requirements of this ordinance. All steps necessary to correct these violations must be complete within sixty (60) days from the date of the written notice. All costs incurred in correcting these violation(s) are entirely at the expense of the user.

(2) Notify the user in writing of the nature of the problem(s) identified on the user's building sewer and inform the user that the city will provide all labor, equipment, and materials necessary to make the repairs required to bring the building sewer into compliance with the requirements of this ordinance. The work on private property will be performed at the city's convenience and the cost of all materials used will be charged to the user. The city will be responsible for bringing any excavations back to original grade, replacing topsoil, and hand-raking all disturbed areas. The user shall be responsible for final landscaping, including but not limited to, seeding, fertilizing, watering, mulching, sodding, and replacing any shrubbery or trees displaced or damaged by the city during the execution of the work.

(3) Any person that requires entry into any part of the POTW or an appurtenance of the POTW to conduct any maintenance work must meet the requirements of § 18-204 of this chapter. (1980 Code, § 13-207, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-208. Availability of public sewer. (1) Where a public sanitary sewer is not available, the building sewer shall be connected to a private sewage disposal system complying with the provisions of § 18-209 of this chapter.

(2) Any residence, office, recreational facility, or other establishment used for human occupancy and the building drain is below the elevation necessary to obtain a grade equivalent to a one-eighth inch (1/8") per foot (one percent (1%)) in the building sewer, but is otherwise accessible to a sanitary sewer as provided in § 18-203 of this chapter, the owner shall provide a private sewage pumping station as required in § 18-204(6)(h) of this chapter.

(3) In the event a public sanitary sewer becomes available to a building, the building sewer shall be connected to that public sewer within ninety (90) days of notice from the city. The supervisor of collections shall maintain the right and discretion to temporarily waive the public sanitary sewer connection requirement, on a case-by-case basis, and under certain circumstances. If the supervisor of collections waives such requirement, the subject property owner (available non-user) shall be required to pay any and all applicable sewer use charges in accordance with the schedule of charges and fees. (1980 Code, § 13-208, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010, and amended by Ord. #16-49, Nov. 2016, and Ord. #19-19, March 2019 *Ch12_12-06-21*)

18-209. Requirements for private sewage disposal. (1) A private sewage disposal system may not be constructed in the city until a certificate is obtained from the superintendent stating that a public sanitary sewer is not accessible to the property and no such sanitary sewer is proposed for construction in the immediate future. No certificate shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than that specified by the Sumner County Health Department.

(2) Before commencement of construction of a subsurface soil absorption facility, the owner shall obtain written permission from the Sumner County Health Department. The owner shall supply all plans, specifications, and other information as deemed necessary by the Sumner County Health Department.

(3) A subsurface soil absorption facility shall not be placed in operation until the installation is completed to the satisfaction of the Sumner County Health Department. The owner shall allow the Sumner County Health Department to inspect the work at any stage of construction. The owner shall notify the Sumner County Health Department when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made by the Sumner County Health Department within a reasonable period of time after the receipt of notice.

(4) The type, capacity, location, and layout of a private sewage disposal system shall comply with all recommendations of TDEC and/or the

Sumner County Health Department. No septic tank or cesspool shall be permitted to discharge directly to any waters of the state.

(5) The owner shall operate and maintain the private sewage disposal system in a sanitary manner at all times, at no cost to the city.

(6) No statement contained in this section shall be constructed to interfere with any additional requirements that may be imposed by the Sumner County Health Department. (1980 Code, § 13-209, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-210. Requirements for satellite POTWs and inter-municipal agreements. The following requirements shall be followed in the development and implementation of all satellite and inter-municipal agreements entered into by the city with other municipalities that desire to connect to the city's POTW. The services offered by the city with its POTW are a valuable but limited asset developed by the city. Use of a portion of its POTW capacity should be viewed as a privilege that comes with certain requirements. All agreements should follow the general provisions of § 18-215 of this chapter.

(1) Agreements with satellite POTWs shall be developed in such a manner as to protect the city's POTW, its employees, and the environment;

(2) Agreements with satellite POTWs shall be developed to reflect the city's SUO including, but not limited to, its definitions, requirements, and regulations. The satellite POTW may be required to develop its own SUO and modify it to reflect the city's SUO when necessary;

(3) The city reserves the right to set discharge limits, for volume and/or pollutant concentration, on satellite POTWs including, but not limited to the requirements in §§ 18-218 through 18-219 of this chapter;

(4) The city shall have the right to administer its industrial pretreatment program unless the satellite POTW has its own state approved industrial pretreatment program;

(5) All satellite POTWs shall install and maintain a monitoring facility at a point just prior to the connection to the city's POTW. These facilities shall include an electronic flow measurement device and a discrete sampling point in accordance with § 18-225 of this chapter;

(6) The city and the satellite POTW shall develop a payment system for the collection of fees, from the satellite POTW or its users, to cover all costs incurred by the city for the use of its POTW and the treatment of the wastewater discharged from the satellite POTW. This payment system shall be reviewed and adjustments made by both parties, not less than bi-annually, to ensure that all cost for the services being extended to the satellite POTW are being covered by their fees;

(7) The satellite POTW shall submit an annual report, due by January 30th of each year, to the city. It shall indicate the activities conducted by the satellite POTW including modifications, maintenance, and extensions of its POTW during the previous year. This report shall also include the annual total

flow discharged, based on their potable water usage or other verifiable method, and the total flow measured by the measured at the connection point to the city's POTW. The difference between these volumes is wastewater not covered by the normal payment system. The city may charge the satellite POTW a fee, determined by the city, for difference between these two (2) volumes. (1980 Code, § 13-210, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-211. Holding tank waste disposal. (1) The acceptance of holding tank wastewater into the POTW is a privilege that may be granted by the city to holding tank haulers. The city reserves the right to terminate this privilege at any time to any or all holding tank haulers if it deems it necessary to protect the POTW. Holding tank wastewater shall be accepted into the POTW only at receiving points designated by the superintendent, at such times established by the WWTP chief operator, and provided that such wastewaters do not violate § 18-218 of this chapter or any other local pretreatment standards or requirements established or adopted by the city. No person shall discharge holding tank wastewaters or clean equipment used to haul such wastewaters at any place other than a place so designated.

(2) The WWTP chief operator shall have the authority to prohibit the disposal of such wastewater, if such disposal will cause interference or pass through or adversely affect the ability of the city to meet the objectives provided in § 18-201 of this chapter. (1980 Code, § 13-211, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-212. Holding tank haulers waste disposal permit. (1) No person shall clean out, drain, or flush any septic tank or any other type of wastewater or sewage disposal system, unless such person obtains a permit from the city to perform such acts or services. Any person desiring a permit to perform such services shall submit an application on the prescribed form(s). Applications may be obtained and submitted at the WWTP during normal office hours. The city may issue a permit when the conditions of this ordinance have been met and providing the WWTP chief operator is satisfied the applicant has adequate and proper equipment to perform the services contemplated in a safe and competent manner.

(2) Failure to comply with all the provisions of this ordinance shall be sufficient cause for the revocation of such permit by the superintendent. The possession within the city by any person of any motor vehicle equipped with a body type and accessories of a nature and design capable of servicing private sewage disposal systems or septic tanks shall be prima facie evidence that such person is engaged in the business of cleaning, draining, flushing, and/or servicing such systems within the city. (1980 Code, § 13-212, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-213. Fees for holding tank waste disposal permits. (1) Annual fees. For each permit issued under the provisions of § 18-212 of this chapter, an annual service charge shall be paid to the city as specified in § 18-245 of this chapter. Holding tank waste disposal permits shall be issued for a maximum period of one (1) year but may be prorated for a lesser period of time, with the approval of the WWTP chief operator. This permit is nontransferable.

(2) Permit number. The permit number issued by the city shall be plainly displayed on each side of the tank used in the conduct of this service.

(3) Tipping fees. The holding tank haulers shall pay a tipping fee, as set by the city, for each load discharged into the POTW.

(4) Sampling and analyzing loads. The city reserves the right to collect and analyze samples from any holding tank hauler at any time as deemed necessary to ensure that all wastewaters being discharged into the POTW shall not cause interference or pass through or adversely affect the ability of the city to meet the objectives provided in § 18-201 of this chapter. The hauler shall be liable for all expenses incurred for all such analysis. Refusal by the hauler to pay these costs shall be grounds for immediate termination of the hauler's discharge privileges. The superintendent may reinstate a hauler's discharge privileges only after receiving payment and a written request by the hauler, provided its wastewater shall not cause interference or pass through or adversely affect the ability of the city to meet the objectives provided in § 18-201 of this chapter. (1980 Code, § 13-213, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-214. Underground fuel storage tank wastewaters. The acceptance of underground fuel storage tank wastewater into the POTW is a privilege that may be granted by the city to a user when requested. Wastewater from contaminated underground fuel storage tank sites within the city may be discharged to the POTW only when and if a permit application, as prescribed by the WWTP chief operator, is submitted, fees, if any, are paid, and a special "underground fuel storage tank wastewater discharge permit" is obtained. Said permits shall have an effective period of not more than one (1) year. The user shall apply for a renewal permit not less than thirty (30) days prior to the expiration date of the current permit. The city reserves the right to terminate this privilege at any time to any or all persons, if the city deems it necessary to protect the POTW. All other aspects of this ordinance will be in force for these permits and administered by the city. (1980 Code, § 13-214, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-215. Domestic wastewater discharge permits. (1) General requirements. All users or prospective users that generate only domestic wastewater shall make application to the city's utility office for written authorization to connect a building sewer and to discharge wastewater to the POTW. Applications shall be required from all new dischargers of domestic

wastewater as well as for any existing dischargers of domestic wastewater desiring additional service. Connection to the POTW shall only be made when the following conditions have been met:

- (a) A completed application is received and approved by the city;
- (b) The appropriate fee(s) have been paid;
- (c) The building sewer is installed in accordance with § 18-204 of this chapter; and
- (d) An inspection of the building sewer by the supervisor of collections has been performed and has passed inspection.

(2) Disclaimer for services requested. The receipt by the city of a prospective user's application for sanitary sewer service shall not obligate the city to render such service. If the service requested cannot be supplied in accordance with this ordinance and/or any other requirements established by the city, the tap fee shall be refunded in full. There shall be no liability on the city to the applicant for such service, except that the superintendent may grant conditional waivers for additional services for interim periods if compliance will be met within thirty (30) days. (1980 Code, § 13-215, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-216. Industrial Wastewater Discharge Permits (hereafter IWDP). It is a privilege and a valuable asset for any user to be allowed to use a portion of the POTW's capacity. Local, state, and federal regulations have been established to protect our environment. A partnership between the city and its local industries can be beneficial for all parties.

(1) General requirements. (a) When requested by the IPC, a user must submit information on the nature and characteristics of its wastewater within sixty (60) days of the request. All new industrial users proposing to connect to or to contribute to the POTW shall notify the IPC and submit baseline information to the IPC not less than ninety (90) days prior to connecting to or contributing to the POTW. The IPC is authorized to prepare a form to collect this baseline information and may periodically require users to update this information. This baseline information shall be used by the IPC to determine the nature of the proposed contribution to the POTW.

(b) No SIU shall discharge wastewater into the POTW without first obtaining an IWDP from the city. All SIUs connected to or contributing to the POTW must maintain a current IWDP. The IPC may require other users to obtain an IWDP as necessary to carry out the objectives of this ordinance.

(c) The IPC shall review all existing IWDP(s) within ninety (90) days after the effective date of this ordinance to determine if any modifications need to be made to bring them into compliance with the provisions of this ordinance.

(d) Failure to follow the guidelines above may result in the city charging extra fees for the services rendered.

(e) Any violation of the terms and conditions of an IWDP shall be deemed a violation of this ordinance and subjects the permitted user to the sanctions set out under the enforcement and abatement sections §§ 18-231 through 18-244 of this chapter. Obtaining an IWDP does not relieve a user of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law.

(2) Applications for an IWDP. Applications for IWDP(s) shall be required as follows:

(a) Application timeframe. All users required to obtain an IWDP shall obtain, complete, and submit a permit application. Existing IWDP holders shall apply for permit renewals not less than sixty (60) days prior to the expiration of their current IWDP permit. Users proposing to begin or recommence discharging into the POTW must obtain an IWDP prior to the beginning or recommencing of such discharge. An application for an IWDP must be filed not less than ninety (90) days prior to contributing to the POTW.

(b) Application information. The application shall be on the prescribed form of the city and may include, but not be limited to, the following information:

(i) Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.

(ii) Permits. The user shall submit a list of any environmental control permits held by or for the facility.

(iii) Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification(s) of the operation(s) carried out by the user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(iv) Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in Tennessee Rule 1200-4-14-.06(5). The city may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(v) Measurement of pollutants. (A) When applicable, the user shall identify the categorical pretreatment standards applicable to each regulated process;

(B) The user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or the city) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the city or the applicable standards to determine compliance with the standard;

(C) The user shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this paragraph;

(D) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula set out in Tennessee Rule 1200-4-14-.06(5) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with Tennessee Rule 1200-4-14-.06(5), this adjusted limit along with supporting data shall be submitted to the city;

(E) Sampling must be performed in accordance with procedures set out in § 18-226(3) of this chapter;

(F) The city may allow the submission of baseline information which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures; and

(G) The baseline information shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(vi) Certification. A statement, reviewed by an authorized representative of the industrial user (as provided in § 18-230 of this chapter) and certified to by an authorized representative of the user, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional Operation and Maintenance (O&M) and/or additional pretreatment is

required for the industrial user to meet the pretreatment standards and requirements.

(vii) Compliance schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

(viii) Pretreatment facilities. Any user who elects or is required to construct new or additional pretreatment facilities to achieve compliance with all categorical pretreatment standards, user discharge restrictions, and prohibitions set out in this ordinance, shall, as part of the application for the IWDP, submit plans, specifications, and other pertinent information related to the proposed construction to the IPC for approval. An IWDP 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 a discharge that is acceptable to the city under the provisions of this ordinance.

(ix) If pretreatment facilities and/or changes to the current O&M practices of the user are required to meet the pretreatment standards, the application shall include the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standards.

(x) The following conditions shall apply to the schedule required by subsection (b)(vii) above:

(A) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.). No increment of progress shall exceed nine (9) months.

(B) The industrial user shall submit a progress report to the IPC, not later than fourteen (14) days following each date in the schedule and the final date for compliance, including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not,

the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than two (2) months elapse between such progress reports to the IPC. Failure to submit progress reports in a timely manner may result in enforcement actions.

(xi) Additional information. The IPC will evaluate the data furnished by the user and may require additional information. After the IPC's evaluation and acceptance of the data furnished, the IPC may issue an IWDP subject to terms and conditions provided herein. The IPC shall determine the discharge status of the applicant and issue billings appropriate for that industrial status. City may reimburse the applicant for the amount received should the application be denied after receipt of any fee.

(xii) IPC's actions on application. The IPC will act only on applications containing all the information required. Persons who have filed an incomplete application will be notified by the IPC 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 IPC, the IPC shall deny the application. A written notification of the IPC's action shall be sent to the applicant and the superintendent.

(xiii) Disclaimer of services requested. The receipt by the IPC of a prospective user's application for an IWDP 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 ordinance 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.

(3) Contents for an IWDP. IWDPs shall be expressly subject to all provisions of this ordinance and all other applicable federal, state, and local regulations and user charges and fees established by the city.

(a) IWDPs shall contain, but not be limited to, the following:

(i) A statement that indicates the IWDP issuance date, expiration date, and effective date;

(ii) A statement that the IWDP is nontransferable without prior notification to the city and provisions for furnishing a copy of the existing IWDP to the new owner or operator;

(iii) Effluent limits, including BMPs, based on applicable pretreatment standards;

(iv) Self monitoring, sampling, reporting, notification, and recordkeeping requirements, including identification of pollutants

(or BMP) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law;

(v) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules shall not extend the time for compliance beyond that required by applicable federal, state, or local law; and

(vi) Requirements to control slug discharge, if determined by the IPC to be necessary.

(b) IWDPs may contain, but not be limited to, the following conditions:

(i) The unit charge per gallon of wastewater discharged, schedule of user charges, and/or fees for the wastewater discharged to the POTW developed by the city to offset the cost of treatment;

(ii) Limits on average and/or maximum rate, time of discharge, and/or requirements for flow equalization;

(iii) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;

(iv) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

(v) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

(vi) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

(vii) A statement that compliance with the IWDP does not relieve the user of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the IWDP; and

(viii) Other conditions as deemed appropriate by the IPC to ensure compliance with this ordinance, and state and federal laws, rules, and regulations.

(4) Duration for an IWDP. An IWDP shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An individual IWDP may be issued for a period less than five (5) years, at the discretion of the public works office. Each IWDP will indicate a specific date upon which it will expire. The user shall apply for permit re-issuance not less than sixty (60) days prior to the expiration of the user's current IWDP.

(5) Transfer for an IWDP. Each IWDP is issued to a specific user for a specific operation. An IWDP shall not be reassigned, transferred, or sold to a new user, a different premise, or a new or changed operation without the approval of the IPC. Any succeeding person, owner, or user shall also comply with all the terms and conditions of the existing IWDP.

(6) Permit modification. Any IWDP issued under the provisions of this ordinance may be modified for good cause, including, but not limited to, the following reasons:

(a) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

(b) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of the IWDP issuance;

(c) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(d) Information indicating that the permitted discharge poses a threat to POTW, city employees, or the receiving waters;

(e) Violation of any terms or conditions of the IWDP;

(f) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

(g) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 C.F.R. 403.13;

(h) To correct typographical or other errors in the IWDP; or

(i) To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with subsection (6) above.

(7) Permit revocation. Any IWDP issued under the provisions of this ordinance is subject to suspension or revocation in whole or in part during its term for good cause, including, but not limited to, the following reasons:

(a) Failure to notify IPC of significant changes in operations or wastewater volume, constituents, and characteristics prior to the changed discharge;

(b) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(c) Falsifying self-monitoring reports and certification statements;

(d) Tampering with monitoring equipment;

(e) Refusing to allow the city timely access to the facility premises and records;

(f) Failure to meet effluent limitations;

(g) Failure to pay fines;

(h) Failure to pay sewer charges;

(i) Failure to meet compliance schedules;

(j) Failure to complete a wastewater survey or the wastewater discharge permit application;

(k) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

(l) Violation of any pretreatment standard or requirement, or any terms of its IWDP or this ordinance. (1980 Code, § 13-216, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-217. Confidential information. Any information and data on a user submitted to the city pursuant to the provisions of this ordinance, an IWDP, or order issued hereunder, or any other pretreatment standard or requirement, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of city, that the release of specific information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a written document that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall be clearly and permanently marked "Confidential Business Information" and the city shall not make available those portions for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the user furnishing the report. Wastewater constituents, characteristics, and other effluent data, as defined at 40 C.F.R. 2.302, shall not be recognized as confidential information and shall be available to the public without restriction. (1980 Code, § 13-217, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-218. Prohibited discharge standards. (1) General prohibitions.

(a) No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not a user is subject to categorical pretreatment standards or any other federal, state, or local pretreatment standards or requirements.

(b) Waters prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. All floor drains located in the process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the POTW.

(2) Specific prohibitions. No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater:

(a) Liquids, solids, or gases which, by reason of their nature or quantity are, or may be, either singly or by interaction with other wastes, sufficient 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 POTW, or to any point in the POTW, be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Wastewater shall not have a closed-cup flashpoint of less than one hundred forty (140°) F (degrees Fahrenheit)/sixty (60°) C (degrees Centigrade) using the test methods in 40 C.F.R. 261.21. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromate, carbides, hydrides and sulfides, and 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) Wastewater having a pH less than 5.0 or higher than 10.0, unless authorized by the city, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW. No wastewater having a pH more than 12.5 shall be authorized, since this would be considered a corrosive hazardous waste under 40 C.F.R. 261.22 of the Act.

(c) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference such as, but not limited to: grease; solids with particles greater than one-half inch (1/2") in any dimension; paunch manure, bones, hair, hides, or fleshings, entrails, whole blood, feathers from animal processing facilities; 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; residues from refining or processing of fuel or lubricating oil; mud; or glass grinding or polishing wastes.

(d) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW.

(e) Wastewater having a temperature which will inhibit biological activity in the WWTP resulting in interference, but in no case wastewater which causes the temperature at the introduction into the WWTP which exceeds one hundred four (104°) F (degrees Fahrenheit)/forty degrees (40°) C (degrees Celsius).

(f) Wastewaters containing any toxic pollutants, chemical elements, or compounds in sufficient quantity, which either singly or by interaction with other pollutants, may cause interference, constitute a hazard to humans or animals, create a toxic effect in the receiving waters

of the POTW, or exceed the pretreatment standards. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to section 307(a) of the Act.

(g) Trucked, hauled, or other discharge of pollutants, except at discharge points designated by the WWTP chief operator in accordance with §§ 18-212 through 18-214 of this chapter.

(h) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life or are sufficient to prevent entry into the POTW for maintenance and repair.

(i) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

(j) Any substance which may cause the WWTP effluent or any other product of the WWTP 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 WWTP to be in noncompliance with sludge use or disposal criteria, guidelines, or regulations developed under section 405 of the Act; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.

(k) Any substance that will cause the POTW to violate its NPDES permit or the receiving water quality standards.

(l) Any wastewater causing discoloration of the WWTP effluent to the extent that the NPDES permit would be violated, such as, but not limited to, dye wastes and vegetable tanning solutions.

(m) Any wastewater of an unusual flow rate or concentrations, "slug" as defined in this ordinance, unless authorized by the city.

(n) Wastewater containing any radioactive wastes or isotopes except as specifically approved by the city and in compliance with applicable state or federal regulations.

(o) Any wastewater that causes a hazard to human life or creates a public nuisance.

(p) Any wastewater containing fats, oils, or greases of animal or vegetable origin, 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°) F and one hundred forty (140°) F (degrees Fahrenheit) or zero (0°) C and sixty (60°) C (degrees Celsius).

(q) Any wastewaters containing petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in excess of one hundred (100) mg/L, or in amounts that will cause interference or pass through.

(r) Stormwater, surface water, groundwater, roof runoff, subsurface drainage, noncontact cooling water, or unpolluted industrial process waters to any sanitary sewer. Stormwater and all other unpolluted drainage shall be discharged to conveyances that are specifically designated as storm sewers, or to a natural outlet approved by the superintendent and TDEC. Noncontact cooling water or unpolluted process wastewaters may be discharged on approval of the superintendent and/or TDEC, to a storm sewer or natural outlet.

(s) Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no user shall ever increase the use of process water, or in any other way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement.

(t) Sludges, screenings, or other residues from the pretreatment of industrial wastes unless approved by the IPC.

(u) Any wastes containing detergents, surface-active agents, surfactants, or other substances that may cause excessive foaming in the POTW.

(3) By-pass. (a) Definitions. (i) By-pass means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a by-pass. Severe property damage does not mean economic loss caused by delays in production.

(b) An industrial user may allow any by-pass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These by-passes are not subject to the provisions of subsections (c) and (d) below.

(c) Notice. (i) If an industrial user knows in advance of the need for a by-pass, it shall submit prior notice to the POTW, if possible at least ten (10) days before the date of the by-pass.

(ii) An industrial user shall submit oral notice of an unanticipated by-pass that exceeds applicable pretreatment standards to the city within twenty-four (24) hours from the time the industrial user becomes aware of the by-pass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the by-pass. The written submission shall contain a description of the by-pass and its cause; the duration of the by-pass, including exact dates and times, and, if the by-pass has not been corrected, the anticipated time it is

expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the by-pass. The city may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(d) Prohibition of by-pass. (i) By-pass is prohibited, and the city may take enforcement action against an industrial user for a by-pass, unless;

(A) By-pass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the by-pass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a by-pass which occurred during normal periods of equipment downtime or preventative maintenance; and

(C) The industrial user submitted notices as required under subsection (c) of this section.

(ii) The city may approve an anticipated by-pass, after considering its adverse effects, if the city determines that it will meet the three (3) conditions listed in subsection (d)(i) of this section. (1980 Code, § 13-218, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-219. Restrictions on wastewater strength. (1) No user shall discharge wastewater containing pollutants in excess of the limits shown in Table A - User Discharge Restrictions. These pollutant limits have been established using standard procedures, calculations, and methods acceptable to TDEC to protect the POTW against pass through, interference, and adverse effects on wastewater residuals reuse or disposal. These pollutant limits shall be included as permit conditions and attached to each IWDP. The pollutant limits apply at the point where the wastewater is discharged to the POTW.

(2) Dilution of any wastewater discharge for satisfying these pollutant limits is prohibited by § 18-223 of this chapter. Any user that discharges pollutant concentrations in excess of the limits presented in Table A of this ordinance will be subject to enforcement actions outlined in the ERP.

(3) The IPC may develop BMPs, by ordinance or in IWDPs, to implement the restrictions of §§ 18-218, 18-219, and 18-220 of this chapter.

Table A - User Discharge Restrictions

Pollutant	Monthly Average Limit (mg/L)	Daily Maximum Limit (mg/L)*	Instantaneous Limit (mg/L)**
<u>Toxic</u>			
1, 1, 1 Trichloroethane	1.82	2.72	4.08
1, 2 Transdichloroethylene	0.037	0.055	0.083
Arsenic	0.147	0.221	0.332
Benzene	0.093	0.140	0.210
Cadmium	0.009	0.014	0.021
Carbon tetrachloride	0.355	0.532	0.798
Chloroform	2.19	3.28	4.93
Chromium VI	0.261	0.392	0.588
Chromium, total	1.00	1.50	2.25
Copper	0.80	1.20	1.80
Cyanide	0.079	0.119	0.179
Ethylbenzene	0.255	0.383	0.575
Lead	0.040	0.060	0.090
Mercury		Prohibited	
Methylene chloride	0.966	1.45	2.174
Molybdenum	0.265	0.397	0.596
Napthalene	0.033	0.049	0.074
Nickel	0.700	1.05	1.575
Selenium	0.003	0.004	0.006
Silver	0.051	0.077	0.116
Tetrachloroethylene	1.02	1.53	2.289

Pollutant	Monthly Average Limit (mg/L)	Daily Maximum Limit (mg/L)*	Instantaneous Limit (mg/L)**
Toluene	1.95	2.92	4.377
Total phenols	1.20	1.80	2.70
Total phthalates	1.49	2.24	3.36
Trichloroethylene	0.823	1.23	1.85
Zinc	1.50	2.25	3.38
<u>Conventional and non-conventional***</u>			
BOD ₅	500	750	1,000
FOG	100	125	150
Total phosphorus	11	16.5	22
Total Kjeldahl Nitrogen (TKN)	23	35	46
Total nitrogen	30	45	60
TSS	500	750	1,000

* Based on 24-hour flow proportional composite samples or average of two or more instantaneous grab samples.

** Based on single grab sample.

*** Based on WWTP influent design criteria.

(1980 Code, § 13-219, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-220. Protection of WWTP. The WWTP chief operator shall monitor the WWTP influent for each pollutant in Table B - Plant Protection Criteria. In the event that the influent to the WWTP reaches or exceeds eighty percent (80%) of a concentration value listed in Table B, the WWTP chief operator may initiate an "Influent Technical Review" (ITR) study. If initiated, the WWTP chief operator, in conjunction with the IPC and any consultants deemed necessary, shall conduct the ITR study. This study shall be conducted in an effort to determine the source(s) of the increased pollutant contributions and to develop recommendations to the city, including, but not limited to, changes to any of the pollutant limits shown in Table A of this ordinance.

Table B - Plant Protection Criteria

Pollutant	Daily Maximum (mg/L)*	Instantaneous (mg/L)**
<u>Toxic</u>		
1, 1, 1 Trichloroethane	0.200	0.300
1,2 Transdichloroethylene	0.004	0.006
Arsenic	0.017	0.026
Benzene	0.015	0.023
Cadmium	0.003	0.005
Carbon tetrachloride	0.039	0.059
Chloroform	0.257	0.386
Chromium VI	0.032	0.048
Chromium, total	0.193	0.290
Copper	0.257	0.386
Cyanide	0.015	0.023
Ethylbenzene	0.028	0.042
Lead	0.062	0.093
Mercury	0.0001	0.0002
Methylene chloride	0.131	0.197
Molybdenum	0.057	0.086
Napthalene	0.004	0.006
Nickel	0.162	0.243
Selenium	0.038	0.057
Silver	0.008	0.012
Tetrachloroethylene	0.125	0.188
Toluene	0.214	0.321
Total phenols	0.500	0.750

Pollutant	Daily Maximum (mg/L)*	Instantaneous (mg/L)**
Total phthalates	0.169	0.254
Trichloroethylene	0.090	0.135
Zinc	0.526	0.789

* Based on 24-hour flow proportional composite samples or average of two or more instantaneous grab samples.

** Based on single grab sample.

(1980 Code, § 13-220, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-221. Categorical pretreatment standards. (1) National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties that may be discharged to the POTW by industrial users in specific industrial subcategories are established as separate regulations under the appropriate subpart of 40 C.F.R. chapter I, subchapter N, parts 405-471. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this ordinance.

(2) Category determination request. (a) Application deadline. Within sixty (60) days after the effective date of a pretreatment standard for a subcategory under which an industrial user may be included, the industrial user or city may request that the approval authority provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation that may be included in a subcategory, the existing industrial user must request this certification prior to commencing discharge from the added or changed processes or operation. A new source must request this certification prior to commencing discharge. Where a request for certification is submitted by the city, the city shall notify any affected industrial user of such submission. The industrial user may provide written comments on the city submission to the approval authority within thirty (30) days of notification.

(b) Contents of application. Each request shall contain a statement:

- (i) Describing which subcategories might be applicable;
- and
- (ii) Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this paragraph must include the certification statement provided in § 18-230 of this chapter.

(3) Compliance by existing sources with categorical pretreatment standards shall be within three (3) years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 C.F.R. chapter I, subchapter N. Existing sources that become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of a new source as defined in § 18-202 of this chapter. New sources shall install and have in operating condition and shall "start-up" all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), new sources must meet all applicable pretreatment standards.

(4) Concentration and mass limits. (a) Pollutant discharge limits in categorical pretreatment standards will be expressed either as concentration or as mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, state or federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.

(b) When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the city may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating permit limitations applicable to individual industrial users.

(c) When calculating equivalent mass-per-day limitations under subsection (b) of this section, the city shall calculate such limitations by multiplying the limits in the categorical pretreatment standard by the industrial user's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

(d) When calculating equivalent concentration limitations under subsection (b) of this section, the city shall calculate such limitations by dividing the mass limitations derived under subsection (c) of this section by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during the representative year. Any day in which a facility does not have a discharge should not be included in the calculation of an average flow.

(e) When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the city convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the city. The city may establish equivalent mass limits only if the industrial user meets all the following conditions:

(i) To be eligible for equivalent mass limits, the industrial user must:

(A) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(B) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard, and not have used dilution as a substitute for treatment;

(C) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

(D) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

(E) Have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

(ii) An industrial user subject to equivalent mass limits must:

(A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

(B) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

(C) Continue to record the facility's production rates and notify the city whenever production rates are expected to vary by more than twenty percent (20%) from its baseline production rates determined in subsection (e)(i)(C) above. Upon notification of a revised production rate, the city must reassess the equivalent mass limit and revise the

limit as necessary to reflect changed conditions at the facility; and

(D) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subsection (e)(i)(A) above so long as it discharges under an equivalent mass limit.

(iii) When developing equivalent mass limits, the city:

(A) Shall calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the industrial user by the concentration based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

(B) Upon notification of a revised production rate, shall reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

(C) May retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment as prohibited by § 18-223 of this chapter. The industrial user must also be in compliance with § 18-218(3) of this chapter.

(iv) The city shall not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants that cannot appropriately be expressed as mass.

(f) The city may convert the mass limits of the categorical pretreatment standards at 40 C.F.R. parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions. When converting such limits to concentration limits, the city must use the concentrations listed in the applicable subparts of 40 C.F.R. parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by § 18-223 of this chapter.

(g) Equivalent limitations calculated in accordance with subsections (c), (d), (e) and (f) of this section are deemed pretreatment standards for the purposes of section 307(d) of the Federal Clean Water Act and this section. The city must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the industrial user must comply

with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(h) Many categorical pretreatment standards specify one (1) limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four (4) day average, limitations. Where such standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

(i) Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the city within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the city of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

(5) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the city shall impose an alternate limit in accordance with Tennessee Rule 1200-4-14-.06(5).

(6) Upon the promulgation of categorical pretreatment standards for a particular industrial subcategory, the categorical pretreatment standards for industries in that subcategory, if more stringent limitations than those imposed under this ordinance, shall immediately supersede the limitations imposed under this ordinance. The IPC shall notify all affected users of the applicable reporting requirements under 40 C.F.R. 403.12. (1980 Code, § 13-221, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-222. Right to establish more restrictive criteria. The city reserves the right to establish, by ordinance or in IWDPs, more stringent pretreatment standards or requirements on discharges to the POTW consistent with the purpose of this ordinance. (1980 Code, § 13-222, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-223. Dilution. No industrial user shall ever increase the use of process water or, in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The IPC may impose mass limitations on users using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate. (1980 Code, § 13-223, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-224. Accidental/slug discharges. (1) Notification of accidental/slug discharge. (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a slug discharge or slug load, that might cause potential problems for the POTW, the user shall immediately telephone and notify the city of the incident. This notification shall include the location of the discharge, type of waste, concentration, and volume, if known, and corrective actions taken by the user.

(b) Any person or user causing or suffering from any accidental/slug discharge shall immediately notify the city that an accidental/slug discharge has occurred.

(i) Normal business hours. If the incident has or is occurring during regular office hours, the user shall telephone the city's public works office.

(ii) After business hours, weekends, and holidays. If the incident has or is occurring at times other than normal business hours, the user shall contact the Portland Police Department.

(iii) Upon notification of the accidental/slug discharge, the public works office or police department shall notify the WWTP chief operator or his duly designated official to enable countermeasures to be taken. This is done in an effort to minimize any damage to the POTW, the health and welfare of the public, and the environment.

(iv) Follow-up statement. The user shall follow up this notification, within five (5) days of the date of occurrence, with a detailed written statement describing the cause(s) of the accidental/slug discharge and the measures being taken to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability, which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability that may be imposed pursuant to this ordinance.

(2) 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 an accidental/slug discharge (examples of, but not limited to, those in § 18-224 of this chapter). Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

(3) Protection from accidental/slug discharge. (a) Users shall provide such facilities and institute such procedures as are reasonably necessary to prevent or minimize the potential for accidental or slug discharge into the POTW, from liquid or raw material storage areas, from truck and rail

car loading and unloading areas, from in-plant transfer or processing and materials handling areas, and from diked areas or holding ponds, of any waste regulated by this ordinance. The IWDP of any user who has a history of significant leaks, spills, slug discharge, or other accidental discharge of waste regulated by this ordinance shall be subject on a case-by-case basis to a special permit condition requiring the construction of facilities or establishment of procedures that will prevent and/or minimize the potential for such accidental or slug discharges. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the user's expense. Detailed plans showing the facilities and its operating procedures shall be submitted to the IPC for approval before the facility is constructed.

(b) 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 ordinance.

(4) Accidental/slug discharge control plan requirements. (a) If the IPC decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(i) Description of discharge practices, including non-routine batch discharges;

(ii) Description of stored chemicals;

(iii) Procedures for immediately notifying the IPC of any accidental or slug discharge, including any discharge that would violate a prohibition under § 18-218 of this chapter, with procedures for follow-up written notification within five (5) days;

(iv) Procedures to prevent accidental spills, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, and worker training;

(v) Any necessary measures for building containment structures or equipment;

(vi) Any additional measures necessary for containing toxic organic pollutants (including solvents);

(vii) Any necessary procedures and equipment for emergency response; and

(viii) Any necessary follow-up practices to limit the damage suffered by the treatment plant or the environment.

(b) Detailed plans shall be submitted to the IPC for review prior to construction of the facility. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility, as necessary, to meet the requirements of this ordinance.

(c) The IPC shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control slug discharges. For industrial users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; additional SIUs must be evaluated within twelve (12) months of being designated a SIU.

(5) Accidental/slug discharge control plan evaluation. (a) Each SIU shall provide protection from accidental/slug discharge of prohibited materials or other substances regulated by this ordinance. Facilities to prevent accidental/slug discharge of prohibited or regulated substances shall be provided and maintained at the user's cost.

(b) The city reserves the right to require the SIU to take specified measures to prevent accidental/slug discharges whenever the facility's accidental/slug control measures are judged by the IPC to be inadequate.

(6) SIUs are required to notify the IPC immediately of any changes at its facility affecting the potential for a slug discharge. (1980 Code, § 13-224, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-225. Monitoring facilities. (1) The city may require installation and operation of a discrete monitoring facility(s) to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems at the user's expense. When, in the judgment of the IPC, there is a significant difference in wastewater constituents and characteristics produced by different operations of a single user the IPC may require that separate monitoring facilities be installed for each separate source of discharge.

(2) Discrete monitoring facilities, including static and/or electronic flow measuring and sampling devices may be required by the city. These devices shall be purchased, installed, and maintained at the user's expense. The purposes of the devices are to enable inspection, monitoring, sampling and flow measurement of wastewater produced by a user. All devices shall be approved by the city before installation.

(3) Discrete monitoring facility may be required to be located on the user's premises, outside of a building. The IPC may, however, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed inside the user's building or in the public street right-of-way with the approval of the public agency(s) having jurisdiction of the right-of-way. It shall also be located so that landscaping or parked vehicles will not obstruct it.

(4) Ample room in or near such discrete monitoring facilities shall be left to allow human access and any necessary work related to the monitoring of the user's discharge. The monitoring facility shall be equipped with the necessary plumbing and electric power, in accordance with all applicable codes requirements, to facilitate required monitoring. These monitoring facilities shall

be maintained at all times in a safe and proper operating condition at the expense of the user.

(5) Whether constructed on public or private property, the monitoring facility shall be constructed in accordance with the city's requirements and all applicable local agency construction standards and specifications. A user shall be notified in writing when, in the judgment of the IPC, a user is required to install a monitoring facility. Construction must be completed within one hundred eighty (180) days following written notification unless an extension is granted by the city. (1980 Code, § 13-225, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-226. Access, reporting violations, and sampling. (1) Access to user's facilities. (a) The city shall have the right to enter and inspect the premises of any user to determine whether the user is complying with all the requirements of this ordinance, an IWDP or an order duly issued hereunder. A fee may be charged, to the user, to offset expenses incurred by this inspection. Users shall allow the city, or its representative(s), ready access at all reasonable times to all parts of the premises for the purpose of inspection, sampling, records examination and copying, or the performance of any additional duties.

(b) The city, state, and/or EPA representatives shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(c) The city, state, and/or EPA representatives may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at the manufacturer's recommended minimum frequency to ensure their accuracy.

(d) Where a user has security measures in force, which would require proper identification and clearance before entry into user's premises, the user shall make necessary arrangements so that, upon presentation of suitable identification, personnel from the city, state, and/or EPA will be permitted to enter, without delay, for the purposes of performing specific responsibilities.

(e) Unreasonable delays in allowing city, state, and/or EPA representatives access to the user's premises shall be a violation of this ordinance.

(2) Violations and repeat sampling. (a) If sampling and analysis performed by a user, following 40 C.F.R. 136 testing procedures, indicates a violation, the user shall notify the IPC within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling

for the parameter violated within ten (10) days after becoming aware of the violation and submit the results of the repeat analysis to the IPC within thirty (30) days after the initial violation.

(b) If the city performed the sampling and analysis in lieu of the user, the city will perform the repeat sampling and analysis unless the city notifies the user of the violation and requires the user to perform the repeat sampling and analysis.

(3) Sample collection. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

(a) Except as indicated in (b) and (c) of this subsection, the user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by IWDP. Where time-proportional composite sampling or grab sampling is authorized by the IWDP, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 C.F.R. part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by IWDP, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.

(b) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(c) For sampling required in support of baseline monitoring and compliance reports required for industrial users subject to pretreatment standards, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, IPC may authorize a lower minimum. For the reports required by § 18-228 of this chapter, the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.

(4) Safety. All city representatives performing work on private properties shall observe all safety rules applicable to the premises established by the user. The user shall be held harmless for injury or death to the city employees and the city shall indemnify the user against loss or damage to its

property by its representative(s) and against liability claims and demands for personal injury or property damage asserted against the user and growing out of the monitoring and sampling operation, except as such may be caused by negligence or failure of the user to maintain safe conditions. (1980 Code, § 13-226, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-227. Reporting requirements. (1) Reports on compliance with categorical pretreatment standard deadline. (a) Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the IPC a report containing the information described in §§ 18-216(2) and 18-226(3) of this chapter. For users subject to equivalent mass or concentration limits established by the city in accordance with the procedures in § 18-221 of this chapter, this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

(b) The report shall state whether the applicable categorical pretreatment standards 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 categorical pretreatment standards. This report shall be signed and certified by an authorized representative of the user in accordance with § 18-230 of this chapter. All sampling will be done in conformance with § 18-226(3) of this chapter.

(2) Baseline monitoring reports. Within one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or one hundred eighty (180) days after the final administrative decision made upon a category determination submission under Tennessee Rule 1200-4-14-.06(1)(d), whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to the POTW shall be required to submit to the city a report which contains the information listed in § 18-216(2)(b)(i)-(x) of this chapter. At least ninety (90) days prior to commencement of discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the city a report which contains the information listed in § 18-216(2)(b)(i)-(x) of this chapter. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in § 18-216(2)(b)(iv) and (v) of this chapter.

(3) All industrial users shall promptly notify the IPC in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under the following paragraph.

(4) The industrial user shall notify the POTW, the EPA regional waste management division director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under Tennessee Rule 1200-1-11.

(a) Such notification must include the name of the hazardous waste as set forth in 1200-1-11, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place within one hundred eighty (180) days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under § 18-227(4) of this chapter. The notification requirement in this rule does not apply to pollutants already reported under the self-monitoring requirements of §§ 18-226(2)(b), 18-227(1), and 18-228 of this chapter.

(b) Dischargers are exempt from the requirements of subsection (a) above during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in Tennessee Rule 1200-1-11-.02(4)(a) and (4)(d). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in Tennessee Rule 1200-1-11-.02(4)(a) and (4)(d), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(c) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must

notify the POTW, the EPA regional waste management waste division director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(d) In the case of any notification made under this paragraph, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical. (1980 Code, § 13-227, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-228. Periodic compliance reports. (1) All SIUs subject to a pretreatment standard must submit to the IPC all data generated between April and September and October and March, no later than every October 15th and April 15th, respectively, unless required more frequently by the user's IWDP, along with a report indicating the nature, concentration of pollutants in the discharge which are limited by the pretreatment standards, and the measured or estimated average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a BMP or pollution prevention alternative, the user must submit documentation required by the IPC or the pretreatment standard necessary to determine the compliance status of the user. At the discretion of the IPC and in consideration of such factors as holidays, budget cycles, etc., the IPC may agree to alter the months during which the above reports are to be submitted.

(2) The reports required by this section shall be signed and certified by an authorized representative of the user in accordance with § 18-230 of this chapter. All sampling and analysis shall be performed in accordance with procedures established by the administrator of the EPA pursuant to section 304(h) of the Act and contained in 40 C.F.R. part 136 and amendments thereto or with any other test procedures approved by the city.

(3) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(4) If a user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by IWDP, using the sampling procedures prescribed in § 18-226(3) of this chapter, the results of this monitoring shall be included in the report.

(5) The city may authorize the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at

background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:

(a) The city may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

(b) The monitoring waiver is valid only for the duration of the effective period of the IWDP, but in no case longer than five (5) years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent IWDP.

(c) In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one (1) sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 C.F.R. part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(d) The request for a monitoring waiver must be signed and certified in accordance with § 18-230 of this chapter.

(e) Any grant of the monitoring waiver by the city must be included as a condition in the user's IWDP. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the city for three (3) years after expiration of the waiver.

(f) Upon approval of the monitoring waiver and revision of the user's IWDP by the city, the industrial user must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 C.F.R. [applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under § 18-228 of the City Ordinance.

(g) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user must immediately: comply with the monitoring requirements of § 18-228 of this chapter or other more frequent monitoring requirements imposed by the city, and notify the city.

(h) This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

(6) Where the city has imposed mass limitations on industrial users (as provided for by § 18-221(4) of this chapter) the report required by § 18-228 of this chapter shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(7) For industrial users subject to equivalent mass or concentration limits (established by the city in accordance with the procedures in § 18-221(4) of this chapter), the report required by § 18-228 of this chapter shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by § 18-228 of this chapter shall include the user's actual average production rate for the reporting period. (1980 Code, § 13-228, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-229. Maintenance of records. Users subject to the reporting requirements of this chapter shall retain, and make available for inspection and copying by the IPC, the city, TDEC, or EPA, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with BMPs established in the user's IWDP.

(1) Records shall include:

(a) A chain of custody form acceptable to the city that includes the date, exact place, method, and time of sampling, the names of the persons taking the samples, and a record of handling up to and including delivery to and receipt by an analytical laboratory;

(b) The date(s) the analyses were performed;

(c) The person who performed the analyses;

(d) The signature of the person who performed the analyses;

(e) The analytical techniques/methods used; and

(f) The results of such analyses expressed in appropriate units.

(2) These records shall remain available for a period of at least three (3) years. This period of retention shall be automatically extended during the course of any unresolved litigation regarding the industrial user or POTW, or when requested by the IPC, the city, TDEC, or EPA. (1980 Code, § 13-229, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-230. Certifications of permit applications and user reports.

(1) The following certification statement is required to be signed and submitted by users submitting permit applications in accordance with

§§ 18-216(2) and 18-221(2) of this chapter and users submitting reports required by §§ 18-227 and 18-228 of this chapter. The following certification statement must be signed by an authorized representative of the user as defined in § 18-202 of this chapter:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(2) If the designation of an authorized representative of a user is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the definition of § 18-202 of this chapter must be submitted to the IPC prior to or together with any reports to be signed by an authorized representative. (1980 Code, § 13-230, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-231. Enforcement response plan. The city shall prepare an ERP, as part of its industrial pretreatment program, to ensure that the city's responsibility to enforce all pretreatment requirements and standards will be met. The ERP shall outline various enforcement actions the city may take for specific violations of pretreatment standards and requirements. The city may review and update the ERP as needed in order to ensure compliance with the federal, state, and local ordinances and regulations. (1980 Code, § 13-231, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-232. Notification of violation. When IPC finds that a user has violated, or continues to violate, any provision of this ordinance, an IWDP, or order issued hereunder, or any other pretreatment standard or requirement, the city may serve upon said user a written notice of violation. Within ten (10) days of the receipt of such notice, the IPC may require a written explanation of the violation and a plan, to include specific required actions, for the satisfactory correction and prevention thereof, to be submitted by the user. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of city to take any action, including emergency actions or any

other enforcement action, without first issuing a notice of violation. (1980 Code, § 13-232, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-233. Administrative orders. For the city to meet its responsibility to enforce all pretreatment standards and requirements, this ordinance provides the city legal authority to issue administrative orders as deemed necessary. Violations of significant noncompliance must be addressed with an administrative order. Failure of the city to issue any order to the noncompliant user shall not in any way relieve the user from any consequences of a wrongful or illegal discharge. An order shall become final and not subject to review unless the user named therein requests by written petition a hearing before the LHA as provided in § 18-234 no later than thirty (30) days after the date of such order is served; provided, however, that the LHA may review such final order on the same grounds upon which a court of the state may review default judgments.

(1) Cease and desist orders. When the IPC finds that a user has violated, or continues to violate, any provision of this ordinance, an IWDP, or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the superintendent may, at the request of the IPC, issue to the user an order to cease and desist all such violations and directing the user to:

(a) Immediately comply with all requirements; and

(b) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(2) Compliance orders. When IPC finds that a user has violated, or continues to violate, any provision of this ordinance, an IWDP, or order issued hereunder, or any other pretreatment standard or requirement, the IPC may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the public sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(3) Consent orders. The IPC may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents shall include

specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to subsections (1) and (2) of this section and shall be judicially enforceable.

(4) Show cause orders. (a) The superintendent may order a user which has violated, or continues to violate, any provision of this ordinance, an IWDP, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the superintendent, other personnel of the public works office, and/or the public, and show cause why more severe enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, future enforcement actions, the reasons for such action, and a request that the user show cause why the proposed enforcement actions should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least fifteen (15) days prior to the hearing. Such notice may be served on any authorized representative of the user as defined in § 18-202 of this chapter and required by § 18-229(2) of this chapter. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(b) The superintendent shall conduct the hearing and take the evidence, or may designate another person to act in his stead. The following guidelines will be used in conducting a show cause hearing.

(i) The superintendent shall issue, in the name of the city, notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings.

(ii) The superintendent may request that other city personnel present the evidence of the violation on behalf of the city.

(iii) The user may present relevant evidence to the city for review.

(c) At any hearing held pursuant to this ordinance, 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 a charge set by the superintendent to cover the costs of preparation.

(d) After the superintendent has reviewed the evidence, he may instruct the IPC to issue further enforcement actions including, but not limited to, additional orders to the user responsible for the violation(s) 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. (1980 Code, § 13-233, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-234. Submission of time schedule. When the superintendent finds that a user has violated any provision of this ordinance, an IWDP, or an order duly issued hereunder, or any other pretreatment standard or requirement, the superintendent may require the user to submit to the city, for approval, a detailed time schedule of specific actions the user shall take to halt the violation. The actions in this time schedule shall include any modifications as it deems necessary, in order to prevent or halt the violation(s). Such schedule shall be submitted to the IPC not less than thirty (30) days after the issuance of any order and shall comply with § 18-216(2)(e) of this chapter. (1980 Code, § 13-234, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-235. Appeals and enforcement hearings. (1) Appeal to superintendent. Any actions taken by the supervisor of collections, the WWTP chief operator, or the IPC in the daily administration of their duties may be appealed to the superintendent. Appeals shall be submitted, in writing, within thirty (30) days of said action. The superintendent shall respond as promptly as possible, but in no case greater than thirty (30) days from the receipt of such appeals.

(2) Appeal to the LHA. The LHA shall have and exercise the power, duty, and responsibility to hear appeals from orders issued and penalties or damages assessed by the superintendent, permit revocations, or modifications by the superintendent; and affirm, modify, or revoke such actions or orders of the superintendent. Any hearing brought before the LHA shall be conducted in accordance with the following:

(a) Upon receipt of a written petition from the alleged noncompliant user pursuant to this section, the superintendent shall give the petitioner a written notice at least thirty (30) days before the time and place of the hearing. In no case shall such hearing be held more than sixty (60) days after the receipt of the written petition, unless the superintendent and the petitioner agree to a postponement;

(b) The LHA, at a regular or special meeting, may conduct the hearing herein provided. A quorum of the LHA must be present at the regular or special meeting in order to conduct the hearing herein provided;

(c) A verbatim record of the proceedings of such hearings shall be taken and filed with the LHA, together with the findings of fact and conclusions of law made pursuant to § 18-235(2)(g) of this chapter. The transcript so recorded shall be made available to the petitioner or any party to a hearing upon payment of a charge set by the superintendent to cover the costs of preparation;

(d) In connection with the hearing, the chairman of the LHA shall issue subpoenas in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court of the county in which the pretreatment agency is located shall have jurisdiction upon the application of the LHA or the superintendent to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof;

(e) Any member of the LHA may administer oaths and examine witnesses;

(f) The superintendent or his designated representative shall act on the city's behalf to present evidence, relevant to the issues at hand, to the LHA;

(g) On the basis of the evidence produced at the hearing, the LHA shall make findings of fact and conclusions of law and enter such decisions and orders as in its opinion will best further the purposes of the pretreatment program and shall give written notice of such decisions and orders to the alleged noncompliant user. The chairman of the LHA shall issue any order issued by the LHA no later than thirty (30) days following the close of the hearing;

(h) The decision of the LHA shall become final and binding on all parties unless appealed to the courts as provided in § 18-235(2)(j) of this chapter;

(i) Any user to whom an emergency suspension order is directed pursuant to § 18-237 of this chapter shall comply therewith immediately, but on petition to the LHA, shall be afforded a hearing as soon as possible. In no case shall such hearing be held by the LHA later than three (3) days from the receipt of such petition; and

(j) An appeal may be taken from any final order or other final determination of the LHA by any party, including to the approval authority, who is or may be adversely affected thereby, to the chancery court pursuant to the common law writ of certiorari set out in Tennessee Code Annotated, § 27-8-101 not later than sixty (60) days from the date such order or determination is made. (1980 Code, § 13-235, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-236. Legal action. If a user violates or continues to violate any provision of this ordinance, an IWDP, or order issued hereunder, or any pretreatment standard or requirement, the superintendent may petition the city attorney to commence an action for appropriate legal and/or equitable relief through the chancery court of this county. A petition for injunctive relief shall

not be a bar against, or a prerequisite for, taking any other action against the user. (1980 Code, § 13-236, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-237. Emergency termination of sewer service. The superintendent or his duly authorized representative may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge to the POTW of any pollutant that, in the opinion of the superintendent or his duly authorized representative, presents or may present an imminent and substantial endangerment to the health or welfare of persons, that threatens to interfere with the operation of the POTW, or that presents or may present an endangerment to the environment. The superintendent or his duly authorized representative shall immediately notify the mayor of the nature of the emergency suspension. The superintendent shall also attempt to notify the user or other person causing the emergency and request their assistance. The superintendent shall restore such service as soon as the emergency situation has been abated or corrected.

(1) Any user notified of a suspension of its sewer service shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the emergency suspension order, the city may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, the environment, or endangerment to any individuals. The city may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the city that the period of endangerment has passed, unless the permit revocation proceedings as provided in § 18-216(8) of this chapter are initiated against the user.

(2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the city prior to the date of any show cause or permit revocation hearing. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency termination of sewer service. (1980 Code, § 13-237, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-238. Public nuisances. A violation of any provision of this ordinance, an IWDP, an order issued hereunder, or any other pretreatment standard or requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the superintendent. Any person(s) creating a public nuisance shall be subject to the provisions of city ordinances governing such nuisances, including reimbursing the city for any costs incurred in

removing, abating, or remedying said nuisance. (1980 Code, § 13-238, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-239. Correction of violation and collection of costs. In order to enforce the provisions of this ordinance, the superintendent shall correct any violation hereof. The cost of such correction shall be payable by the user violating the ordinance or the owner or tenant of the property upon which the violation occurred. The city shall have such remedies for the collection of such costs as it has for the collection of sewer service charges. (1980 Code, § 13-239, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-240. Damage to POTW facilities. When a discharge of wastewater or wastes causes an obstruction, damage, or any other physical or operational impairment to the POTW, the city shall assess a charge against the user for the work required to clean or repair the POTW. At the superintendent's discretion, these costs may either be billed separately or added to the user's sewer charge. (1980 Code, § 13-240, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-241. Liabilities. (1) Civil liability. Any person or user who violates any provision of this ordinance, an IWDP, or an order duly issued hereunder, or any other pretreatment standard or requirement, shall be liable civilly. The city may sue for such damage in any court of competent jurisdiction. In determining the damages, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any.

(2) Criminal liability. The city shall maintain the authority to seek criminal penalties in addition to any civil penalties under certain circumstances involving evidence of intentional, willful, or knowing violations or criminal negligence. In particular, any person or user who intentionally, willfully, knowingly, or with criminal negligence violates any provision of this ordinance, an IWDP, or an order duly issued hereunder, or any other pretreatment standard or requirement, shall be criminally liable and assessed criminal penalties. (1980 Code, § 13-241, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-242. Publication of users in significant noncompliance. The IPC shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the users that, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be applicable to a SIU

(or any other industrial user that violates subsections (3), (4), or (8) of this section) if its violation meets one (1) or more of the following criteria:

(1) Chronic violations of wastewater pollutant limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined in § 18-202 of this chapter;

(2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements taken for a pollutant during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by § 18-202 of this chapter, multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, FOG, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment standard or requirement as defined by § 18-202 of this chapter (daily maximum limit, monthly average limit, instantaneous limit, or narrative standard) that the IPC determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of city personnel or the general public;

(4) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an IWDP or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide within forty-five (45) days after the due date, required reports such as baseline monitoring reports, compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations, which may include a violation of BMPs, which the IPC determines will adversely affect the operation or implementation of the city's industrial pretreatment program. (1980 Code, § 13-242, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-243. Penalties. Issuance of a penalty shall not be a bar against, or prerequisite for, taking any other action against the user.

(1) Civil penalties. (a) Any person or user who is found to have violated any provision of this ordinance, an IWDP, or an order duly issued hereunder, or any other pretreatment standard or requirement, may be penalized not less than one thousand dollars (\$1,000.00) but not more than ten thousand dollars (\$10,000.00) per violation. Each day in which a violation shall occur or continue to occur shall be deemed a separate and distinct violation. In addition to the penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporters'

fees, and other expenses of litigation by appropriate suit at law against the person or user found to have violated any provision of this ordinance, an IWDP, or an order duly issued hereunder, or any other pretreatment standard or requirement.

(b) Unpaid charges, fines, and penalties shall, after seven (7) calendar days of the due date, be assessed an additional penalty of twenty-five percent (25%) of the unpaid balance.

(c) Any person or user desiring to dispute such penalties may secure a review of such assessment by filing with the superintendent a written petition setting forth the grounds and reasons for the objections and asking for a hearing in the matter involved before the city's LHA as per the provisions of § 18-235 of this chapter. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the said user shall be deemed to have consented to the assessment and it shall become final. Upon receipt of a written petition from the alleged said user pursuant to this section, the superintendent shall give the petitioner a written notice thirty (30) days prior to the meeting indicating the time and place of the hearing; in no case shall such hearing be held more than sixty (60) days from the receipt of the written petition, unless the superintendent and the petitioner agree to a postponement.

(2) Prosecution. Nothing in this ordinance shall be construed as to prohibit criminal prosecution for a violation of any provision of this ordinance, an IWDP, or an order duly issued hereunder, or any other pretreatment standard or requirement, by the city or other duly constituted government authority or a civil action by the city or other private person or entity. (1980 Code, § 13-243, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-244. Falsifying information. Any person or user who knowingly makes any false statements, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this ordinance or IWDP, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance or IWDP, shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000.00) or by imprisonment for not more than six (6) months, or both. (1980 Code, § 13-244--13-252, as replaced by Ord. #00-26, June 2001, and Ord. #10-25, Oct. 2010)

18-245. Purpose of charges, fees and billings. It is the purpose of the following sections to provide for the equitable recovery of costs from users of the POTW including, but not limited to, costs of operation, maintenance, replacement, administration, bond service costs, capital improvements, and

depreciation. (as added by Ord. #00-26, June 2001, and replaced by Ord. #10-25, Oct. 2010)

18-246. Types of charges, fees, and billings. The charges, fees, and billings as established in the city's schedule of charges, fees, and billings may include, but not be limited to:

- (1) Inspection fee and tapping fee for connection of building sewers;
- (2) Fees for IWDP applications;
- (3) Mandated repairs to service lines;
- (4) Industrial discharge compliance monitoring fees;
- (5) Holding tank haulers permit fees;
- (6) Holding tank hauler tipping fees;
- (7) Underground storage tank wastewater permit fee;
- (8) Inspection and monitoring fees associated with the grease management plan;
- (9) Appeal fees; and
- (10) Fees for reviewing slug control plans. (as added by Ord. #00-26, June 2001, and replaced by Ord. #10-25, Oct. 2010)

18-247. Base sewer charges. (1) Determination of sewer charges. The city shall establish monthly rates and charges for the use of the POTW and for the services provided by the city to the POTW. Said charges shall be based upon the cost categories of administration costs, including billing and accounting costs; operation and maintenance costs of the POTW; debt service costs; and general replacement costs.

- (a) All users shall pay a sewer charge expressed as dollars per one thousand (1,000) gallons of water purchased (\$/1,000 gallons) with the unit charge being determined in accordance with the following formula:

$$C_i = \frac{T.S.C.}{V_t}$$

Where:

- C_i = Base unit charge in \$/1,000 gallons applicable to users.
 $T.S.C.$ = Total operation, maintenance, minor equipment replacement, administration, and debt service costs determined by yearly budget projections.
 V_t = Total volume of water in one thousand (1,000) gallons purchased by all users per year as determined from projections from one city fiscal year to the next.

- (b) The volume of water purchased that is used in the calculation of sewer charges may be adjusted by the city if a user purchases a significant volume of water for use that does not result in its

discharge to the POTW (e.g., filling swimming pools, industrial heating, and humidifying equipment, etc.). The user shall be responsible for documenting the quantity of wastewater discharged to the POTW. The accuracy of the equipment used to determine the quantity of wastewater discharged into the POTW must be verified by accepted scientific methods, installed and maintained in accordance to manufacturers' recommendations, and approved by the city. The city reserves the right to approve all methods used for this purpose.

(c) All "available non-users" shall pay one-half (1/2) of the established monthly minimum sewer rate for residential service inside or outside the city, whichever applies.

(2) **Discharge violations.** Discharges from any user in excess of a pollutant concentration listed in Table A of this ordinance will be considered a violation of this ordinance and will be enforced in accordance with the ERP. (as added by Ord. #00-26, June 2001, replaced by Ord. #10-25, Oct. 2010, and amended by Ord. #16-49, Nov. 2016, and Ord. #19-19, March 2019 *Ch12_12-06-21*)

18-248. Billing. The billing for normal domestic wastewater services shall consist of monthly billing in accordance with the rates and schedules specified by the city and in accordance with article 13-11-1 of the City Code Annotated. (as added by Ord. #00-26, June 2001, and replaced by Ord. #10-25, Oct. 2010)

18-249. Review of operation and maintenance charges. The user charge method provided in § 18-247 of this chapter will be reviewed as deemed necessary. The total wastewater contribution of users and the total cost of operation and maintenance of the system will be reviewed to assess the need for revision of the sewer base unit charge. (as added by Ord. #00-26, June 2001, and replaced by Ord. #10-25, Oct. 2010)

18-250. Validity. (1) All ordinances or parts of ordinances in conflict herewith are hereby repealed.

(2) The validity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance, which can be given effect without such invalid part or parts.

(3) This ordinance and its provisions shall be valid for all service areas, regions, and POTWs under the jurisdiction of the city. (as added by Ord. #00-26, June 2001, and replaced by Ord. #10-25, Oct. 2010)

18-251. Ordinance in force. That this ordinance shall take effect after its passage on second and final reading, amending Ordinance No. 299 passed December 7, 1980; Ordinance No. 328 passed January 15, 1985; Ordinance No. 465 passed March 7, 1994; Ordinance No. 00-26 passed June 4, 2001; Ordinance

No. 10-25 passed October 4, 2010; and Ordinance No. 16-49 passed on November 7, 2016, the public welfare requiring it. (as added by Ord. #00-26, June 2001, and replaced by Ord. #10-25, Oct. 2010, Ord. #16-49, Nov. 2016, and Ord. #19-19, March 2019 *Ch12_12-06-21*)

18-252. [Deleted.] (as added by Ord. #00-26, June 2001, and deleted by Ord. #10-25, Oct. 2010)

18-253. [Deleted.] (as added by Ord. #00-26, June 2001, and deleted by Ord. #10-25, Oct. 2010)

18-254. [Deleted.] (as added by Ord. #00-26, June 2001, and deleted by Ord. #10-25, Oct. 2010)

CHAPTER 3**SEWAGE AND HUMAN EXCRETA DISPOSAL**¹**SECTION**

- 18-301. Definitions.
- 18-302. Places required to have sanitary disposal methods.
- 18-303. When a connection to the public sewer is required.
- 18-304. When a septic tank shall be used.
- 18-305. Registration and records of septic tank cleaners, etc.
- 18-306. Use of pit privy or other method of disposal.
- 18-307. Approval and permit required for septic tanks, privies, etc.
- 18-308. Owner to provide disposal facilities.
- 18-309. Occupant to maintain disposal facilities.
- 18-310. Only specified methods of disposal to be used.
- 18-311. Discharge into watercourses restricted.
- 18-312. Pollution of ground water prohibited.
- 18-313. Enforcement of chapter.
- 18-314. Carnivals, circuses, etc.
- 18-315. Violations.

18-301. Definitions. The following definitions shall apply in the interpretation of this chapter:

(1) "Accessible sewer." A public sanitary sewer located in a street or alley abutting on the property in question or otherwise within two hundred (200) feet of any boundary of said property measured along the shortest available right-of-way.

(2) "Health officer." The person duly appointed to such position having jurisdiction, or any person or persons authorized to act as his agent.

(3) "Human excreta." The bowel and kidney discharges of human beings.

(4) "Sewage." All water-carried human and household wastes from residences, buildings, or industrial establishments.

(5) "Approved septic tank system." A watertight covered receptacle of monolithic concrete, either precast or cast in place, constructed according to plans approved by the health officer. Such tanks shall have a capacity of not less than 750 gallons and in the case of homes with more than two (2) bedrooms the capacity of the tank shall be in accordance with the recommendations of the Tennessee Department of Health as provided for in its 1958 bulletin entitled "Recommended Construction of Septic Tanks and Disposal Fields for Residential

¹Municipal code reference

Plumbing code: title 12, chapter 2.

Uses." A minimum liquid depth of four (4) feet should be provided with a minimum depth of air space above the liquid of one (1) foot. The septic tank dimensions should be such that the length from inlet to outlet is at least twice but not more than three (3) times the width. The liquid depth should not exceed five (5) feet. The discharge from the septic tank shall be disposed of in such a manner that it may not create a nuisance on the surface of the ground or pollute the underground water supply, and such disposal shall be in accordance with recommendations of the health officer as determined by acceptable soil percolation data.

(6) "Sanitary pit privy." A privy having a fly-tight floor and seat over an excavation in earth, located and constructed in such a manner that flies and animals will be excluded, surface water may not enter the pit, and danger of pollution of the surface of the ground or the underground water supply will be prevented.

(7) "Other approved method of sewage disposal." Any privy, chemical toilet, or other toilet device (other than a sanitary sewer, septic tank, or sanitary pit privy as described above) the type, location, and construction of which have been approved by the health officer.

(8) "Watercourse." Any natural or artificial drain which conveys water either continuously or intermittently. (1980 Code, § 8-201)

18-302. Places required to have sanitary disposal methods. Every residence, building, or place where human beings reside, assemble, or are employed within the corporate limits shall be required to have a sanitary method for disposal of sewage and human excreta. (1980 Code, § 8-202)

18-303. When a connection to the public sewer is required. Wherever an accessible sewer exists and water under pressure is available, approved plumbing facilities shall be provided and the wastes from such facilities shall be discharged through a connection to said sewer made in compliance with the requirements of the official responsible for the public sewerage system. On any lot or premise accessible to the sewer no other method of sewage disposal shall be employed. (1980 Code, § 8-203)

18-304. When a septic tank shall be used. Wherever water carried sewage facilities are installed and their use is permitted by the health officer, and an accessible sewer does not exist, the wastes from such facilities shall be discharged into an approved septic tank system.

No septic tank or other water-carried sewage disposal system except a connection to a public sewer shall be installed without the approval of the health officer or his duly appointed representative. The design, layout, and construction of such systems shall be in accordance with specifications approved by the health officer and the installation shall be under the general supervision of the department of health. (1980 Code, § 8-204)

18-305. Registration and records of septic tank cleaners, etc.

Every person, firm, or corporation who operates equipment for the purpose of removing digested sludge from septic tanks, cesspools, privies, and other sewage disposal installations on private or public property must register with the health officer and furnish such records of work done within the corporate limits as may be deemed necessary by the health officer. (1980 Code, § 8-205)

18-306. Use of pit privy or other method of disposal.

Wherever a sanitary method of human excreta disposal is required under the section above designated as "Places required to have sanitary disposal methods", and water-carried sewage facilities are not used, a sanitary pit privy or other approved method of disposal shall be provided. (1980 Code, § 8-206)

18-307. Approval and permit required for septic tanks, privies, etc. Any person, firm, or corporation proposing to construct a septic tank system, privy, or other sewage disposal facility, requiring the approval of the health officer under this chapter, shall before the initiation of construction obtain the approval of the health officer for the design and location of the system and secure a permit from the health officer for such system. (1980 Code, § 8-207)

18-308. Owner to provide disposal facilities. It shall be the duty of the owner of any property upon which facilities for sanitary sewage or human excreta disposal are required by, or the agent of the owner to provide such facilities. (1980 Code, § 8-208)

18-309. Occupant to maintain disposal facilities. It shall be the duty of the occupant, tenant, lessee, or other person in charge to maintain the facilities for sewage disposal in a clean and sanitary condition at all times and no refuse or other material which may unduly fill up, clog, or otherwise interfere with the operation of such facilities shall be deposited therein. (1980 Code, § 8-209)

18-310. Only specified methods of disposal to be used. No sewage or human excreta shall be thrown out, deposited, buried, or otherwise disposed of, except by a sanitary method of disposal as specified in this chapter. (1980 Code, § 8-210)

18-311. Discharge into watercourses restricted. No sewage or excreta shall be discharged or deposited into any lake or watercourse except under conditions specified by the health officer and specifically authorized by the Tennessee Stream Pollution Control Board. (1980 Code, § 8-211)

18-312. Pollution of ground water prohibited. No sewage, effluent from a septic tank, sewage treatment plant, or discharges from any plumbing facility shall empty into any well, either abandoned or constructed for this purpose, cistern, sinkhole, crevice, ditch, or other opening either natural or artificial in any formation which may permit the pollution of ground water. (1980 Code, § 8-212)

18-313. Enforcement of chapter. It shall be the duty of the health officer to make an inspection of the methods of disposal of sewage and human excreta as often as is considered necessary to insure full compliance with the terms of this chapter. Written notification of any violation shall be given by the health officer to the person or persons responsible for the correction of the condition, and correction shall be made within forty-five (45) days after notification. If the health officer shall advise any person that the method by which human excreta and sewage is being disposed of constitutes an immediate and serious menace to health such person shall at once take steps to remove the menace, and failure to remove such menace immediately shall be punishable under the general penalty clause for this code; but such person shall be allowed the number of days herein provided within which to make permanent correction. (1980 Code, § 8-213)

18-314. Carnivals, circuses, etc. Whenever carnivals, circuses, or other transient groups of persons come within the corporate limits such groups of transients shall provide a sanitary method for disposal of sewage and human excreta. Failure of a carnival, circus, or other transient group to provide such sanitary method of disposal and to make all reasonable changes and corrections proposed by the health officer shall constitute a violation of this section. In these cases the violator shall not be entitled to the notice of forty-five (45) days provided for in the preceding section. (1980 Code, § 8-214)

18-315. Violations. Any person, persons, firm, association, or corporation or agent thereof, who shall fail, neglect, or refuse to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punishable under the general penalty clause for this code. (1980 Code, § 8-215)

CHAPTER 4

CROSS CONNECTIONS, AUXILIARY INTAKES, ETC.¹

SECTION

- 18-401. Definitions.
- 18-402. Water system to comply with law, rules, etc.
- 18-403. Cross connections unlawful; exception.
- 18-404. Statements.
- 18-405. Inspections.
- 18-406. Right of entry.
- 18-407. Time for compliance.
- 18-408. Protective devices.
- 18-409. Unpotable water supply.
- 18-410. Application of this chapter.
- 18-411. Violations.

18-401. Definitions. The following definitions and terms shall apply in the interpretation and enforcement of this chapter:

(1) "Public water system." The waterworks system furnishing water to Portland for general use and which supply is recognized as the public water supply by the Tennessee Department of Health.

(2) "Cross connection." Any physical arrangement whereby the public water system is connected, directly or indirectly, with any other water supply system, whether sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device which contains, or may contain, contaminated water, sewage, or other waste or liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water system as a result of backflow. By-pass arrangements, jumper connections, removable sections, swivel or change-over devices through which, or because of which, backflow could occur are considered to be cross connections.

(3) "Auxiliary intake." Any water supply, on or available to premises, other than that directly supplied by the public water system.

(4) "By-pass." Any system of piping or other arrangement whereby the water may be diverted around a backflow prevention device.

(5) "Interconnection." Any system of piping or other arrangement whereby the public water supply is connected directly with a sewer, drain, conduit, pool, storage reservoir, or other device which does or may contain

¹Municipal code references

Plumbing code: title 12.

Water and sewer system administration: title 18.

Wastewater treatment: title 18.

sewage or other waste or liquid which would be capable of imparting contamination to the public water system.

(6) "Person." Any individual, corporation, company, association, partnership, state, municipality, utility district, water cooperative, or federal agency.

(7) "Approved." To mean that the device or method is accepted by the Tennessee Department of Environment and Conservation and the City of Portland Water Distribution Department Head, or state certified backflow tester, as meeting specifications suitable for the intended purpose.

(8) "Portland Water Distribution Dept. Head." To mean a Grade I and II Distribution state certified by the State of Tennessee Department of Environment and Conservation. (1980 Code, § 8-301, as amended by Ord. #04-05, Feb. 2004)

18-402. Water system to comply with law, rules, etc. The Portland Water System is to comply with Tennessee Code Annotated, §§ 68-221-701 through 68-221-720 as well as the Rules and Regulations for Public Water Systems, legally adopted in accordance with this code, which pertain to cross connections, auxiliary intakes, by-passes, and interconnections, and establish an effective ongoing program to control these undesirable water uses. (1980 Code, § 8-302, as amended by Ord. #04-05, Feb. 2004)

18-403. Cross connections unlawful; exception. It shall be unlawful for any person to cause a cross connection to be made, or allow one to exist for any purpose whatsoever, unless the construction and operation of same have been approved by the Tennessee Department of Environment and Conservation and the operation of such cross connection, auxiliary intake, by-pass or interconnection is at all times under the direct supervision of the Portland Public Water System. (1980 Code, § 8-303, as amended by Ord. #04-05, Feb. 2004)

18-404. Statements. Any person whose premises are supplied with water from the public water supply and who also has on the same premises a separate source of water supply, or stores water in an uncovered or unsanitary storage reservoir from which the water stored therein is circulated through a piping system, shall file with the superintendent of public works, a statement of the non-existence of unapproved or unauthorized cross connections, auxiliary intakes, by-passes, or interconnections. Such statement shall also contain an agreement that no cross connection, auxiliary intake, by-pass, or interconnection will be permitted upon the premises. (1980 Code, § 8-304)

18-405. Inspections. It shall be the duty of the superintendent of the public water system to cause inspections to be made of all properties served by the public water supply where cross connections with the public water supply

are deemed possible. The frequency of inspections and reinspections based on potential health hazards involved, shall be established by the Superintendent of the Portland Public Water System and as approved by the Tennessee Department of Environment and Conservation. (1980 Code, § 8-305, as amended by Ord. #04-05, Feb. 2004)

18-406. Right of entry. The superintendent, or his authorized representative shall have the right to enter, at any reasonable time, any property served by a connection to the Portland Public Water System for the purpose of inspecting the piping system or systems therein for cross connections, auxiliary intakes, by-passes, or interconnections or for the testing of backflow prevention devices. On request, the owner, lessee, or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross connections. (1980 Code, § 8-306, as amended by Ord. #04-05, Feb. 2004)

18-407. Time for compliance. Any person who now has cross connections, auxiliary intakes, by-passes, or interconnections in violation of the provisions of this chapter shall be allowed a reasonable time within which to comply with the provisions of this chapter. After a thorough investigation of existing conditions and an appraisal of the time required to complete the work, the amount of time shall be designated by the Superintendent of the Portland Public Water System or the designated agent, depending on the degree of hazard, but in no case shall the time for correction exceed thirty (30) days.

The failure to correct conditions threatening the safety of the public water system as prohibited by this chapter and the Tennessee Code Annotated, § 68-221-711, within a reasonable time and within the time limits set by the Portland Public Water System shall be grounds for denial of water service. If proper protection has not been provided no more than thirty (30) days, the utility shall give the customer legal notification that water service is to be discontinued and shall physically separate the public water system from the customer's on-site piping system in such a manner that the two systems cannot again be connected by an unauthorized person subject to the right of a due process hearing upon timely request. The due process hearing may follow disconnection when the risk to public health and safety in the opinion of the public works superintendent, or the water distribution supervisor, warrant disconnection prior to a due process hearing.

Where cross connections, interconnections, auxiliary intakes, or by-passes are found that constitute an extreme hazard of immediate concern of contaminating the public water system, the management of the water supply shall require that immediate corrective action be taken to eliminate the threat to the public water system. Immediate steps shall be taken to disconnect the

public water supply from the on-site piping system unless the imminent hazard(s) is (are) corrected immediately. (1980 Code, § 8-307, as amended by Ord. #04-05, Feb. 2004)

18-408. Protective devices. Where the nature of use of the water supplied a premises by the water department is such that it is deemed:

- (1) Impractical to provide an effective air-gap separation.
- (2) That the owner and/or occupant of the premises cannot, or is not willing, to demonstrate to the public works superintendent, or his designated representative, that the water use and protective features of the plumbing are such as to propose no threat to the safety or potability of the water system.
- (3) That the nature and mode of operation within a premises are such that frequent alterations are made to the plumbing.
- (4) There is a likelihood that protective measures may be subverted, altered, or disconnected.
- (5) The public works superintendent, or his designated representative, shall require the use of an approved protective device on the service line serving the premises to assure that any contamination that may originate in the customer's premises is contained therein.
- (6) The protective device shall be a reduced pressure zone type backflow preventer approved by the Tennessee Department of Environment and Conservation and the public works superintendent, or state certified tester, as to manufacture, model, size, and application. The method of installation of backflow protective devices shall be approved by the public works superintendent, or his designated representative, prior to installation and shall comply with the criteria set forth by the Tennessee Department of Environment and Conservation. The installation shall be at the expense of the owner or occupant of the premises.
- (7) Applications requiring backflow prevention devices include, but are not limited to, service and/or fire flow connections for most commercial and educational buildings, construction sites, all industrial, institutional, and medical facilities, all fountains, lawn irrigation systems, swimming pools, softeners and other point of use treatment systems, locations where the nature of the premises is such that the use of the structure may change to a use wherein backflow prevention is required, and all fire hydrant connections other than by the fire department in combating fires.
- (8) Personnel of the City of Portland Water Department System shall have the right to inspect and test the device or devices on an annual basis or whenever deemed necessary by the public works superintendent, or his designated representative. Water service shall not be disrupted to test the device without the knowledge of the occupant of the premises.
- (9) Where the use of water is critical the continuance of normal operations or protection of life, property, or equipment, duplicate units shall be provided to void the necessity of discontinuing water service to test or repair the

protective device or devices. Where it is found that only one unit has been installed and the continuance of service is critical, the public works superintendent, or his designated representative, shall notify, in writing, the occupant of the premises of plans to discontinue water serviced and arrange for a mutually acceptable time to test and/or repair the device. The water system shall require the occupant of the premises to make all repairs indicated promptly, to keep the unit(s) working properly, and the expense of such repairs shall be borne by the owner or occupant of the premises. Repairs shall be made by qualified personnel acceptable to the public works superintendent, or his designated representative.

(10) The failure to maintain backflow prevention device(s) in proper working order shall be grounds for discontinuing water service to a premises. Likewise, the removal, by-passing, or altering of the protective device(s) or the installation thereof so as to render the device(s) 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 public works superintendent or his designated representative. (1980 Code, § 8-308, as amended by Ord. #04-05, Feb. 2004)

18-409. Unpotable water supply. The potable water system made available to premises served by the public water supply shall be protected from possible contamination as specified herein. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as:

WATER UNSAFE
FOR DRINKING

Minimum acceptable sign shall have black letters at least one-inch high located on a red background. (1980 Code, § 8-309)

18-410. Application of this chapter. The requirements contained herein shall apply to all premises served by the Portland 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 water distribution system against the entrance of contamination which may render the water unsafe healthwise, or otherwise undesirable, shall be enforced rigidly without regard to location of the premises, whether inside or outside the Portland Corporate Limits.

Any owner or occupant of a premises that shall be required to install backflow prevention devices shall be required to meet all other criteria as

provided in the City of Portland's Cross Connection Plan in addition to the requirements provided herein. (1980 Code, § 8-310, as amended by Ord. #04-05, Feb. 2004)

18-411. Violations. 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) nor more than one hundred dollars (\$100.00), and each day of continued violation after conviction shall constitute a separate offense. (1980 Code, § 8-311)

CHAPTER 5**STORMWATER MANAGEMENT****SECTION**

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18-501. General provisions. (1) Purpose. It is the purpose of this chapter to:

(a) Protect, maintain, and enhance the environment of the City of Portland and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the city's stormwater system and to maintain and improve the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the city;

(b) Enable the city to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR 122.26 for stormwater discharges;

(c) Allow the city to exercise the powers granted in Tennessee Code Annotated, § 68-221-1105, which provides that, among other powers cities have with respect to stormwater facilities, is the power by ordinance or resolution to:

(i) Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the city, whether or not owned and operated by the city;

(ii) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;

(iii) Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;

(iv) Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;

(v) Issue permits for stormwater discharges, or for the construction, alteration, extension, or repair of stormwater facilities;

(vi) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;

(vii) Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and

(viii) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.

(2) Administering entity. The city engineer shall administer the provisions of this chapter.

(3) Stormwater management ordinance. The intended purpose of this ordinance is to safeguard property and public welfare by regulating stormwater drainage and requiring temporary and permanent provisions for its control. It should be used as a planning and engineering implement to facilitate the necessary control of Stormwater.

(4) Jurisdiction. The stormwater management ordinance shall govern all properties within the corporate limits of the City of Portland, Tennessee.

(a) Exemptions from article. The following development activities shall be exempt from the provisions of this article and requirements of providing stormwater management:

(i) Agricultural land management activities.

(ii) Additions or modifications to existing detached single-family dwellings that disturb less than one acre and not part of a larger common plan of development.

(iii) Developments that disturb less than one (1) acre of land use. This exception may not be applied for contiguous properties that may have been subdivided and/or are attributed to multiple separate owners. This exemption does not apply to development in critical areas. This exemption does not apply to any discharge of sediment or other forms of water pollution that may leave a small site. (as added by Ord. #16-02, May 2016)

18-502. Definitions. For the purpose of this chapter, the following definitions shall apply: Words used in the singular shall include the plural, and

the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

(1) "100-year flood event." See base flood.

(2) "Active construction sites" means any site that has a permit for grading or other activities (even if actual construction is not proceeding) and any site where construction is occurring regardless of permits required.

(3) "Administrative or civil penalties" means under the authority provided in Tennessee Code Annotated, § 68-221-1106, the city declares that any person violating the provisions of this title may be assessed a civil penalty by the city of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.

(4) "Appeal" means a request for a review of the city engineer's interpretation of any provision of these regulations.

(5) "As built plans" means drawings depicting conditions as they were actually constructed.

(6) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. While this statistical event may occur more frequently, it may also be known as the "100-year flood event."

(7) "Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(8) "BMP treatment train" means a technique for progressively selecting various stormwater management practices to address water quality, by which groups of practices may be used to achieve a treatment goal while optimizing effectiveness, maintenance needs and space.

(9) "Borrow Pit" means an excavation from which erodible material (typically soil) is removed to be fill for another site. There is no processing or separation of erodible material conducted at the site. Given the nature of activity and pollutants present at such excavation, a borrow pit is considered a construction activity for the purpose of this permit.

(10) "Buffer management plan" means a written integrated plan outlining the utilitarian, ecological and aesthetic objectives for a specific landscape, and the landscape management practices and products that will be employed.

(11) "Buffer zone" means a setback from the top of water body's bank of undisturbed vegetation, including trees, shrubs and herbaceous vegetation; enhanced or restored vegetation; or the re-establishment of native vegetation

bordering streams, ponds, wetlands, springs, reservoirs or lakes, which exists or is established to protect those water bodies.

(12) "Building" means any structure built for support, shelter, or enclosure for any occupancy or storage.

(13) "Channel" means a natural or artificial watercourse with a definite bed and banks that conducts flowing water continuously or periodically.

(14) "City" means the City of Portland, Tennessee.

(15) "City engineer" refers to the City of Portland, City Engineer who has the authority to delegate to designated city staff, which includes, but is not limited to, staff engineers, the stormwater management coordinator, water quality specialists and stormwater inspectors or staff of the city's designated engineering consultant.

(16) "Common plan of development or sale" is broadly defined as any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. A common plan of development or sale identifies a situation in which multiple areas of disturbance are occurring on contiguous areas. This applies because the activities may take place at different times, on different schedules, by different operators.

(17) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(18) "Cut" means a portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface.

(19) "Design storm event" means a hypothetical storm event, of a given frequency interval and duration, used in the analysis and design of a stormwater management facility. The estimated design rainfall amounts, for any return period interval (i.e., 2-yr, 5-yr, 25-yr, etc.) in terms of either 24-hour depths or intensities for any duration, can be found by accessing the following NOAA National Weather Service Atlas 14 data for Tennessee: http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=tn. Other data sources may be acceptable with prior written approval by TDEC Water Pollution Control.

(20) "Detention" means the temporary delay of stormwater runoff prior to discharge into receiving waters.

(21) "Developer" means any individual, firm, corporation, association, partnership, trust, or authorized agents involved in commencing proceedings to effect development of land for him/her or others.

(22) "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 permanent storage of materials (as defined as materials of like nature stored in whole or in part for more than six (6) months).

(23) "Discharge" means dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of any solid or liquid matter into the MS4.

(24) "Easement" means an acquired privilege or right of use or enjoyment that a person, party, firm, corporation, city or other legal entity has in the land of another.

(25) "Engineer" or "professional engineer" means an engineer duly registered, licensed or otherwise authorized by the State of Tennessee to practice in the field of civil engineering.

(26) "Erosion" means the removal of soil particles by the action of water, wind, ice or other geological agents, whether naturally occurring or acting in conjunction with or promoted by human activities or effects.

(27) "Erosion Prevention and Sediment Control Plan (EPSCP)" means a written plan (including drawings or other graphic representations) that is designed to minimize the erosion and sediment runoff at a site during construction activities.

(28) "Excavation." See cut.

(29) "Existing construction" means any structure for which the "start of construction" commenced before the effective date of these regulations.

(30) "Existing grade" means the slope or elevation of existing ground surface prior to cutting or filling.

(31) "Fill" means a portion of land surface or area to which soil, rock, or other materials have been or will be added; height above original ground surface after the material has been or will be added.

(32) "Finished grade" means the final slope or elevation of the ground surface, after cutting or filling.

(33) "Flood or flooding" means water from a river, stream, watercourse, lake, or other body of standing water that temporarily overflows and inundates adjacent lands and which may affect other lands and activities through increased surface water levels and/or increased groundwater level.

(34) "Floodplain" means the relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water, which has been or may be covered temporarily by floodwater. For purposes of the title, the floodplain is defined as the 100-year floodplain having a one percent (1%) chance of being equaled or exceeded in any given year.

(35) "Floodway" means that portion of the stream channel and adjacent floodplain required for the passage or conveyance of a 100-year flood discharge. The floodway boundaries are placed to limit encroachment in the floodplain so that a discharge can be conveyed through the floodplain without materially increasing (less than one foot (1')) the water surface elevation at any point and without producing hazardous velocities or conditions. This is the area of

significant depths and velocities and due consideration should be given to effects of Fill, loss of cross sectional flow area, and resulting increased water surface elevations.

(36) "Floor" means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

(37) "Grading" means any operation or occurrence by which the existing site elevations are changed; or where any ground cover, natural, or man-made, is removed; or any watercourse or body of water, either natural or man-made, is relocated on any site, thereby creating an unprotected area. This includes stripping, cutting, filling, stockpiling, or any combination thereof, and shall apply to the land in its cut or filled condition. Grading activities that disturb one (1) acre or more shall only be performed with a land disturbance permit.

(38) "Green infrastructure" means the interconnected network of natural areas and other open spaces that conserves natural ecosystem values and functions, sustains clean air and water, and provides environmental and community benefits.

(39) "Green infrastructure practices" means management measures that are designed, built and maintained to infiltrate, evapotranspire, harvest and/or use rainwater through the use of natural hydrologic features.

(40) "Greenways" means linear undeveloped areas linking various types of Development by such facilities as bicycle paths, footpaths, and bridle paths. Greenways are usually kept in their natural state except for the pathway and areas immediately adjacent to the pathway.

(41) "Hotspot" means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. The following land uses and activities are deemed stormwater hotspots, but that term is not limited to only these land uses:

- (a) Vehicle salvage yards and recycling facilities.
- (b) Vehicle service and maintenance facilities.
- (c) Vehicle and equipment cleaning facilities.
- (d) Fleet storage areas (bus, truck, etc.).
- (e) Industrial sites (included on Standard Industrial Classification code list).
- (f) Marinas (service and maintenance).
- (g) Public works storage areas.
- (h) Facilities that generate or store hazardous waste materials.
- (i) Commercial container nursery.
- (j) Restaurants and food service facilities.
- (k) Other land uses and activities as designated by an appropriate review authority.

(42) "Illicit connections" means illegal and/or unauthorized connections to the MS4 whether or not such connections result in discharges into that system.

(43) "Illicit discharge" means any discharge to the MS4 that is not composed entirely of stormwater, except discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from firefighting activities; and not specifically exempted under §18-508(2).

(44) "Impaired waters" means any segment of surface waters that has been identified by the Tennessee Department of Environment and Conservation (TDEC) as failing to support classified uses. The TDEC periodically compiles a list of such waters known as the "303(d) list."

(45) "Impervious surface" means a term applied to any ground or structural surface that water cannot penetrate or through which water penetrates with great difficulty.

(46) "Improved sinkhole" means a natural surface depression that has been altered in order to direct fluids into the hole opening. Improved sinkhole is a type of injection well regulated under TDEC's Underground Injection Control (UIC) program. Underground injection constitutes an intentional disposal of waste waters in natural depressions, open fractures, and crevices (such as those commonly associated with weathering of limestone).

(47) "Inspector" means a person that has successfully completed (has a valid certification from) the "Fundamentals of Erosion Prevention and Sediment Control Level I" course or equivalent course. An inspector performs and documents the required inspections, paying particular attention to time-sensitive permit requirements such as stabilization and maintenance activities. An inspector may also have the following responsibilities:

(a) Oversee the requirements of other construction-related permits, such as Aquatic Resources Alteration Permit (ARAP) or Corps of Engineers permit for construction activities in or around waters of the state;

(b) Update field SWPPPs;

(c) Conduct pre-construction inspection to verify that undisturbed areas have been properly marked and initial measures have been installed; and

(d) Inform the permit holder of activities that may be necessary to gain or remain in compliance with the Construction General Permit (CGP) and other environmental permits.

(48) "Invasive exotic plants" means plants that have been introduced from other regions and compete so successfully against native plants that they can crowd out their competitors, thus providing a monoculture that discourages the growth of native plant species.

(49) "Land disturbance permit" means a permit issued by the city engineer that allows for land disturbing activities within the City of Portland in

accordance with this chapter. In some instances, additional local, state or federal permitting may also be required.

(50) "Land disturbing activity" means any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, and excavation. Land disturbing activities that disturb one acre or more shall only be performed with a land disturbance permit.

(51) "Landscape architect" means a landscape architect duly registered, licensed or otherwise authorized by the State of Tennessee to practice in the field of landscape architecture.

(52) "Maintenance" means any activity that is necessary to keep a stormwater management facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a stormwater management facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the stormwater management facility.

(53) "Maintenance agreement" or "long term maintenance agreement" means a document recorded in the land records that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

(54) "Municipal Separate Storm Sewer System (MS4)" means the conveyances owned or operated by the city for the collection and transportation of stormwater, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains, and where the context indicates, it means the municipality that owns the separate storm sewer system.

(55) "National Pollutant Discharge Elimination System permit" or a "NPDES permit" means a permit issued pursuant to 33 U.S.C. 1342.

(56) "Native vegetation" means the normal vegetation that grows or would reestablish normally after a disturbance. This does not include invasive exotic plants.

(57) "New construction" means structures for which the "start of construction" commenced on or after the effective date of these regulations. The term also includes any subsequent improvements to such structures.

(58) "Off-site facility" means a structural BMP located outside the subject property boundary described in the permit application for land development activity.

(59) "On-site facility" means a structural BMP located within the subject property boundary described in the permit application for land development activity.

(60) "Passive recreation" means recreational activities that require limited physical exertion on behalf of the participant. Examples of passive recreation activities include bird watching, walking or photography.

(61) "Peak flow" means the maximum instantaneous rate of flow of water at a particular point resulting from a storm event.

(62) "Person" means any and all persons, natural or artificial, including any individual, firm or association and any municipal or private corporation organized or existing under the laws of this or any other state or country.

(63) "Permittee" means any person, firm, or any other legal entity to which a grading, building or other related permit is issued in accordance with City of Portland regulations.

(64) "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded and abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes, wastes and residues that result from constructing a building or structure; sediment; and noxious or offensive matter of any kind.

(65) "PUD" means a Planned Unit Development.

(66) "Qualified Hydrologic Professional" or "QHP" means a person who is duly registered, licensed or otherwise authorized by the State of Tennessee to perform hydrologic determinations and is certified as a Tennessee Qualified Hydrologic Professional.

(67) "Redevelopment" means the alteration of developed land that disturbs and increases the site or building impervious footprint, or offers a new opportunity for stormwater controls. Demolition and reconstruction is considered development and not redevelopment. Note: redevelopment is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts.

(68) "Retention" means the prevention of storm runoff from direct discharge into receiving waters. Examples include systems which discharge through percolation, exfiltration, filtered bleed-down and evaporation processes.

(69) "Riparian buffer." See buffer zone.

(70) "Riparian zone" means areas adjacent to water resources with a differing density, diversity, and productivity of plant and animal species relative to nearby uplands. This area provides a transition from an aquatic ecosystem to a terrestrial ecosystem.

(71) "Runoff" means that portion of the precipitation on a drainage area that is discharged from the area into the MS4.

(72) "Sediment" means solid material, both inorganic and organic, that is in suspension, is being transported, or has been moved from its site of origin

by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.

(73) "Sedimentation" means soil particles suspended in stormwater that can settle in stream beds.

(74) "Site" means all contiguous land and bodies of water in one (1) ownership, graded, proposed for grading or development as a unit, although not necessarily at one (1) time.

(75) "Slope" means degree of deviation of a surface from the horizontal, usually expressed in percent or ratio.

(76) "Soil" means all unconsolidated mineral and organic material of any origin that overlies bedrock and that can be readily excavated.

(77) "Soils report" means a study of soils on a subject property with the primary purpose of characterizing and describing the soils. The soils report shall be prepared by a qualified soils engineer, who shall be directly involved in the soil characterization either by performing the investigation or by directly supervising employees conducting the investigation.

(78) "Stabilization" means providing adequate measures, vegetative and/or structural, that will prevent erosion from occurring.

(79) "Stop work order" means an order directing the developer and/or permittee responsible for the development to cease and desist all or any portion of the work which violates the provisions of this chapter.

(80) "Stormwater" means stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.

(81) "Stormwater management" means the programs to maintain quality and quantity of stormwater runoff to pre-development levels.

(82) "Stormwater management facilities" means the drainage structures, conduits, ponds, ditches, combined sewers, sewers, and all device appurtenances by means of which stormwater is collected, transported, pumped, treated or disposed of.

(83) "Stormwater management plan" means the set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts and techniques intended to maintain or restore quality and quantity of stormwater runoff to pre-development levels.

(84) "Stormwater Pollution Prevention Plan (SWPPP)" means a written plan that includes site map(s), an identification of construction/contractor activities that could cause pollutants in the stormwater, and a description of measures or practices to control these pollutants. It must be prepared and approved before construction begins. In order to effectively reduce erosion and sedimentation impacts, Best Management Practices (BMPs) must be designed, installed, and maintained during land disturbing activities. The SWPPP should be prepared in accordance with the current Tennessee Erosion and Sediment Control Handbook. The handbook is intended for use during the design and

construction of projects that require erosion and sediment controls to protect waters of the state. It also aids in the development of SWPPPs and other reports, plans, or specifications required when participating in Tennessee's water quality regulations. All SWPPPs shall be prepared and updated in accordance with section 3 of the general NPDES permit for discharges of stormwater associated with construction activities.

(85) "Stormwater runoff" means flow on the surface of the ground, resulting from precipitation.

(86) "Stream" means surface water that is not a wet weather conveyance as determined by a qualified hydrological professional and approved by the city engineer.

(87) "Structural BMPs" means facilities that are constructed to provide control of stormwater runoff.

(88) "Structure" means anything constructed or erected, the use of which requires a permanent location on or in the ground. Such construction includes but is not limited to objects such as buildings, towers, smokestacks, carports, and walls.

(89) "Surface water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs.

(90) "Top of bank" means the ordinary high water level and break in slope for a water resource.

(91) "View corridors" means areas associated with formal trail systems closer than the required buffer width approved by the city engineer with an approved buffer management plan.

(92) "Waste site" means an area where waste material from a construction site is deposited. When the material is erodible, such as soil, the site must be treated as a construction site.

(93) "Water quality buffer." See buffer zone.

(94) "Water resources" means streams, seeps, springs, wetlands, sinkholes, lakes or channels, as determined by the city engineer. It may be necessary to use methodology from standard operating procedures for hydrologic determinations (see rules to implement a certification program for qualified hydrologic professionals, TN Rules chapter 0400-40-17) to identify a community water.

(95) "Watercourse" means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(96) "Watershed" means all the land area that contributes runoff to a particular point along a waterway.

(97) "Waters" or "waters of the state" means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in

single ownership which do not combine or effect a junction with natural surface or underground waters.

(98) "Wetland(s)" means those areas that are inundated or saturated by Surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

(99) "Wet weather conveyances" are man-made or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality and whose channels are above the groundwater table and are not suitable for drinking water supplies; and in which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow, there is not sufficient water to support fish or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two (2) months. (Rules and Regulations of the State of Tennessee, chapter 1200-4-3-.04(3)). (as added by Ord. #16-02, May 2016)

18-503. Waivers. (1) General. No waivers will be granted any construction or site work project. All construction and site work shall provide for stormwater management as required by this chapter. However, alternatives to the 2010 NPDES general permit for discharges from small MS4s primary requirement for on-site permanent stormwater management may be considered, if:

(a) Management measures cannot be designed, built and maintained to infiltrate, evapotranspire, harvest and/or use, at a minimum, the first inch of every rainfall event preceded by seventy-two (72) hours of no measurable precipitation. This first inch of rainfall must be one hundred percent (100%) managed with no discharge to surface waters.

(b) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this chapter. Alternative minimum requirements for on-site management of stormwater discharges have been established in a stormwater management plan that has been approved by the city.

(2) Downstream damage, etc. prohibited. In order to receive consideration, the applicant must demonstrate to the satisfaction of the city engineer that the proposed alternative will not lead to any of the following conditions downstream:

(a) Deterioration of existing culverts, bridges, dams, and other structures;

(b) Degradation of biological functions or habitat;

(c) Accelerated streambank or streambed erosion or siltation;

(d) Increased threat of flood damage to public health, life or property.

(3) Land disturbance permit not to be issued where alternatives requested. No land disturbance permit shall be issued where an alternative has been requested until the alternative is approved. If no alternative is approved, the plans must be resubmitted with a stormwater management plan that meets the primary requirement for on-site stormwater management. (as added by Ord. #16-02, May 2016)

18-504. Stormwater system design: construction and permanent stormwater management. (1) MS4 stormwater design or BMP manuals.

(a) Adoption. The city adopts as its MS4 stormwater design and Best Management Practices (BMP) manuals for stormwater management, construction and permanent, the following publications, which are incorporated by reference in this ordinance as if fully set out herein:

(i) TDEC Erosion Prevention and Sediment Control Handbook; most current edition.

(ii) Tennessee Permanent Stormwater Management and Design Guidance Manual; most current edition.

(iii) A collection of MS4 approved BMPs developed or collected by the MS4 that comply with the goals of the MS4 permit and/or the CGP, such as the Nashville-Davidson County Metro Stormwater Management Manual (BEST MANAGEMENT PRACTICES (BMP) MANUAL - Volume 4); most current edition.

(b) The city's BMP manual(s) include a list of acceptable BMPs including the specific design performance criteria and operation and maintenance requirements for each stormwater practice. These include city approved BMPs for permanent stormwater management including green infrastructure BMPs.

(c) The city manual(s) may be updated and expanded from time to time, at the discretion of the governing body of the city, upon the recommendation of the city engineer, based on improvements in engineering, science, monitoring and local maintenance experience, or changes in federal or state law or regulation. Stormwater facilities that are designed, constructed and maintained in accordance with these BMP criteria will be presumed to meet the minimum water quality performance standards.

(2) Land development. This section shall be applicable to all land development, including, but not limited to, site plan applications, subdivision applications, land disturbance applications and grading applications. These standards apply to any new development or redevelopment site that meets one (1) or more of the following criteria:

(a) One (1) acre or more;

- (i) New development that involves land development activities of one (1) acre or more;
- (ii) Redevelopment that involves other land development activity of one (1) acre or more;
- (b) Projects or developments of less than one (1) acre of total land disturbance may also be required to obtain authorization under this ordinance if:

- (i) The city engineer has determined that the stormwater discharge from a site is causing, contributing to, or is likely to contribute to a violation of a state water quality standard;
- (ii) The city engineer has determined that the stormwater discharge is, or is likely to be a significant contributor of pollutants to waters of the state;
- (iii) Changes in state or federal rules require sites of less than one (1) acre that are not part of a larger common plan of development or sale to obtain a land disturbance permit;
- (iv) Any new development or redevelopment, regardless of size, that is defined by the city engineer to be a hotspot land use; or
- (v) Minimum applicability criteria set forth in item (a) above if such activities are part of a larger common plan of development even multiple that is part of a separate and distinct land development activity that may take place at different times on different schedules.

(3) Submittal of a copy of the NOC, SWPPP and NOT to the local MS4. Permittees who discharge stormwater through an NPDES-permitted Municipal Separate Storm Sewer System (MS4) who are not exempted in section 1.4.5 (Permit Coverage through Qualifying Local Program) of the Construction General Permit (CGP) must provide proof of coverage under the Construction General Permit (CGP); submit a copy of the Stormwater Pollution Prevention Plan (SWPPP); and at project completion, a copy of the signed Notice of Termination (NOT) to the city engineer.

Copies of additional applicable local, state or federal permits (i.e.: ARAP, etc.) must also be provided upon request. If requested, these permits must be provided before the issuance of any land disturbance permit or the equivalent.

(4) Stormwater Pollution Prevention Plan (SWPPP) for construction stormwater management. The applicant must prepare a Stormwater pollution prevention plan for all construction activities that complies with subsection (5) below. The purpose of this plan is to identify construction/contractor activities that could cause pollutants in the stormwater, and to describe measures or practices to control these pollutants during project construction.

(5) Stormwater pollution prevention plan requirements. The erosion prevention and sediment control plan component of the SWPPP shall accurately describe the potential for soil erosion and sedimentation problems resulting

from land disturbing activity and shall explain and illustrate the measures that are to be taken to control these problems. The length and complexity of the plan is to be commensurate with the size of the project, severity of the site condition, and potential for off-site damage. If necessary, the plan shall be phased so that changes to the site during construction that alter drainage patterns or characteristics will be addressed by an appropriate phase of the plan. The plan shall be sealed by a registered professional engineer or landscape architect licensed in the state of Tennessee. The plan shall also conform to the requirements found in the MS4 BMP manual, and shall include at least the following:

- (a) Project description - briefly describe the intended project and proposed land disturbing activity including number of units and structures to be constructed and infrastructure required.
- (b) A topographic map with contour intervals of two feet (2') or less showing present conditions and proposed contours resulting from land disturbing activity.
- (c) All existing drainage ways, including intermittent and wet weather. Include any designated floodways or floodplains.
- (d) A general description of existing land cover. Individual trees and shrubs do not need to be identified.
- (e) Stands of existing trees as they are to be preserved upon project completion, specifying their general location on the property. Differentiation shall be made between existing trees to be preserved, trees to be removed and proposed planted trees. Tree protection measures must be identified, and the diameter of the area involved must also be identified on the plan and shown to scale. Information shall be supplied concerning the proposed destruction of exceptional and historic trees in setbacks and buffer strips, where they exist. Complete landscape plans may be submitted separately. The plan must include the sequence of implementation for tree protection measures.
- (f) Approximate limits of proposed clearing, grading and filling.
- (g) Approximate flows of existing stormwater leaving any portion of the site.
- (h) A general description of existing soil types and characteristics and any anticipated soil erosion and sedimentation problems resulting from existing characteristics.
- (i) location, size and layout of proposed stormwater and sedimentation control improvements.
- (j) Existing and proposed drainage network.
- (k) Proposed drain tile or waterway sizes.
- (l) Approximate flows leaving the site after construction and incorporating water runoff mitigation measures. The evaluation must include projected effects on property adjoining the site and on existing drainage facilities and systems. The plan must address the adequacy of

outfalls from the development: when water is concentrated, what is the capacity of waterways, if any, accepting stormwater off-site; and what measures, including infiltration, sheeting into buffers, etc., are going to be used to prevent the scouring of waterways and drainage areas off-site, etc.

(m) The projected sequence of work represented by the grading, drainage and sedimentation and erosion control plans as related to other major items of construction, beginning with the initiation of excavation and including the construction of any sediment basins or retention/detention facilities or any other structural BMPs.

(n) Specific remediation measures to prevent erosion and sedimentation runoff. Plans shall include detailed drawings of all control measures used; stabilization measures including vegetation and non-vegetation measures, both temporary and permanent, will be detailed. Detailed construction notes and a maintenance schedule shall be included for all control measures in the plan.

(o) Specific details for: the construction of stabilized construction entrance/exits, concrete washouts, and sediment basins for controlling erosion; road access points; eliminating or keeping soil, sediment, and debris on streets and public ways at a level acceptable to the city. Soil, sediment, and debris brought onto streets and public ways must be removed by the end of the work day to the satisfaction of the city. Failure to remove the sediment, soil or debris shall be deemed a violation of this ordinance.

(p) Proposed structures: location and identification of any proposed additional buildings, structures or development on the site.

(q) A description of on-site measures to be taken to recharge surface water into the ground water system through runoff reduction practices.

(r) Specific details for construction waste management. Construction site operators shall control waste such as discarded building materials, concrete truck washout, petroleum products and petroleum related products, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. When the material is erodible, such as soil, the site must be treated as a construction site.

(6) General design performance criteria for permanent stormwater management: the following performance criteria shall be addressed for permanent stormwater management at all development sites. The runoff reduction requirement found below in § 18-504(6)(a) will become effective March 1, 2018.

(a) Site design standards for all new and redevelopment require, in combination or alone, management measures that are designed, built and maintained to infiltrate, evapotranspire, harvest and/or use, at a minimum, the first inch of every rainfall event preceded

by seventy-two (72) hours of no measurable precipitation. This first inch of rainfall must be one hundred percent (100%) managed with no discharge to surface waters or the public storm sewer system.

(i) Pre-development infiltrative capacity of soils at the site must be taken into account in selection of runoff reduction management measures.

(ii) The Tennessee Runoff Reduction Assessment Tool (TN-RRAT) or Metro Nashville's Stormwater Management Manual Volume 5, Low Impact Development design guidelines may be used by the site designer to determine compliance with the runoff reduction requirement.

(iii) Incentive standards for re-developed sites: a ten percent (10%) reduction in the volume of rainfall to be managed for any of the following types of development. Such credits are additive such that a maximum reduction of fifty percent (50%) of the standard in the paragraph above is possible for a project that meets all five (5) criteria:

- (1) Redevelopment;
- (2) Brownfield redevelopment;
- (3) High density (>7 units per acre);
- (4) Vertical dDensity, (Floor to Area Ratio (FAR) of 2 or >18 units per acre); and
- (5) Mixed use and transit oriented development (within one half (1/2) mile of transit).

(b) Prior to March 1, 2018 or after March 1, 2018 for projects that cannot meet one hundred percent (100%) of the runoff reduction requirement unless subject to the incentive standards, the remainder of the stipulated amount of rainfall (one inch (1") prior to March 1, 2018) must be treated prior to discharge with a technology documented to remove eighty percent (80%) Total Suspended Solids (TSS) unless an alternative provided under this ordinance is approved. The treatment technology must be designed, installed and maintained to continue to meet this performance standard.

(c) Limitations to the application of runoff reduction requirements include, but are not limited to:

- (i) Where a potential for introducing pollutants into the groundwater exists, unless pretreatment is provided;
- (ii) Where pre-existing soil contamination is present in areas subject to contact with infiltrated runoff;
- (iii) Presence of sinkholes or other karst features.

(d) To protect stream channels from degradation, specific channel protection criteria shall be provided as prescribed in the MS4 BMP manual.

(e) Stormwater discharges to critical areas with sensitive resources (i.e., cold water fisheries, shellfish beds, swimming beaches, recharge areas, water supply reservoirs) may be subject to additional performance criteria, or may need to utilize or restrict certain stormwater management practices.

(f) Stormwater discharges from hotspots may require the application of specific structural BMPs and pollution prevention practices. In addition, stormwater from a hotspot land use may not be infiltrated.

(g) Prior to or during the site design process, applicants for land disturbance permits shall consult with the city engineer to determine if they are subject to additional stormwater design requirements.

(7) Minimum volume control requirements. In accordance with § 18-501(1)(c)(iii) the MS4 may establish standards to regulate the quantity of stormwater discharged, therefore:

(a) Stormwater designs shall meet the multi-stage storm frequency storage requirements as identified in the MS4 BMP manual and Attachment A of this chapter.

(b) If hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the city engineer may impose any and all additional requirements deemed necessary to control the volume, timing, and rate of runoff.

(8) Permanent stormwater management plan requirements. The stormwater management plan shall include sufficient information to allow the city engineer to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the project site. To accomplish this goal the stormwater management plan shall include the following:

(a) Topographic base map: Topographic base map of the site which extends a minimum of one hundred feet (100') beyond the limits of the proposed development and indicates:

(i) Existing surface water drainage including streams, ponds, culverts, ditches, sink holes, wetlands; and the type, size, elevation, etc., of nearest upstream and downstream drainage structures;

(ii) Current land use including all existing structures, locations of utilities, roads, and easements;

(iii) All other existing significant natural and artificial features;

(iv) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns;

locations of utilities, roads and easements; the limits of clearing and grading.

(b) Proposed structural and non-structural BMPs;

(c) A written description of the site plan and justification of proposed changes in natural conditions may also be required;

(d) Calculations: Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storm event specified in the MS4 BMP manual and Attachment A of this chapter. These calculations must show that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this chapter and the guidelines of the MS4 BMP manual. Such calculations shall include:

(i) A description of the design storm event frequency, duration, and intensity where applicable;

(ii) Time of concentration;

(iii) Soil curve numbers or runoff coefficients including assumed soil moisture conditions;

(iv) Peak runoff rates and total runoff volumes for each watershed area;

(v) Infiltration rates, where applicable;

(vi) Culvert, stormwater sewer, ditch and/or other stormwater conveyance capacities;

(vii) Flow velocities;

(viii) Data on the increase in rate and volume of runoff for the design storm event referenced in the MS4 BMP manual; and

(ix) Documentation of sources for all computation methods and field test results.

(e) Soils information: If a stormwater management control measure depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles and soil survey reports. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.

(9) Maintenance and repair plan: the design and planning of all permanent stormwater management facilities shall include detailed maintenance and repair procedures to ensure their continued performance. These plans will identify the parts or components of a stormwater management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

(10) Buffers and buffer zones. Buffer and buffer zones shall be those buffers and buffer zones as those terms are defined in § 18-502(11), above, and shall meet the requirements contained in those provisions.

(a) Construction (i) Construction requires buffer zone widths of a minimum of thirty feet (30'). The thirty foot (30') criterion for the width of the buffer zone can be established on an average width basis. As long as the minimum width of the buffer zone is fifteen feet (15'). The buffer zone shall meet all the other applicable requirements of §§ 18-502(11) and 18-506.

(ii) Construction on impaired or exceptional waters. The width of the buffer zone shall be a minimum of sixty feet (60'). The sixty feet (60') criterion for the width of the buffer zone can be established on an average basis at a project as long as the minimum width of the buffer is more than thirty feet (30') at any measured location. The buffer zone shall meet all the other applicable requirements of §§ 18-502(11) and 18-506.

(b) Permanent. (i) More than one (1) square mile drainage area will require buffer zones of a minimum of sixty feet (60'). The sixty foot (60') criterion for the width of the buffer zone can be established on an average width basis, as long as the minimum width of the buffer zone is more than thirty feet (30') at any measured location.

(ii) Less than one (1) square mile drainage area. Less than one (1) square mile drainage area will require buffer zones of a minimum of thirty feet (30'). The thirty foot (30') criterion for the width of the buffer zone can be established on an average width basis, as long as the minimum width of the buffer zone is more than thirty feet (30') at any measured location. The buffer zone shall meet all the other applicable requirements of §§ 18-502(11) and 18-506. (as added by Ord. #16-02, May 2016)

18-505. Permanent stormwater management: operation, maintenance, and inspection. (1) As built plans. All applicants are required to submit actual as built plans for any stormwater structures located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be sealed by a registered professional engineer and/or land surveyor licensed to practice in Tennessee. Coordinate data shall be presented in the State of Tennessee plane system with the North American Datum 1983 (NAD83) and North American Vertical Datum (NAVD) of 1988. A final inspection by the city is required before any performance security or performance bond will be released. The city shall have the discretion to adopt provisions for a partial pro-rata release of the performance security or performance bond on the completion of various stages

of development. In addition, occupation permits shall not be granted until corrections to all BMPs have been made and accepted by the city.

(2) Landscaping and stabilization requirements. (a) Any area of land from which the natural vegetative cover has been either partially or wholly cleared by development activities shall be stabilized. Stabilization measures shall be initiated as soon as possible in portions of the site where construction activities have temporarily or permanently ceased. Temporary or permanent soil stabilization at the construction site (or a phase of the project) must be completed not later than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased. In the following situations, temporary stabilization measures are not required:

(i) Where the initiation of stabilization measures is precluded by snow cover or frozen ground conditions or adverse soggy ground conditions, stabilization measures shall be initiated as soon as practicable; or

(ii) where construction activity on a portion of the site is temporarily ceased, and land disturbing activities will be resumed within fourteen (14) days.

(b) Permanent stabilization with perennial vegetation (using native herbaceous and woody plants where practicable) or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable. Unpacked gravel containing fines (silt and clay sized particles) or crusher runs will not be considered a non-eroding surface.

(c) The following criteria shall apply to revegetation efforts:

(i) Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over ninety percent (90%) of the seeded area.

(ii) Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.

(iii) Any area of revegetation must exhibit survival of a minimum of seventy-five percent (75%) of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum seventy-five percent (75%) survival for one (1) year is achieved.

(iv) In addition to the above requirements, a landscaping plan must be submitted with the final design describing the vegetative stabilization and management techniques to be used at

a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

(3) Inspection of stormwater management facilities. Periodic inspections of Facilities shall be performed, documented, and reported in accordance with this chapter, as detailed in §18-507.

(4) Records of installation and maintenance activities. Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation of the stormwater management facility, and of all maintenance and repairs to the facility, and shall retain the records for at least three (3) years. These records shall be made available to the city during inspection of the facility and at other reasonable times upon request.

(5) Failure to meet or maintain design or maintenance standards. If a responsible party fails or refuses to meet the design or maintenance standards required for stormwater facilities under this chapter, the city, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the stormwater management facility becomes a danger to public safety or public health, the city shall notify in writing the party responsible for maintenance of the stormwater management facility. Upon receipt of that notice, the responsible person shall have thirty (30) days to effect maintenance and repair of the facility in an approved manner. In the event that corrective action is not undertaken within that time, the city may take necessary corrective action. The cost of any action by the city under this section shall be charged to the responsible party. (as added by Ord. #16-02, May 2016)

18-506. Riparian buffer requirements. (1) A riparian buffer shall be applied to all water resources located in, or adjacent to, new construction, development, or redevelopment that require a land disturbance permit. The goal of the water quality buffer is to preserve undisturbed vegetation that is native to the streamside habitat in the area of the project. Vegetated, preferably native, water quality buffers protect water bodies by providing structural integrity and canopy cover, as well as stormwater infiltration, filtration and evapotranspiration.

(2) A determination that water quality buffer widths cannot be met on-site may not be based solely on the difficulty or cost of implementing measures, but must include multiple criteria, such as: type of project, existing land use and physical conditions that preclude use of these practices. Every attempt should be made for development and redevelopment activities not to take place within the buffer zone.

(a) "Construction" applies to all streams adjacent to construction sites, with an exception for streams designated as impaired

or exceptional Tennessee waters, as designated by the Tennessee Department of Environment and Conservation. A thirty foot (30') natural riparian buffer zone adjacent to all streams at the construction site shall be preserved, to the maximum extent practicable, during construction activities at the site. The water quality buffer zone is required to protect waters of the state located within or immediately adjacent to the boundaries of the project, as identified using methodology from standard operating procedures for hydrologic determinations (see rules to implement a certification program for qualified hydrologic professionals, TN Rules chapter 0400-40-17). Buffer zones are not primary sediment control measures and should not be relied on as such. Rehabilitation and enhancement of a natural buffer zone is allowed, if necessary, for improvement of its effectiveness of protection of the waters of the state. The buffer zone requirement only applies to both new construction sites and redevelopment. The riparian buffer zone should be preserved between the top of stream bank and the disturbed construction area.

(b) Buffer zone requirements for discharges into impaired or exceptional waters: a sixty foot (60') natural riparian buffer zone adjacent to the receiving stream designated as impaired or exceptional waters shall be preserved, to the maximum extent practicable, during construction activities at the site. The water quality buffer zone is required to protect waters of the state (e.g., perennial and intermittent streams, rivers, lakes, wetlands) located within or immediately adjacent to the boundaries of the project, as identified using methodology from standard operating procedures for hydrologic determinations (see rules to implement a certification program for qualified hydrologic professionals, TN Rules chapter 0400-40-17). Buffer zones are not sediment control measures and should not be relied upon as primary sediment control measures. Rehabilitation and enhancement of a natural buffer zone is allowed, if necessary, for improvement of its effectiveness of protection of the waters of the state. The buffer zone requirement only applies to both new construction sites and redevelopment. The riparian buffer zone should be established between the top of stream bank and the disturbed construction area. The sixty foot (60') criterion for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone is more than thirty feet (30') at any measured location.

(c) "Permanent" new development and significant redevelopment sites are required to preserve water quality buffers along waters within the MS4. Buffers shall be clearly marked on site development plans, land disturbance permit applications, and/or concept plans. Buffer width depends on the size of a drainage area. Streams or other waters with drainage areas less than one (1) square mile will require buffer widths of thirty feet (30') minimum. Streams or other

waters with drainage areas greater than 1 square mile will require buffer widths of sixty feet (60') minimum. The sixty feet (60') criterion for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone is more than thirty feet (30') at any measured location.

(3) The following list includes the allowable uses within the buffer zone. The city engineer shall approve the specific requirements of a plan proposing the installation of any feature or construction within the buffer zone. For any such work, a buffer management plan shall be submitted to the city engineer prior to the issuance of a land disturbance permit.

(a) Utility crossings.

(b) Passive recreation, pervious footpaths, and boardwalks to approach the water resource as approved by the city engineer.

(c) Biking or hiking paths and greenways, but no closer than thirty feet (30') at any measured location. View corridors shall be allowed along greenways as approved by the city engineer. Paths and greenways shall be designed to prevent the channelization of stormwater runoff, and should be constructed of pervious and/or permeable materials. There shall be no other permanent structures with the exception of paths.

(d) Stormwater channels as approved by the city engineer.

(e) Stabilization practices to prevent channelization and erosion in the buffer zone from stormwater runoff adjacent to the water resource.

(f) Landscaping to allow for climax successional vegetation through the removal of invasive exotic plants and the establishment of native vegetation, and/or other practices that restore the ecological integrity of the riparian buffer.

(g) Removal of individual trees within the buffer zone which are in danger of falling, causing damage to dwellings or other structures, or causing blockage of the water resource.

(h) Cut and fill for floodplain compensations as approved by the city engineer.

(4) Requests to reduce the riparian buffer width, perform clearing activities or install crossings within the riparian buffer shall be approved by the city engineer.

(a) The riparian buffer width may be reduced in conjunction with targeted restoration plans that make comparable improvements to both the ecological integrity within the buffer zone and water quality of the water resource. Reduction of the riparian buffer width shall be approved on a case-by-case basis. Restoration plans must be submitted along with a buffer management plan to the city engineer for approval.

(b) Riparian Buffer crossings should be limited as much as possible. Utilities shall be located under pavement where possible to limit the width of the crossing. Riparian Buffer crossings shall be

submitted along with a buffer management plan to the city engineer for approval.

(i) Utilities may be allowed in the riparian buffer, but not closer than thirty feet (30') to the top of bank except for crossings.

(ii) The city engineer may approve new driveways or road crossings through or across riparian buffer zones on a case-by-case basis. It shall be demonstrated that the access across the buffer is necessary and that the buffer will not be impacted excessively. In these cases, the driveway or road crossing shall be constructed perpendicular, or as close to perpendicular as possible to the water resource and/or riparian buffer with careful detail to protecting trees and vegetation and minimizing site grades. Other federal, state and/or local permits may still be required.

(5) For any proposed development and/or construction activity within or adjacent to a riparian buffer, the following shall be required.

(a) The parameters of the riparian buffer shall be delineated by the applicant and boundaries shall be clearly indicated and labeled on all plats, plans, permits and official maps.

(b) Include a note on plans to reference protective covenants governing all riparian buffer areas, labeled as: "any riparian buffer is subject to protective covenants recorded in the register of deeds (Sumner or Robertson County). Disturbance and use of these areas is restricted; severe penalties apply."

(c) Riparian buffers shall be protected during construction activities by a combination of fencing and flagging to prevent entry of construction equipment, storage and stockpiling. Buffer boundaries shall be marked with signs that persist before, during and after construction activities.

(d) Permanent boundary markers shall be installed prior to the completion of the development activities. Signage shall be posted at the edge of the riparian buffer on each lot line, and at a maximum spacing of two hundred feet (200'). Properties with a large amount of riparian buffer frontage may request a reduction in spacing requirements, subject to approval by the city engineer. The size of the sign shall be six inches by four inches (6" x 4") or greater and shall contain the message, "Water resource protected. Violators subject to severe penalties" or other language as approved by the city engineer.

(e) All riparian buffers shall be placed in open space lots to be maintained according to § 18-505 of this chapter.

(6) Riparian buffers shall be actively managed with periodic buffer surveys. Violators shall be served with civil penalties according to § 18-510(2) of this title and shall be required, at their own expense, to revegetate, according to an approved buffer management plan, and maintain the section of the

riparian buffer encroached upon, using only native vegetation. Equivalent native plants and trees that were removed shall be replaced on a tree per tree basis or as approved by the city engineer. Specimen trees shall be replaced as required by the city's zoning ordinance. (as added by Ord. #16-02, May 2016)

18-507. Existing locations and ongoing developments. (1) On-site stormwater management facilities maintenance agreement:

(a) Where the stormwater management facility is located on property that is subject to a development agreement, and the development agreement provides for a permanent stormwater maintenance agreement that runs with the land, the owners of property must execute an inspection and maintenance agreement that shall operate as a deed restriction binding on the current property owners and all subsequent property owners and their lessees and assigns, including but not limited to, homeowner associations or other groups or entities.

(b) The maintenance agreement shall:

(i) Assign responsibility for the maintenance and repair of the stormwater management facility to the owners of the property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation.

(ii) Provide for a periodic inspection by the property owners in accordance with the requirements of § 18-507(1)(b)(v) below for the purpose of documenting maintenance and repair needs and to ensure compliance with the requirements of this ordinance. The property owners will arrange for this inspection to be conducted by a registered professional engineer licensed to practice in the State of Tennessee, who will submit a signed written report of the inspection to the city engineer. It shall also grant permission to the city to enter the property at reasonable times and to inspect the stormwater management facility to ensure that it is being properly maintained.

(iii) Provide that the minimum maintenance and repair needs include, but are not limited to: the removal of silt, litter and other debris, the cutting of grass, cutting and vegetation removal, and the replacement of landscape vegetation, in detention and retention basins, and inlets and drainage pipes and any other stormwater facilities. It shall also provide that the property owners shall be responsible for additional maintenance and repair needs consistent with the needs and standards outlined in the MS4 BMP manual.

(iv) Provide that maintenance needs must be addressed in a timely manner, on a schedule to be determined by the city engineer.

(v) Provide that if the property is not maintained or repaired within the prescribed schedule, the city engineer shall perform the maintenance and repair at its expense, and bill the same to the property owner. The maintenance agreement shall also provide that the city engineer's cost of performing the maintenance shall be a lien against the property.

(2) Existing problem locations - no maintenance agreement.

(a) The city engineer shall in writing notify the owners of existing locations and developments of specific drainage, erosion or sediment problems affecting or caused by such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance. Discharges from existing BMPs that have not been maintained and/or inspected in accordance with this ordinance shall be regarded as illicit discharges.

(b) Inspection of existing stormwater management facilities. The city may, to the extent authorized by state and federal law, enter and inspect private property for the purpose of determining if there are non-stormwater illicit discharges, and to establish inspection programs to verify that all stormwater management facilities are functioning within design limits. These inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of the city's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other BMPs.

(3) Owner/operator inspections - generally. The owners and/or the operators of stormwater management practices shall:

(a) Perform routine inspections to ensure that the BMPs are properly functioning. These inspections shall be conducted on an annual basis, at a minimum. These inspections shall be conducted by a person familiar with control measures implemented at a site. Owners or operators shall maintain documentation of these inspections. The city engineer may require submittal of this documentation.

(b) Perform comprehensive inspection of all stormwater management facilities and practices. These inspections shall be conducted once every five years, at a minimum. Such inspections must

be conducted by either a professional engineer or landscape architect, licensed in the State of Tennessee. Complete inspection reports for these five (5) year inspections shall include:

- (i) Facility type,
- (ii) Inspection date,
- (iii) Latitude and longitude and nearest street address,
- (iv) BMP owner information (e.g. name, address, phone number, fax, and email),
- (v) A description of BMP condition including: vegetation and soils; inlet and outlet channels and structures; embankments, slopes, and safety benches; spillways, weirs, and other control structures; and any sediment and debris accumulation,
- (vi) Photographic documentation of BMPs, and
- (vii) Specific maintenance items or violations that need to be corrected by the BMP owner along with deadlines and re-inspection dates.

(c) Owners or operators shall maintain documentation of these inspections. The city engineer may require submittal of this documentation.

(4) Requirements for all existing locations and ongoing developments.

The following requirements shall apply to all locations and development at which land disturbing activities have occurred previous to the enactment of this ordinance:

(a) Denuded areas must be vegetated or covered under the standards and guidelines specified in § 18-505 (2)(c)(i), (ii), (iii) and on a schedule acceptable to the city engineer.

(b) Cuts and slopes must be properly covered with appropriate vegetation and/or retaining walls constructed.

(c) Drainage ways shall be properly covered in vegetation or secured with rip-rap, channel lining, etc., to prevent erosion.

(d) Trash, junk, rubbish, etc. shall be cleared from drainage ways.

(e) Stormwater runoff shall, at the discretion of the city engineer be controlled to the maximum extent practicable to prevent its pollution. Such control measures may include, but are not limited to, the following:

- (i) Ponds.
 - (A) Detention pond.
 - (B) Extended detention pond.
 - (C) Wet pond.
 - (D) Alternative storage measures.
- (ii) Constructed wetlands.
- (iii) Infiltration systems.
 - (A) Infiltration/percolation trench.

- (B) Infiltration basin.
- (C) Drainage (recharge) well.
- (D) Porous pavement.
- (iv) Filtering systems.
 - (A) Catch basin inserts/media filter.
 - (B) Sand filter.
 - (C) Filter/absorption bed.
 - (D) Filter and buffer strips.
- (v) Open channel.
 - (A) Swale.

(5) Corrections of problems subject to appeal. Corrective measures imposed by the city engineer under this section are subject to appeal under § 18-511 of this chapter. (as added by Ord. #16-02, May 2016)

18-508. Illicit discharges. (1) Scope. This section shall apply to all water generated on developed or undeveloped land entering the city's separate storm sewer system.

(2) Prohibition of illicit discharges. No person shall introduce or cause to be introduced into the MS4 any discharge that is not composed entirely of stormwater or any discharge that flows from stormwater management facility that is not inspected in accordance with § 18-507 shall be an illicit discharge. Non-stormwater discharges shall include, but shall not be limited to, sanitary wastewater, car wash wastewater, radiator flushing disposal, spills from roadway accidents, carpet cleaning wastewater, effluent from septic tanks, improper oil disposal, laundry wastewater/gray water, improper disposal of auto and household toxics. The commencement, conduct or continuance of any non-stormwater discharge to the MS4 is prohibited except as described as follows:

- (a) Uncontaminated discharges from the following sources:
 - (i) Water line flushing or other potable water sources;
 - (ii) Landscape irrigation or lawn watering with potable water;
 - (iii) Diverted stream flows;
 - (iv) Rising ground water;
 - (v) Groundwater infiltration to storm drains;
 - (vi) Pumped groundwater;
 - (vii) Foundation or footing drains;
 - (viii) Crawl space pumps;
 - (ix) Air conditioning condensation;
 - (x) Springs;
 - (xi) Non-commercial washing of vehicles;
 - (xii) Natural riparian habitat or wetland flows;
 - (xiii) Swimming pools (if dechlorinated - typically less than one (1) PPM chlorine or desalinated for salt water pools);

- (xiv) Firefighting activities;
- (xv) Individual residential car washing;
- (xvi) Controlled flushing of stormwater conveyances (controlled by appropriate BMPs);
- (xvii) Discharges within the constraints of an NPDES permit from the Tennessee Department of Environment and Conservation (TDEC);
- (xviii) Any other uncontaminated water source.

(b) Discharges specified in writing by the city as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge if the city has so specified in writing.

(d) Discharges authorized by the Construction General Permit (CGP), which comply with section 3.5.9 of the same:

(i) Dewatering of work areas of collected stormwater and ground water (filtering or chemical treatment may be necessary prior to discharge);

(ii) Waters used to wash vehicles (of dust and soil, not process materials such as oils, asphalt or concrete) where detergents are not used and detention and/or filtering is provided before the water leaves site;

(iii) Water used to control dust in accordance with CGP section 3.5.5;

(iv) Potable water sources including waterline flushings from which chlorine has been removed to the maximum extent practicable;

(v) Routine external building washdown that does not use detergents or other chemicals;

(vi) Uncontaminated groundwater or spring water; and

(vii) Foundation or footing drains where flows are not contaminated with pollutants (process materials such as solvents, heavy metals, etc.).

(3) Prohibition of illicit connections. The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(4) Reduction of stormwater pollutants by the use of best management practices. Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, the BMPs necessary to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with

industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. Discharges from existing BMPs that have not been maintained and/or inspected in accordance with this ordinance shall be regarded as illicit discharges.

(5) Notification of spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into, the MS4, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the city in person or by telephone, fax, or email, no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the city within three (3) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

(6) No illegal dumping allowed. No person shall dump or otherwise deposit outside an authorized landfill, convenience center or other authorized garbage or trash collection point, any trash or garbage of any kind or description on any private or public property, occupied or unoccupied, inside the city. (as added by Ord. #16-02, May 2016)

18-509. Enforcement. (1) Enforcement authority. The city engineer shall have the authority to issue notices of violation and citations, and to impose the civil penalties provided in this title. Each day of noncompliance is considered a separate offense; and nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation, including application for injunctive relief. If the person, property or facility has or is required to have a stormwater discharge permit from TDEC, the city shall alert the appropriate state authorities of the violation. Measures authorized include:

(a) Verbal warnings - At minimum, verbal warnings must specify the nature of the violation and required corrective action. Verbal warnings will be documented by the city.

(b) Written notices - Written notices must stipulate the nature of the violation and the required corrective action, with deadlines for taking such action.

(c) Citations with administrative penalties - The MS4 has the authority to assess monetary penalties, which may include civil and administrative penalties.

(d) Stop work orders - Stop work orders that require construction activities to be halted, except for those activities directed at cleaning up, abating discharge, and installing appropriate control measures.

(e) Withholding of plan approvals or other authorizations - where a facility is in noncompliance, the MS4's own approval process affecting the facility's ability to discharge to the MS4 can be used to abate the violation.

(f) Additional measures - The MS4 may also use other escalated measures provided under local legal authorities. The MS4 may perform work necessary to improve erosion control measures and collect the funds from the responsible party in an appropriate manner, such as collecting against the project's bond or directly billing the responsible party to pay for work and materials.

(2) Notification of violation:

(a) Verbal warning. Verbal warning may be given at the discretion of the Inspector when it appears the condition can be corrected by the violator within a reasonable time, which time shall be approved by the Inspector.

(b) Written notice. Whenever the city engineer finds that any permittee or any other person discharging stormwater has violated or is violating this ordinance or a permit or order issued hereunder, the city engineer may serve upon such person written notice of the violation. All written notices will be documented and delivered by personal service or by registered or certified mail (return receipt requested) to the person that has violated or is violating this chapter. Within ten (10) days of this notice or shorter period as may be prescribed in the notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the city engineer. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(c) Consent orders. The city engineer is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (d) and (e) below.

(d) Show cause hearing. The city engineer may order any person who violates this chapter or permit or order issued hereunder, to

show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.

(e) Compliance order. When the city engineer finds that any person has violated or continues to violate this title or a permit or order issued thereunder, he may issue an order to the violator directing that, following a specific time period, adequate stormwater structures or devices be installed and/or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate stormwater structures, installation of devices, self-monitoring, and management practices.

(f) Cease and desist and stop work orders. When the city engineer finds that any person has violated or continues to violate this title or any permit or order issued hereunder, the city engineer may issue a stop work order or an order to cease and desist all such violations and direct those persons in noncompliance to:

(i) Comply forthwith; or

(ii) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation; including halting operations except for terminating the discharge and installing appropriate control measures.

(g) Suspension, revocation or modification of permit. The city engineer may suspend, revoke or modify the permit authorizing the land development project or any other project of the applicant or other responsible person within the city. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated upon such conditions as the city engineer may deem necessary to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

(h) Conflicting standards. Whenever there is a conflict between any standard contained in this chapter and in the BMP manual adopted by the city under this ordinance, the strictest standard shall prevail. (as added by Ord. #16-02, May 2016)

18-510. Penalties. (1) Violations. Any person who shall commit any act declared unlawful under this chapter, who violates any provision of this chapter, who violates the provisions of any permit issued pursuant to this

chapter, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the city engineer, shall be guilty of a civil offense.

(2) Penalties. Under the authority provided in Tennessee Code Annotated, § 68-221-1106, the city declares that any person violating the provisions of this title may be assessed a civil penalty by the city engineer of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.

(3) Measuring civil penalties. In assessing a civil penalty, the city engineer may consider:

- (a) The harm done to the public health or the environment;
- (b) The duration and gravity of the violation;
- (c) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
- (d) The economic benefit gained by the violator;
- (e) The amount of effort put forth by the violator to remedy this violation;
- (f) Whether the violation was committed intentionally;
- (g) The prior record of the violator in complying or failing to comply with the stormwater management program;
- (h) Any unusual or extraordinary enforcement costs incurred by the city;
- (i) The amount of penalty established by ordinance or resolution for specific categories of violations; and
- (j) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

(4) Recovery of damages and costs. In addition to the civil penalty in subsection (2) above, the city may recover:

- (a) All damages proximately caused by the violator to the city, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this chapter, or any other actual damages caused by the violation.
- (b) The costs of the city's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this chapter.

(5) Referral to TDEC. Where the city has used progressive enforcement to achieve compliance with this ordinance, and in the judgment of the city has not been successful, the city may refer the violation to tdec. For the purposes of this provision, "progressive enforcement" shall mean two (2) follow-up inspections and two (2) warning letters. In addition, enforcement referrals to TDEC must include, at a minimum, the following information:

- (a) Construction project or industrial facility location;
- (b) Name of owner or operator;

(c) Estimated construction project or size or type of industrial activity (including SIC code, if known);

(d) Records of communications with the owner or operator regarding the violation, including at least two (2) follow-up inspections, two (2) warning letters or notices of violation, and any response from the owner or operator.

(6) Other remedies. The city may bring legal action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

(7) Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted. (as added by Ord. #16-02, May 2016)

18-511. Appeals. Pursuant to Tennessee Code Annotated, § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this title may appeal said penalty or damage assessment to the city's governing body.

(1) Appeals to be in writing. The appeal shall be in writing and filed with the municipal recorder or clerk within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.

(2) Public hearing. Upon receipt of an appeal, the city's governing body, or other appeals board established by the city's governing body shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date, and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days' notice by registered mail shall also be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal. The decision of the governing body of the city shall be final.

(3) Appealing decisions of the city's governing body. Any alleged violator may appeal a decision of the city's governing body pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8. (as added by Ord. #16-02, May 2016)

APPENDIX A

**INSPECTION AND MAINTENANCE AGREEMENT
FOR PRIVATE STORMWATER MANAGEMENT FACILITIES**

Property Identification ("Property"): _____ City Use: _____

Map: _____ Parcel No. _____ Land Dist. Permit No.: _____
 Record Book: _____ Page No. _____

Project Name: _____

Project Address: _____

Owner(s): _____

Owner Address: _____

City: _____ State: _____ Zip Code: _____

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A.

This Inspection and Maintenance Agreement ("Agreement") is made this _____ day of _____, 20____, by and between _____ ("Owner," whether one or more), and the City of Portland ("City").

WHEREAS, the City is required by federal and state surface water quality regulations and its National Pollutant Discharge Elimination System (NPDES) permit to prevent surface water quality degradation from development or redevelopment activities within its jurisdiction, and the City has adopted surface water quality regulations as required and such regulations are contained in the Stormwater Management Title of the City Code; and

WHEREAS the Owner owns the Property identified above and has or will construct certain stormwater management facilities on the Property, and has developed a Stormwater Maintenance Plan (SWMP No. _____), as may be amended from time to time (the "Plan") for the maintenance of those facilities, which the City has reviewed and approved, and a copy of which will be maintained at the office of the City Engineer. A drawing showing the general area of the facilities covered by the Plan is attached to this Agreement for ease of identification.

THEREFORE, in consideration of the benefits received by the Owner as a result of the approval by the City of the Plan, the Owner does hereby covenant and agree with the City as follows:

1. The Owner shall provide adequate long term maintenance and continuation of the stormwater control measures described in the Plan, to ensure that all stormwater facilities are and remain in proper working condition. The Owner shall perform inspection and preventative maintenance activities in accord with the Plan.
2. The Owner shall maintain a copy of the Plan On-site, together with a record of inspections and maintenance actions required by the Plan. The Owner shall document the times of inspections, remedial actions taken to repair, modify or reconstruct the system, the state of control measures, and notification of any planned change in responsibility for the system. The City may require that the Owner's records be submitted to the City.
3. If it is later determined that the City's NPDES permit clearly directs Owners or the City to manage stormwater treatment systems differently than specified in the Plan, the direction of the NPDES permit shall override the provisions of the Plan.
4. The Owner hereby grants to the City the right of ingress, egress and access to enter the Property at reasonable times and in a reasonable manner for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining or repairing the facilities. The Owner hereby grants to the City the right to install and maintain equipment to monitor or test the performance of the stormwater control system for quality and quantity upon reasonable notice to Owner.
5. If the City finds that the Owner has not maintained the facilities, the City may order the Owner to make repairs or improvements to bring the facilities up to the standards set forth in the Plan. If the work is not performed within the time specified by the City, the City may enter the property and take any action necessary to maintain or repair the stormwater management facilities; PROVIDED, HOWEVER, that the City shall in no event be deemed obligated to maintain or repair the stormwater management facilities, and nothing in this Agreement shall ever be construed to impose or create any such obligation on the City.
6. If the City incurs expenses in maintaining the stormwater control facilities, and the Owner fails to reimburse the City for such expenses within 45 days after a written notice, the City may collect said expenses from the Owner through appropriate legal action, and the Owner shall be

liable for the reasonable expenses of collection, including all court costs and attorney fees.

7. The Owner and the Owner's heirs, administrators, executors, assigns, and any other successor in interest shall indemnify and hold the City harmless from any and all damages, accidents, casualties, occurrences, claims or attorney's fees which might arise or be asserted, in whole or in part, against the City from the construction, presence, existence, or maintenance of the stormwater control facilities subject to the Plan and this Agreement. In the event a claim is asserted against the City, its officers, agents or employees, the City shall notify the Owner, who shall defend at Owner's expense any suit or other claim. If any judgment or claims against the City shall be allowed, the Owner shall pay all costs and expenses in connection therewith. The City will not indemnify, defend or hold harmless in any fashion the Owner from any claims arising from any failure, regardless of any language in any attachment of other document that the Owner may provide.
8. No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
9. The City, at Owner's expense, shall record this Agreement with the Register of Deeds of Sumner County, Tennessee; this Agreement shall constitute a covenant running with the land, and shall be binding upon the Owner and the Owner's heirs, administrators, executors, assigns, and any other successors in interest.
10. The Owner shall have the facilities inspected in accordance with § 18-507 of the City's stormwater ordinance and certify to the City that the constructed facilities conform and purport substantially to the approved Plan. If the constructed condition of the facility or its performance varies significantly from the approved Plan, appropriately revised calculations shall be provided to the City and the Plan shall be amended accordingly.
11. Owner agrees that the failure to follow the provisions and requirements of the Plan may result in the revocation of previously approved credits to stormwater user fees, or the imposition of such stormwater user fees or of additional stormwater user fees.
12. The Owner agrees that for any systems to be maintained by a property owner's association, deed restrictions and covenants for the subdivision or other development will include mandatory membership in the property owners' association responsible for providing maintenance of the system,

will require the association to maintain the stormwater system, will prohibit termination of this covenant by unilateral action of the association, and provide for unpaid dues or assessments to constitute a lien upon the property of an owner upon recording a notice of non-payment.

- 13. This Agreement must be re-approved and re-executed by the City if all or a portion of the Property is subdivided or assembled with other property.

Owner: _____ Date: _____
Signature by Individual

Owner: _____ Date: _____
Signature by Individual

State of _____ County of _____

Personally appeared before me, the undersigned Notary Public of the state and county mentioned, _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and executed this Agreement (Inspection and Maintenance Agreement for Private Stormwater Management Facilities) for the purposes contained herein.

Witness my hand and official seal at office, this ____ day of _____, of the year _____.

Notary Public: _____

My Commission Expires: _____

Accepted by:

_____ For the City of _____

State of _____ County of _____

Personally appeared before me, the undersigned Notary Public of the state and county mentioned, _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and executed this Agreement (Inspection and Maintenance Agreement for Private Stormwater Management Facilities) on behalf of the City of _____ for the purposes contained herein.

Witness my hand and official seal at office, this ____ day of _____,
of the year _____.

Notary Public: _____

My Commission Expires: _____

CHAPTER 6

STORMWATER UTILITY

SECTION

- 18-601. General provisions.
- 18-602. Jurisdiction.
- 18-603. Definitions.
- 18-604. Funding of stormwater utility.
- 18-605. Stormwater utility management fund.
- 18-606. Operating budget.
- 18-607. Stormwater user fee
- 18-608. Equivalent Residential Unit (ERU).
- 18-609. Property classification for stormwater user fees.
- 18-610. Base rate.
- 18-611. Property owners to pay charges.
- 18-612. Billing procedures and penalties for late payment.
- 18-613. Appeal of fees.
- 18-614. Stormwater user fee credit and adjustment policy.

- 18-601. General provisions.** (1) Introduction. (a) This chapter is to:
- (i) Be known as the "stormwater utility" for the City of Portland, Tennessee;
 - (ii) Enable the city to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR 122.26 for stormwater discharges;
- (b) The City of Portland finds, determines, and declares that the stormwater system, which provides for the collection, treatment, storage and disposal of stormwater, provides benefits and services to all property within the incorporated City of Portland limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of stormwater, the reductions of hazards to property and life resulting from stormwater runoff, improvements in general health and welfare through reduction of undesirable stormwater conditions, and improvements to water quality in the stormwater and surface water system and its receiving waters of the state all of which are managed by the stormwater management coordinator as part of the Municipal Separate Storm Sewer System (MS4) program.
- (c) The objective of this chapter is to promote the public health, safety and general welfare of the City of Portland, Tennessee ("City") and its citizens in compliance with the Federal Clean Water Act, 33 U.S.C. 1251 et seq., and Tennessee Code Annotated, § 68-221-1101 et seq. which require municipalities to implement stormwater management programs,

within prescribed time frames, to regulate stormwater discharges to protect water quality; establish adequate systems of collection, conveyance, detention, treatment and release of stormwater; reduce hazards of property and life resulting from stormwater runoff; and enable municipalities to fix and require payment of fees for the privilege of discharging stormwater. The city finds that a stormwater management system which provides for the treatment of stormwater is of benefit and provides services to all property within the city.

(d) It is further determined and declared that charges shall be established for each developed parcel of developed property located within the municipal limits of the city as provided hereinafter to provide for dedicated funding sources for the administration of stormwater management programs and/or stormwater system of the city. The proceeds of charges so derived shall be used for the purposes of planning, operation, maintenance, repair, replacement and debt service of the city's stormwater management programs and system necessary to protect the health, safety, and welfare of the public.

(2) Purpose. The stormwater utility's purpose is to:

(a) Administer and enforce the City of Portland's stormwater management ordinance;

(b) Administer, plan, and implement stormwater projects to protect, maintain, and enhance the environment of the City of Portland;

(c) Implement activities necessary to maintain compliance with the city's MS4 National Pollutant Discharge Elimination System (NPDES) permit and applicable regulations, 40 CFR section 122.26 for stormwater discharges;

(d) Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, civil penalties, and other revenues of the utility; and,

(e) Advise the board of mayor and alderman and other City of Portland departments on matters relating to the utility.

(3) Administering entity. The stormwater utility shall be a part of the City of Portland Engineering Department. The stormwater utility, under the immediate direction and supervision of the city engineer or designee, shall administer the provisions of this stormwater utility ordinance. (as added by Ord. #16-59, Nov. 2016)

18-602. Jurisdiction. The stormwater utility ordinance shall govern all properties within the incorporated limits of the City of Portland, Tennessee. (as added by Ord. #16-59, Nov. 2016)

18-603. Definitions. For the purpose of this chapter, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall

include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

(1) "Board of mayor and alderman" means the city governing body for the City of Portland.

(2) "Agricultural property" means property which is zoned agricultural and/or property which yields an annual minimum, or in which the annual minimum has been met in two (2) of the last five (5) years, of one thousand dollars (\$1,000.00) of agricultural products produced and/or sold from the operation of the property. Agricultural production shall include agricultural, forest, and/or livestock production as defined by the United States Department of Agriculture, Natural Resources Conservation Service, and Environmental Quality Incentive Program. Proof of agricultural producer status may include IRS form 1040 Schedule F or other accounting records certified by a tax preparer.

(3) "Appeal" means a request for a review of the city engineer's interpretation of any provision of these regulations.

(4) "Base rate" means the stormwater user fee for a detached single family residential property in the City of Portland.

(5) "Best Management Practices" or "BMPs" means the physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of Portland, and that have been incorporated by reference into the stormwater management ordinance as if fully set out therein.

(6) "CII" refers to developed commercial, industrial, and institutional properties within the incorporated limits of the City of Portland, Tennessee.

(7) "City" means the City of Portland, Tennessee.

(8) "City engineer" refers to the City of Portland, City Engineer who has the authority to delegate to designated city staff, which includes, but is not limited to, staff engineers, the stormwater management coordinator, water quality specialists and stormwater inspectors or staff of the city's designated engineering consultant.

(9) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement, or extension of stormwater facilities; preliminary planning to determine the economic and engineering feasibility of stormwater facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary in the construction of stormwater facilities; and the inspection and supervision of the construction of stormwater facilities.

(10) "Deficient property" means developed property that does not have adequate stormwater facilities as required in the latest edition of the City of Portland minimum drainage requirements for development.

(11) "Developed property" means developed property which has been altered from its natural state by the creation or addition of buildings, structures, pavement or other impervious surfaces, or by the alteration of the property that results in a meaningful change in the hydrology of the property.

(12) "Equivalent Residential Unit (ERU)" shall be used as the basis for determining stormwater service charges to all properties within the city. An ERU is the standard value for which non-residential properties are compared to the average residential property. One (1) ERU is based upon the average residential property area.

(13) "Exempt property" means all public rights-of-way, public streets and public roads, public alleys, public sidewalks and public greenways, public drainage facilities, privately owned residential streets, property that does not discharge stormwater runoff to the stormwater or flood control facilities and railroad right-of-way properties within the City of Portland. For purposes of this definition, "public" shall mean that which is maintained by or is or is to be dedicated to the City of Portland and/or the State of Tennessee or the government of the United States.

(14) "Fee or stormwater user fee" means the charge established by ordinance and levied on owners or users of parcels or pieces of developed property to fund the cost of stormwater management and of operating, maintaining, and improving the stormwater system in the city.

(15) "Fiscal year." July 1 of a calendar year to June 30 of the next calendar year, both inclusive.

(16) "Impervious surface" means a surface which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or any other surface which impedes the natural infiltration of surface water.

(17) "Impervious surface area" means the number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements shall be made between exterior limits of the structure, foundations, columns or other means of support or enclosure.

(18) "Multi-family residential property" means a building containing three (3) or more dwelling units. The term includes cooperative apartments, condominiums, and the like.

(19) "Other developed property" means all developed property located within the municipal limits of the city other than

(a) Residential property;

(b) Exempt property;

(c) Vacant property and

(d) Park lands/cemetery. Other developed property shall include commercial properties, industrial properties, apartments, parking lots, hospitals, schools, recreational and cultural facilities, industrial properties, hotels, offices, churches, federal, state and local government

properties and multi-use properties. Such property shall also include single family dwellings which are attached to or otherwise a part of a building housing a commercial enterprise. Any single family residential structure which contains more than two (2) attached dwelling units is specifically included in this definition.

(20) "Park land"/"cemetery" means all developed property owned by federal, state and/or local governments that has been designated by such governmental entity for use as a public park or cemetery.

(21) "Person" means any and all persons, natural or artificial, including any individual, firm or association, and any municipal or private corporation organized or existing under the laws of this or any other state or country.

(22) "Property owner" means the property owner of record as listed in the city's and/or county's tax assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

(23) "Runoff coefficient" is a term used to describe the percentage of precipitation that leaves a particular site as runoff. Runoff is precipitation that does not soak or absorb into the soil surface and is greatly impacted by the amount of impervious surface that exists on a particular site. The runoff coefficient relates the amount of impervious surface to the intensity of development.

(24) "Single family residential property" refers to a building containing only one (1) dwelling unit located upon one (1) zone lot, the term is general, including such specialized forms as one-family detached, one-family semi-detached, and one-family attached. For regulatory purposes, the term is not to be construed to include travel trailers, self-propelled motor homes, tents, or other forms of portable or temporary housing.

(25) "Stormwater" or "storm water" refers to stormwater runoff, snow melt runoff, surface runoff, infiltration, and drainage.

(26) "Stormwater management" means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.

(27) "Stormwater management coordinator" refers to the city of portland, stormwater management coordinator who develops, coordinates, and maintains the city's stormwater program. The stormwater management coordinator shall report directly to the city engineer.

(28) "Stormwater management fund" or "fund" means the fund created by this ordinance to operate, maintain, and improve the city's stormwater management system.

(29) "Stormwater system" or "system" means all stormwater facilities, stormwater drainage systems and flood protection systems of the city and all improvements thereto which operate to, among other things, control discharges and flows necessitated by rainfall events; and incorporate methods to collect,

convey, store, absorb, inhibit, treat, prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

(30) "Stormwater user fee" or "fee" refers to the utility service fee established under this ordinance and levied on owners or users of parcels or pieces of developed property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the City of Portland. The stormwater user fee is in addition to other fees that the City of Portland has the right to charge under any other rule or regulation of the City of Portland.

(31) "Stormwater utility" means a management structure that is responsible solely and specifically for the stormwater management program and system.

(32) "Surface water" means a water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, ponds, wetlands, marshes and sinkholes.

(33) "Undeveloped property" shall mean property that is in its natural state and has not been developed; does not have impervious surfaces on it.

(34) "User" refers to the owner or customer of record of property subject to the stormwater user fee imposed by this ordinance.

(35) "Vacant/undeveloped property" means property on which there is no structure for which a certificate of occupancy has been issued. (as added by Ord. #16-59, Nov. 2016)

18-604. Funding of stormwater utility. Funding for the stormwater utility's activities may include, but not be limited to, the following:

- (1) Stormwater user's fees.
- (2) Civil penalties and damage assessments imposed for or arising from the violation of the city's stormwater management ordinance.
- (3) Stormwater permit and inspection fees.
- (4) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (Tennessee Code Annotated, title 9, chapter 21).

To the extent that the stormwater drainage fees collected are insufficient to construct needed stormwater drainage facilities, the cost of the same may be paid from such city funds as may be determined by the board of mayor and alderman. (as added by Ord. #16-59, Nov. 2016)

18-605. Stormwater utility management fund. All revenues generated by or on behalf of the stormwater utility shall be deposited in a stormwater utility management fund and used exclusively to fulfill the purposes of the stormwater utility. (as added by Ord. #16-59, Nov. 2016)

18-606. Operating budget. The board of mayor and alderman shall adopt, based on a recommendation from the city engineer, stormwater management coordinator, and city recorder, an operating budget for the stormwater utility management fund each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance, extension and replacement and debt service. (as added by Ord. #16-59, Nov. 2016)

18-607. Stormwater user fee. There shall be imposed on each and every developed property in the City of Portland, a stormwater user fee which will be charged monthly, which shall be set from time to time by ordinance in the fee schedule as adopted by the City of Portland, except exempt property, and in the manner and amount prescribed by this ordinance. Prior to establishing or amending the stormwater user fee, the City of Portland shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the City of Portland at least ten (10) days in advance of a council meeting which shall consider the adoption of the fee or its amendment. (as added by Ord. #16-59, Nov. 2016)

18-608. Equivalent Residential Unit (ERU). (1) Establishment. The ERU was established for the purpose of calculating the stormwater user fee.

(2) Definition. See definition section.

(3) Setting the ERU. The ERU shall be set by the board of mayor and alderman via ordinance.

(4) Source of ERU. The board of mayor and alderman shall have the discretion to determine the source of the data from which the ERU is established, taking into consideration the general acceptance and use of such source on the part of other stormwater systems, and the reliability and general accuracy of the source including but not limited to property tax assessor's rolls, site examination, mapping information, aerial photographs, and other reliable information.

(5) Evaluation of ERU. The ERU shall be evaluated by the stormwater utility as necessary. (as added by Ord. #16-59, Nov. 2016)

18-609. Property classification for stormwater user fees.

(1) Property classifications. For purposes of determining the stormwater user fee, all properties in the City of Portland are classified into one (1) of the following categories:

- (a) Developed property;
- (b) Single family dwelling residential property;
- (c) Commercial/Industrial Property/Institutional (CII);
- (d) Park land/cemetery;
- (e) Vacant property;
- (f) Exempt property; and

(g) Undeveloped property.

(2) Single family dwelling residential fee. The board of mayor and alderman finds that the intensity of development of most parcels of developed property in the City of Portland classified as single family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the impervious surface on each such parcel. Therefore, all single family residential properties in the City of Portland shall be charged the rate outlined in Appendix A, regardless of the size of the parcel or the impervious surface area of the improvements, except as provided herein.

(3) Developed property, commercial, industrial, institutional, park land, and cemetery fee. The fee for the properties listed above (i.e., non-single-family residential property) in the City of Portland shall be charged the rate outlined in Appendix A under specific section.

(4) Vacant/undeveloped property fee. The fee for vacant/undeveloped property in the City of Portland shall be charged the rate outlined in Appendix A.

(5) Exempt property. There shall be no stormwater user fee for exempt property or as otherwise provided by state law.

(a) Property outside of the incorporated city limits.

(b) Undeveloped property that is not altered from its natural state. (c) Agricultural property upon which the owner or operator conducts activities that satisfy the requirements of a qualified farmer or nurseryman under Tennessee Code Annotated, § 67-6-207(e). The owner or operator shall bear the burden of establishing such exempt status.

(d) Cemeteries.

(e) Railroad rights-of-way. (as added by Ord. #16-59, Nov. 2016)

18-610. Base rate. The board of mayor and alderman shall, by ordinance in the fee schedule as adopted by the Board of mayor and alderman, establish the base rate for the ERU. The base rate shall be calculated to insure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater system in the City of Portland. The base rates are set forth in City of Portland Ordinance No. 16-46.¹ (as added by Ord. #16-59, Nov. 2016)

18-611. Property owners to pay charges. (1) The owner of each property/tax lot shall be obligated to pay the stormwater user fee as provided in this chapter, provided however, that if no water or sewer service is being provided by the City of Portland or local water utility district at the property to

¹Ordinance #16-46 regarding base rates, and any amendments thereto, may be found in the recorder's office.

the owner as a customer of record and such service is being provided to a customer of record other than the owner, it shall be presumed that the owner and such customer of record have agreed that the customer of record shall be obligated to pay such stormwater user fee.

(2) If the customer of record other than the owner refuses to pay the stormwater user fee, the owner of each property shall be obligated to pay the stormwater user fee as defined in this chapter.

(3) Non-residential multi-tenant properties shall be billed according to the placement of utility meters, i.e. if the property contains individual unit meters, then billing for the stormwater user fee shall be billed to individual units based on the unit's pro rata percentage of impervious surface. If the multi-tenant property contains a master meter, then the stormwater user fee for the entire impervious surface area shall be billed to the customer of record for such master meter.

(4) Each unit of a multi-tenant residential building shall be billed a minimum charge, the same being the single family residential fee, to the customer of record for the unit. If an individual unit is not individually billed for any water or sewer service, i.e. water and sewer utilities are billed to a master meter, then the customer of record for the master meter shall be billed as commercial property based on the total impervious surface area. Billing rates are set forth in Appendix A. (as added by Ord. #16-59, Nov. 2016)

18-612. Billing procedures and penalties for late payment.

(1) Rate and collection schedule. A stormwater user fee shall be set at a rate as set forth in the stormwater user fee schedule¹ as adopted by the board of mayor and alderman by ordinance, collected at a location, and collected on a schedule, established in accordance with this ordinance. The stormwater user fee shall be billed and collected monthly with the monthly utility services bill for those properties within the incorporated limits. The stormwater user fee for those properties utilizing city utilities is part of a consolidated statement for utility customers, which is generally paid by a single payment to the property owner's water utility or to the City of Portland Stormwater Department, unless other means of billing is established at any time by the city.

(2) The stormwater user fee for those properties utilizing utilities not provided by the City of Portland shall be billed and collected by the City of Portland directly to the utility provider or as directed by the city recorder. All bills for the stormwater user fee shall become due and payable in accordance with the rules and regulations of the applicable utilities department pertaining to the collection of the stormwater user fees.

¹The stormwater user fee schedule, and any amendments thereto, may be found in the recorder's office.

(3) Delinquent bills. The stormwater user fee shall be considered delinquent if not received by the City of Portland or applicable billing water utility by the due date stated within the utility statement, and subsequent late fees shall be imposed as set forth in the fee schedule as adopted by the board of mayor and alderman as established by an ordinance.

(4) Penalties for late payment; failure to pay. Stormwater user fees shall be subject to a late fee established by ordinance as indicated in the stormwater user fee schedule. The City of Portland shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user fees. The city or other collecting utility provider may discontinue utility service to any stormwater user who fails or refuses to pay the stormwater user fees and may refuse to accept payment of the utility bill from any user without receiving at the same time, payment of the stormwater user fee charges owned by such user and further may refuse to re-establish service until all such fees have been paid in full.

(5) Mandatory statement. Pursuant to Tennessee Code Annotated, § 68-221-1112, each bill that shall contain stormwater user fees shall contain the following statement in bold: "THE STORMWATER FEE HAS BEEN MANDATED BY CONGRESS PURSUANT TO TENNESSEE CODE ANNOTATED, § 68-221-1112." The City of Portland Board of Mayor and Alderman hereby finds and declares that the stormwater user fee is a utility service fee and not a tax. (as added by Ord. #16-59, Nov. 2016)

18-613. Appeal of fees. (1) Any person who disagrees with the calculation of the stormwater user fee, as provided in this ordinance, may appeal such fee determination to the City of Portland's Stormwater Appeal Board within ten (10) days after the date the payment is due. Any appeal not filed within the time permitted by this section shall be deemed waived.

(2) All appeals shall be filed in writing addressed to the stormwater management coordinator for the City of Portland and shall state the grounds for the appeal and the amount of the stormwater user fee the appellant asserts is appropriate. The appeal shall provide such information and documentation supporting the basis of the appeal. The appeal shall be accompanied by an appeal review fee as set forth in the City of Portland's Utility Credit Manual.

(3) Any matter, decision, conclusion, pronouncement, or evaluation made by the city cannot be considered for The Portland Stormwater Appeal Board review until the matter has first been submitted to the City of Portland Engineering Department for evaluation. Only after the city engineer and stormwater management coordinator has had an opportunity to fully consider the matter, and denied the appeal, or a timely review has not taken place, can appellate review be considered with the Portland Stormwater Appeal Board.

(4) The Portland Stormwater Appeal Board shall then review the appeal and determine whether the challenged determination is consistent with the provisions of this chapter. Appeals related to the stormwater user fee shall

be decided based on substantiated evidence with a sound engineering and factual basis. All appeal determinations shall be applied utilizing a strict interpretation of the stormwater utility ordinance. At any hearing related to an appeal or credit determination, the city shall be allowed to present evidence, findings, and recommendations; appealing parties and applicants shall be given an opportunity to present evidence, findings, and recommendations.

(5) The Portland Stormwater Appeal Board may request additional information from the appealing party; the committee may defer the determination of an appeal one (1) time to the next regularly scheduled meeting of the Portland Stormwater Appeal Board. Each appeal shall be placed on the Portland Stormwater Appeal Board agenda for the next scheduled meeting, which meeting is at least twenty (20) days after the stormwater management coordinator receives the written appeal.

(6) The stormwater management coordinator shall notify the appellant customer of the date of the appeal review hearing in writing; such written notice shall be given at least ten (10) days prior to the hearing by regular mail at the address provided in the written appeal document. The decision of the Portland Stormwater Appeal Board shall be final and conclusive with no further administrative review.

(7) If a refund is due, the city engineer shall authorize the refund which will be provided as the stormwater management coordinator deems necessary. (as added by Ord. #16-59, Nov. 2016)

18-614. Stormwater user fee credit and adjustment policy. All applications for stormwater user fee credits and adjustments shall be submitted as outlined in the City of Portland's Utility Credit Manual. Stormwater user fee credits and adjustments may be available for developed properties that provide an up-to-date certified engineered plan, stamped by a current state-approved engineer licensed to practice in Tennessee, documenting reduced stormwater runoff and shows the stormwater on the property is not coming in contact with the city's stormwater system. A detailed hydrologic report is required. (as added by Ord. #16-59, Nov. 2016)

TITLE 19

ELECTRICITY AND GAS

CHAPTER

1. ELECTRICITY.
2. NATURAL GAS.

CHAPTER 1

ELECTRICITY¹

SECTION

19-101. To be furnished under franchise.

19-101. To be furnished under franchise. Electricity shall be furnished for the city and its inhabitants under such franchise as the city council shall grant.² The rights, powers, duties, and obligations of the city, 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. (1980 Code, § 13-301)

¹Municipal code reference
Electrical code: title 12.

²The agreements are of record in the office of the city recorder.

CHAPTER 2

NATURAL GAS¹

SECTION

- 19-201. Application and scope.
- 19-202. Definitions.
- 19-203. Obtaining service.
- 19-204. Application and contract for service.
- 19-205. Service charges for temporary service.
- 19-206. Connection charges.
- 19-207. Gas main extensions.
- 19-208. Gas service line installation policy.
- 19-209. Variances from and effect of preceding section as to extensions.
- 19-210. Meters.
- 19-211. Meter tests.
- 19-212. Multiple services through a single meter.
- 19-213. Billing.
- 19-214. Discontinuance or refusal of service.
- 19-215. Re-connection charges.
- 19-216. Termination of service by customer.
- 19-217. Access to customers' premises.
- 19-218. Inspections.
- 19-219. Customer's responsibility for system's property.
- 19-220. Customer's responsibility for violations.
- 19-221. Supply and resale of gas.
- 19-222. Unauthorized use of or interference with gas supply.
- 19-223. Damages to property due to gas pressure.
- 19-224. Liability for cutoff failures.
- 19-225. Restricted use of gas.
- 19-226. Interruption of service.
- 19-227. Schedule of rates.
- 19-228. Applicability of chapter.

19-201. Application and scope. The provisions of this chapter are a part of all contracts for receiving gas service from the city and shall apply whether the service is based upon contract, agreement, signed application, or otherwise. (1980 Code, § 13-401, as amended by Ord. #05-45, Dec. 2006, as replaced by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

¹Municipal code reference
Fuel gas code: title 12.

19-202. Definitions. (1) "Customer" means any person, firm, or corporation who receives gas service from the city under either an express or implied contract.

(2) "Household" means any two (2) or more persons living together as a family group.

(3) "Service line" shall consist of the pipe line extending from any gas main of the city to private property. The service line shall be construed to include the pipe line extending from the city's gas main to and including the meter.

(4) "Discount date" shall mean the date ten (10) days after the date of a bill, except when some other date is provided by contract. The discount date is the last date upon which gas bills can be paid at net rates.

(5) "Dwelling" means any single structure, with auxiliary buildings, occupied by one (1) or more persons or households for residential purposes.

(6) "Premises" means any structure or group of structures operated as a single business or enterprise, provided, however, the term "premises" shall not include more than one (1) dwelling. (1980 Code, § 13-402, as replaced by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-203. Obtaining service. A formal application for either original or additional service must be made and approved by the city before connection or meter installation orders will be issued and work performed. (1980 Code, § 13-403, as replaced by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-204. Application and contract for service. Each prospective customer desiring gas service will be required to sign a standard form of contract before service is supplied. If, for any reason, a customer, after signing a contract for service, does not take such service by reason of not occupying the premises or otherwise, he shall reimburse the city for the expense incurred by reason of its endeavor to furnish said service. The receipt of a prospective customer's application for service, regardless of whether or not accompanied by a deposit, shall not obligate the city to render the service applied for. If the service applied for cannot be supplied in accordance with the provisions of this chapter and general practice, the liabilities of the city to the applicant shall be limited to the return of any deposit made by such applicant. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-205. 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 gas service. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-206. Connection charges. 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 municipality. Before a gas line will be laid by the city, the applicant shall make a deposit equal to the estimated cost of the installation. This deposit shall be used to pay the cost of laying such new service line and appurtenant equipment. If such cost exceeds the amount of the deposit, the applicant shall pay to the city the amount of such excess cost when billed therefor. 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 such portion of the service line shall belong to the city. The remaining portion of the service line beyond the meter) shall belong to and be the responsibility of the customer. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-207. Gas main extensions. Persons desiring gas main extension must pay all the cost of making such extensions.

(1) Each prospective customer desiring gas service from the city must make application for such service and must comply with all pertinent ordinances and rules and regulations established for the operation of the gas department. Fees for gas service line and other related fees shall be a set by ordinance. Service shall be provided for any customer within the city limits, so long as access to a gas main economically feasible. Main extensions outside the city limits shall depend on the economic feasibility of extending the mains as determined by the director of utilities and the availability of funds. Any prospective customer so refused has the right to ask the city council to reconsider and rule on the application.

(2) Natural gas service shall be made available to all lots within new subdivisions by approval from the City of Portland. A developer's agreement shall be executed by the city and owner outlining the cost sharing options below:

(a) Developer purchases gas taps for fifty percent (50%) of the total lot count and installs a natural gas water heater and natural gas HVAC unit per tap:

(i) City pays one hundred percent (100%) of the construction cost.

(ii) Developer pays zero percent (0%) of the construction cost.

(b) Developer purchases gas taps for twenty five to fifty percent (25%-50%) of the total lot count and installs a natural gas water heater and natural gas HVAC unit per tap:

(i) City pays fifty percent (50%) of the construction cost.

(ii) Developer pays fifty percent (50%) of the construction cost

(c) Developer purchases gas taps for less than twenty-five percent (25%) of the total lot count and installs a natural gas water heater and natural gas HVAC unit per tap:

(i) City pays zero percent (0%) of the construction cost.

(ii) Developer pays one hundred percent (100%) of the construction cost.

(3) The developer shall provide the city, prior to the city commencing design, a letter of credit for the construction cost of the proposed improvements as estimated by the city. The surety shall be held for up to five (5) years and may be called for failure to comply with the provisions of the agreement in whole or in part according to the terms of the surety. Upon completion of the development, but no more than five (5) years, the city shall release the bond as per the percentage complete of the development as outlined above. A five percent (5%) addition to the surety shall be added each year for up to five (5) years to cover construction cost. (as added by Ord. #20-49, Oct. 2020 **Ch12_12-06-21**)

19-208. Gas service line installation policy. The City of Portland Natural Gas Department (a municipally-owned and operated system, referred to as OPERATOR) will install the approximately sized service line, where the main is available, from the main to the building wall of the residence, commercial or industrial establishment, set the meter, perform the necessary tests for required safety measures, inspect customer piping's, and turn the gas on for use by the customer, after the customer has paid applicable fees and meter deposits as are current. Approval will be subject to the compliance with the Standard Building Code as required by title 12, chapter 4, of the gas code of the City of Portland, §§ 12-401-12-404. The customer will also have been cleared for installation from the following:

The Portland Gas System reserves the right to refuse installation of more than one thousand five hundred feet (1,500') of service line to any customer, basing its decision on one (1) or more of the following factors:

(1) Excessive length of service line over lands that may be tilled for crops, or that the customer plans to till, or may plan to clear of timber, and/or any similar work or procedure which would likely damage a service line;

(2) Roughness of terrain, such as rocky conditions, creeks or branches of water to cross, which could likely pose more damage to a service line, or create the possibility of wash-outs of the line, or of rock working its way into the pipe;

(3) The angle of installation which a customer may request across vacant property which could, at some point in time, be subdivided for development and make relocation necessary.

These decisions will be based on the expertise and knowledge of the director of utilities and gas department supervisor/crew leader, and will be based on fact, and made as consistently to the individual situation as is reasonably possible, without bias or partiality, and with the safety of the customers and the OPERATOR'S liability and responsibility foremost in consideration.

In such cases when decision is made to go beyond the one thousand five hundred feet (1,500') limit, documentation will be kept with the tap sheet (work

order) to verify the reasoning for the allowance. Said documentation will bear the signature of the decision maker. (Examples may be, but not limited to, a consumption factor which would render this tap installation more profitable to the system than the average service line connection, such as commercial versus residential, and/or no other heat source available to a customer experiencing extreme hardship.) Costs incurred for installation beyond one thousand five hundred feet (1,500') will be passed on to the customer.

Regulations governing the transportation and disposition of natural gas, the responsibilities and liabilities of the OPERATOR, and factors determining the feasibility for the municipally-owned system, make it necessary that this policy be adopted by the City of Portland, for compliance by its gas system, the public welfare requiring it.

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 gas mains shall become the property of the city. The persons paying the cost of constructing such mains shall execute any written instruments requested by the city to provide evidence of the city's title to such mains. In consideration of such mains being transferred to it, the city shall incorporate said mains as an integral part of the city gas systems and shall furnish gas 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. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-209. Variances from and effect of preceding section as to extensions. Whenever the city council is of the opinion that it is to the best interest of the city and its inhabitants to construct a gas main extension without requiring strict compliance with the preceding section, such extension may be constructed upon such terms and conditions as shall be approved by the city council. The authority to make gas main extensions under the preceding section is permissive only and nothing contained therein shall be construed as requiring the city to make such extensions or to furnish service to any person or persons. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-210. Meters. (1) All meters shall be installed, tested, repaired, and removed only by the city.

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

(3) Tampering with utility equipment or stealing service will be grounds for discontinuance of utility service. Theft of service shall include, but not be limited to, the following:

- (a) Opening valves at the curb or meter that have been turned off by utility personnel;
- (b) Breaking, picking or damaging cutoff locks;
- (c) By-passing meters in any way;
- (d) Removing, disabling or adjusting meter registers, or transmitters;
- (e) Connecting to or intentionally damaging gas lines, valves or other appurtenances for the purpose of stealing or damaging utility equipment;
- (f) Moving the meter or extending service without permission of the utility;
- (g) Any other intentional act of defacement, destruction or vandalism to utility property or act that affects utility property;
- (h) Any intentional blockage or obstruction of utility equipment.

(4) A "notice of violation" may be mailed or otherwise delivered at the discretion of the director of utilities if:

- (a) Evidence suggests the possibility of theft of utility service at the customer's premises;
- (b) The violation does not constitute an immediate threat of safety or equipment integrity to the system. The customer will be ordered to immediately cease any unlawful practice.

(5) No "notice of violation" will be mailed or delivered and customer service is subject to immediate cutoff in any of the following situations:

In the opinion of the director of utilities, theft of service is definitely evident on the customer's premises;

(6) In addition, the customer will be subject to a five hundred-dollar (\$500.00) violation payment as well as service call charges, labor and replacement parts as detailed by the utility.

(7) If the city determines theft of service has occurred, it reserves the right to adjust the customer's current bill and the bills for the past twelve (12) months' usage. If the approximate amount of service that was stolen cannot be reasonably determined, the customer's usage will be set at two to four (2-4) times the minimum bill, as set on a case by case basis by the governing board of the utility according to the facts of each case.

(8) Service will not be restored until all payments for the following are received by the utility:

- (a) Adjusted payment for utility service.
- (b) Violation payment (see subsection (6) above).
- (c) All service call charges.
- (d) Labor.
- (e) Replacement parts.

(f) Reinstatement of service charge.

(9) Service will be reinstated only during the hours listed and at the corresponding fees as approved by Ordinance #19-75, August 19, 2019, unless otherwise directed by the director of utilities.

(10) Discontinuance of service by the utility shall not release the customer from liability for payment for service already received or from liability from payments that thereafter become due under the minimum bill provisions or other provisions of the customer's contract. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-211. Meter tests. The city will, at its own expense, make routine tests of meters when it considers such tests desirable. The city will also change meters and make tests or inspections of its meters at the request of the customer at no cost to the customer. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-212. Multiple services through a single meter. No customer shall supply gas to more than one (1) dwelling or premises from a single service line and meter without first obtaining the written permission of the city.

Where the city allows more than one (1) dwelling or premises to be served through a single service line and meter, the amount of gas used by all the dwellings and premises served through a single service line and meter shall be allocated to each separate dwelling or premises served. The gas charges for each such dwelling or premises thus served shall be computed just as if each such dwelling or premises had received through a separately metered service the amount of gas so allocated to it, such computation to be made at the city's applicable gas rates schedule, including the provisions as to minimum bills. The separate charges for each dwelling or premises served through a single service line and meter shall then be added together, and the sum thereof shall be billed to the customer in whose name the service is supplied. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-213. Billing. Bills for residential gas services will be rendered monthly. Bills for commercial and industrial service may be rendered weekly, semimonthly, or monthly, at the option of the city.

Both charges shall be collected as a unit; no city employee shall accept payment of gas service charges from any customer without receiving at the same time payment of all service charges owed by such customer. Gas service may be discontinued for nonpayment of the combined bill.

Gas bills must be paid on or before the due date shown thereon; otherwise, a penalty of ten percent (10%) for each delinquent month shall be charged on each such bill. Failure to receive a bill will not release a customer from payment obligation, nor extend the discount date.

In the event a bill is not paid on or before five (5) days after the due date, a written notice shall be mailed to the customer. The notice shall advise the customer that his service may be discontinued without further notice if the bill is not paid in full on or before ten (10) days after the due date. The city shall not be liable for any damages resulting from discontinuing service under the provisions of this section, even though payment of the bill is made at any time on the day that service is actually discontinued.

Should the final date of payment of bill at the net rate fall on Sunday or a holiday, the next business day following the final date will be the last day to obtain the net rate. A net remittance received by mail after the time limit for payment at the net rate will be accepted by the city if the envelope is date-stamped on or before the final date for payment of the net amount.

If a meter fails to register properly, or if a meter is removed to be tested or repaired, or if gas is received other than through a meter, the city reserves the right to render an estimated bill based on the best information available. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-214. Discontinuance or refusal of service. The municipality shall have the right to discontinue gas service or to refuse to connect service for a violation of, or a failure to comply with, any of the following:

- (1) These rules and regulations.
- (2) The customer's application for service.
- (3) The customer's contract for service.

Such right to discontinue service shall apply to all service received through a single connection or service, even if more than one (1) customer or tenant is furnished services therefrom, and even if the delinquency or violation is limited to only one (1) such customer or tenant.

Discontinuance of service by the city for any cause stated in these rules and regulations shall not release the customer from liability for service already received or from liability for payments that thereafter become due under other provisions of the customer's contract. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-215. Re-connection charges. Whenever gas service has been discontinued as provided for above, a re-connection charge shall be collected by the city before service is restored. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-216. Termination of service by customer. Customers who have fulfilled their contract terms and wish to discontinue service must give at least three (3) days written notice to that effect unless the contract specifies otherwise. Notice to discontinue service prior to the expiration of a contract term will not relieve the customer from any minimum or guaranteed payment under such contract or applicable rate schedule.

When service is being furnished to an occupant of premises under a contract not in the occupant's name, the city reserves the right to impose the following conditions on the right of the customer to discontinue service under such a contract:

(1) Written notice of the customer's desire for such service to be discontinued may be required; and the city shall have the right to continue such service for a period of not to exceed ten (10) days after receipt of such written notice, during which time the customer shall be responsible for all charges for such service. If the city should continue service after such ten (10) day period subsequent to the receipt of the customer's written notice to discontinue service, the customer shall not be responsible for charges for any service furnished after the expiration of the ten (10) day period.

(2) During the ten (10) day period, or thereafter, the occupant of premises to which service has been ordered discontinued by a customer other than such occupant, may be allowed by the city to enter into a contract for service in the occupant's own name upon the occupant's complying with these rules and regulations with respect to a new application for service. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-217. 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. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-218. Inspections. The city shall have the right, but shall not be obligated, to inspect any installation or plumbing system before gas service is furnished or at any later time. The city reserves the right to refuse service or to discontinue service to any premises not meeting standards fixed by city ordinances regulating building and plumbing, or not in accordance 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. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-219. Customer's responsibility for system's property. 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 same, the cost of

necessary repairs or replacements shall be paid by the customer. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-220. Customer's responsibility for violations. Where the city furnishes gas service to a customer, such customer shall be responsible for all violations of these rules and regulations which occur on the premises so served. Personal participation by the customer in any such violations shall not be necessary to impose such personal responsibility on him. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-221. Supply and resale of gas. All gas shall be supplied within the city exclusively by the city and no customer shall, directly or indirectly, sell, sublet, assign, or otherwise dispose of the gas or any part thereof, except with written permission from the city. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-222. Unauthorized use of or interference with gas supply. No person shall turn on or turn off any of the city's gas valves, or remove locks without permission or authority from the city. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-223. Damages to property due to gas pressure. The city shall not be liable to any customer for damages caused to his gas plumbing or property by high pressure, low pressure, or fluctuations in pressure in the city's gas mains. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-224. Liability for cutoff failures. The city's liability shall be limited to the forfeiture of the right to charge a customer for gas that is not used but is received from a service line under any of the following circumstances:

(1) After receipt of at least ten (10) days' written notice to cut off gas service, the city has failed to cut off such service.

(2) The city has attempted to cut off a service but such service has not been completely cut off.

(3) The city has completely cut off a service, but subsequently, the cutoff develops a leak or is turned on again so that gas enters the customer's pipes from the city's main.

Except to the extent stated above, the city shall not be liable for any loss or damage resulting from cutoff failures. If a customer wishes to avoid possible damage for cutoff failures, the customer shall rely exclusively on privately owned cutoffs and not on the city's cutoff. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-225. Restricted use of gas. In times of emergencies or in times of gas shortage, the city reserves the right to restrict the purposes for which gas

may be used by a customer and the amount of gas which a customer may use. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-226. Interruption of service. The city will endeavor to furnish continuous gas service, but does not guarantee to the customer any fixed pressure or continuous service. The city shall not be liable for any damage for any interruption of service whatsoever.

In connection with the operation, maintenance, repair, and extension of the city gas systems, the gas supply may be shut off without notice when necessary or desirable and each customer must be prepared for such emergencies. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-227. Schedule of rates. All gas service shall be furnished under such rate schedules as the city may from time to time adopt by appropriate ordinance or resolution. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

19-228. Applicability of chapter. These rules and regulations shall apply to all customers receiving gas service from the City of Portland Gas Department. (as added by Ord. #20-49, Oct. 2020 *Ch12_12-06-21*)

TITLE 20
MISCELLANEOUS

CHAPTER

1. FAIR HOUSING REGULATIONS.
2. IMPACT FEES.
3. AIRPORT AUTHORITY.
4. CIVIL DEFENSE REGULATIONS.
5. CREATION OF THE DEPARTMENT OF PUBLIC SAFETY.
6. DELETED.
7. DELETED.
8. REGULATIONS FOR TELECOMMUNICATIONS TOWERS AND FACILITIES.
9. TITLE SIX (VI) POLICY AND COMPLAINT PROCEDURE.
10. RACIAL PROFILING POLICY.
11. SEXUALLY ORIENTED CRIMES POLICY.

CHAPTER 1

FAIR HOUSING REGULATIONS

SECTION

- 20-101. Fair housing adopted.
- 20-102. Definitions.
- 20-103. General purposes.
- 20-104. Prohibited acts.
- 20-105. Exceptions.
- 20-106. Applicability.
- 20-107. Access.
- 20-108. Findings of hearing board; nature of affirmative action.
- 20-109. Investigations, powers, records.
- 20-110. Conspiracy to violate unlawful.
- 20-111. Establishment of procedures for conciliation.
- 20-112. Enforcement and penalties.

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

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

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

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

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

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

(2) "Family" includes a single individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Reporting as to the manner of compliance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 2

IMPACT FEES

SECTION

- 20-201. Short title and applicability.
- 20-202. Intent.
- 20-203. Definitions.
- 20-204. Fee determination.
- 20-205. Exemptions.
- 20-206. Independent fee calculation.
- 20-207. Use of fees.
- 20-208. Refunds.
- 20-209. Credits.
- 20-210. Miscellaneous.
- 20-211. Appeals.
- 20-212. Violations.
- 20-213. Severability.

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

(2) Applicability. The provisions of this chapter shall apply to all of the territory within the corporate limits of the City of Portland. (1980 Code, § 1-1201, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

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

(2) It is not the intent of this chapter to collect any money from any impact-generating development in excess of the actual amount necessary to offset demands generated by that development for the type of facilities for which the fee was paid. (1980 Code, § 1-1202, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

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

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

(2) "Functional population" means a common unit of measure that represents the impact of a development on the city's fire, parks, and police facilities.

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

(4) "Impact fee study" means the impact fee study prepared for the City of Portland by TischlerBise and is dated December 2, 2019, or a subsequent similar report.

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

(6) "Commercial" is an establishment primarily selling merchandise, eating/drinking places, and entertainment uses. By way of example, "commercial/retail" includes shopping centers, supermarkets, pharmacies, restaurants, bars, nightclubs, automobile dealerships, and movie theaters.

(7) "Hotel" is a place of lodging that provides sleeping accommodations and may provide supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops.

(8) "Industrial" is an establishment primarily engaged in the production or transportation of goods. By way of example, "industrial" includes manufacturing plants, printers, material testing, trucking companies, utility substations, power generation facilities, and telecommunications buildings.

(9) "Institutional" is an establishment including public and quasi-public buildings providing educational, social assistance, or religious services. By way of example, "institutional" includes schools, universities, churches, daycare facilities, government buildings, and prisons.

(10) "Office and other service" is an establishment providing management, administrative, professional, or business services; personal and health care services. By way of example, "office and other services" includes banks, business offices, assisted living facilities, nursing homes, hospitals, medical offices, and veterinarian clinics.

(11) "Warehouse" is an establishment that are primarily engaged in the storage, wholesale, and distribution of manufactured products, supplies, and/or equipment, excluding bulk storage of materials that are flammable or explosive or that present hazards or conditions commonly recognized as offensive. A "warehouse" less than seventy thousand (70,000) square feet shall be classified as industrial.

(12) "Service units" means common units of measure of the demand placed on the infrastructure and facilities of the city, including fire, parks, and police functional population.

(13) "Square feet" means gross floor area, defined as the total area of all floors of a primary building and all associated accessory buildings, measured

from the external surface of the outside walls, but excluding covered walkways, open roofed-over areas, porches and similar spaces, exterior terraces or steps, chimneys, roof overhangs, and similar features. Excluded areas include basements or attic spaces of less than seven feet in height and vehicular parking and maneuvering areas. (1980 Code, § 1-1203 as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

20-204. Fee determination. (1) Maximum allowable fee. The City of Portland has conducted an impact fee study to determine the needs for the city as it develops over the next ten (10) years. Said study has determined that for the projected development to cover an equitable share of services offered by the parks, police, and fire departments. The City of Portland will set the maximum allowable fee, that shall not be exceed without completing and adopting a new impact fee study. The maximum allowable fee rates are as follows:

Maximum Allowable Impact Fee

<u>Residential Development</u>	<u>Fees per unit</u>			
Development Type	Fire	Parks	Police	Total
Single Family	\$1,444	\$1,194	\$631	\$3,269
Multi-Family	\$864	\$715	\$377	\$1,956
<u>Nonresidential Development</u>	<u>Fees per 1,000 Square Feet</u>			
Development Type	Fire	Parks	Police	Total
Industrial	\$657	\$ -	\$192	\$849
Warehouse	\$478	\$ -	\$165	\$643
Commercial	\$967	\$ -	\$1,218	\$2,185
Office & Other Services	\$1,225	\$ -	\$476	\$1,701
Institutional	\$384	\$ -	\$630	\$1,014
Hotel (per room)	\$241	\$ -	\$409	\$650

(2) Fee schedule. The City of Portland realize that the maximum allowable fee will overburden development if fully implemented as called for in the study. The city has decided to adopt the enforceable fee on a percentage

basis. The city shall adopt impact fees at thirty-eight percent (38%) of the maximum allowable fee. The percentage basis may be changed by two (2) readings of an ordinance setting the new fee. The impact fee schedule shall be set as follows:

Any person who applies for a building permit or a water or wastewater connection for an impact-generating development, except those exempted or preparing an independent fee calculation study, shall pay a fire, parks, and police impact fee in accordance with the following fee schedule prior to the issuance of a building permit. If any credit is due pursuant to § 20-209, the amount of such credit shall be deducted from the amount of the fee to be paid.

Percentage Based Adoption 38%

Residential
Development

Fees per unit

Development Type	Fire	Parks	Police	Total
Single Family	\$549	\$454	\$240	\$1,243
Multi-Family	\$328	\$272	\$143	\$743

Nonresidential
Development

Fees per 1,000 Square Feet

Development Type	Fire	Parks	Police	Total
Industrial	\$250	\$ -	\$73	\$323
Warehouse	\$182	\$ -	\$63	\$245
Commercial	\$367	\$ -	\$463	\$830
Office & Other Services	\$466	\$ -	\$181	\$647
Institutional	\$146	\$ -	\$239	\$385
Hotel (per room)	\$92	\$ -	\$155	\$247

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

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

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

(6) Net impact of expansions. An impact fee shall be collected on commercial, institutional, industrial, or multi-family structures that expand in building square footage or add additional dwelling units after the passage of this chapter. The impact fee imposed shall be based on the expansion, not the entire structure. For example, a one hundred thousand (100,000) square feet industrial building adds twenty-five thousand (25,000) square feet, the impact fee shall be based on the industrial fee for twenty-five thousand (25,000) square feet, or a four (4) unit multi-family building adds two (2) units, the fee shall be paid for two (2) units.

(7) No refund for change of use. In the event that the proposed change of land use type, redevelopment, or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there shall be no refund of impact fees previously paid. (1980 Code, § 1-1204, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

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

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

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

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

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

(5) No waivers: payment of fees by city. Impact fees shall not be waived. In order to promote the economic development of the city or the public health, safety, and general welfare of its residents, the city council may agree

to pay some or all of the impact fees imposed on a proposed development or redevelopment from other funds of the city that are not restricted to other uses. Any such decision to pay impact fees on behalf of an applicant shall be at the discretion of the city council and shall be made pursuant to goals and objectives articulated by the city council. (1980 Code, § 1-1205, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

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

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

(2) Content of study. The independent fee calculation study shall be based on the same formulas, level of service standards and unit costs for facilities used in the impact fee study, and shall document the methodologies and assumptions used. The scope of the study shall be approved in advance by the impact fee administrator. (1980 Code, § 12-1206, as deleted by Ord. #04-26, Sept. 2004 and replaced by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

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

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

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

(c) Police impact fee account. The police impact fee account shall contain only those police impact fees collected pursuant to this

chapter plus any interest which may accrue from time to time on such amounts.

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

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

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

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

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

(d) As described § 20-209, Credits.

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

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

(b) Ongoing operational costs. (as added by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

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

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

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

(4) If an applicant has paid an impact fee required by this chapter and the building permit later expires without the possibility of further extension, and the development activity for which the impact fee was imposed did not occur and no impact has resulted, then the applicant who paid such fee shall be entitled to a refund of the fee paid, without interest. In order to be eligible to receive such refund, the applicant who paid such fee shall be required to submit

an application for such refund within thirty (30) days after the expiration of the permit or extension for which the fee was paid.

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

(6) The city shall be entitled to retain two percent (2%) of the amount of any refund to cover the administrative costs of processing refunds. (as added by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

20-209. Credits. Credit against the fire, parks, and police impact fees shall be provided for contributions toward the cost of fire, parks, and police facilities, respectively.

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

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

(3) Construction costs. In order to receive credit for fire, parks, and police improvements, the developer shall submit complete engineering drawings, specifications, and construction cost estimates to the impact fee administrator. The impact fee administrator shall determine the amount of credit due based on the information submitted, or where such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the impact fee administrator.

(4) Developers agreement. To qualify for an impact fee credit, the developer must enter into an agreement with the city as approved by the city

council. The developer agreement shall specify the amount of the credit, how the credit will be allocated within the development, and whether and how the developer will be reimbursed for any excess credit beyond the impact fees that would otherwise be due from the development.

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

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

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

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

(9) Must be claimed. The use of credits must be claimed at the time of application for a building permit. Any right to credit not so claimed shall be deemed to be waived. (as added by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

20-210. Miscellaneous. (1) Developer exactions. Nothing in this chapter shall restrict the city from requiring the construction of reasonable improvements required to serve the development project, whether or not such

improvement are of a type for which credits are available under § 20-209, Credits.

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

(3) Programming of funds. The city's capital improvements program¹ shall assign monies from each impact fee fund to specific projects and related expenses for eligible improvements of the type for which the fees in that fund were paid. Any monies, including any accrued interest, not assigned to specific projects within such capital improvements program and not expended pursuant to § 20-208, Refunds, or § 20-209, Credits, shall be retained in the same impact fee fund until the next fiscal year.

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

(5) Periodic updates. The impact fee schedules and the administrative procedures established by this chapter shall be reviewed at least once every three (3) years. (as added by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

20-211. Appeals. Any determination made by the impact fee administrator charged with the administration of any part of this chapter may be appealed to the city council within thirty (30) days from the date of the

¹The capital improvement plan and impact fee report shall be adopted as if a part of this chapter. The report shall be referenced for questions related to the collection, and enforcement, of the impact fee, including, but not limited to defining the types of development, and may be found in the recorder's office.

decision to be appealed. (as added by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

20-212. Violations. Furnishing false information on any matter relating to the administration of this chapter, including, without limitation, the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this chapter. (as added by Ord. #06-10, May 2006, as replaced by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

20-213. Severability. If a provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the division that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. (as added by Ord. #19-101, Jan. 2020 *Ch12_12-06-21*)

CHAPTER 3

AIRPORT AUTHORITY

SECTION

20-301. Creation.

20-302. Previous ordinance incorporated.

20-303. Commissioners.

20-304. Location of office.

20-305. Powers and authorities.

20-306. Previous actions and transactions ratified and approved.

20-307. Applications.

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

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

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

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

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

20-306. Previous actions and transactions ratified and approved.

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

20-307. Applications.

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

CHAPTER 4

CIVIL DEFENSE REGULATIONS

SECTION

- 20-401. Local agency established, etc.
- 20-402. Title of chapter.
- 20-403. Definitions.
- 20-404. Authority.
- 20-405. Duties and responsibilities of director.
- 20-406. Powers of director.
- 20-407. Enemy-caused emergencies.
- 20-408. Natural emergencies.
- 20-409. Emergency powers of city.
- 20-410. Liabilities.
- 20-411. Acceptance of services, equipment, etc., from federal or state governments, etc.
- 20-412. Absence, incapacity, etc. of mayor.
- 20-413. Interference with civil defense organization, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 5

CREATION OF THE DEPARTMENT OF PUBLIC SAFETY¹

SECTION

20-501. Department of public safety.

20-502. Functions of the department.

20-503. Establishment of the police division and the fire protection division.

20-504. [Deleted.]

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

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

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

¹Municipal code references

Fire department: title 7, chapter 3.

Police and arrest: title 6.

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

CHAPTER 6

DELETED

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

CHAPTER 7

DELETED

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

CHAPTER 8

REGULATIONS FOR TELECOMMUNICATIONS TOWERS AND FACILITIES

SECTION

- 20-801. Findings.
- 20-802. Purposes.
- 20-803. Definitions.
- 20-804. Special provisions for amateur radio stations.
- 20-805. Development of towers.
- 20-806. Application.
- 20-807. Setbacks.
- 20-808. Structural requirements.
- 20-809. Separation of towers.
- 20-810. Method of determining tower height.
- 20-811. Illumination.
- 20-812. Exterior finish.
- 20-813. Landscaping and screening.
- 20-814. Telecommunications facilities on antenna support structures.
- 20-815. Modification of towers.
- 20-816. Certifications and inspections.
- 20-817. Maintenance.
- 20-818. Criteria for site plan development modifications.
- 20-819. Abandonment.

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

- (1) The regulation of the environmental effects of radio frequency (RF) emissions from telecommunications facilities, and
- (2) The regulation of radio signal interference among users of the RF spectrum.

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

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

Specifically, the purposes of this chapter are:

- (1) To regulate the location of towers and telecommunications facilities in the city;
- (2) To protect residential areas and land uses from potential adverse impact of towers and telecommunications facilities;
- (3) To minimize adverse visual impact of towers and telecommunication facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
- (4) To promote and encourage shared use/collocation of towers and antenna support structures as a primary option rather than construction of additional single-use towers;
- (5) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new tower structures to support antenna and telecommunications facilities;
- (6) To avoid potential damage to property caused by towers and telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
- (7) To ensure that towers and telecommunications facilities are compatible with surrounding land uses. (as added by Ord. #02-31, Oct. 2002)

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

- (1) "Antenna support structure" means any building or structure other than a tower that can be used for location of telecommunications facilities.
- (2) "Applicant" means any person that applies for a tower development permit.
- (3) "Application" means the process by which the owner of a parcel of land within the city submits a request to develop, construct, build, modify, or erect a tower upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the city concerning such a request.
- (4) "Engineer" means any engineer licensed by the State of Tennessee.
- (5) "Owner" means any person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the city who desires to develop, or construct, build, modify, or erect a tower upon such parcel of land.
- (6) "Person" is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.
- (7) "Stealth" means any tower or telecommunications facility which is designed to enhance compatibility with adjacent land uses, including but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than like a tower such as light poles, power poles, and trees. The term stealth does not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commercial Districts

Central Business District

General Commercial Services

Interchange Service District

Industrial Districts

All Industrial Districts

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

Commercial Districts

Medical-professional Office

Neighborhood Service Districts

Office Professional Service

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20-818. Criteria for site plan development modifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 9

TITLE SIX (VI) POLICY AND COMPLAINT PROCEDURE

SECTION

20-901. Purpose.

20-902. Policy and procedure.

20-903. General provisions.

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

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

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

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

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

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

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

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

Step 1

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

1. Name, address and telephone number of the complainant.
2. The location and name of the entity delivering the service.
3. The nature of the incident that led the complainant to feel that discrimination was a factor.
4. The basis of the complaint (race, color or national origin).
5. Names, addresses and phone numbers of people who may have knowledge of this event.

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

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

Step 2

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

Step 3

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

1. The signed complaint.
2. The report from the manager where the alleged discrimination occurred.
3. The requested appeal from the complainant.
4. The coordinator's findings and recommendations.

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

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

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

(3) A complainant's right to a prompt and equitable resolution of the complaint will not be impaired by his/her pursuit of other remedies. Use of this complaint procedure is not a prerequisite to the pursuit of other remedies. The Title Six (VI) Coordinator maintains a list of Title Six (VI) Coordinators for state

agencies and can provide contact information upon request. (as added by Ord. #03-03, Feb. 2003)

CHAPTER 10

RACIAL PROFILING POLICY

SECTION

20-1001. Purpose.

20-1002. Policy.

20-1003. Definitions.

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

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

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

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

CHAPTER 11

SEXUALLY ORIENTED CRIMES POLICY

SECTION

20-1101. Purpose.

20-1102. Policy.

20-1103. Definitions.

20-1104. Procedures.

20-1105. Compliance.

20-1006. Application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Victim interviews:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



PERSONNEL MANUAL 2019

Ordinance Number 19-67
Adopted August 19, 2019

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SECTION 1 - INTRODUCTION TO HUMAN RESOURCES REGULATIONS

1.1. PURPOSE AND OBJECTIVES

The purpose of the following policies is to establish a high degree of understanding and cooperation among the City of Portland employees, which comes from the application of good procedures in personnel administration, and to provide uniform policies for all employees. **Each individual employee's primary purpose, regardless of occupational specialty, is to provide efficient and effective service for the citizens of Portland. The primary objective in providing efficient and effective service is good stewardship of the citizen investment whether through taxes or through fees paid to the City to provide those services.**

It is the policy of City of Portland to provide equal employment opportunity to all employees and applicants for employment. No person will be discriminated against in employment because of race, color, religion, gender or gender identity, age, national origin, disability, military status, genetic information, communication with an elected public official, exercise of free speech made as a citizen as a matter of public concern*, refusal to participate in or remain silent about illegal activities, exercise of a statutory constitutional right or any right under clear public policy, political affiliation, or any other basis protected by law. The City will provide reasonable accommodation to qualified individuals with a disability unless the accommodation would pose an undue hardship on the City.

Per Article V, Sections 4, 2(A), 2(B) of the City of Portland Charter, the Mayor shall:

(A) Employ, promote, discipline, suspend and discharge all employees and department heads, in accordance with personnel policies and procedures adopted by the City Council; and

(B) Nothing in [the] charter shall be construed as granting a property interest to employees or department heads in their continued employment.

The Mayor may perform the actions listed in Article V, Section 4, 2(A) or may authorize the execution of the action(s) by a department head under his/her direction.

It is the intent of the City for this personnel policy to comport itself with the City Charter and offer reasonable processes for making non-discriminatory, job-related employment decisions. It is not the intent of the personnel policy to grant property interest to employees. Tennessee is an Employment-At-Will state unless property interest is otherwise granted.

The City will not discriminate on the basis of a person's national origin or citizenship status with regard to employment actions. However, the City will not knowingly employ any person who is or becomes an unauthorized immigrant. In compliance with the Immigration Reform and Control Act, all employees hired after November 6, 1986, regardless of national origin, ancestry, or citizenship, must provide suitable documentation to verify identity and employability. The documentation must be provided within three days of employment or the individual will be subject to separation.

This policy applies to all terms, conditions, and privileges of employment and all policies of the City, including hiring, placement, training, employee development, promotion, transfer, compensation, benefits, grievances, educational assistance, layoffs, termination and retirement.

The City complies with Title VI of the Civil Rights Act of 1964. Title VI requires that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial

assistance. The City further complies with all federal and state laws protecting employees from discrimination.

The fundamental objectives to be achieved by these policies are to:

1. promote and increase effectiveness, efficiency and cooperation among employees of the City of Portland; and
2. provide fair and equal employment opportunity to all qualified individuals on the basis of demonstrated merit and fitness, as ascertained through fair and practical employment practices.

** Whether an employee's speech addresses a matter of public concern is determined by the assessment of the content, form, and context of a given statement. If the employee speaks pursuant to his/her official duties (performing a task he/she was paid to perform); and/or the speech was not a matter of public concern; and/or his/her free speech interests are not sufficient to outweigh the City's interest(s) in promoting efficiency in delivery of public services an employee may not expect free speech protection(s).*

1.2. PERSONNEL POLICY STATEMENT

This manual and all other City manuals do not bestow any property rights or interests to employees regarding employment or employment benefits. This manual is not part of a contract and no employee has any contractual right to the matters set forth herein. *The City reserves the right to change any and all such policies, practices, and procedures in whole or in part at any time, with or without prior notice to employees.*

It is the policy of the City of Portland to apply and foster a sound program of personnel management. The policies of the City are established to assist in fulfillment of the objectives below:

A. People

1. Deliver talent acquisition processes that maintain a workforce that meets the needs of the City by filling positions in accordance with job qualifications and requirements without discrimination as to membership in any protected class;
2. Establish sourcing, recruitment, selection assessment, onboarding and job offer contingency (drug screens, background checks, etc.) guidelines for the appointment, promotion, transfer, demotion, dismissal, and reassignment of personnel;
3. Establish, periodically review, and maintain job descriptions for every position; periodically conduct appropriate wage and salary surveys; and as applicable, propose wage and salary classification groups for board approval as the budget allows; and
4. Design, recommend, and implement compensation systems and benefit packages including pay practices; medical and ancillary insurance options; leave plans; and retirement strategies designed to attract and retain qualified employees.

B. Organization

1. Structure the Human Resources function to encompass the people, processes, systems and activities involved in the delivery of services that meet the personnel needs of the City;
2. Oversee any dealings between the City and its employees regarding the terms and conditions of employment including grievance and complaint resolution; disciplinary

- processes; employment rights; compliance programs and approaches to retaliation prevention; and
3. Management of technologies including social media and the policies and procedures governing their use in the workplace.

B. Workplace

1. Follow appropriate best practices for development of a diverse workforce;
2. Minimize the probability and impact of risks to the City through best practices ensuring employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to City employees; and
3. Ensure the knowledgeable application of relevant Federal, state and local laws and regulations relating to employment as well as the City Charter and Municipal Code, as applicable.

D. Records

1. Establish and maintain uniform personnel records;
2. Maintain confidentiality and privacy of employees to the extent allowed by the law subject to the Tennessee Public Records Act (T.C.A. 10-7-501 – 515).

1.3. COVERAGE

Unless otherwise stated, the content of this Personnel Manual applies to all employees of the City. All employees will receive a copy of, or electronic access to, the manual upon employment and a copy will be held by each department head for convenience.

The following personnel are not covered by this personnel policy manual, unless otherwise provided and as statutorily required, and are classified in the exempted class:

1. All elected officials;
2. Members of appointed boards and commissions;
3. Consultants, advisors, and legal counsel rendering temporary professional service;
4. The City Attorney;
5. Independent contractors;
6. Volunteer personnel;
7. Seasonal and temporary employees;
8. The City Judge;
9. The City Recorder*.

Some policies apply to all employees and officers of the City including those placed in the exempted class above, such as policies related to discrimination and/or harassment, and policies required by state or federal law.

**The City Recorder is subject to all terms and conditions of the Personnel Policy, except as provided in the City of Portland Charter (The City Recorder is appointed by election of the City Council by majority vote.)*

1.4. ADMINISTRATION OF POLICY

The Mayor is responsible for the proper operations of all City functions, enforcement and application of all laws, provisions of the City Charter, Municipal Code, and acts of the governing body including but not limited to personnel policies and procedures and pay classification plan.

The Mayor is also responsible for implementation of additional rules, policies and procedures, which may be necessary for the proper operation of the City or its various departments, provided that such rules and procedures are consistent with the personnel policies adopted by the City Council.

Department heads, managers and supervisors are responsible for the administration and enforcement of the personnel policies and procedures for employees in their respective departments.

1.5. CONTACTING ELECTED OFFICIALS

No employee shall be disciplined or discriminated against for communicating with an elected official. However, an employee may be disciplined for making untrue allegations concerning any job-related matter (T.C.A. 8-50-601--604).

1.6. POLITICAL ACTIVITY

City employees, whether on or off duty, whether in or out of uniform, and whether on or off City property, shall not, at any time or any place, act as a candidate for an elected City office. The City will not compensate employees for time when the employee is not performing work for the City. Any time off from work used by the employee for participation in political activities will be limited to earned days off, vacation days, or by any other arrangements worked out between the employee and the City.

In all other elections for public office, employees may enjoy the rights of any other citizen of the state of Tennessee to be a candidate for any local political office, the right to participate in political activities by supporting or opposing political parties, political candidates, and petitions to governmental entities. Any time off from work used by the employee for participation in political activities will be limited to earned days off, vacation days, or by other time off duty arrangements worked out between the employee and the City. Nothing in this section is intended to prohibit any City employee from privately expressing his/her political views or from casting his/her vote in all elections.

1.7. AMENDMENTS TO PERSONNEL MANUAL

Amendments or revisions to the personnel manual may be recommended by the Mayor or designee for adoption of the City Council by ordinance. Such amendments or revisions of the personnel manual shall become effective upon adoption by the City Council. Departments may adopt their own internal operating policies (*i.e.* SOP/SOG) specific to their operations; however, none of these policies shall be in conflict with these personnel regulations. Copies of departmental policies shall be provided to the Mayor's office as well as to the HR office and are subject to review prior to adoption.

1.8. SEVERABILITY

If any chapter, article or section of this personnel manual is found to be in conflict with Federal, State or City laws and regulations, or court decision, that section will continue in effect only to the extent permitted by such law or regulation or court decision. If any chapter, article or section of this personnel manual is or becomes invalid or unenforceable, such invalidity or unenforceable nature will not affect or impair any other chapter, article or section of this personnel manual.

SECTION 2 – JOB CLASSIFICATION AND PAY PLAN

2.1. PURPOSE AND USE OF JOB CLASSIFICATION

Job classification provides an inventory of positions in the City's service. The plan standardizes titles, each of which is indicative of a range of duties and responsibilities and has the same meaning throughout the City.

Job classification may consist of:

- a. groupings of classes of positions that are approximately equal in difficulty and responsibility, that call for the same general level of qualifications and that can be equitably compensated within the same range of pay under similar working conditions according to the market and budget availability;
- b. class (job) titles reasonably descriptive of the work of the class;
- c. written job descriptions for each position; and
- d. physical and mental standards for performance of the duties of the position.

Job classification may be used:

- a. as a guide in recruiting and examining candidates for employment;
- b. in determining potential lines of promotion and developing employee training programs;
- c. in determining salaries and wages to be paid for various types of work;
- d. in determining placement within pay ranges/step plans;
- e. in providing uniform job terminology understandable by all City officers and employees and by the general public.

2.2. ALLOCATION OF POSITIONS

Before a new position is established by a department, the department head shall submit in writing 1) a job description describing in detail the duties of such a position, and 2) justification of the need for an additional position.

The Mayor may then approve or deny such recommendation. If the Mayor agrees that the new position is necessary, then the recommendation is put before the City Council for approval or denial.

The Mayor may recommend to the City Council the establishment of a new position independently of a department. Any new position shall be subject to budgetary review and evaluation as to the appropriate salary range prior to submission to the City Council. This review and evaluation shall take into account the relative qualifications and responsibilities of the

position such that there is no wage disparity on the basis of sex for comparable skill, effort and responsibility and which are performed under similar working conditions. (TCA 50-2-202).

Positions may be reclassified by the Mayor within the classification and compensation plan based on City business needs.

2.3. PURPOSE AND USE OF THE PAY PLAN

The pay plan is intended to provide equitable compensation for classes of positions in consideration of ranges or steps of pay for other positions, general rates of pay for similar employment in similarly situated private establishments and other public agencies in the labor market area, cost of living data as determined using the Consumer Price Index or other valid and accepted data, the financial condition of the City, and other factors as appropriate as the budget allows.

The pay plan for the City of Portland shall consist of minimum, midpoint and maximum rates of pay for each existing pay grade/step, and/or compensation step levels within ranges, as applicable.

The Mayor, or designee, may from time to time make comparative studies of all factors affecting the level of wage/salary ranges and may make changes in the wage/salary ranges/steps as the adopted and appropriated budget allows.

Salary/wage ranges/steps and flexible initial paid leave bank amounts are intended to furnish degrees of administrative flexibility in recognizing individual differences among positions and to provide objectivity and consistency in compensation, including consideration for placement within ranges based on job-related experience, qualifications, education, and certification, among other valid job-related criteria.

The minimum rate established for a position and minimum paid leave bank amounts and accrual rates are the normal starting point except in cases where circumstances related to operational needs appear to warrant employment of an individual at a higher rate in the pay range, or in consideration for applicable and appropriate education and/or experience levels, or other valid job-related criteria.

SECTION 3 – COMPENSATION

3.1. FAIR LABOR STANDARDS ACT (FLSA)

Minimum Wage

In accordance with the Fair Labor Standards Act (FLSA), no employee shall be paid less than the Federal minimum wage unless they are expressly exempt from the minimum wage requirement by FLSA regulations. Employees paid on an hourly rate basis are paid for all time actually worked.

Overtime

The FLSA shall govern the overtime compensation of hourly, non-exempt, City employees. The FLSA defines overtime pay as one-and-one-half times the employee's regular rate of pay for all hours worked over the applicable overtime threshold. Generally, overtime work must be authorized by the department head.

Overtime pay calculations are based on actual hours worked during the workweek / work period. Overtime will be paid when the employee's actual hours worked exceed the hours that constitute a full workweek / work period for that employee.

Sworn Fire Service non-exempt employees working a 24-hour shift may be allowed to accrue up to a maximum of 480 hours of compensatory time, only for actual hours worked at 1.5 hours of compensatory time for each hour of overtime worked according to the Fair Labor Standards Act (FLSA).

Workweek

A workweek is a regular recurring period of 168 hours consisting of seven, consecutive 24-hour periods. The number of days that shall constitute a workweek for regular employment is typically five in total. Schedules may vary in departments as necessary for the operation of the City.

A standard workweek is scheduled between 12:00 AM on Monday through 11:59 PM on the following Sunday.

Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. Work periods for the Police Department consist of 14 days, and the Fire Department consists of 7 days. Most City employees observe a 40-hour workweek; however, the overtime threshold for nonexempt police personnel is eighty-six (86) hours in a fourteen (14) day work period, and fifty-three (53) hours for nonexempt fire department personnel in a seven (7) day work period.

Minimum Age

The FLSA requires that employees of state and cities be at least 16 years of age for most jobs and at least 18 years of age to work jobs declared hazardous by the Secretary of Labor. All Firefighters and Police Officers must be a minimum of 18 years of age.

3.2. PAY FOR PART TIME WORK

Employees who are employed in part-time positions are not eligible for benefits and will only be paid for their actual hours worked. In the event that hours worked by a part-time employee exceed the FLSA defined workweek/work period threshold, overtime rates will apply. Part-time employees performing the same function as full-time employees will begin employment at the minimum rate of pay for the position as described in the classification and pay ranges established by the City, but will be eligible for across the board increases. Ongoing part-time workers are limited to an average of **29** hours or fewer per workweek.

Volunteer Firefighter and Volunteer EMT compensation is on a per-call basis. Each call will be paid a de minimis payment intended to cover expenses as a nominal fee. The fee paid is subject to establishment and adjustment by Resolution of the City Council.

3.3. ON CALL PAY

The designated on-call employee will be compensated at an hourly differential rate for every hour they are assigned to “on-call” status as adopted by Resolution of the City Council. This differential will be included in their regular rate of pay for overtime rate calculation.

3.4. CALL OUT PAY

Employees assigned to on call services during nights, holidays and weekends are required to restrict themselves from any activity that would impair their ability to drive or work safely while being subject to on-call and/or responding to after-hour service calls. When on call, employees are required to comply with the City’s drug and alcohol policy. The employee is required to respond within thirty (30) minutes after being called. An employee who is on-call and fails to respond to an emergency call within 30 minutes will be subject to disciplinary action up to and including discharge.

Non-exempt employees who are or called out after scheduled work hours will receive call out pay for a minimum of two (2.0) hours of regular pay for the first call-out. This pay will be paid at the straight time rate of pay when allowed by FLSA, and will be considered hours worked for the purpose of calculating overtime. All subsequent call-outs that occur prior to the beginning of the next scheduled work shift will be paid at actual hours worked.

Salaried/exempt employees and salaried/exempt supervisors are exempt from the overtime pay and from on-call services. Salaried/exempt employees and salaried/exempt supervisors may not be listed on the rotation for on call but are considered “on call as necessary”, as assumed with acceptance of the departmental supervisory responsibilities.

EMERGENCY CALL IN TO WORK FROM VACATION/HOLIDAY - If an employee is called in to work due to a City emergency on their pre-scheduled, pre-approved vacation day or holiday, then, the City will pay the employee at time and one-half their regular hourly rate for the hours actually worked on that day in addition to straight time pay for the regularly scheduled vacation day. All hours actually worked on the scheduled vacation day shall be used in the total hours calculated before overtime is paid.

3.5. CHRISTMAS BONUS

Employees classified as full-time with less than one (1) year of service, unless hired in December of the previous year, and those employees classified as ongoing part-time employees (regardless of time with the City) will receive a \$40.00 Christmas bonus.

Full-time employees with at least one (1) year of service (December hires from previous year are considered in this category) will receive the bonus according to the following schedule*:

Years of Service	Bonus Amount	Years of Service	Bonus Amount
1	\$150.00	13	\$600.00
2	\$175.00	14	\$650.00
3	\$200.00	15	\$700.00
4	\$225.00	16	\$750.00
5	\$250.00	17	\$800.00
6	\$275.00	18	\$850.00
7	\$300.00	19	\$900.00
8	\$350.00	20	\$950.00
9	\$400.00	21-25	\$1200.00
10	\$450.00	26-30	\$1350.00
11	\$500.00	31 +	\$1500.00
12	\$550.00	Ongoing part-time employees received \$50.00 each	

Any retiring employee with at least 10 years of fulltime service with the City, will have their bonus prorated for that year. Retirees who are eligible for a pro-ration of the Christmas bonus upon retirement will have the bonus calculated based on the number of months worked in the retirement year, minus the actual month of retirement.

*The City's continuation of Christmas Bonuses is subject to budgetary considerations within each fiscal year and will be paid in compliance with the Fair Labor Standards Act. (as amended by Ord. #20-07, March 2020 **Ch12_12-06-21**)*

3.5. DEDUCTIONS FROM PAY

By law, the City is required to deduct, where applicable, federal withholding taxes, Social Security taxes, and garnishments from an employee's pay. The following deductions will be made:

1. **Federal Income Tax** – Federal taxes are withheld from employees' paychecks based on the number of dependents claimed by each individual. Employees are required to file with the City a copy of the W-4 form. In the event of changes in the employee's exemption status, a revised W-4 form must be filed before payroll deduction adjustments will be made.
2. **Social Security** – Social Security payments and deductions will be made according to the Social Security Act. The payroll department shall keep such

records and make such reports as may be required by applicable state and federal laws or regulations.

3. **Others** – Other City authorized deductions will be made from an employee’s pay with either the employee’s signed consent or pursuant to a valid court order.
 - a. health/hospitalization insurance (medical service premiums),
 - b. life insurance,
 - c. dental insurance,
 - d. vision insurance,
 - e. deferred compensation payments,
 - f. credit union payments,
 - g. pension plan,
 - h. supplemental insurance approved by the city,
 - i. child support or other garnishments*
 - j. charity contributions approved by the city, and
 - k. cost of uniforms, safety footwear, and other applicable equipment during employment or upon failure to return such upon separation as allowed by state law and the FLSA**

*An employee who is garnished for more than one indebtedness within a 12-month period may be subject to disciplinary action in accordance with the Consumer Credit Protection Act (15 USC, Ch. 41); except for assignment(s) of wages for spousal or child support (T.C.A. 36-5-501 (c)(2)(i)).

** The City may deduct from an employee’s final paycheck any amount due (on a depreciated/prorated basis) for failure to return City property as long as the deduction(s) do not reduce final pay to below minimum wage.

3.6. PAYCHECKS AND DIRECT DEPOSIT

All employees of the City of Portland will be paid on a basis determined to best suit the needs of the City. Examples are: weekly, bi-weekly, etc. as allowed by law.

If an employee is absent on payday and wishes to have someone, such as a relative, obtain his/her live check, the employee may send his/her identification and a signed note authorizing the City to give the check to the note bearer.

Final Paycheck The final paycheck will be made available no later than the employee’s next regularly scheduled pay date, or within twenty-one (21) days, whichever is later.

Lost Paychecks- Employees are responsible for their paychecks after they have been issued. Checks lost or otherwise missing should be reported immediately to the payroll department so that a stop-payment order will be initiated. The employee will be responsible for reimbursement to the City for any stop payment fees incurred due to employee loss of paycheck.

Unclaimed Paychecks- Paychecks not claimed by employees must be returned by the supervisor to the payroll office.

Direct Deposit - All ongoing employees hired after 7/1/17 are required to have their payroll checks deposited via direct deposit into the financial institution of their choice. Seasonal and temporary and employees are not required to have direct deposit. Employee pay stubs/checks will be distributed no later than Friday each week.

SECTION 4 – EMPLOYMENT

4.1. RECRUITMENT AND SELECTION

The City carefully selects employees through written applications, personal interviews, and applicable background and reference checks. After all available information is considered and evaluated, a decision may be made by the hiring manager. This selection process helps the City find and employ people who are concerned with their own personal success and the success of the City; people who want to do a job well; people who can carry on their work with skill and ability; and people who can work well with others to create an efficient team.

Applications

The City of Portland will make a reasonable effort to attract qualified applicants for all positions. Applications are only accepted for current position vacancies.

In the instance where positions within the same pay range and comparable skills requirements (for example maintenance or clerical), an eligibility list may be created in which future hires may be made from this list instead of requiring a separate recruitment.

All applications for employment are received at City Hall in the Human Resources Department and reviewed by the Human Resources Department or designee to ensure that minimum employment qualifications are met.

Vacancies for positions may be simultaneously posted internally and externally. The City exercises a policy of fairness for every individual who applies for work, and strives for the proper placement of individuals in various departments based on their experience, qualifications, and the needs of the City.

Potential applicants may request an application from the Human Resources Department or the receptionist at City Hall either in person, via email, or via the telephone, whereby an application will be sent to the applicant. Applicants will file their application with the receptionist or the Human Resources Department.

Applications will remain active for a period of six (6) months from the date of original submission, and only for the position(s) applied for. Applications are only accepted when vacancies exist. The City does not consider applications and resumes after a position closes except in limited circumstances, or as announced on a case by case basis.

Internal applicants for open positions are required to submit a transfer application for each open position applied for.

Applicants may be removed from consideration if:

1. Applicant declines an appointment when offered;
2. Applicant cannot be located by the postal authorities – it will be deemed impossible to so locate an applicant when a communication mailed to the last known address is returned unclaimed;
3. Applicant cannot be located via appropriate alternative means of communication;

4. Applicant moves out of a required geographic area if residency within is required for the position;
5. Applicant is currently using illegal drugs or narcotics as determined by a post-offer, pre-employment drug test;
6. Applicant is found to have been convicted of a felony or misdemeanor dependent upon the nature and gravity of the offense, the time passed since the offense, and the nature of the job sought;
7. Applicant has made a false statement on the application;
8. Applicant does not file the application within the period specified in the application/examination announcement or does not use the prescribed form or uses a different format than allowed as a reasonable accommodation;
9. Applicant fails to satisfactorily pass background check/investigation that is job-related and necessary; and/or
10. Applicant does not possess the minimum qualifications for the position.

Job Announcements - Department Heads who need to fill a job opening should contact the Human Resources Department in order to begin the recruitment process. The Human Resources Department shall work with the hiring department to establish a plan of action for the recruitment and testing process before the position is advertised. Once the selection process is established and approved by the Mayor and Human Resource Department, there shall be no deviations unless the position is advertised again with notification to all affected applicants. The Human Resource Department will cause the announcement to be prepared and publicized in order to bring notice of vacancies to as many qualified persons as possible.

In-House Posting - Notice of vacant, regular ongoing positions will be distributed to all departments for posting on designated bulletin boards or for circulation among employees within each department. The vacancy will be posted until a specified closing date or until the position is filled.

Public Advertisement - Applicants shall be recruited from a geographic area as wide as necessary and for a period of time sufficient to ensure that qualified applicants are obtained for City employment. The Human Resource Department in collaboration with the hiring department, will determine what forms of media to use for advertisement.

Advertisements may also include the City's website along with the City cable channel. The notice shall contain brief descriptions of the qualifications for the particular position and will specify the locations where applications can be obtained and the deadline for accepting applications. The vacancy will be posted until a specified closing date or until the position is filled.

Recruitment by Examination - All appointments in the City shall be made according to merit and fitness and may be subject to competitive valid examination. All such examinations shall fairly and impartially test those matters relevant to the capacity and fitness of the applicant's ability to be able to perform the essential functions, as well as the requisite knowledge, skills and abilities for the position.

4.2. SELECTION EXAMINATIONS

The examinations held to establish eligibility and fitness for any position may consist of one or more of the following elements as determined by the Mayor and/or department head in conjunction with Human Resources.

1. **Written Test** – This validated test, when necessary, will include a written demonstration designed to show the applicant's familiarity with the knowledge involved in the class of positions to which he/she is seeking employment.
2. **Oral Test** – This test, when necessary, will include a personal interview where the ability to deal with others, to interact with the public, and/or other personal qualifications are to be evaluated. An oral interview may also be used in examinations where a written test is unnecessary or impractical or as a reasonable accommodation to someone unable to take a written test due to a disability.
3. **Performance Test** – This test, when necessary, will involve performance tests as would aid in determining the ability and manual skills of applicants to perform the work involved. The performance test may be given weight in the examination process or may be used to exclude from further consideration applicants who:
 - a. cannot perform the essential functions of a specific position due to a disability that cannot reasonably be accommodated;
 - b. pose a direct threat to themselves or others.
4. **Physical Agility Test** – When necessary, this consists of job-related tests of bodily conditioning, muscular strength, agility, and physical fitness of job applicants for a specific position. This test may be given weight in the examination process or may be used to exclude from further consideration applicants who do not meet the minimum required physical job-related standards.
5. **Psychological Test** – When required and related to ongoing business necessity, this will include any test to determine mental alertness, psychological state/stability, general capacity of the applicant to adjust his/her thinking to new problems, or to ascertain special character traits and attitudes that are job-related and consistent with business necessity.
6. **Pre-employment, Post-offer Drug Test** – Pre-employment drug testing will be conducted for all positions after the offer of employment is made. Positive results on the drug test will result in an applicant being denied employment.

The City will make reasonable accommodations in the examination process to disabled applicants requesting such accommodations.

Notification and Inspection of Examination Results: Each person who takes an examination shall be notified in writing of his/her standing on the eligibility list (if one is maintained) or of his/her passing or failing and may see any applicable testing results during regular City business hours.

4.3. APPOINTMENT TO POSITIONS

The Mayor shall appoint for budgeted, vacant positions existing within the Schedule of Authorized positions adopted by ordinance and may promote or transfer all officers and employees of the City, or may authorize appropriate designees and/or department heads to do so, subject to the provisions of the City Charter, state law, and this personnel policy adopted by ordinance in order to meet City operational needs. New employees are appointed to existing salary ranges/steps as established and approved by City Council.

Contingent Job Offers are made to the candidate approved for hiring. The City will not discriminate on the basis of a person's national origin or citizenship status with regard to recruitment, hiring, or discharge. However, the City will not knowingly employ any person who is or becomes an unauthorized alien. In compliance with the Immigration Reform and Control Act, all employees hired after Nov. 6, 1986, regardless of national origin, ancestry, or citizenship, must provide suitable documentation to verify identity and employability. The documentation must be provided within three days of employment or the individual will not be hired. All offers of employment are contingent on verification of the individual's right to work in the United States. The City uses E-Verify to confirm employment eligibility.

The job offer is also contingent on the results of a job-related background check as applicable and job-related to the position. The check may consist of prior employment verification, professional reference checks, and education confirmation. As appropriate, a criminal conviction history, health examination, driving record history and credit check may also be obtained if related to the position and consistent with business necessity.

Following the requirements imposed by the Federal Truth-In-Lending and the Fair Credit Reporting Acts the City may conduct a post-offer, pre-employment credit check for positions who are responsible for payments, cash, payroll and other financial related duties, including some law enforcement positions. Employment may be conditional upon the information in the credit check.

Post-offer, Pre-employment physical examinations may be required of prospective employees for certain positions based on the essential functions of the position as contained in the job description after a conditional offer of employment is made. The physical examination shall be given by a licensed medical practitioner, occupational or physical therapist, or appropriate licensed examiner designated by the City to determine if the employee meets required standards in order to perform the essential functions of the job with or without reasonable accommodation.

A copy of the specific job description will be provided to the examiner. The cost of this physical examination shall be borne by the City. Prospective employees who are unable to successfully perform the essential functions tested for in the examination shall have their 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; or
2. pose a direct threat to themselves and/or others.

Post-hire Medical Examinations / Physical Agility Tests -- All employees of the City may, during the period of their employment, be required by their department head, with the approval

of the Mayor and coordination with the Human Resources Department, to undergo periodic medical (which may also include mental fitness) examinations, as allowed by law, to determine their fitness to perform the essential functions of the position they currently hold.

Any such medical examination shall be at no expense to the employee. Determination of fitness for duty will be by a licensed medical practitioner, occupational or physical therapist, or appropriate licensed examiner designated by the City or its insuring agency.

Annual job-related physical agility testing for incumbent positions may be required based on business necessity. These will be limited to physical agility tests, which measure an employee's ability to perform actual or simulated job tasks, and physical fitness tests, which measure an employee's performance of physical tasks, as long as these tests do not include examinations that could be considered medical.

Employees determined to be physically or mentally unfit to continue in their positions may be demoted, or they may be separated from the City service only after it has been determined that they:

1. cannot perform the essential functions due to a disability that cannot reasonably be accommodated; or
2. pose a direct threat to themselves and/or others.

Barry Brady Law Fire Service Health Screenings -- To be eligible for presumption benefits, firefighters must be diagnosed after July 1, 2019, have served five or more consecutive years with an eligible fire department, and may only utilize the presumption for up to five years after their most recent date of exposure. A firefighter must have been exposed to heat, smoke, and fumes, or carcinogenic, poisonous, toxic, or chemical substances while performing the duties of a firefighter in the firefighter's capacity as an employee.

Eligible firefighters must also pass a pre-employment physical medical exam, with a cancer screening, and complete an annual physical medical examination that includes a cancer screening for the types of cancer covered under this law. Any firefighter employed by an eligible department before July 2019 who would like to be eligible for benefits must obtain a physical medical examination with the appropriate cancer screenings by July 1, 2020.

Elimination Periods - Newly appointed regular, ongoing, full-time employees are eligible for health, dental, and vision benefits the first of the month following appointment. The elimination period for all other benefits (voluntary life, AD&D, etc.) is completion of ninety (90) days of employment. Leave benefit elimination periods for leave benefits are described within leave policies.

4.4. PROMOTIONS

The Mayor may promote officers and employees of the City, or may authorize appropriate designees and/or department heads to do so, subject to the provisions of the City Charter, state law, and this personnel policy adopted by ordinance in order to meet City operational needs.

A promotion is the assignment of a qualified employee from one job class to another that has a higher pay rate. A qualified employee possesses the knowledge, skills and abilities, has the required experience level and is able to physically perform the duties and essential functions as outlined in the job description.

Temporary Promotion - The Mayor may authorize department heads to make promotions of employees, including temporary promotions to fill vacancies on an interim basis. The duration of absence in the position must create a business necessity for proper operation of the City. Employees will begin to earn the pay differential for a temporary promotion immediately upon assuming the related duties and will cease to do so upon completion of the interim assignment.

In every case, promotions must involve a definite increase in duties and responsibilities and shall not be made merely for the purpose of affecting an increase in compensation.

When a promotion occurs and the employee's current pay rate is less than the minimum rate for the new position, the employee's salary/wage shall be raised to at least the minimum rate. When the employee's current pay rate falls above the new position's minimum rate, an appropriate increase in alignment with the compensation plan will be awarded as determined by the department head, Human Resources and the Mayor.

When a position is advertised for certified personnel (positions that require agency or subject matter certification) and no applications are received that meet the qualifications, then present employees may be given the opportunity to move into the position and receive training, unless it is necessary to fill the vacancy quickly, or on an emergency basis.

4.5. TRANSFERS

The Mayor may transfer officers and employees of the City, or may authorize appropriate designees and/or department heads to do so, subject to the provisions of the City Charter, state law, and this personnel policy adopted by ordinance in order to meet City operational needs.

A transfer is a lateral move assigning an employee from one position to another position of equal responsibility and class. Transfers can take place within a department, between departments, between positions of the same pay range, between positions of the same class, or between positions of different classes of equal responsibility levels and pay. A transfer may also be implemented as a reasonable accommodation when an employee is unable, due to a disability, to continue to perform the essential functions of the job.

Should a City employee wish to transfer to another position, in the same department or in another department, when there is a vacancy, the transfer may be allowed if the level of pay is the same and the position is considered as the same level position, and the employee wishing to transfer is qualified, can perform the essential functions and duties as outlined in the job description and it is in the best interest of the City.

An employee who transfers from one department to another will retain and carry forward all benefits earned, accrued, or both as of the date of transfer. In the event an employee of the fire department working 24-hour shifts transfers to another department, Sick Leave will be reduced at a ratio of fire department accrual divided by standard accrual. As a general rule, lateral transfers require no increase in compensation. If an employee has less than one (1) year of full-time employment with the City or less than six (6) months service in his/her current position, the transfer must be approved by the Mayor.

Under no circumstances will a department head (as defined in the City Charter), an employee of supervisory status, a certified operator, or any employee with a higher-level position be allowed to transfer to a position of lesser responsibility without accepting a lower rate of pay. Should

this type of transfer be allowed, the employee's existing length of overall service to the City will be acknowledged, but the employee's pay will be adjusted to the appropriate amount from the wage range for the position.

4.6. DEMOTIONS

The Mayor may demote officers and employees of the City, or may authorize appropriate designees and/or department heads to do so, subject to the provisions of the City Charter, state law, and this personnel policy adopted by ordinance in order to meet City operational needs.

A demotion is the assignment of an employee from one position to another that has a lower maximum pay rate and responsibility. An employee may be demoted for any of the following reasons:

1. because his/her position is being abolished and s/he would otherwise be laid off;
2. because his/her position is being reclassified to a higher grade, and the employee lacks the necessary skills to successfully perform the job;
3. because there is a lack of work;
4. because there is a lack of funds;
5. because another employee, returning from authorized leave granted in accordance with the rules of the leave, will occupy the position to which the employee is currently assigned;
6. because the employee does not possess the necessary qualifications to render satisfactory service to the position s/he holds;
7. because the employee voluntarily requests such a demotion, and an open position is available;
8. as a reasonable accommodation when an employee, due to a disability, becomes unable to perform the essential functions of the job, and job transfer, reassignment, or job redesign are not reasonable; and/or
9. as a form of disciplinary action.

4.7. NEPOTISM / PERSONAL RELATIONSHIPS

Members of the immediate family of a City employee or elected official who meet the hiring standards may be employed to fill City positions as detailed below. For purposes of this policy, members of the immediate family include spouse, child, brother, sister, son- or daughter-in-law, sister- or brother-in-law, parents, parents-in-law, nephews, nieces, stepsisters, stepbrothers, stepchildren, and stepparents.

- No member of an immediate may family supervise members of his/her immediate family. This does not preclude employment of immediate family members under other lines of supervision. If the city cannot reasonably transfer one of the family members to another line of supervision, and the family members can't decide which one will leave voluntarily, the employee in the more junior position will be subject to discharge.
- No special preference will be given to family members in the selection of work location, days off, vacation schedules, etc.
- The work and conduct of the family members will be governed by the same requirements and procedures as all other employees.
- Seasonal and part-time employees are exempt from this provision/policy.

If a personal, romantic, or intimate relationship is established between two or more employees post-hire, it is the responsibility and obligation of the employees involved to disclose the existence of the relationship to the City. When a conflict or potential conflict arises due to the relationship affecting employment, the City reserves the right to make any and all employment decisions in the best interest of the City.

4.8. TYPES OF EMPLOYEES

- **Full-Time, Ongoing Employees.** A full-time, ongoing employee is an employee who is typically scheduled a minimum of 40 hours per week, is paid an hourly or salaried rate, is subject to all conditions of employment, and receives all benefits offered unless specifically excluded by the City Charter, code, or ordinance.
- **Part-Time Ongoing Employees.** A part-time ongoing employee is an employee who works fewer hours per workweek than a full-time employee on a regular basis and whose hours cannot exceed an average of **29 hours per week** during the standard measurement period. Week-to-week increases of hours beyond the 29-hour limit must be approved by the Mayor or department head. Human Resources will assist department heads with ongoing analysis of hours worked regarding the budgetary impact of benefits costs and compliance with the Affordable Care Act (ACA). Ongoing part-time employees are not eligible for benefits other than those statutorily mandated. Standard measurement periods can be defined separately for hourly and salaried employees.
- **Temporary Employees.** Temporary employees are individuals who perform work for the City for no more than six months during a 12-month period and whose ongoing employment with the City is not expected at time of hire. Temporary employees are not eligible for benefits except those coverage under workers' compensation. Hours of work shall be determined by the department head.
- **Seasonal Employees.** Seasonal employees are hired for a pre-established period, usually during peak workloads, either directly or through an employment service. They may work a full-time or part-time schedule. They are ineligible for City benefits except coverage under workers' compensation.
- **Non-Exempt Employees,** according to the Overtime Requirements of the FLSA are eligible for overtime pay and may be required to work more than the threshold hours for overtime in their workweek / work period. They are not exempt from overtime pay and are entitled to receive overtime pay for hours actually worked in excess of the employee's defined work period. Holiday pay and leave time will not be considered as "hours worked" for purposes of calculating overtime pay.
- **Exempt Employees.** Employees whose positions meet specific tests established by applicable state and federal laws and whose duties and responsibilities allow them to be "exempt" from overtime pay provisions as provided by the FLSA. They are not paid overtime regardless of the number of hours they work in a particular week. All exempt employees are expected to observe a normal forty-hour workweek and to work any additional hours necessary to accomplish the responsibilities of the position. *Exempt employees are required to complete time records which are maintained by the Finance Department and must be submitted during the payroll process. Exempt employees must*

utilize available paid leave if they work fewer than forty (40) hours in a work week. If no paid leave is available during the week in which fewer than forty (40) hours are worked, the employee will have his/her pay reduced by the number of hours not worked.

- **Salaried Employees.** Employees who are paid a specified weekly rate. All personnel defined as “department heads” in the City Charter, and any employee determined to be, and designated as exempt from the Fair Labor Standards Act, shall be paid on a salary basis and are not eligible for overtime pay.
- **Hourly Employees.** Employees who are paid an hourly rate and are paid overtime for worked hours over their overtime threshold for that work period. *Holiday pay and leave time for hours not worked will **not** be considered as “hours worked” for purposes of calculating overtime pay.*

4.9. PERFORMANCE EVALUATION

The annual rating period (period of performance measurement) evaluates performance occurring during the prior fiscal year, i.e. from June 30th of the completed fiscal year back through July 1st of the previous calendar year.

Employees will receive a performance evaluation at least annually at a time based on City needs. Additional evaluations shall be conducted prior to moving to another job in the organization, when performance outcomes fall below minimum expectations or whenever a department head/supervisor/manager determines a need.

The performance evaluation is intended to help the employee achieve a professional level of conduct and performance;

Employees must clearly understand what is expected and be committed to achieving quality results;

At a minimum, evaluations will be conducted annually, but may occur more frequently if the department head/supervisor/manager determines a need.

1. The Human Resources Department will maintain evaluation schedules and will notify department heads/supervisors/managers thirty (30) days in advance of evaluation due dates; and
2. Department heads/supervisors/managers will use the appropriate evaluation form to candidly and accurately document feedback on the critical success factors and previously agreed upon performance objectives established for the measurement period.

Reviews should be structured as follows:

1. Be sure that there is an accurate and complete job description for the position.
2. Incorporate input from the employee’s self-evaluation as appropriate.
3. Discuss the written performance ratings/summaries in the evaluation areas.
4. Goals, objectives, development plans, performance improvement plans, etc. should be established during this time for the upcoming rating period. Discuss what is expected and by when (develop a timeline for completion).

5. Determine how the expectations will be measured (i.e. complete a seminar or course of study, work quality or quantity improvements, cross training, etc.).
6. Secure all required authorization signatures and dates BEFORE DISCUSSING WITH THE EMPLOYEE.
7. Review the results of the overall evaluation with the employee.
8. Provide opportunity for the employee to ask questions and to document their remarks regarding the review.
9. Employee and reviewer should sign and date the evaluation form.
10. The appraisal is not final until it has been reviewed and acted upon by the Human Resources Director and the Mayor.
11. The completed and signed evaluation form should be returned to Human Resources for filing in the employee's personnel file.
12. The City reserves the right to alter the terms and the manner in which performance is or is not appraised.

As important as written performance appraisals are, they are not meant as substitutes for ongoing discussions between employees and their supervisors about their performance.

4.10. OUTSIDE EMPLOYMENT

With the approval of the department head and Mayor (on an annual basis if ongoing), outside employment is permissible, provided that there is no conflict of interest or impairment of work performance for the City of Portland. Before outside employment begins, employees must present a written request to their department head describing the work to be performed.

Required overtime of any employee of the City takes priority over an employee's outside employment. Anyone who knowingly misses work or refuses mandatory overtime at his/her primary job to work a second job may be subject to disciplinary action up to, and including, termination of employment. Employees missing work because of sickness or injury that can be attributed to outside employment will not receive pay or other benefits for time lost from their City job. Approval of outside employment may be withdrawn for any business-related reason.

4.11. GRIEVANCES

A grievance is defined only as an expression of dissatisfaction, disagreement or dispute arising between a current employee and his/her supervisor and/or the City regarding an aspect of the application or interpretation of regulations and policies; reasonable accommodation under the ADA*; or an operational management decision affecting him/her. Disciplinary actions, promotions, demotions, and transfers are not grievable.

**If the grievance is for reasonable accommodation under the ADA, Human Resources must be involved in each grievance process step.*

It is the City's desire to address grievances informally, and both supervisors and employees are expected to make every effort to resolve problems as they arise. However, it is recognized that there will be occasional situations that will be resolved only after a formal meeting and review.

Employee(s) who have a grievance should first discuss it with their immediate supervisor, within five business days following the incident or immediately upon returning to work from a

suspension. Every employee may present a grievance under the provisions of the grievance procedure free from fear of retaliation of any kind concerning employment.

STEPS OF THE GRIEVANCE PROCEDURE ARE AS FOLLOWS:

Step 1. The employee files a written grievance with the immediate supervisor within five (5) business days of the incident. An employee should give the supervisor copies of any witness statements or other supporting documents. The immediate supervisor will promptly investigate the circumstances surrounding the grievance, discuss the matter with the appropriate department head, and take action if within the scope of the immediate supervisor's authority. The supervisor shall inform the employee of his/her decision in writing within three (3) business days. The supervisor shall provide a copy of his/her decision to the department head. No supervisor may hold a grievance longer than three (3) business days without forwarding it to the next supervisory level.

Step 2. If the issue cannot be resolved between the employee and his/her supervisor, the employee may proceed to the second step by reducing the request to writing and requesting that the department head review the written grievance and supervisor's response. If an employee wishes a meeting with the department head, one will be arranged. Upon hearing the grievance, the department head must provide a written response to the employee and the immediate supervisor within three (3) business days of the meeting.

Step 3. If the issue still cannot be resolved by the department head, the employee may request in writing a meeting with the Mayor. The Mayor shall have ten (10) business days to schedule the meeting after which, the Mayor shall provide a written response to the employee with copies to the department head and immediate supervisor. Every attempt will be made to resolve the employee's grievance. The Mayor's decision shall be final and binding on all parties involved.

SECTION 5 – EMPLOYEE BENEFITS

The City provides a competitive benefits program for all eligible employees. In addition to receiving an equitable salary and having an equal opportunity for professional development and advancement, employees may be eligible to enjoy other benefits which will enhance job and employment satisfaction. The benefit programs described in this personnel manual represent a significant investment in each employee by the City.

This section contains only a summary of insurance benefits, and the terms and conditions of any Plan Document and Summary Plan Description control any benefit if the summary contained in the Personnel Manual conflicts or may be interpreted to conflict. Employees should review their Summary Plan Description(s) in addition to the information provided in the Personnel Manual.

Other benefits previously approved by the Portland City Council, and not in conflict with this policy, shall remain in effect. The Portland City Council may, from time to time, approve additional benefits.

5.1. HEALTH, DENTAL AND VISION BENEFITS

Eligibility for benefits

Ongoing, full time employees will be eligible for the benefits described in this personnel manual as soon as the eligibility requirements for each particular benefit are met. Coverage is available defined in the benefits' Summary Plan Descriptions.

- Part-time, temporary and seasonal employees are not eligible for benefits.
- No benefits are available to employees prior to the plan's stated eligibility date, except as otherwise provided by law.

Health benefits: Employees and those City officials specified in the Municipal Code are covered under plan providers selected by the City. For details regarding current benefit plans and availability, refer to the annually approved Schedule of Benefits available in Human Resources.

Medical, dental and vision insurance: Eligibility for the medical, dental and vision insurance is per each plan document.

COBRA: COBRA provides certain former employees, retirees, spouses, former spouses, and dependent children the right to temporary continuation of health insurance coverage at group rates. This coverage, however, is only available when coverage is lost due to certain specific events. Group health coverage for COBRA participants is usually more expensive than health coverage for active employees, since usually the employer pays a part of the premium for active employees while COBRA participants generally pay the entire premium themselves. For details regarding your COBRA coverage options following a covered event, please contact the Human Resource Department.

5.2. SECTION 125 PLAN

A Section 125 plan is a benefit plan that allows employees to make contributions toward medical and dental insurance on a pre-tax rather than an after-tax basis. This means qualified expenses are deducted from gross pay before income taxes and social security are calculated.

By doing so, employees elect to have their gross pay reduced by an amount equal to contributions for medical and dental insurance. Once this election is made, no changes may be made to the pre-tax contributions until the next open enrollment period, unless the change being requested is the result of a change in family status (such as marriage, divorce, death of a spouse or child, birth or adoption of a child or termination of employment of a spouse). A change in election due to a change in family status will be effective in the pay period following receipt of the election.

5.3. RETIREMENT / TCRS

Retirement is defined as voluntary withdrawal from City employment by an employee eligible to receive retirement benefits under Social Security or the Tennessee Consolidated Retirement System. Retirement benefits are based upon the regulations of the retirement system in which the employee is enrolled and any other applicable provisions that may be in effect at the time of that employee's retirement.

All regular employees (Mayor's participation is optional) completing six (6) months of continuous employment with the City are eligible to receive employer contributions in the City's retirement plan. Membership in this plan is mandatory for eligible employees and is non-contributory by the employee. In addition, the City participates in the Social Security System.

Retirement benefits are based upon the regulations of the retirement system in which the employee is enrolled and any other applicable provisions that may be in effect at the time of that employee's retirement. 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 schedule.

Details regarding TCRS retirement eligibility and procedures may be obtained from the Human Resources Department.

Re-employment after Retirement

Any retired member may return to service in a position covered by the TCRS and continue to draw such person's retirement allowance in a temporary capacity limited to the equivalent of 120 days per 12-month period, and may earn no more than 60% of their final compensation at time of retirement.

Retiree Health Insurance

Should the City of Portland withdraw from the state's health insurance plan, the retiree would no longer be eligible to continue the coverage [through the state's plan].

All retirees must elect to continue coverage in the Plan within 30 days of termination of coverage.

The retired employee's insurance premium, single coverage only, will be paid by the City with the retired employee's dependent's coverage offered at the retiree's expense.

Retirees or covered dependents who are not members of TCRS will be eligible for a BC/BS Medicare Supplement when they reach the age of 65 or become Medicare eligible.

5.4. 401(k) / 457(b) PLAN

The City participates in the State of Tennessee voluntary defined contribution 401(k) and 457(b) tax-deferred retirement savings programs. For details on enrollment in the program, please refer to the plan documents available in the Human Resource Department.

5.5. CITY OBSERVED HOLIDAYS

All offices of the City of Portland, except emergency and necessary operations, will be closed and employees excused from work on the holidays listed below.

- | | | | |
|----|---|-----|----------------------------|
| 1. | New Year's Day | 7. | Labor Day |
| 2. | Martin Luther King Jr. Day | 8. | Thanksgiving Day |
| 3. | Presidents' Day | 9. | Day after Thanksgiving Day |
| 4. | Good Friday | 10. | Veterans' Day |
| 5. | Memorial Day | 11. | Christmas Eve |
| 6. | Independence Day - July 4 th | 12. | Christmas Day |
| | | 13. | Employee Personal Holiday* |

One day granted per calendar year beginning January 1, 2020 to a regular employee to be taken in a minimum of four-hour increments and with 24-hour advance notice to the supervisor. Any unused portion of a personal day will be forfeited at the end of the year and will not be eligible for cashing out nor paid upon separation from employment. This benefit becomes available upon completion of the 90-day elimination period. (as amended by Ord. #20-07, March 2020 **Ch12_12-06-21)*

5.6. HOLIDAY PAY

The City's observance of the holidays listed above (with the exception of the Employee Personal Holiday) will be scheduled on either Monday, Tuesday, Wednesday, Thursday or Friday. A holiday calendar designating the weekday to be observed may be issued annually. Eight (8) hours of holiday pay will be paid at the eligible employee's straight-time rate of pay for the City's observed holidays. Holiday Pay is not considered hours worked for the purpose of calculation of overtime pay.

To receive compensation for a holiday, employees eligible for holiday benefits must be in an active pay status (not away on leave without pay or on workers' compensation) on their last regular shift scheduled before a holiday and their first regularly scheduled shift after a holiday. Employees must seek appropriate approval for paid leave in conjunction with a Holiday with the exception of statutorily mandated leaves (i.e. FMLA).

Pay for hours worked for full-time, non-exempt employees who are required to work (excluding emergency call-in) on a holiday shall be calculated at their regular, hourly pay rate for the actual hours worked on the holiday and shall be paid in addition to the regular straight-time holiday pay for the day. All hours actually worked will be counted as straight-time hours for overtime calculation purposes.

5.7. VACATION

Vacation is an employee benefit that depends on how long the employee has worked for the employer for all regular full-time, exempt and non-exempt employees.

The City will try to honor all vacation requests; however, vacations cannot interfere with the City's operation. Therefore, your vacation must be approved by your department head/supervisor/manager in advance on a first come, first-served basis. If any conflicts arise in vacation requests, preference will be given to the employee with the longest length of continuous service.

All regular, ongoing full-time employees of the City will be granted vacation leave annually January 1 based on continuous years of service to the City. As the number of years of service increases, the amount of vacation leave granted increases and may accumulate to the maximum amount as shown in the table below:

Service Completed	Non-Public Safety and Exempt	Police Non-Exempt	Fire Non-Exempt
1 Year	1 week = 40 hours	1 week = 43 hours	1 week = 56 hours
2 Years	2 weeks = 80 hours	2 weeks = 86 hours	2 weeks = 112 hours
5 Years	3 weeks = 120 hours	3 weeks = 129 hours	3 weeks = 168 hours
10 Years	4 weeks = 160 hours	4 weeks = 172 hours	4 weeks = 224 hours
20 Years	5 weeks = 200 hours	5 weeks = 215 hours	5 weeks = 280 hours

The City's vacation year is based on the calendar year. This means that the vacation year begins on January 1 and ends on December 31 of each year. Since employees are hired throughout the calendar year, vacation time will be prorated for any partial year of service upon hire and be taken upon accrual. **There is no elimination period for this benefit.** For each completed month of service during the first year of employment Non-Public Safety and exempt staff will accrue 3.34 hours of vacation, Police Non-Exempt personnel will accrue 3.58 hours of vacation, and Fire Non-Exempt personnel will accrue 4.67 hours of vacation.

Scheduling. Vacations should be scheduled in advance for the mutual convenience of the employee and the City so that proper adjustments can be made in work schedules. Department heads preparing vacation schedules may give a choice of dates based on seniority of the personnel in their departments, and no employee may begin his/her vacation leave until his/her request has been approved by the department head.

Employees may at any time cash out up to two (2) weeks of accrued vacation once annually.

Employees may roll over up to one (1) week to the following year in December annually.

Employees may convert unused vacation leave to sick leave without limit at any time.

At no time may an employee have more than his/her vacation accrual amount plus one week in his/her vacation bank.

An employee may not schedule more than two (2) weeks of vacation in any six (6) week period without approval from the Department Head.

Vacation Pay-out at Termination of Employment. If there is unused vacation time upon voluntary separation from employment with the City it will be paid out at the employee's regular, base rate. A break in service of 6 months or more will reset the vacation accrual calculation.

The Mayor, when newly elected (not for purposes of continuation due to re-election), as an elected official of the City and head of City operations, will be awarded two (2) weeks of vacation per year of his/her term. A vacation year for the Mayor runs from the date of taking office. The Mayor may exercise the Vacation Cash Out or Carry Over options listed above.

Legal Holidays. Legal holidays falling within a vacation period will not to be counted as vacation days. (as amended by Ord. #20-07, March 2020 **Ch12_12-06-21**)

5.8. SICK LEAVE

All full-time employees shall accumulate (9.33) hours of sick leave with pay for each month of work completed for the City (total of 14 days per calendar year), except sworn Police department employees working 12-hour shifts who shall accrue 12 hours of sick leave per month, and fire department employees working 24-hour shifts who shall accumulate 24 hours of sick leave per month. Sick leave may be used as it accrues. **There is no elimination period for this benefit.**

Sick leave may be granted for any of the following reasons, and must run concurrently with FMLA when applicable:

1. Personal illness or physical incapacity resulting from causes beyond the employee's control;
2. Medical, dental, optical or other professional treatments or examinations for the employee;
3. Medical, dental, optical or other professional treatments or examinations for family members;
4. Acute illness of a member of the employee's immediate family. Immediate family includes children, spouse or parent(s);
5. To attend to personal illness or physical incapacity of family members, resulting from causes beyond the employee's control;
6. Exposure to contagious disease so that employee's presence at work might jeopardize the health of other employees;
7. To attend to a family member with exposure to contagious disease so that the family member might jeopardize the health of other people;

There is no maximum accumulation of sick leave. Any unused sick leave upon retirement is to be a service credit toward the employee's retirement (T.C.A. 8-34-604). Accumulated sick leave is not otherwise payable to the employee upon termination, resignation or retirement; nor can it be used as a form of 'early retirement' in practice.

A doctor's statement shall be delivered to the supervisor after three (3) consecutive days of absence for sickness. To prevent abuse of the sick leave privilege, the City supervisory staff may satisfy themselves that the employee is genuinely ill before approving sick leave, and may require a doctor's certificate for any absence for which the employee requests sick leave.

Sick leave hours deducted from an employee's sick leave accumulation shall be for the number of regular work hours absent and shall not include holidays and scheduled days off. Employees claiming sick leave while on vacation leave must support their claim by a doctor's statement if requested by a department head or the Mayor. When an employee is on "leave without pay" for greater than half of their assigned shifts during any calendar month no sick leave accumulates.

Sick Leave Notice. The employee is required to notify his/her supervisor as soon as practical, but no later than the start of the workday. The employee should make every effort to reach the supervisor directly to explain the reason for absence.

Health Care Statement. To prevent abuse of the sick leave privilege, any absence may require a doctor's certificate. Absences in excess of three (3) days shall require a doctor's return to work certification in order to return to work.

Fire Personnel Sick Leave. Members of the fire department working a 24-hour shift will be charged 24 hours of sick leave for each missed shift due to illness. Fire department employees who work a regular eight or ten-hour shift shall be charged sick leave for the number of hours absent each day up to a maximum of eight or ten hours.

Workers' Compensation. Employees on Workers' Compensation will continue to accrue sick leave during the period of absence. Workers' Compensation leave runs concurrently with FMLA leave for employees who are eligible for FMLA job-protected leave.

Exhaustion of Leave. Once an employee exhausts sick leave, vacation leave will be substituted for the remaining absences or until the vacation leave is exhausted. If the illness is FMLA qualifying, once all accrued leave is exhausted, further absences shall be designated as leave without pay.

Department Head or Supervisor Requirements. Department heads and/or supervisors are required to report to Human Resources any employee sick leave absences of more than three (3) calendar days to ensure that the City complies with federal regulations regarding the Family and Medical Leave Act. Notification to Human Resources must occur on the fourth day after three consecutive days of absence.

5.9. FUNERAL / BEREAVEMENT

Full-time, ongoing employees may take **eight (8) hours** of funeral leave per relative for the following family members: grandparents-in-law, aunts and uncles. Full-time employees may take **twenty-four (24) hours** of funeral leave per relative for the following family members:

Children	Spouse	Parents	Mother-in-law
Father-in-law	Step parent	Step children	Grandfather
Grandmother	Brother	Brother-in-law	Sister
Sister-in-law	Grandchildren	Daughter-in-law	Son-in-law
Legal Guardian/Foster Child or Parent			

Should more than twenty-four (24) hours of bereavement leave be necessary; employees may seek approval from their supervisor to use available compensatory, vacation, or sick time in addition to the funeral leave. Notice must be given to the supervisor and the amount of vacation or sick time to be used must be approved by the supervisor prior to the additional time being taken. The twenty-four (24) hours of funeral leave is available per relative for each of these listed relatives. Bereavement Leave may be used non-consecutively as approved. **There is no elimination period for this benefit.**

5.10. FAMILY AND MEDICAL LEAVE

Overview: The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks (in some situations up to 26 weeks) of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave.

FMLA is designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons. It also seeks to accommodate the legitimate interests of employers and promote equal employment opportunity for men and women.

Eligibility: The Family & Medical Leave policy is applicable employees who have worked at least 12 months for the City and who have worked at least 1,250 hours during the preceding 12-month period. Such employees are eligible for a maximum of 12 to 26* weeks of leave under the act. Special rules apply for husbands and wives employed by the same employer and for exempted key employees (top 10 percent of all wage earners, and who are paid on a salary basis). People who are not covered include elected officials, volunteers, independent contractors, and legal advisors.

Leave entitlement: Eligible employees may take up to 12 workweeks (480 work hours for 40-hour work week employees; 516 hours for 86-hour work period employee and 636 hours for 53-hour work period employees) of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

*Eligible family members of military personnel defined as the spouse, son, daughter, parent or next of kin of a covered service member may take a maximum of 26 workweeks leave under FMLA to care for a wounded member of the armed forces. This includes family members of the National Guard or Reserves who are undergoing medical treatment, recuperation, therapy or other medical treatment for a “serious injury or illness”.

Paid / Unpaid Leave. FMLA runs concurrently with paid time off (compensatory, sick, vacation leave) and concurrently with workers’ compensation leave. Sick time will be paid out first and vacation time will be paid afterwards. In the event that an hourly paid, non-exempt employee has accrued compensatory time, that use will precede the use of sick or vacation leave.

Approved leave will be unpaid if the employee does not have paid leave available at the time FMLA starts or when all available paid leave is exhausted while out on leave.

Effects on Sick Leave Accrual. When an employee’s unpaid leave time is greater than half of their assigned shifts or more during any calendar month while on FMLA, no sick leave accrues. The combination of compensatory time, sick leave, vacation leave, and unpaid leave may not exceed the total allowable leave under the FMLA, except as required by statute.

Guidelines. An eligible employee may take up to 12 weeks of family and medical leave in a 12-month period for the birth of a child or the placement of an adopted or foster care child. Leave may also be taken to care for one’s self, a child, spouse, or parent who has a serious health condition. Eligible employees may take up to 12 weeks of unpaid leave to deal with family issues resulting from a spouse, son, daughter or parent being called to active duty (including being notified of an impending call to active duty).

Serious health condition. A serious health condition means an illness, injury, impairment, or physical or mental condition that involves one of the following:

- Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment;
- A period of incapacity of more than three consecutive calendar days that also involves treatment two or more times by a health care provider or treatment which results in a regimen of continuing treatment under the supervision of the health care provider;
- Any period of incapacity due to pregnancy or for prenatal care;
- A chronic condition that requires periodic treatments, continues over an extended period of time, and may cause episodic rather than a continuous period of incapacity;
- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, requiring continuing supervision of a health care provider;
- Multiple treatments either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three calendar days in the absence of medical intervention or treatments, such as cancer, severe arthritis or kidney disease.

Serious Injury or Illness for an Injured Service Member is defined as a covered service member’s injury or illness incurred in the line of duty on active duty in the Armed Forces that

may render the service member medically unfit to perform the duties of the member's office, grade, rank, or rating. This could include medical treatment, recuperation, therapy, outpatient care and other treatments for a serious injury or illness.

Spouse / Same Employer. If spouses are employed by the same employer and eligible to take leave for the birth or adoption of a child, their aggregate leave under FMLA is limited to 12 weeks. For example, if the father takes four weeks leave to care for a child, the mother would be entitled to eight weeks leave, for a total of 12 weeks. If, however, the spouse experiences her own serious health condition as a result of the pregnancy, both employees are entitled to the full 12 weeks.

Right to Return to Work. On return from family and medical leave, an employee is entitled to be returned to the same position that s/he held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his/her position has been restructured to accommodate the employee's absence.

If the employee is unable to perform the essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The City, however, may be required by the Americans with Disabilities Act (ADA) to offer the employee an accommodation.

Notification and Scheduling. An eligible employee must provide the City at least 30 days advance notice of the need for leave for birth, adoption, or planned medical treatment when it is foreseeable. This 30-day advance notice is not required in cases of medical emergency or other unforeseen events, such as premature birth or sudden changes in a patient's condition that require altering scheduled medical treatment.

Parents who are awaiting the adoption of a child and are given little notice of the availability of the child may also be exempt from this 30-day notice.

It is the City's responsibility to designate leave in writing as FMLA leave and to notify the employee. Employees may not retroactively claim that leave was for FMLA. Failure to provide notification will result in the leave not being designated as FMLA. The City will, if necessary, provide the FMLA leave notice in alternate formats.

Certification. The City reserves the right to verify an employee's request for family and medical leave. Failure to provide certification from a health care provider in a timely manner may result in delay or denial of FMLA. Medical certifications will be treated as confidential and privileged information under HIPAA and the State's Open Records laws as appropriate.

If the City has a reason to question the original certification, the City may, at the City's expense, require a second opinion from a different health care provider chosen by the employer. The health care provider may not be employed by the City on a regular basis. If a resolution of the conflict cannot be obtained by a second opinion, a third opinion may be obtained from another provider and that opinion will be final and binding. The City will pay for second and third opinion visits.

An employee may be required to report periodically to the City the status and the intention of the employee to return to work. Before return is granted, employees are required to furnish the City with a medical certification from the employee's health care provider stating that the employee is able to resume work.

Reduced and Intermittent Leave. Family and medical leave may be taken intermittently or on a reduced schedule when medically necessary as certified by the health care provider. Intermittent or reduced leave schedules for routine care of a new child can be taken only with the City's approval. The schedule must be mutually agreed upon by the employee and the employer. Employees on intermittent or reduced leave schedules may be temporarily transferred by the City to an equivalent alternate position that may better accommodate the intermittent or reduced leave schedule. Intermittent or reduced leave may be spread over a period of time longer than 12 weeks, but it will not exceed the equivalent of 12 workweeks total leave in a 12-month period.

Restoration. Employees who are granted leave under the FMLA policy will be reinstated to an equivalent or the same position held prior to the commencement of their leave.

Certain highly compensated key employees, who are salaried and among the 10% highest paid workers, may be denied restoration if:

- the employer shows that such denial is necessary to prevent substantial and grievous economic injury to the employer's operations;
- the employer notifies the employee that it intends to deny restoration on such basis at the time the employer determines that such injury would occur; and
- if leave has commenced, the notice must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

Employees voluntarily accepting a light duty assignment in lieu of continuing FMLA leave maintain their right to restoration to the original or an equivalent job until the twelve (12) weeks of FMLA leave has passed.

If an employee fails to provide a requested fitness-for-duty certification to return to work, the City may delay restoration until the employee submits the certification.

The 12-Month FMLA Period. The City follows a **12-months measured forward method**. This means that the leave is measured from the first date an employee's FMLA leave begins.

Denial of FMLA Leave. If an employee fails to give timely, advance notice when the need for FMLA leave is foreseeable, the City may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the employer of the need for FMLA leave.

If an employee fails to provide, in a timely manner, a requested medical certification to substantiate the need for FMLA leave, the City may delay continuation of FMLA leave until an employee submits the certificate. If the employee never produces the certification, the leave

may not be designated as FMLA. In instances of workers' compensation leave, pregnancy, or events where the City has sufficient knowledge of an event certification may not be required.

Employee Benefits While on FMLA. During periods of FMLA, the City will continue to provide health insurance benefits at the employee rate. If premiums are current, the City will maintain health insurance benefits during periods of unpaid leave without interruption. Any payment for premiums or other payroll deductible insurance policies must be paid by the employee or the benefits may be terminated. Arrangements may be made between the employee and the City for a payment plan for the employee's portion of insurance premiums. If interrupted, the City is obligated to reinstate benefits upon an employee's return to work.

The City has the right to recover from the employee all health insurance premiums paid by the City on behalf of the employee during the FMLA leave period if the employee fails to return to work after leave. Employees who fail to return to work because they are unable to perform the functions of their job because of their own serious health condition or because of the continued necessity of caring for a seriously ill family member may be exempt from this recapture provision.

FMLA leave under this policy does not constitute a qualifying event that entitles an employee to Consolidated Omnibus Budget Reconstruction Act (COBRA) benefit; however, the qualifying event triggering COBRA coverage may occur when it becomes clearly known that an employee will not be returning to work. At that point, the employee ceases to be entitled to leave under this policy and may be offered COBRA.

Workers' Compensation While on FMLA. Workers' Compensation injury/illness meets the criteria for a serious health condition, therefore, the workers' compensation absence and the FMLA leave entitlement will run concurrently.

5.11. TN MATERNITY/PATERNITY LEAVE

Under the Tennessee Maternity Leave Act, any employee who has been employed full-time for at least one year with the City of Portland and who gives at least three months advance notice of their anticipated date of departure, length of maternity/paternity leave, and intentions to return to full-time employment, may be granted maternity/paternity leave for a period not to exceed four (4) calendar months for pregnancy, childbirth, adoption, and nursing an infant. Use of paid leave (compensatory, sick, and vacation – in that order) shall be used until exhausted for maternity/paternity purposes; if no paid leave exists, leave will be without pay.

An employee desiring maternity/paternity leave shall notify her/his department head so a temporary replacement may be secured. Maternity/paternity leave will run concurrently with FMLA leave if FMLA has not exhausted otherwise, and shall be approved depending upon the medical needs and doctor's instructions. Return to duty must be accompanied by a release statement from the employee's attending physician under maternity leave.

5.12. WORKERS' COMPENSATION LEAVE

An employee of the City of Portland who suffers injury or illness as a result of a work-related accident or condition shall receive compensation during the period of illness or injury in accordance with the Tennessee Worker's Compensation Act.

Work Related Injuries Notification: *If you experience any injury on the job as a City employee- regardless of whether it seems minor; regardless of whether it needs medical attention -- you must take the following steps:*

1. *Report the injury immediately to your department head or Human Resources;*
2. *If the department head or Human Resources is not available, report it to your immediate supervisor;*
3. *Should the injury occur after hours (weekdays) or on the weekends, report of the injury must be made as soon as you return to work and must be reported within 24 hours;*
4. *Failure to comply with this procedure may result in disciplinary action up to, and including, termination of employment.*

Please note that your health insurance will not cover the cost of a work-related injury. *Timely reporting is important for you, and is required by law.*

No compensation shall be paid by the City for the first seven (7) days of disability resulting from injury, excluding the day of injury. If sick leave is accumulated, the employee may use it for this seven (7) day period. If disability extends beyond the seven (7) day period, workers' compensation payment from the workers' compensation insurer will commence with the eighth (8) day after the injury. Beginning on the eighth day, and for as long as worker's compensation benefits continue, no accumulated sick leave shall be used by the employee. In the event the disability from injury exists for a period as long as fourteen (14) days, then the workers' compensation insurer will be retroactively paid beginning with the first day after injury through.

Employees injured in an on-the-job accident may be compensated according to the state worker's compensation board's schedule of compensation.

Employees on occupational disability leave due to an on-the-job injury will not be charged sick or vacation leave during the period of convalescence. Employees shall continue to accrue sick leave and vacation leave at their regular rate while on occupational disability or injury leave.

Leave coordination: *Workers' Compensation Leave and Family and Medical Leave (FMLA) will run concurrently for employees who are eligible for FMLA leave.*

The employee shall continue paying their portion of their insurance while on worker's compensation. After returning to work, any workers' compensation related doctor's visits will be covered by worker's compensation. If worker's compensation does not cover these visits then the employee may use their sick days.

Time Off for Medical Appointments. Any City employee with a workers'-compensation-related illness or injury who is on the job but seeing a medical provider for said illness/injury will not be required to use his/her accumulated sick leave for medical appointments that are scheduled during the employee's regularly scheduled work hours.

Medical providers and medical appointments shall include, but not necessarily be limited to: specializing physicians, medical practitioners, chiropractors, occupational therapists, and providers from other medical fields, as prescribed by provisions of the TN Code, Title 50, Chapter 6.

Workers' compensation related medical appointments shall be noted as such on the employee's time sheet/time card but shall not be deducted from the employee's accumulated sick leave. The employee shall be compensated at his/her regular rate of pay.

The employee shall, as soon as s/he has knowledge of scheduled appointments, advise the supervisor of the date and times that s/he will be away from the job. The Mayor (or designee), at his/her discretion, may question the employee's number of appointments and length of appointments through the employee's workers' compensation case worker should there appear to be a pattern of irregularities.

Mileage Paid to Employees For Medical Appointment. When a City employee, who has suffered a workers'-compensation-related illness/injury, drives more than 15 miles for a medical appointment calculated from either the employee's residence or worksite that employee is eligible for mileage reimbursement. The per mile reimbursement rate for the injured employee shall be not less than the mileage allowance authorized for state employees who have been authorized to use personally owned vehicles in the performance of their duties. Said employee is personally responsible for keeping accurate records of all mileage.

Employee May Use City-Owned Vehicles for Doctors Appointment for Workers' Compensation Related Illnesses/Injuries. City employees, who have suffered a workers' compensation related illness/injury that have a City-assigned vehicle for his /her job, shall be permitted to use that vehicle to travel to medical appointments for said illness/injury. The employee, however, may not use the City-assigned vehicle for appointments that are scheduled during off-duty time. During off-duty, the employee shall use his/her personal vehicle for appointments and shall keep mileage records to turn in to workers' compensation for reimbursement.

Those City employees who do not have access to City-owned vehicles shall drive their personal vehicles to medical appointments and will be paid mileage by the City for the first 15 miles, and then paid mileage by workers' compensation for 15 miles and above. Said employee is personally responsible for keeping accurate records of all mileage.

5.13. AMERICANS WITH DISABILITIES ACT (ADA)

The City of Portland is committed to the fair and equal employment of individuals with disabilities under the Americans with Disabilities Act (ADA). It is The City of Portland's policy to provide reasonable accommodation to individuals with disabilities who are qualified for the job in question unless the accommodation would impose an undue hardship on the City. The City prohibits any harassment of, or discriminatory treatment of, employees on the basis of a disability or because an employee has requested a reasonable accommodation.

In accordance with the ADA as amended, reasonable accommodations will be provided to qualified individuals with disabilities to enable them to perform the essential functions of their jobs or to enjoy the equal benefits and privileges of employment. This policy applies to all applicants for employment and all employees.

Disability

“Disability” refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual. A “qualified person with a disability” means an individual with a disability who **has the requisite skills, experience, and education for the job in question and who can perform the essential functions of the job with or without reasonable accommodation.**

Reasonable Accommodation

The City will seek to provide reasonable accommodation for a known disability or at the request of an individual with a disability. Many individuals with disabilities can apply for jobs and perform the essential functions of their jobs without any reasonable accommodations. However, there are situations in which a workplace barrier may interfere. A “reasonable accommodation” is any change or adjustment to the job application process, work environment, or work processes that would make it possible for the individual with a disability to perform the essential functions of the job without placing an undue hardship on the City.

There are three types of reasonable accommodation that may be considered:

- Changes to the job application process so that a qualified applicant with a disability will receive equal consideration for the job opportunity;
- Modifications to the work environment so that the qualified individual with a disability can perform the essential functions of the job; *or*
- Adjustments that will allow a qualified individual with a disability to enjoy the same benefits and privileges of employment as other similarly situated employees without disabilities.

Essential Job Functions

For each position, the job description typically will identify essential job functions. Human Resources generally will review job descriptions on a periodic basis to evaluate job functions designated as essential. An employee’s questions about a job’s requirements should be directed to the employee’s supervisor or the director/manager of Human Resources.

Requesting a Reasonable Accommodation

An employee with a disability is responsible for requesting an accommodation from the Human Resources Department, or his/her supervisor, and engaging in an informal process to clarify what the employee needs and to identify possible accommodations. The City will provide notice of the employee’s rights under the ADA and document the interactive process discussions. If requested, the employee is responsible for providing medical documentation regarding the disability.

The employee should describe the problem created by a workplace barrier so that an appropriate accommodation may be considered. The Human Resources Department will work with the employee to identify possible reasonable accommodations and to assess the effectiveness of each in allowing the employee to perform the essential functions of the job.

Based on this interactive process, a reasonable accommodation will be selected that is appropriate for both the City and the individual employee. While an individual’s preference will be considered, The City is free to choose between equally effective accommodations with consideration toward expense and impact on the rest of the organization.

A request for reasonable accommodation may be denied if it would create an undue hardship for the City. The City will provide notification in writing of denial based on undue hardship.

Factors to be considered when determining whether an undue hardship exists include the cost of the accommodation, the organization's overall financial resources, the financial resources of the particular facility at which the accommodation is to be made, the number of employees at the facility, the total number of employees of the organization, and the type of operation.

Grievances

In the event that an employee would like to grieve the outcome of the reasonable accommodation and interactive process, he/she should follow the City of Portland Grievance Procedure.

Safety

All employees are expected to comply with all safety procedures. The City will not place qualified individuals with disabilities in positions in which they will pose a direct threat to the health or safety of others or themselves. A "direct threat" means a significant risk to the health or safety of one's self or others that cannot be eliminated by reasonable accommodation. The determination that an individual with a disability poses a direct threat typically will be made by the Human Resources Department and will be based on factual, objective evidence. A written copy of the determination will be given to the employee so that s/he may submit additional information and/or challenge the determination that s/he poses a direct threat.

Confidentiality

All information obtained concerning the medical condition or history of an applicant or employee will be treated as confidential information, maintained in separate medical files, and disclosed only as permitted by law.

It is the policy of the City to prohibit any harassment of, or discriminatory treatment of, employees on the basis of a disability or because an employee has requested a reasonable accommodation. If an employee feels s/he has been subject to such treatment or has witnessed such treatment, the situation should be reported using the harassment complaint procedure. The City of Portland's policy prohibits retaliation against an employee for exercising his or her rights under the ADA or applicable state fair employment laws. Any employee found to have engaged in retaliation against an employee for exercising his or her rights or for making a request for reasonable accommodation under this policy will be subject to disciplinary action up to and including discharge. If an employee feels he or she has been retaliated against, the situation should be reported using the harassment complaint procedure.

5.14. MILITARY LEAVE

Any employee who is or becomes a member of the armed forces of the United States (including the Army, Army Reserves, Army National Guard, Navy, Naval Reserve, Marine Corps, Marine Corps Reserve, Air Force, Air Force Reserve, Air National Guard, Coast Guard, Coast Guard Reserve, Commissioned Corps of the Public Health) and leaves work for initial training for the Guard or Reserves, leaves work to join active duty military, or is called to active duty, will be placed on military leave. Such employee must present his/her supervisor or department head with advance notice of the active duty orders. The employee's seniority, status and pay rate will remain unchanged during his/her time of military leave. Continued health insurance coverage will be offered up to 24 months, with the employee paying premiums due for such policy. For the first 31 days of military leave, the City will maintain contribution at the same level as was done prior to leave. An employee wishing to continue health insurance coverage during his/her military leave shall provide a mailing address where notices of premium payments due may be

sent. When an employee's unpaid leave time is greater than half of their assigned shifts or more during any calendar month, no sick leave accrues for that month.

The process for reinstatement of employees returning from military leave begins when the employee submits an "application for re-employment." Said application must be submitted within ninety (90) days of the end of service, or from the end of hospitalization continuing after discharge for a period of not more than one (1) year for an injury/illness related to deployment.

The returning employee will be re-employed in the position they would have attained had they not been absent for military service, with the same seniority, status and pay.

5.15. MILITARY RESERVIST LEAVE

Any employee who is member, or may become a member of any reserve component of the armed forces of the United States or of the Tennessee Army and Air National Guard will be entitled to a leave of absence from their respective duties for periods of military service during which they are engaged in the performance of duty or training in the service of this state, or of the United States, under competent orders. While on such leave, the employee will be granted paid leave up to twenty (20) days (160 hours) in any one (1) calendar year.

Qualified employees who seek paid leave under this policy must provide the official order calling for their service or training to their supervisor. Employees serving in the National Guard or Military Reserve will receive full compensation for a period of twenty (20) days (or 160 hours) of military leave each calendar year, excluding holidays and scheduled off days. Such leave will not be charged to any form of accrued paid leave. An employee requesting military leave shall provide the City the dates for training and travel time in advance. After the twenty (20) working days (or 160 hours) of full compensation, members of any reserve component of the armed forces of the United States, including members of the Tennessee army and air national guard, may use up to five (5) days of sick leave in lieu of vacation leave for the purposes of not having to take leave without pay.

Active State Duty: Army/Air National Guard and TN State Guard. Civil Air Patrol

In addition to the leave of absence provided above, employees who are members of the Tennessee army and air national guard on active state duty or the Tennessee state guard and civil air patrol shall be entitled to an unpaid leave of absence from their respective duties, without loss of time, pay not specifically related to leave of absence time, regular leave or vacation, or impairment of efficiency rating for all periods of service during which under competent orders he/she is engaged in the performance of duty or training in the service of this state, including the performance of duties in an emergency.

Pursuant to T.C.A. § 42-7-102, members of the United States air force auxiliary civil air patrol who participate in a training program for the civil air patrol, or in emergency and disaster services, as defined in T.C.A. § 58-2-101, are entitled to a leave of absence with pay for a period of not more than fifteen (15) days during a calendar year for such purposes if the leave of absence is at the request of the employee's wing commander or the wing commander's designated representative. Employees granted leave are entitled to their regular salary during the time that they are away from their regular duties. All the rights and benefits of the employee continue as if a leave of absence had not been granted.

It is the responsibility of the employee to make arrangements with their department head for leave to attend monthly meetings on regular off-time, with the expectation that the paid leave granted herein will be applied to the annual training periods required for reservists.

5.16. LEAVE WITHOUT PAY

Leave without pay is defined as time off from regular work which may be granted without pay at the recommendation of the employee's department head. Leave without pay may only be authorized by the Mayor unless provided for statutorily (i.e. FMLA, Mat/Pat, ADA).

Leave without pay may only be granted after an employee exhausts all applicable paid leave, and for a period not to exceed three (3) months for good and sufficient reasons which are considered uncontrollable. When an employee is on Leave Without Pay for greater than half of their assigned shifts during any calendar month no sick or vacation leave accumulates until the employee returns to work for greater than half of their assigned shifts for the calendar month in which they return.

There is no job protection entitlement associated with a leave without pay except where statutorily mandated. Such leaves of absence may be granted to regular, ongoing full-time employees in instances where unusual or unavoidable circumstances require a prolonged absence and all applicable unpaid and paid-time-off options have been exhausted, e.g. sick leave, vacation time, etc.

Additionally:

- Health insurance premiums must be paid on a monthly basis; if leave is not covered under FMLA, the entire amount of COBRA premium will be paid by the employee to the appropriate COBRA administrator.
- The City reserves the right to limit the number of leaves granted an employee unless statutorily mandated.
- The employee on leave without pay will not receive holiday pay.

An employee who utilizes leave time to actively pursue other employment or who accepts any employment or goes into business while on leave of absence shall be considered to have resigned from their employment and will be terminated as of the day the other employment began.

5.17. EMPLOYEE TRAINING

The Mayor or his/her designee may require employees to attend conferences, seminars, workshops or other functions that are intended to improve or upgrade the employee's job skills.

Employees are also encouraged to take advantage of education and training benefits to improve their job skills and ability to qualify for advancement opportunity. These benefits are limited to training and education relevant to the employee's current position or "reasonable" transfer and/or advancement opportunities. "Reasonable" is defined as attaining the minimum qualifications for advancement or transfer with no more than two years of additional training or education.

Education and training benefits will be available to employees on a first-come, first-served basis, subject to the availability of budgeted funds and departmental operational needs. Requests for training may be initiated by either the employee or the City. Certificates of completion should be forwarded to Human Resources for inclusion in the employee's personnel file. Final decisions on requests for education and training will be made by the Mayor and the department head. Requests to attend training sessions should be made at least 15 days prior to the deadline for registration (if available). The department head, based on the supervisor's recommendation, will determine who will attend conferences and/or training opportunities based on the availability of budgeted funds.

When a request for training is approved, the employee's cost for registration, tuition, training materials transportation, lodging, and other reasonable expenses will be covered by the City. All professional training should be documented in Human Resources training files.

5.18. EMPLOYEE ASSISTANCE PROGRAM

As a benefit to employees, the City of Portland provides an employee assistance program which allows for up for three sessions per issue per year with a mental health counselor for employees and their family members. In addition, there is access to limited legal and financial advice as well as online information on general issues.

Unless as part of a disciplinary referral, utilization of this program is confidential and encouraged as undue stress, either job or family related can interfere with your health or success at work or in your daily activities.

There are instances in which supervisors may feel it necessary to make a mandatory referral to the EAP when either your behavior or attitude at work is having a detrimental effect on the organization.

Prior to making a mandatory referral, supervisors should consult with HR. Should this referral be approved, the employee will be required to sign a release of information regarding attendance and level of cooperation during the sessions. No other information will be requested. Failure to attend the mandatory counseling or an uncooperative attitude (in the opinion of the counselor) will result in immediate disciplinary action, up to and/or termination.

5.19. EDUCATIONAL / TUITION ASSISTANCE

PROGRAM SUMMARY: The City of Portland offers educational assistance to eligible employees. Any approval of educational assistance must be applicable to the employee's current job or professional development deemed beneficial to the operation of the City. Assistance must be approved and employees must agree to the stipulations of the programs outlined below for participation.

The City reserves the right to limit Educational/Tuition Assistance opportunities on a first-come, first-served basis; to limit opportunities to comply with fiscal constraints and budgetary responsibility; and to limit opportunities to those circumstances deemed to be work or job-related in the best interest of the City.

EDUCATIONAL ASSISTANCE (Scope of the benefit):

- A. The *Educational Assistance Reimbursement Program*** includes tuition expenses, books and registration fees charged by colleges, universities and vocational/technical institutions for course work applied to the completion of a two- or four-year degree or technical diploma. Master's and doctorate level course work will be evaluated for the reimbursement program on a case-by-case basis. The City reimburses eligible employees after successful completion of the course and submission of the required paperwork. Participants will be required to sign a *City of Portland Tuition Reimbursement and Repayment Agreement* form.
- B. *Academy Training for Police Officer Certification*** Includes tuition, books and registration fees for course work applied to the completion of training through the state's police academy for police officer certification. Costs for police officer certification training will be paid in advance of the training to the state's academy. Participants will be required to sign a Police Department *Tuition Reimbursement and Repayment Agreement* prior to enrollment to recapture costs on a prorated basis if the employee leaves employment within two years of attending the academy.
- C. *Professional Development*** includes enrollment fees for training costs at approved seminars, workshops, conferences etc. related to an employee's job performance and skill development in their position. Approved Professional Development training costs paid on behalf of the employee do not require a reimbursement agreement.

EMPLOYEE ELIGIBILITY REQUIREMENTS for participation:

Eligible employees must:

- be a full-time employee at the time for application for participation in the program;
- have been employed full-time for at least one (1) year or required to obtain police officer certification;
- be performing at their job's "Acceptable" performance level;
- have completed, signed, secured the required approvals and returned all documentation on time.

Any failure to meet the eligibility and documentation requirements of the program(s) may jeopardize any reimbursement or pre-payment from the City of Portland, exclude an employee from future participation in the program(s) or, be cause for the repayment of funds to the City.

Participating employees are required to complete, sign and provide the following documentation:

- the Application for Educational Assistance (Reimbursement Program) form;
- the Tuition Reimbursement Agreement form;
- the applicable Repayment Agreement form;
- and provide the City of Portland with official evidence of satisfactory completion of any and all courses (with grades received) and documentation of any additional financial assistance from another agency or source within sixty (60) calendar days of completion of any pre-approved course.

PROCEDURE:

Educational Assistance Reimbursement Program -- Employees must submit a completed application with a proposed study curriculum from the learning institution to their department head at least 30 days prior to the registration deadline for such classes. Requests will be considered for attendance at accredited colleges, universities, business, technical/vocational schools and state run academies for single courses or programs leading to a degree, certificate, or a HiSET (High school equivalency test formerly a General Equivalency Diploma (GED)). The City reserves the right to review the adequacy of any programs, and/ or course work as to relevance to the position and the integrity of the educational process.

- A. . The City reserves the right to limit its assistance to the published average of the state's cost for post-secondary education tuition costs. Participants will be required to sign a *City of Portland Tuition Reimbursement and Repayment Agreement form* with the understanding that any monies owed will be deducted from their final paycheck as long as the final pay is not reduced to below minimum wage.
- B. ***Academy Training for Police Officer Certification*** -- Employees must submit a completed application form to their department head at the time of registration. Costs for Police Officer Certification training will be paid at registration (in advance) of the training to the state's academy by the City. Participants will be required to sign *Police Department Tuition Reimbursement and Repayment Agreements* prior to enrollment.
- C. ***Professional Development*** -- Employees must submit an approved (by the department head) purchase order for registration in the seminar, workshop, conference, etc. and provide a certificate or notification of completion to Human Resources for their training files, if provided. Repayment agreement is not applicable to this circumstance.
- D. **Grade Requirements for the tuition reimbursement program** -- If a written request is approved, the employee shall receive reimbursement for the cost of tuition (maintenance) fees upon proof of successfully completing the course(s) based upon the following schedule:
- 100% reimbursement for a grade of A, B or C
 - 0% reimbursement for a grade of D or F.
 - Pass/Fail class: Pass 100%, Fail 0%
 - Minuses and pluses (A-, B+, etc.) will not change the percentages

The city will reimburse up to a maximum of \$375/per credit hour (up to 12 hours per semester/quarter) to a maximum of \$5250 per fiscal year according to the above reimbursement schedule.

- E. **Additional financial assistance programs** -- The City's financial assistance for continuing education will be reduced by the funding amounts received from other agencies/sources such as scholarships, the Department of Veterans Affairs, etc. Employees will be required to provide documentation of the funding received from any other agency or source.

F. **Required documentation at completion of course/training (for the employee file) --**

1. at the end of all **educational assistance** course work (semester or quarter) -- the employee will provide an official transcript or grade report and an itemized statement of reimbursable expenses (with receipts) and documentation of all additional tuition assistance they receive from other sources to Human Resources for processing of the reimbursement.
2. At the end of the program for **Police Officer Certification Training** -- the employee will provide a copy of their certificate of completion to Human Resources for inclusion in his/her employee file.
3. **Professional Development Training** -- the employee will provide a copy of the certificate of completion (if applicable) from the training provider to Human Resources for inclusion in his/her employee file.

REPAYMENT REQUIREMENTS: Employees participating in the Educational Assistance Reimbursement Program, certain job-specific Certifications, and the Police Officer Certification Training program will be required to sign documentation agreeing that they are required to repay the City of Portland all or a portion of the funds paid on their behalf under the program for any affected course(s) or certification if they leave employment voluntarily, or involuntarily within two years from the cost being incurred by the City.

- A. ***Educational Assistance Reimbursement Program:*** If an employee is voluntarily, or involuntarily, separated from the City within two years (24 months) of receiving educational assistance through this program, the employee will be required to repay a portion of the funding paid on their behalf. The repayment plan will be calculated as an amount prorated over a 24-month period. Specifically, for each month of employment, after completion of the final course, the repayment amount owed to the City will be reduced by 1/24 of the total amount incurred and paid on behalf of the employee. The ***TUITION REIMBURSEMENT AGREEMENT & REPAYMENT AGREEMENT FOR TUITION REIMBURSEMENT FUNDS*** forms must be completed and signed.

Educational Assistance funds must be repaid if a participant:

1. does not successfully complete any course with a grade of "C" or better, as evidenced by an official grade report, transcript, or equivalent form;
2. drops, withdraws, or takes an incomplete grade in the course(s);
3. does not continue full time employment with the City of Portland at the start and completion of any course;
4. voluntarily resigns from the City of Portland's employment within two years after completion of the final course.

- B. ***Police Officer Certification Training:*** If a police officer is voluntarily, or involuntarily, separated from the City during the two years (24 months) after completion of the basic recruit training required to become a certified police officer, the employee will be required to repay the costs and expenses incurred by the City on a prorated basis. Specifically, for each month of employment, for two years after completion of the training program, the repayment amount owed to the City will be reduced by 1/24 of the total amount incurred and paid on behalf of the employee.

- C. ***Professional Development Training:*** An employee is not required to repay the costs of professional development training at separation.

WORK SCHEDULE ACCOMMODATIONS: In cases where employees have special scheduling problems while attending approved education or training programs, especially courses in preparation for a GED, reasonable effort will be made to allow the employee release time from his/her work schedule to attend classes, subject to departmental scheduling and workloads. In situations of this type, the employee may be required to make up the release time on a weekly basis. Written approval from the employee's department head must be obtained prior to using release time. Employees who obtain their GED or HiSet shall receive a one-time bonus of \$250.

NON-WORK-RELATED TYPES OF EDUCATION/TRAINING: Employees are encouraged to improve themselves through education or training, even if it is not related to their City work; however, the City will be unable to provide financial assistance for non-work-related types of education/training. Employees may be granted, upon written request, permission to take time away from their jobs for training when such time is taken without pay, as paid leave that is available and approved (excluding sick leave). This applies only so long as their absences are pre-approved and will not cause hardships for their departments.

TAX IMPLICATIONS: There may be tax implications for employees receiving Educational Assistance and/or Professional Development Training. Please contact your accountant or tax professional for complete details. (as amended by Ord. #20-07, March 2020 **Ch12_12-06-21**)

SECTION 6 – EMPLOYEE CONDUCT

It is the policy of the City of Portland that employees use appropriate conduct during the course of their official duties. These rules of conduct are established to give general guidelines to employees as to what is acceptable behavior and what is prohibited behavior. Violation of any of these or other appropriate rules shall be sufficient reasons for counseling, reprimand, suspensions, and/or dismissal of any City employee. Rules of Conduct are not intended to grant property interest in employment.

Employees may hold their positions during good behavior and acceptable performance, but may be removed for, but not limited to, the following reasons: acts of, or behaviors of, incompetence, inefficiency, ineffectiveness, dishonesty, insubordination, discourteous treatment of the public or other employees, unbecoming conduct, neglect of duty, undermining the efficiency and/or effectiveness of the City mission to deliver service to its citizens, unwarranted work slowdown or stoppage, and undermining employee morale.

6.1. GENERAL RULES OF CONDUCT

MISCONDUCT - The following list of unacceptable activities is a sample of the types of infractions to the Code of Conduct that may result in disciplinary action. It does not include all types of conduct that can result in disciplinary action, up to and including termination.

Rule 1 – VIOLATION OF RULES

Employees of the City of Portland shall not commit any act or omit any acts which constitute a violation of any of the rules, regulations, directives, or orders of this policy whether stated in this rule or elsewhere (i.e. departmental SOP/SOG). Examples: punching the timecard of another employee; leaving during workhours without the approval of the supervisor, etc.

Rule 2 – UNBECOMING CONDUCT

Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the City. Unbecoming conduct shall include that which brings the City disrepute or reflects discredit upon the individual as an employee of the City, or that which impairs the operation or efficiency of the City or individual. Examples: Using threatening, intimidating, abusive or vulgar language; fighting, horseplay, or other disorderly conduct; sabotage, etc.

Rule 3 – IMMORAL CONDUCT

Employees shall not participate in any incident involving moral turpitude, which impairs their ability to perform or causes the City to be brought into disrepute. Definition of Moral Turpitude: conduct that is believed to be contrary to community standards of honesty, justice or good morals, thought by a reasonable person to be shameful, corrupt or vile acts.

Rule 4 – CONFORMANCE TO LAWS

Employees shall in the course of their duties obey all laws of the United States and of any state and local jurisdictions in which the employees are present. A conviction of a violation of any law may be evidence of violation of this section.

Rule 5 – REPORTING FOR DUTY

Employees shall report for duty at the time and place required by assignment or orders and

shall be properly equipped and be cognizant of all information required for the proper performance of duty.

Rule 6 – NEGLECT OF DUTY

Employees shall not commit any acts expressly forbidden or omit any acts that are specifically required by the laws of this state, the ordinances of this City, the Personnel Policy, policies, procedures or directives of the City. Employees shall not engage in any activity or personal business, which could cause them to neglect or be inattentive to duty.

Rule 7 – FICTITIOUS ILLNESS OR INJURY REPORTS

Employees shall not feign illness or injury, falsely report themselves ill or injured, or otherwise deceive or attempt to deceive any official of the City as to the condition of their health.

Rule 8 – EMPLOYMENT: SICK – INJURED – LIMITED DUTY

No employee shall engage in off-duty employment of any kind while on sick leave, workers compensation leave, or leave of absence status, except by specific written permission from the Mayor.

Rule 9 – SLEEPING ON DUTY

Employees shall remain awake while on duty. If unable to do so, they shall so report to their supervisor, who shall determine the proper course of action.

Rule 10 – UNSATISFACTORY PERFORMANCE

Employees shall maintain sufficient competency to properly perform their duties and assume the responsibility of their positions. Employees shall perform their duties in a manner, which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department.

Unsatisfactory performance may be demonstrated by a lack of knowledge of the job duties; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the position; the failure to take appropriate action; or absence without approval.

Rule 11 – INSUBORDINATION

Employees shall promptly obey any lawful directives of a supervisor, manager, department head, or the Mayor.

Rule 12 – GRATUITIES

Employees shall not accept, directly or indirectly, any money gift, gratuity, or other consideration or favor of any kind from anyone other than the City except as defined in the City of Portland Ethics Policy.

Rule 13 – ABUSE OF POSITION

Employees shall not use their official position, official identification card, or badges:

1. To secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the City.
2. To avoid consequences of unlawful acts.

Employees shall not lend their identification cards or badges to another person or permit them to be photographed or reproduced without the approval of the Mayor.

Rule 14 – ENDORSEMENTS AND REFERRALS

Employees shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service.

Rule 15 – CITIZEN COMPLAINTS

Employees shall courteously and promptly direct complaints against employees to a supervisor for handling. Supervisors taking a complaint may attempt to resolve the complaint but shall never attempt to dissuade anyone from lodging a complaint against any employee.

Rule 16 – COURTESY

Employees shall be courteous to the public and co-workers. Employees shall be tactful in the performance of their duties; shall control their tempers and exercise the utmost patience and discretion; and shall not engage in argumentative discussions. In the performance of their duties, employees shall not use coarse, violent, profane, or insolent language or gestures, and shall not express any discriminatory intent toward members of protected classes.

Rule 17 – REPORTS

Employees shall submit all required reports on time and in accordance with established procedures. Reports submitted by employees shall be truthful and complete and no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information, or alter, remove, or destroy any report once filed for the purpose of altering the natural order of information.

Rule 18– ISSUANCE / RETURN OF CITY OWNED EQUIPMENT

Each employee may be issued or provided with authorized equipment required for duty. Any employee separated from employment shall return all equipment issued.

Employees shall utilize City-owned property only for its intended purpose in accordance with established procedures and shall not abuse, damage, alter, tamper with, repair unless authorized, or allow unauthorized persons to use City-owned property. All City-owned property issued to employees shall be maintained in a proper order and returned upon separation from employment. Intentionally defacing or damaging City property is not permitted.

Rule 19 – TRUTHFULNESS

Upon the directive of the Mayor, department head, Human Resources Director, or a supervisor, employees shall fully and truthfully answer all questions specifically directed and narrowly relating to the performance of official duties or fitness for duty which may be asked of them.

Rule 20 – PRIVACY

Employees provided lockers in the work place are expected to provide their own lock and to keep the locker locked when away. Liability for loss or damage to content of lockers cannot be assumed by the City. Employees may be requested to open their assigned locker for periodic housekeeping, inspections or other occasions when it is appropriate and/or necessary. Those who use the locker rooms are expected to assist in keeping them clean and orderly. Any suspicious activity around lockers, as well as break-ins and theft, should be reported to a supervisor. All property belonging to the City is subject to inspection at any time without notice, as there is no expectation of privacy.

Rule 21 – ETHICAL and LEGAL BEHAVIORS

Employees shall not conspire or knowingly engage in any activity which deprives any person of their civil rights, due process, equal opportunity for employment, advancement, job opportunities, or any constitutional or statutory guaranteed right. No employee shall disseminate confidential or protected information to any unauthorized person for any purpose.

Employees are responsible to follow the ethics code as defined in Portland Municipal Code, Title 4, Chapter 8, Code of Ethics

6.2. DRESS CODE

Employees' personal appearance and hygiene are important both to employees and the City. Employees are expected to maintain a good personal appearance and to give consideration to neatness and cleanliness. Employees should always dress in a manner befitting the job, with due consideration to the needs of the City, other employees, and safety. Employees are responsible for dressing appropriately for work and following the dress code.

Supervisors/managers and, when notified, the Human Resources Department will interpret the application of the dress code and the appropriateness of an employee's dress at work.

Dress and appearance should not be offensive, revealing, sloppy or distracting. Clothing that works well for the beach, yard work, dance clubs, exercise sessions, and sports contests is not appropriate for a professional, casual appearance at work.

The following dress code includes appropriate appearance and dress guidelines for employees in both office and field positions. Employees in the Police, Fire, Parks and Public Works Departments are furnished uniforms, which must be worn on the job at all times.

Office personnel are expected to dress appropriately for their work environment (i.e., dress slacks, dresses, skirts and appropriate blouses, shirts, sweaters, jackets, sandals, boots, loafers, pumps).

Clothing that is not allowed to be worn by employees while working includes, but is not limited to, the following:

- tattered/torn jeans or shorts
- shirts with language or graphics that are vulgar, sexually explicit, or may otherwise be offensive;
- attire that is too tight, revealing or provocative;
- clothing that exposes bare midriffs;
- mini-skirts, sun dresses, beach dresses, spaghetti-strap dresses;
- see-through blouses or shirts;
- sports bras, halter tops, or similar attire;
- tank tops, muscle shirts or mesh shirts;
- flip-flops;
- hats (in the office);
- sweat suits, sweat pants, ski or jogging pants/shorts.

Also, remember that some employees are allergic to the chemicals in perfumes and makeup, so wear these substances with restraint.

Employees arriving at work dressed inappropriately will be sent home to change, with no pay for the time so spent. Repeated violations of the dress code may result in disciplinary action up to and including termination.

On “Casual Fridays” office personnel may wear neat, clean blue jeans (must not have holes or tears) and t-shirts, sweat shirts, sneakers, and sandals. However, items of casual clothing bearing offensive slogans and/or prints and/or with designs that are inappropriate, vulgar, offensive, or advertise drug, alcohol or tobacco-related products are not permitted.

6.3. DRUG FREE WORKPLACE

To provide a safe, healthy, productive, and drug-free working environment for its employees to properly conduct the public business, the City has adopted by resolution a drug and alcohol testing policy. The policy complies with the Drug-Free Workplace Act of 1988, which ensures employees the right to work in an alcohol and drug-free environment and to work with persons free from the effects of alcohol and drugs; Federal Highway Administration (FHWA) rules, which require drug and alcohol testing for persons required to have a commercial driver’s license (CDL); Division of Transportation (DOT) rules, which include procedures for urine drug testing and breath alcohol testing; and the Omnibus Transportation Employee Testing Act of 1991, which requires alcohol and drug testing of safety-sensitive employees in the aviation, motor carrier, railroad, pipeline, commercial marine, and mass transit industries. The types of tests that may be required under the DFW policy are: pre-employment, transfer, reasonable suspicion, post-accident (post-incident), random, return-to-duty, and follow-up.

It is the policy of the City that the use of drugs by its employees and impairment in the workplace due to drugs and/or alcohol is prohibited and will not be tolerated. Engaging in prohibited and/or illegal conduct may lead to disciplinary action. Prohibited and/or illegal conduct includes but is not limited to:

1. being on duty or performing work for the City while under the influence of drugs and/or alcohol;
2. engaging in the manufacture, sale, distribution, use or unauthorized possession of drugs at any time and of alcohol while on duty or while in or on City property, or City vehicles;
3. refusing or failing a drug and/or alcohol test administered under this policy;
4. providing an adulterated, altered, or substituted specimen for testing;
5. use of alcohol within four hours prior to reporting for duty on schedule or use of alcohol while on-call for duty; and
6. use of alcohol or drugs within eight 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

Employees who are required to take prescribed or over-the-counter medication shall notify the immediate supervisor should the medication produce any effects which might limit the employee’s ability to safely perform his/her job. Per Public Chapter 373 – 2019 a valid prescription is defined only as a prescription issued within six (6) months prior to a positive drug test.

Compliance with this substance abuse policy is a condition of employment. The failure or refusal by an applicant or employee to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or disciplinary actions up to and including termination of employment. The submission by an applicant or employee of a urine sample that is not his/her own or is adulterated shall be grounds for refusal to hire or disciplinary actions up to and including termination of employment.

All property belonging to the City is subject to inspection at any time without notice, as there is no expectation of privacy.

- a. Property includes, but is not limited to, vehicles, desks, containers, files and storage lockers.
- b. Employees assigned lockers (that are locked by the employee) are also subject to inspection.

Employees who have reason to believe another employee is using alcohol or illegal drugs while on duty must report the facts and circumstances immediately to their supervisor or Human Resources. Failure to do so may result in disciplinary action. Supervisors are required to detail in writing the specific facts, symptoms, or observations that formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. This documentation shall be forwarded to the appropriate department head who shall immediately forward the information to Human Resources.

The City performs post-offer, pre-employment; random selection (for safety sensitive positions); post-accident; reasonable suspicion; fitness-for-duty; and follow-up drug testing.

All employees in safety-sensitive positions (such as gas department employees, equipment / vehicle operators that require a Commercial Driver's License, Police and Fire department employees, etc.) are subject to alcohol and drug testing in accordance with the Department of Transportation (DOT) Omnibus Transportation Employee Testing Act of 1991 (P.L. 102-143, Title V) and the Natural Gas Pipeline Safety Act (49 CFR Part 199).

DOT regulated positions (i.e. CDL drivers) upon being engaged in a vehicle accident, or have been removed from duty due to reasonable suspicion of being under the influence by a trained supervisor, cannot resume driving activities until results of drug/alcohol screen have been confirmed as negative.

As a condition of continued employment with the City, all employees must abide by the City's policy and notify the immediate supervisor of any criminal drug statute convictions within five (5) days after such conviction. The City, in turn, informs any granting or contracting agency within ten (10) days of such notification.

Failure to comply with the provision or intent of this rule may be used as grounds for disciplinary action up to and including termination, or for requiring the employee to participate satisfactorily in an approved drug abuse assistance or rehabilitation program.

A minimum of 15 minutes and a maximum of two hours will be allowed between notification of an employee's selection for random urine drug testing and the actual presentation for specimen collection.

Random donor selection dates will be unannounced with unpredictable frequency. Some employees may be tested more than once each year while others may not be tested at all, depending on the random selection.

If an employee is unavailable (i.e., vacation, sick day, out of City, work-related causes, etc.) to produce a specimen on the date random testing occurs, the City may omit that employee from that random testing or await the employee's return to work.

An employee or job applicant whose drug test yields a positive result, indicating the presence of drugs or alcohol, shall be given the opportunity to speak with the Medical Review Officer prior for a final determination. Test results are then forwarded to Human Resources for appropriate action.

A job applicant will be denied employment with the City if his/her post-offer, pre-employment test result has been confirmed positive.

Current employees will be subject to disciplinary action up to and including termination of employment if their test result has been confirmed positive, if they refuse to test, or for any other violations outlined in the Drug Free Workplace policy.

To the extent allowed under the Tennessee Open Records Law, all information from an employee's or applicant's drug and alcohol test is confidential and only those individuals with a need to know are to be informed of test results.

6.4. TRAVEL POLICY

All employees and elected and appointed officials are required to comply with the City's travel policy, adopted separately by ordinance, and any applicable laws and charter provisions. All trips that involve reimbursement and/or City expense shall not be undertaken without prior approval of the City. Mileage, meals, incidentals and expenses will be reimbursed according to the provisions of the City of Portland Travel Policy. For details regarding travel, obtain a copy of the City's travel policy from the City Recorder or Finance Department.

6.5. WORKPLACE VIOLENCE AND HARASSMENT POLICY

The City is committed to preventing workplace violence and to maintaining a safe work environment. It is the policy of the City to promote a productive, safe and healthy work environment for all employees, customers, vendors, contractors and members of the general public and to provide for the efficient and effective operation of the City's activities. Employees and customers are to be treated with courtesy and respect at all times.

Employees are expected to maintain a productive work environment free from harassing or disruptive activity including threats of physical violence. No form of bullying or harassment will be tolerated, including sexual harassment and harassment based on race, color, religion, gender or gender identity, age, national origin, disability, military status, genetic information, communication with an elected public official, exercise of free speech made as a citizen as a matter of public concern, refusal to participate in or remain silent about illegal activities, exercise

of a statutory constitutional right or any right under clear public policy, political affiliation, or any other basis protected by law.

This policy applies to all City employees, elected officials, appointed officials, regular part time/temporary employees, members of the public, and contractors. The governing body may discipline an elected official in whatever manner it deems appropriate, consistent with its authority under state law, the municipal charter, ordinances, resolutions or other rules governing discipline of elected officials.

Per Public Chapter 331 – 2019 the City can seek an injunction against a person who commits harassment against a City employee. Harassment under this statute is defined as two (2) or more instances of contact serving no legitimate purpose directed at an employee, in connection with that persons status as an employee, that a reasonable person would consider alarming, threatening, intimidating, abusive, or emotionally distressing and that does or reasonably could interfere with the performance of the employee’s duties.

The City will not tolerate bullying, or verbal or physical conduct by an employee which harasses, disrupts or interferes with another’s work performance or which creates an intimidating, abusive, offensive or hostile environment.

1. No employee or non-employee shall be allowed to harass any other employee or non-employee by exhibiting behavior including, but not limited to, the following:
 - a. Verbal harassment – Verbal threats toward persons or property; the use of vulgar or profane language directed towards others; disparaging or derogatory comments or slurs; offensive flirtations or propositions; verbal intimidation; exaggerated criticism or name-calling; spreading untrue or malicious gossip about others.
 - b. Physical Harassment – Any physical assault, such as hitting, pushing, kicking, holding, impeding or blocking the movement of another person.
 - c. Visual Harassment – Displaying derogatory or offensive posters, cartoons, publications or drawings.
 - d. Bullying – Workplace bullying refers to unwanted aggressive behavior that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. The imbalance of power involves the use of physical strength, access to embarrassing information, or popularity to control or harm others. This behavior may be performed by individuals (or a group) directed towards an individual (or a group of individuals).
 - e. Abusive Conduct - acts or omissions that would cause a reasonable person, based on the severity, nature, and frequency of the conduct, to believe that an employee was subject to an abusive work environment, which can include but is not limited to:
 - i. repeated verbal abuse in the workplace, including derogatory remarks, insults, and epithets;
 - ii. verbal, nonverbal, or physical conduct of a threatening, intimidating, or humiliating nature in the workplace; or

- iii. the sabotage or undermining of an employee's work performance in the workplace.

A single act generally will not constitute abusive conduct, unless such conduct is determined to be severe; multiple acts may arise to the level of pervasive. To aid employees in identifying abusive conduct, the following examples are provided.

These examples are not exhaustive; they illustrate, however, the types of conduct that may violate this policy:

- Intimidating an employee by excessive yelling, repeated emotional outbursts, berating others, using an unreasonably harsh tone of voice;
- Undermining another's work by withholding pertinent work-related information or purposefully giving incorrect information, or by not giving enough information to do what is required, as compared to others;
- Persistent or constant criticism in front of others for the purpose of humiliating another employee;
- Isolating an employee from co-workers, or launching a campaign not based on facts to provoke an employee to leave or be removed;
- Making humiliating or degrading remarks about a person through or on social media; or
- Any malicious behavior a reasonable person would find unprofessional, disturbing, and/or harmful to his or her psychological health.

Under no circumstances are the following items permitted on City property, including City-owned parking areas, except when issued or sanctioned by the City for use in the performance of the employee's job:

- a. dangerous chemicals;
- b. explosives or blasting caps;
- c. other objects carried for the purposes of injury or intimidation.

Copies of the investigative report with recommendations for appropriate action will be turned over to the Mayor to determine the appropriate further action.

Anyone determined to be responsible for threats of, or actual violence, or other conduct that is in violation of this policy will be subject to prompt disciplinary action up to and including termination.

Employees are encouraged to bring their disputes or differences with other employees to the attention of their supervisors, Human Resources, or the Mayor before the situation escalates into potential violence.

The City is eager to assist in the resolution of employee disputes, and will not discipline employees for raising such concerns. Employees have the right to file a police report at their own discretion if they believe a criminal act has occurred.

Employees are prohibited from interfering or attempting to interfere with any departmental investigation.

False allegations will be dealt with on a case by case basis, and depending on the outcome, may include disciplinary action, up to and including termination.

The City will not tolerate harassment of its employees. The City will take necessary steps to stop such harassment when it occurs from employees, or third parties.

This policy applies to all officers and employees of the City including, but not limited to: full and regular part time employees, elected officials, seasonal and temporary employees, employees covered or exempt from the Human Resources rules or regulations, citizens, third parties, and employees working under contract for the City.

Sexual Harassment

The following actions constitute an unlawful employment practice and are absolutely prohibited by the City when they affect employment decisions, create a hostile work environment, cause distractions, or unreasonably interfere with work performance. They are:

1. Sexual harassment or unwelcome sexual advances;
2. Requests for sexual favors;
3. Verbal or physical conduct of a sexual nature in the form of pinching, grabbing, patting, or propositioning;
4. Explicit or implied job threats or promises in return for submission to sexual favors;
5. Inappropriate sexually-oriented comments on appearance;
6. Sexually-oriented stories;
7. Displaying sexually explicit or pornographic material, no matter how the material is displayed or communicated; and/or
8. Sexual assault on the job by supervisors, fellow employees, or non-employees
9. Demeaning insulting, intimidating or sexually suggestive written, recorded or electronically transmitted materials (such as email, instant message, video and audio, and internet materials).

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.

Making harassment complaints

An employee who feels he/she is subjected to 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. Complaints may be made orally or in writing to:

1. The employee's immediate supervisor,
2. The department head,
3. Human Resources,
4. The Mayor, or
5. the City Attorney.

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

1. his/her name, department, and position title;
2. the name of the person or people allegedly committing the harassment, including their title(s), if known;
3. the specific nature of the 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;
4. witnesses to the harassment; and
5. whether the employee has previously reported the harassment and, if so, when and to whom.

Employee Obligation

Employees are obligated to report instances of harassment. Employees are also obligated to cooperate in every investigation of harassment. The obligation includes, but is not limited to, coming forward with evidence, both favorable and unfavorable, for 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 to refrain from making bad faith accusations of harassment.

Disciplinary action may be taken against an employee who fails to report instances of harassment, or who fails or refuses to cooperate in the investigation of a complaint of harassment, or who files a complaint of harassment in bad faith. Employees are prohibited from interfering or attempting to interfere with any departmental investigation. False allegations will be dealt with on a case by case basis, and depending on the outcome, may include disciplinary action up to and including termination of employment.

Reporting and investigating harassment complaints

The Human Resource Director, or designee as appropriate, is the office the City designates as the investigator of harassment complaints against employees. In the event the harassment complaint is against the Human Resource Director, the investigator may be independent outside counsel appointed by the Mayor, or provided through the City employment practices liability insurer.

When an allegation of harassment is made by any employee, the following shall occur:

1. the City may separate the complainant and accused party for the duration of the investigation upon the approval of the department head and Mayor;
2. the investigator will meet with the employees, any witnesses, the supervisor(s), any other members of management considered appropriate and other individuals that may have relevant information. The investigator may elect to conduct a hearing as part of the investigation process;
3. the investigator will prepare a report of the complaint and submit it to the Mayor;

4. the investigator will make and keep a written record of the investigation, including notes on:
 - a. verbal responses made to the investigator by the person complaining of harassment,
 - b. witnesses interviewed during the investigation,
 - c. the person against whom the complaint of harassment was made, and
 - d. any other person contacted by the investigator in connection with the investigation.
5. the investigator will prepare and present the findings to the Mayor in a report, which will include:
 - a. the statement of the person complaining of harassment;
 - b. the statements of witnesses;
 - c. the statement of the person against whom the complaint of harassment was made; and
 - d. all the investigator's notes connected to the investigation.
6. If the City suspects a criminal act has occurred, the investigation process may be turned over to the Portland Police department or an outside agency for review.

Actions on complaints of harassment

If the Human Resources Director or Mayor, or designated investigator, determines that the report is not complete in some respect, they may question the person complaining of harassment, the person against whom the complaint has been made, witnesses to the conduct in question, or any other person(s) who may have knowledge about the harassment.

Based upon the report and his/her own investigation, the Human Resources Director and/or Mayor, within a reasonable time, will determine whether the conduct in question constitutes harassment.

In making that determination, the Human Resources Director and/or Mayor may 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. The decision of whether harassment actually took place will be determined on a case-by-case basis.

If the Human Resources Director and/or the Mayor determines that the harassment complaint is founded, the City shall take immediate and appropriate disciplinary action against the offending employee, consistent with its authority under the City charter, ordinances, resolutions, or rules governing its authority to discipline employees.

The disciplinary action may include oral counseling, written reprimand, suspension, demotion, mandatory referral to the EAP program, or termination depending upon the severity of the matter and circumstances surrounding the incident(s).

A written record of disciplinary actions, including oral reprimands, shall be maintained in the employee's human resources file.

Determining the level of disciplinary action shall also be made on a case-by-case basis. The disciplinary action may be consistent with the nature and severity of the offense and any other

factors sincerely believed to relate to fair and efficient administration of the City. 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 City. The City will notify the employee who filed a harassment complaint of the outcome of the investigation once determined.

In all events, an employee found guilty of violation of this policy shall be warned not to retaliate in any way against the person making the complaint, witnesses, or any other person connected with the investigation. All other City employees are also hereby warned not to retaliate in any way to the complaining or participating parties.

Any such retaliation or harassment may include disciplinary action, up to and including termination of employment.

If the employee complaining of harassment is not satisfied with the manner in which the City addressed the complaint, the employee shall be given an opportunity to present a request for review of the outcomes to the Mayor through the City Grievance Process.

The Office of the Mayor will render a determination in the matter within prescribed timelines, and in the manner outlined in applicable grievance or complaint processes.

The decision of the Mayor will be final in all such matters, unless otherwise provided for in these personnel policies.

The Mayor has the authority to appoint a neutral third party (arbitrator) to be the final decision-maker in lieu of the Mayor when he/she determines that a neutral third party is in the best interest of the City.

6.6. COMPUTER AND ELECTRONIC DEVICE USE

It is every employee's duty to use the City's computer resources and communication devices responsibly, professionally, ethically and lawfully. These policies are not intended to, and do not grant users any contractual rights. The term "computer resources" refers to the City's computers, electronic equipment, and its entire computer network.

The computer resources are the property of the City and should be used for legitimate business purposes. While personal use of City computer resources including Internet and electronic mail is not forbidden, it is limited to breaks and meal times. Personal use shall be minimal and shall not interfere with the performance of job duties and responsibilities. Users are permitted access to the computer resources to assist them in performing their jobs. Use of the computer resources is a privilege that may be restricted or revoked at any time. All information contained in the computer resources and all documents generated there from are for the exclusive use of the City in connection with the conduct of its business and are the sole property of the City. Periodically, the City may make a random check of any device in order to ascertain any abuse.

A. General Computer Policies

- Computer information, programs, software and hardware are owned by and licensed to the City.

- All systems and information are considered proprietary.
- Utilization of computing resources, the Internet or electronic mail may not be used in any way that may be disruptive to the City's operations or in violation of Federal or State laws or City policy.
- Only those persons currently employed (or given special permission) are permitted to use any computer resources owned, leased or in control of the City of Portland.
- **Employees have no right or expectation of privacy regarding computing resources, the Internet or electronic mail and voice mail systems.** The City has the right to monitor Internet and e-mail use for security, as well as detection of an employee's use of these services for personal use on company time.
- Use of the City of Portland's computer resources or Internet connections for gambling, obtaining or distributing pornographic materials and all other illegal activity is strictly forbidden. The City actively monitors incoming and outgoing internet traffic for this type of usage.
- Programs and/or downloads related to specialized icons, wallpaper, screensavers, instant messaging, chat rooms, and online gaming is strictly prohibited.
- Only information system personnel or agents contracted by them may install software or hardware on any City computer system. Information systems personnel may, at their discretion, authorize staff to perform specific software or hardware installations. All other software or hardware installations are strictly prohibited.
- The changing of, or introduction of, any original software or hardware on users' systems or other company computer or communications systems from the original issued form is forbidden, without prior IT Department approval.
- No software programs are to be installed on any computer equipment without IT management's approval.
- Unless departmental arrangements have been made, always obtain permission from a co-worker before using his/her computer. Please be considerate, if you must use someone else's computer, do not change their colors or other settings.
- Do not log into your colleague's account(s). However, staff may authorize other staff members to use shared files and/or directories in cooperative projects.
- Where copyright laws apply, the City forbids unlawful copying of any software or manuals.
- Anyone misusing or tampering with computer information or equipment will face disciplinary action up to and including termination, as well as, possible prosecution. Also, violations of the policy guidelines can lead to revocation of system privileges.
- The City of Portland is under no obligation to store or forward the contents of an individual's computer files, e-mail inbox/outbox or voice mails after the termination of the individual's employment.

B. Internet Usage

- Access to the Internet is for the exchange of information and research consistent with the vision, mission, goals and activities of the City of Portland.
- Employees are expected to use the Internet solely for job related or approved educational research and City business communications during work hours.
- Employees shall not use the Internet for inappropriate or unlawful purposes, including but not limited to, placing unauthorized information, computer viruses or harmful programs on or through the computer system in either public or private files or messages, using obscene or otherwise inappropriate language in communications and obtaining, viewing or downloading information that is unlawful, obscene, indecent, vulgar, pornographic or otherwise objectionable.

- Employees are prohibited from posting anything on the Internet that could be construed as an act of unlawful harassment, a threat, or other evidence of discrimination.
- An employee may not characterize him or herself as representing the City, directly or indirectly, in any online posting unless done pursuant to a written policy of the City.
- Internet access records and records of downloaded files are not private and may be occasionally monitored as the Mayor or department head deems necessary.
- Department heads shall be responsible to ensure proper employee use of the Internet.
- Inappropriate or unlawful use of the Internet may result in the loss of access for the user and, depending on the seriousness of the infraction, can result in disciplinary action as deemed necessary.

C. E-Mail Usage

- In general, electronic mail is treated no differently than any other business record or correspondence.
- Employees should be aware that all types of business records are subject to inspection, review, or disclosure without prior notice for any business purpose or as required by law.
- Electronic mail may constitute a public record under certain circumstances and may be accessible or obtainable by individuals, agencies and others outside the City and subject to state archivist rules for retention / destruction.
- All electronic mail originating from or received by City computer systems is City property, and is not considered private information.
- Electronic mail may be monitored by the department head and/or the Mayor as they deem necessary.

6.7. SOCIAL MEDIA

This policy applies to every employee employed by the City in any capacity who post any material whether written, audio, video, or otherwise on any website, blog or any other medium accessible via the Internet.

City of Portland departments may utilize social media and social network sites in support of City goals and objectives. To address the fast-changing landscape of the Internet and the way residents communicate and obtain information online, City departments may consider participating in social media formats to reach a broader audience. The City of Portland encourages the use of social media to further the goals of the City and the missions of its departments where appropriate.

The Mayor and department heads will approve which social media outlets may be suitable for use by the City and its departments.

The City of Portland's website will remain the City's primary and predominant Internet presence.

All official City presences on social media sites or services are considered an extension of the City's information networks and are governed by the City of Portland's policy.

The Mayor and department heads will review department requests to use social media sites. In addition, the Mayor and department heads may assist in the selecting of appropriate social media outlets, as well as defining a strategy for engagement using social media.

Departments that use social media are responsible for complying with applicable federal, state, and local laws, regulations, and policies, as well as all applicable City policies. This includes adherence to established laws and policies regarding copyright, records retention, the open records statutes, the First Amendment, and privacy laws.

Authorized employees representing the City government via social media outlets must conduct themselves at all times as representatives of the City. Employees that fail to conduct themselves in an appropriate manner shall be subject to the disciplinary action outlined in the *City of Portland Personnel Manual* and the City of Portland Information Systems Policy and Procedures. Violation may also result in the removal of department pages from social media outlets.

Departmental staff members are responsible for the content and upkeep of any social media pages or sites that a department might create. One contact will be designated by the department and approved by the Mayor.

The simultaneous use of a City email address, job title, official City name, or logo in conjunction with a posting may be evidence of an attempt to represent the City in an official capacity. Other communications leading a reasonable viewer to conclude that a posting was made in an official capacity may also be deemed evidence to represent the City in an official capacity.

Any postings on non-City social media sites and platforms made in an official capacity may be subject to the Tennessee Public Records Act. A City employee posting on a non-City social media site or platform shall take reasonable care not to disclose any confidential information in any posting. When posting in a personal capacity an employee should take reasonable care to distinguish that his content is a personal expression and not that of the City.

6.6. ATTENDANCE

Punctual and regular attendance is necessary for the City to operate efficiently. The City provides a variety of forms of leave to cover absences from work. Employees are expected to report for duty, and be ready to begin work by the start of the regular work day or their regular shift, unless on approved leave.

Employees unavoidably late or absent from work due to illness or other causes must notify their supervisor within the time frame established by each department, unless unusual circumstances prevent the employee from making proper notification. Employees must explain the reason for the absence and, if possible, the anticipated time and date they will return to work. When this is not possible due to sudden illness or emergency, the employee is to notify his/her supervisor as soon as possible, and in all cases, prior to the start of the work day in which the employee will be absent. Failure to notify one's supervisor of absences, or abuse of leave policies may result in disciplinary action.

ATTENDANCE: Punctual and regular attendance is necessary for the efficient operation of the City. Attendance expectations for all employees are that they are to be at work every day, on time and work their complete workday. Uncontrollable circumstances may cause an employee's inability to meet attendance expectations. In those instances:

- Employees who are unavoidably late or absent from work due to illness or other cause must notify their supervisor (or the supervisor's designee if unable to reach the

supervisor) within the time frame established by his/her department of their regularly scheduled starting time (with the exception of an emergency situation).

- Employees should provide the reason for their absence and, if possible, an anticipated return to work date. A note should be provided to the supervisor if the employee is treated by a medical professional.
- Supervisors should notify Human Resources when an employee is absent more than three (3) consecutive days for guidance on possible FMLA leave eligibility.
- Failure to timely notify one's supervisor of absences may result in disciplinary action or dismissal.
- Excessive absences, unless protected under existing law, may be subject to disciplinary action regardless of an existing bank of available paid leave time.

Every City employee has been assigned working hours. These scheduled hours are not the same for every employee or every department.

Note: An unauthorized absence from work for a period of three (3) consecutive working days including three (3) days **no show/no call** will be considered a voluntary resignation.

RECORDING TIME: Some City employees record their hours on time sheets rather than “punching” time clocks. Employees who complete time sheets are subject to the same rules as those using a time clock.

- The 7-Minute Rule: Employees assigned a time clock must not clock in more than seven (7) minutes prior to the beginning of their work schedule, nor clock out more than seven (7) minutes after the end of their work schedule.
- Early or late clock-ins/outs in excess of seven (7) minutes deviation from the assigned work schedule must be justified and approved by the supervisor.
- Time accumulated on the time clock before or following the employee's scheduled work hours will not be allowed whether regular time or overtime – without written justification provided to the payroll office by the supervisor. The accumulation of extra time or overtime by virtue of early clock-in or late clock-out is prohibited as long as practices remain compliant with the FLSA regulations for time rounding 29 CFR § 785.48.
- An employee who does not have prior written permission and is found to have clocked in more than seven (7) minutes before his/her schedule, or clocked out more than seven (7) minutes after his/her schedule, will be in violation of the provisions of this policy and subject to discipline.

TIME CALCULATIONS: Tardiness exceeding the seven (7) minute grace period will be counted in 15-minute increments **for purposes of payroll calculation.** Fractions of time on the clock beyond the seven (7) minute grace period resulting in overtime will be paid in 15-minute increments but only when overtime has been authorized. **All issues of tardiness up to and including the 7-minute period are subject to disciplinary action.**

- Continual and/or repeated deviations from the assigned working hours will be grounds for disciplinary action. Such deviations include, but are not limited to: changes of schedule without prior approval, excessive tardiness, and clocking in/out too early or too late.
- Any time a City employee leaves the workplace during the workday, except for work-related business, the employee must clock out. Upon returning to work, the employee must clock-in.

PAID TIME OFF and TIME OFF DOCUMENTATION: If the time card /sheet calculations result in less than the assigned work hours for the pay period, the employee must claim paid-time-off leave e.g. vacation leave*, funeral leave*, sick time*, jury duty*, or other paid-time-off reason for the lost time. (**NOTE: All of these must be approved, and some in advance.*)

Prior arrangements, approved by the supervisor, for lost time for anything other than the approved, paid-time-off reasons noted above may supersede the prior approval requirement. In other words, the employee shall be docked for lost time during the workweek if no provision is made for the absence by using any of the paid-time-off reasons listed above.

For any time off including the *leave times mentioned above, a *Time Off Request Form* must be completed and approved by the supervisor in advance, except in the event of an emergency.

FALSIFICATION OF RECORDS: Time cards/sheets must be signed by the employee and forwarded to the supervisor for review and approval. The employee's signature attests to the accuracy and completeness of the time card/sheet.

No City employee is to punch the time clock in/out for another employee. This and any deliberate documentation errors to time cards/sheets will be considered falsification of records and documents and shall be a violation of City policy that will result in both employees receiving disciplinary action. **Per Public Chapter 495 – 2019 the penalty for knowingly making a false entry in, or a false alteration of a government record, may be punishable as a Class E Felony under Tennessee Law.** (as amended by Ord. #20-07, March 2020 *Ch12_12-06-21*)

SECTION 7 – SEPARATIONS AND DISCIPLINARY ACTION

7.1. SEPARATIONS

All separations of employees from positions with the City shall be designated as one of the following types and shall be accomplished in the manner indicated: resignation, reduction in force, disability, retirement, death, or dismissal. At the time of separation and prior to final payment, all records, assets, and other City property in the employee's custody must be transferred to the City. Any amount due for failure to return City property may be withheld from the employee's final compensation on a depreciated/prorated basis. Deductions from pay cannot result in the employee being paid less than the federal minimum wage. These rules are not intended to grant property interest in employment.

7.2. RESIGNATION

In the event an employee decides to leave the City's employ, an appropriate (customarily, two weeks') notice shall be given so that arrangements for a replacement can be made. In such a case, employees will be expected to return any/or all City equipment assigned and/or in their possession. An unauthorized absence from work for a period of three (3) consecutive working days may be considered resignation from employment by means of job abandonment.

In the event an employee tenders a resignation with appropriate notice while in good employment standing, and not under investigation for an offense in violation of City policy, the City may, if in the best interest of City operation, remove the employee from service and compensate them for remaining scheduled work hours, and any unpaid vacation. In this event the employee will be placed on Administrative Leave with Pay until the last day of official employment not to exceed two (2) weeks.

If a former employee returns to City employment after resigning, his/her status of seniority, pay, leave, etc., will be the same as a new employee.

7.2. REDUCTION IN FORCE (LAYOFF)

To establish an effective and equitable process in the event that a reduction-in-force (RIF) is necessary, a RIF may be determined as necessary by the Mayor. The Mayor may promulgate additional policy, rules and procedures necessary for the implementation of a RIF.

This regulation applies to all regular full time, regular part time and temporary employees. Provisional employees, hired for a specific period covering the duration of an assigned project, are not subject to the provisions of this policy. State-funded positions, which the City supplements, may be subject to a reduction or elimination of the City supplement. A loss of the City supplement may not ultimately result in a position reduction.

In the event that a RIF becomes necessary, consideration shall be given to organizational needs, the quality of each employee's service, and length of service in determining retention. For the purpose of this regulation, it is understood that upon determination that a RIF becomes necessary, a RIF plan may be implemented based on the circumstances.

Discharge, demotion, or layoff because of lack of work, RIF, or job elimination is non-grievable under the City's Grievance Policy and Procedure. The City retains the right, at any time, to abolish positions for business necessity.

7.3. DISABILITY

An employee may be separated from employment with the City for a disability when he/she cannot perform the essential functions of the job because of a physical or mental impairment that cannot be accommodated without undue hardship, or when the disability poses a direct threat to the health and safety of the employee and/or others.

7.4. RETIREMENT

Retirement is defined as voluntary withdrawal from City employment by an employee eligible to receive retirement benefits under Social Security, the Tennessee Consolidated Retirement System (TCRS), or other adopted retirement system. Retirement benefits are based upon the regulations of the retirement system in which the employee is enrolled and any other applicable provisions that may be in effect at the time of that employee's retirement. 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 schedule.

7.5. DEATH

All compensation due in accordance with T.C.A., Section 30-2-103, designation of beneficiary, wages and debts owed deceased employee, shall be paid except for such sums as by law must be paid to the surviving spouse.

7.6. DISMISSAL

The Mayor may remove all officers and employees of the City subject to the City Charter, state law, and provisions of this personnel ordinance.

7.7. DISCIPLINARY ACTION

Whenever an employee's performance, attitude, work habits, or personal conduct fall below desirable level, supervisors should inform employees promptly and specifically of such lapses and should give them counsel and assistance. All records associated with disciplinary action shall become a permanent part of the employee's file. The employee may attach a rebuttal statement.

The types of disciplinary action are:

1. oral reprimand,
2. written reprimand,
3. suspension,

4. reduction in pay,
5. demotion, and
6. dismissal

Disciplinary action may be remedial and progressive, if possible, with the objective of directing and motivating employees to fully carry forth their work obligations to the City.

Employees should be informed of standards of conduct, performance, and applicable rules and regulations. Rules and regulations should be consistently applied considering the gravity of the infraction, mitigating circumstances, previous work record, and other relevant criteria.

As a public employee, the City may require you to provide information as part of an internal and/or administrative investigation to determine whether disciplinary or administrative action is necessary. You may be ordered to truthfully respond to questions or be subject to disciplinary action. You may be asked questions specifically, directly and narrowly related to performance of your official duties or fitness for your job. You are entitled to all the rights and privileges guaranteed by the law and the Constitution of the United States, including the right not to be compelled to incriminate yourself. If you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you could be subject to discharge. If you do answer, neither your statement, nor any information or evidence which is gained by reason of such statement, can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent internal discipline.

ORAL REPRIMAND

Whenever an employee's performance, attitude, work habits, or personal conduct fall below a desirable level, the supervisor should inform the employee of such lapses and should give him/her counsel. If justified, a reasonable period of time for improvement may be allowed before initiating disciplinary action. The supervisor will place a memorandum in the employee's file stating the date of the oral reprimand, what was said to the employee, and the employee's response. The memorandum will be reviewed with the employee prior to placement in the employee's file.

WRITTEN REPRIMAND

When an employee receives a written reprimand, a copy will be placed in the employee's file. The supervisor administering the reprimand will advise the employee that the action is a written reprimand and emphasize the seriousness of the problem; cite applicable previous corrective actions and/or informal discussions relating to the offense; identify the problem and/or explain the offense; inform the employee of the consequences of continued undesirable behavior; detail performance improvement plans and identify dates by which the correction actions shall be taken.

At the conclusion of a meeting with the employee, a signed copy of the written reprimand will be given to the employee and a copy placed in the employee's file. It is recommended that the affected employee sign 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.

SUSPENSION

An employee may be suspended with or without pay by the Mayor or by his/her department head with the approval of the Mayor.

REDUCTION IN PAY

An employee may have their pay reduced as a disciplinary action by the Mayor or by his/her department head with the approval of the Mayor.

DISCIPLINARY DEMOTION

An employee may be demoted by the Mayor or by his/her department head with the approval of the Mayor.

DISCHARGE

An employee may be discharged by the Mayor or by his/her department head with the approval of the Mayor. Employees who are involuntarily discharged are not eligible for payout of accrued but unused paid leave, but will be paid out any unused compensatory time. The action of the Mayor, or designee as authorized by the Mayor, shall be final and binding on all parties involved, unless overturned or remanded by the chancery court on appeal.

The City will assess discharge actions using the following standard:

- The employee was informed either verbally, or by promulgation of work rules, that an act or behavior could reasonably result in discipline.
- The employee should have known that the act or behavior could reasonably result in discipline due to the nature of the act or behavior.
- The City took reasonable steps to make a fair determination of the circumstance(s) involved.
- The City has reason to believe the employee committed the alleged infraction, act, or behavior based on observation of reasonable facts.
- The City took reasonable measures to ensure the consistent application of rules and regulations using available resources.

INVESTIGATIVE LEAVES

ADMINISTRATIVE LEAVE WITH PAY/REASSIGNMENT

An employee may be placed on administrative leave with pay from his/her specific job duties and temporarily reassigned pending the outcome of an investigation, and upon approval of the Mayor, or approved designee. A copy of the temporary removal/reassignment notification and related documentation shall be forwarded to Human Resources for inclusion in the employee's file.

ADMINISTRATIVE LEAVE WITHOUT PAY

When an employee is unable to effectively perform the duties of his/her position due to an ongoing investigation, the employee may be placed on administrative leave without pay by the Mayor, or authorized designee, pending the outcome of the investigation when it is in the best interest of the City. In the event the employee is determined eligible to return to his/her duty at the conclusion of the investigation, the employee will be restored with backpay for hours missed.

SECTION 8 – MISCELLANEOUS POLICIES

8.1. NONSMOKER PROTECTION ACT

The City complies with the Non-Smoker Protection Act of 2007 which prohibits smoking in all public places such as buildings, equipment, and City-owned vehicles. All employees who operate City-owned vehicles are prohibited from smoking, the use of vapor devices, or use of smokeless tobacco in the vehicle or piece of equipment. This includes other occupants that may be being transported in the vehicles. Violators of this policy will be subject to disciplinary action.

8.2. VOTING POLICY

When elections are held in the state, leave for the purpose of voting, if requested, shall be in accordance with T.C.A. 2-1-106. Any person entitled to vote in an election held in this state may be absent from any service or employment on the day of the election for a reasonable period of time, not to exceed three (3) hours, necessary to vote during the time the polls are open in the county where the person is a resident. A voter who is absent from work to vote in compliance with this section may not be subjected to any penalty or reduction in pay for such absence.

If the tour of duty [workday] of an employee begins three (3) or more hours after the opening of the polls or ends three (3) or more hours before the closing of the polls of the county where the employee is a resident, the employee may not take time off under this section.

The employer may specify the hours during which the employee may be absent. Application for such absence shall be made to the employer before twelve o'clock (12:00) noon of the day before the election.

8.3. IDENTITY THEFT POLICY

The risk to the City, its employees and customers for data loss and identity theft is of significant concern to the City and can be reduced only through the combined efforts of every employee and contractor. The City adopts this sensitive information policy to help protect employees, customers, contractors and the City from damages related to the loss or misuse of sensitive information.

Sensitive information includes the following items whether stored in electronic or printed format:

1. Credit card information (including credit card number (in part or whole), credit card expiration date, cardholder name, and cardholder address);
2. Tax identification numbers (including social security number, business identification number, and employer identification number);
3. Payroll information (including paychecks and pay stubs);
4. Cafeteria plan check requests and associated paperwork;
5. Medical information for any employee or customer (including doctor names and claims, insurance claims, or any related personal medical information); and

6. Other personal information belonging to any customer, employee or contractor (including date of birth, address, phone number, maiden name, names, or customer number).

Municipal personnel are required to use good judgment in securing confidential information to the proper extent. If an employee is uncertain of the sensitivity of a particular piece of information, s/he should contact the supervisor. In the event that the City cannot resolve a conflict between this policy and the Tennessee Public Records Act, the City will contact the Tennessee Office of Open Records.

Each employee and contractor performing work for the City will comply with the following Hard Copy Distribution policies:

1. File cabinets, desk drawers, overhead cabinets, and any other storage space containing documents with sensitive information will be locked when not in use.
2. Storage rooms containing documents with sensitive information and record retention areas will be locked at the end of each workday or when unsupervised.
3. Desks, workstations, work areas, printers and fax machines, and common shared work areas will be cleared of all documents containing sensitive information when not in use.
4. Whiteboards, dry-erase boards, writing tablets, etc. in common shared work areas will be erased, removed or shredded when not in use.
5. When documents containing sensitive information are discarded, they will be placed inside a locked shred bin or immediately shredded using a mechanical cross cut or Department of Defense (DOD) approved shredding device.

Each employee and contractor performing work for the City will comply with the following Electronic Distribution policies;

1. Internally, sensitive information may be transmitted using approved municipal e-mail. All sensitive information must be encrypted when stored in an electronic format.
2. Any sensitive information sent externally must be encrypted and password protected and only to approved recipients. Additionally, a statement such as this should be included in the e-mail:

"This message may contain confidential and/or proprietary information and is intended for the person/entity to whom it was originally addressed. Any use by others is strictly prohibited."

Staff training shall be conducted for all employees, officials and contractors for whom it is reasonably foreseeable that they may come in contact with accounts or personally identifiable information that may constitute a risk to the City or its customers.

The Mayor, or designee, is responsible for ensuring that identity theft training for all requisite employees and contractors is provided. Employees must receive annual training in all elements of this policy. To ensure maximum effectiveness, employees may continue to receive additional training as changes to the program are made.

8.4. JURY AND CIVIL DUTY LEAVE

Civil leave with pay shall be granted to employees for the following reasons:

1. Jury duty (T.C.A. 22-4-108);

2. To answer a subpoena to testify for the City.

Employees providing proper documentation when selected for jury duty shall be excused from their assigned duties for the actual duration of the jury duty. In the event of release from jury duty during the employee's normal working hours, s/he shall be expected to return to his/her department. An employee shall receive full pay from the City during jury duty. Any monies received from jury duty may be kept by the employee.

8.5. DRIVERS LICENSES

Any employee who is required as an employment condition to operate a City vehicle must possess and maintain an appropriate valid driver's license. Any employee who drives a City vehicle must **immediately** inform his/her supervisor if his/her license becomes denied, expired, restricted, suspended, or revoked. Periodic review of employees' driving records may be conducted by the City.

All employees required to drive:

- a vehicle with a gross weight of more than 26,000 pounds;
- a trailer with a gross weight of more than 10,000 pounds;
- a vehicle designed to transport more than 15 passengers, including the driver; and
- any size vehicle hauling hazardous waste requiring placards

Employees operating vehicles of greater than 26,000 GVW and/or carrying 15 or more passengers are required to have a Tennessee Commercial Driver's License in accordance with T.C.A. 55-50-101 et seq. Fire truck, police vehicle, and emergency medical vehicle operators are exempt from the CDL requirements.

8.6. USE OF CITY VEHICLES

Use of City Vehicles: No employee may use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to oneself or any other person, group, or organization other than the City. Decisions about aid to charitable, civic or other organizations will be made exclusively by the Mayor and the City Council.

Authorized Positions for Vehicle Take Home: Due to the need for various departments to have on-call employees available to deploy in emergency situations, a take-home vehicle policy may be adopted by Resolution of the City Council.

Rules for Drivers of City Vehicles:

- No one may ride in City vehicles except City employees or people who are directly involved in ongoing City projects such as engineers, contractors, and vendors.
- Absolutely no family members are allowed to ride in a City vehicle except for City related matters or functions. All employees who are not the on-call person may only use the City vehicle for City business.
- The paid on-call employee will be required to have the vehicle with them at all times.
- The on-call employee may not leave the City's geographical utility service area in the City vehicle without proper approval.

- City employees may use City vehicles to attend job related schools if assigned by the department head. No other City employee will be allowed to take a City vehicle home overnight unless specifically approved by the department head.
- All employees are required to keep their assigned vehicle clean with maintenance up to date and documented.
- No smoking (including vapor devices), or smokeless tobacco use shall be allowed in City vehicles at any time.

Any employee who is required as an employment condition to operate a City vehicle must possess and maintain an appropriate valid driver's license. Any employee who drives a City vehicle must immediately inform his/her supervisor if his/her license becomes denied, expired, restricted, suspended, or revoked. Periodic review of employees' driving records may be conducted.

8.7. BREAKS AND MEALS

Employees working an eight (8)-hour daily work schedule may be allowed to take a fifteen (15) minute paid break in the morning and another one in the afternoon. The supervisor/manager will coordinate break schedules based on the needs of the department.

With the exception of the Police Department, Fire Department and Water Treatment Plant, whose schedules must cover 24-hour operations, full-time employees will observe a 40-hour workweek with a one-hour unpaid meal break and two 15-minute paid break times scheduled at the discretion of the department head.

A. Coffee breaks and snack breaks (15-minute breaks) are compensable rest periods and cannot be excluded from hours worked as meal periods as long as they are under 20 minutes in length.

B. Meal Periods - "A bona fide meal time, when employees are completely relieved from duty, is not work time." 29 C.F.R. § 785.19(a). "Short periods, such as coffee breaks or snack breaks, are not considered meal time. If an employee works during the meal, the time is compensable. Whether or not an employee's meal period can be excluded from compensable working time depends on the employee 'freedom meal test'." 29 C.F.R. § 785.19(a). Unless all of the following three conditions are met, meal periods must be counted as hours worked:

1. The meal period generally must be at least 30 minutes, although a shorter period may qualify under special conditions.
2. The employee must be completely relieved of all duties. (If an employee must sit at a desk and incidentally answer the telephone this would be compensable time)
3. The employee must be free to leave his/her duty station. There are no requirements, however, that an employee be allowed to leave the premises or work site.

C. Smoking Breaks: The 15-minute breaks in the morning and afternoon are also the designated times for smoking breaks and are to be compliant with the Non-Smoker Protection Act of 2007 which prohibits smoking in all public places such as buildings, equipment, and City-owned vehicles.

Note: Employees working in the field, away from their department office locations, must begin and end their 15-minute break(s) at the worksite. Travel time to and from the work location is included in the 15-minute break time.

Overtime, lunch breaks, break times and any other modification of the hours/time mentioned above shall be subject to approval of the department head.

8.8. INCLEMENT WEATHER

It is the City's intent to remain open through various weather situations unless it is determined that the essential functions of the City cannot be safely be administered. This decision will be made by the Mayor and will be communicated via appropriate communication methods.

However, when the weather conditions appear to be so severe that an employee fears for his/her safety in traveling to or from the work site, he/she may be absent with leave if the following conditions are met:

1. The employee informs his/her immediate supervisor of his/her absence and the reason for it as soon as possible; and
2. The employee reports to work immediately if a change in weather conditions allows safe transportation to the work site.

If the above conditions are not met, the employer will deduct the missed workday (or portion thereof) from accumulated vacation leave, and if no leave is available, the missed portion of the work day will be unpaid. Reporting this leave shall follow the same requirements as other leave.

In situations where advanced notice of closure is known, the Mayor will communicate such closure via appropriate means. If City government operations are closed due to inclement weather, all non-essential personnel will be provided administrative leave with pay. Those employees deemed essential personnel will be provided the choice between time off to be used at a later date equivalent to time awarded off with pay to non-essential employees, or payment incurred for the time served during closure of government operations.

The policy is meant for those who are in danger due to weather conditions only. Should any employee abuse this policy, he/she will be subject to disciplinary action.

8.9. PERSONNEL RECORDS

Per Public Chapter 495 – 2019 the penalty for knowingly making a false entry in, or a false alteration of a government record is punishable as a Class E Felony under Tennessee Law.

The City respects the dignity and worth of each individual employee, while asking each employee to offer in return his/her loyalty, respect, and best effort. The City will collect, retain, use, disclose, and maintain the confidentiality of employee information as required by law.

Human Resources records for each employee are kept on file and maintained in a secure manner by the Human Resource Department.

The Human Resources File for each employee may contain, but not be limited to the following information: 1) Human Resources action forms noting position and wage information; 2) performance evaluation forms and other documentation related to an employee's job

performance; 3) employment documentation including application and resume, employee data sheet, and income tax deduction forms; 4) outside employment forms; 5) official commendations, training and education records including certificates and diplomas; 6) complete documentation pertaining to all disciplinary matters and corrective actions; 7) information relative to grievance proceedings, and complaints of discrimination and harassment filed by the employee; and, 8) all applicable benefits records. All medical records shall be kept in a separate confidential file for each employee.

It is the responsibility of each employee to update personal information including change of address, telephone number, marital status, draft status, beneficiaries, number of dependents, or completed education/training maintained in the Human Resources file by notifying the Human Resource Department. The City shall not be held liable when incorrect withholding, wrong beneficiaries, or loss of employee benefits result from the failure of any employee to keep Human Resources records current.

Collection, Retention, and Use of Personal Information

The City will strictly follow the requirements of applicable laws regarding information collection concerning membership in protected class. With these restrictions in mind, the City will gather such information about job applicants or employees as determined by the City to meet compliance initiatives.

The following basic principles will be applied in collecting and retaining personal information:

1. The Human Resource Department shall maintain a complete (master) file of each employee's records, which will contain necessary information, as determined by applicable provisions within a City charter, ordinance or resolution. The master file shall be the central file containing all employee information.
2. Each department head may maintain a file on each employee in his/her charge. The file shall be limited to performance evaluations, attendance records, official memos, letters, and information related to an employee's salary history. All information contained in this file must also be present in the master file.
3. Payroll data may be kept separately from the human resources file and the departmental file, although both may include information about an employee's salary history.
4. Supervisors may maintain separate files on their subordinates. The file shall be limited to performance evaluations, attendance records, official memos, and letters. All information contained in this file must also be present in the master file.
5. Employee information may be collected from employees whenever possible, but the City may use outside sources for other information where allowed by law.
6. Worker's Compensation documents will be maintained in a separate file in the custody of the Human Resource Department.
7. Medical information obtained from city provided medical examinations are the property of the City, and will be maintained in a secured file system separate from an employee's official Human Resources record. Medical information may include, but not be limited to the following: benefit documentation such as health insurance forms, fitness for duty examinations, drug testing results, medical information related to leaves of absence, inoculation records, etc. These documents will be maintained in a secured file system

that is not open for public inspection. These procedures are in accordance with applicable laws.

Employees' Access to Human Resources Records and Management Files

Employees may have access to and review their own Human Resources files during normal business hours. If the employee disagrees with any information found therein, the employee may submit a written disagreement to the Human Resource Department, which will be attached to the specific document in the file(s). Contents of employee files may not be removed. An employee desiring to access the Human Resources file of another employee must follow the procedures for public records requests.

Employees' Access Procedures

Employees may contact the Human Resource Department for an appointment to view their own file. Employees must review the file in the presence of an appropriate representative. Employees may take notes and may request to be provided with a copy of any of the file's contents subject to the City's policy on copy charges. Any question about the information's accuracy must be referred to the Human Resource Department. Employees may submit a note of disagreement to the Human Resource Department.

Disclosure of Applicant and Employee Records and Information

The content of applicant and employee Human Resources files is open to public inspection under the Tennessee Public Records law; however, some personal information has been deemed confidential under state and federal law. Only the Human Resource Department is authorized to disclose information about applicants and employees to outside inquirers.

Confidential information shall only be disclosed under the following circumstances:

1. properly identified and duly authorized law enforcement officials without a warrant when investigating allegations of illegal conduct by applicants and employees;
2. legally issued summonses or judicial orders, including subpoenas and search warrants; and
3. others as legally allowed by state and federal law.

Requests for copies of detailed applicant and employment information shall be made in writing and should be directed to the City Recorder who will then forward to the appropriate departments. Requests for public inspection of applicant and employee records shall be directed to the City Recorder who will then inform the appropriate departments.

Police Department applicant and employment records may be exempt from public access pursuant to state law. All requests for applicant and employment records shall be reviewed by the Chief of Police on a case by case basis. When a request is for a professional, business, or official purpose, and includes a request for personal information as defined by T.C.A. § 10-7-504(g), the Chief of Police (or designated custodian of files) must notify the officer prior to disclosure. The officer must be given a reasonable opportunity to be heard to oppose the release of the information. If the Chief of Police decides not to disclose personal information, the requestor must be notified within two (2) business days from the request and the files shall be released with personal information redacted.

All public records requested shall be subject to the City's public records request process.

Confidential information will be redacted out of any Human Resources files that are requested for inspection, as per Tennessee Law. Adequate time will be allotted to allow for redaction of such information as allowed by law. All requests will be completed promptly, and in a responsive and timely manner.

In all such matters, the employee shall be notified within seventy-two (72) hours of the records inspection and/or provision of copies. Police officers shall be informed that an inspection has taken place or copies have been provided; the name, address, and phone number of the person(s) making the request; person(s) for whom the request was made; and the date of inspection and/or the provision of copies. Exceptions for non-police employees may be made to release limited general information, such as the following: (a) employment dates; (b) position held; and (c) location of job site.



ACKNOWLEDGEMENT OF RECEIPT

Sign, date and keep this copy with your manual

Sign, date and return the duplicate acknowledgement to Human Resources

Employee Printed Name: _____ Employee #: _____

I acknowledge that I have received a copy (written or electronic access) of the City of Portland, TN Personnel Manual adopted by **Ordinance 19-67**. I understand and agree that it is my responsibility to read and familiarize myself with the policies and procedures contained in the Manual. If I have any questions, I understand that it is my responsibility to ask my supervisor or Human Resources.

I understand that any and all policies and practices can be changed at any time by the City by ordinance, or if appropriate by Resolution. I understand and agree that other than by ordinance or resolution of the City Council a manager or representative of the City has no authority to enter into any agreement, expressed or implied, for employment for any specific period of time, or to make any agreement.

I understand and agree that the Personnel Manual may be changed at any time upon issuance of ordinance by the City Council. My continued employment indicates my agreement to work under those changes.

I understand that nothing in the Personnel Manual or any summary brochure or employee handbook should be deemed to be a promise by the City to provide any benefit. The City reserves the right to alter or eliminate any benefit, without notice, at any time by City Council action.

I understand that the Personnel Manual replaces (supersedes) any and all prior policies and any and all prior Personnel Manuals or employee handbooks and affected ordinances and/or resolutions, and any information contained in any such prior policy, handbook, or manual is no longer in effect.

As an employee, I am aware that I may be required to undergo drug and/or alcohol tests, that I may not be informed prior to the drug and/or alcohol test if classified as a safety sensitive position, and that I may be subject to immediate dismissal if I refuse to take the test.

I am aware that the Personnel Policies grant me no property interest in my employment.

I understand and agree that the City may deduct from my final paycheck any amount due (on a depreciated/prorated basis) for failure to return City property, or for reimbursement of appropriate fees paid for educational assistance, as long as the deduction(s) do not reduce final pay to below minimum wage.

Signature

Date

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ORDINANCE NO. 577

AN ORDINANCE ADOPTING AND ENACTING A CODIFICATION AND REVISION OF THE ORDINANCES OF THE CITY OF PORTLAND TENNESSEE.

WHEREAS some of the ordinances of the City of Portland are obsolete, and

WHEREAS some of the other ordinances of the city are inconsistent with each other or are otherwise inadequate, and

WHEREAS the City Council of the City of Portland, 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 "Portland Municipal Code," now, therefore:

BE IT ORDAINED BY THE CITY OF PORTLAND, TENNESSEE, THAT:

Section 1. Ordinances codified. The ordinances of the city 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 "Portland 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 city or authorizing the issuance of any bonds or other evidence of said city's indebtedness; any appropriation ordinance or ordinance providing for the levy of taxes or any budget ordinance; any contract or obligation assumed by or in favor of said city; any ordinance establishing a social security system or 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,

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direction of travel, passing, stopping, yielding, standing, or parking on any specifically named public street or way; any right or franchise granted by the city; any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way; any ordinance establishing and prescribing the grade of any street; any ordinance providing for local improvements and special assessments therefor; any ordinance dedicating or accepting any plat or subdivision; any prosecution, suit, or other proceeding pending or any judgment rendered on or prior to the effective date of said code; any zoning ordinance or amendment thereto or amendment to the zoning map; nor shall such repeal affect any ordinance annexing territory to the city.

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 five hundred dollars (\$500.00) 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

When a civil penalty is imposed on any person for violating any provision of the municipal code and such person defaults on payment of such penalty, he may be required to perform hard labor, within or without the workhouse, to the extent that his physical condition shall permit, until such

¹State law reference

For authority to allow deferred payment of fines, or payment by installments, see Tennessee Code Annotated, § 40-24-101 et seq.

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civil penalty is discharged by payment, or until such person, being credited with such sum as may be prescribed for each day's hard labor, has fully discharged said penalty.

Each day any violation of the municipal code continues shall constitute a separate civil offense.

Section 6. Severability clause. Each section, subsection, paragraph, sentence, and clause of the municipal code, including the codes and ordinances 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 city council, by motion or resolution, shall fix, and change from time to time as considered necessary, the prices to be charged for copies of the municipal code and revisions thereto. After adoption of the municipal code, each ordinance affecting the code shall be adopted as amending, adding, or deleting, by numbers, specific chapters or sections of said code. Periodically thereafter all affected pages of the municipal code shall be revised to reflect such amended, added, or deleted material and shall be distributed to 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.

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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, July 6, 19 98.

Passed 2nd reading, August 3, 19 98.

Dan Keekin
Mayor

Nancy Keen
Recorder