

**THE
WHITE BLUFF
MUNICIPAL
CODE**

Prepared by the

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

in cooperation with

TENNESSEE MUNICIPAL LEAGUE

February 2005

Change 2
May 7, 2019

TOWN OF WHITE BLUFF, TENNESSEE

MAYOR

Linda Hayes

VICE MAYOR

Connie Reed

COUNCILMEMBERS

Carol Harmon
Stephanie Murrell
Travis Plotzer
Seth Williams

RECORDER

Melody Lewis

PREFACE

The White Bluff Municipal Code contains the codification and revision of the ordinances of the Town of White Bluff, 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 pay the annual update fee as provided in the MTAS codification service charges policy in effect at the time of the update.

When the foregoing conditions are met MTAS will reproduce replacement pages for the code to reflect the amendments and additions made by such ordinances. This service will be performed at least annually and more often if justified by the volume of amendments. Replacement pages will be supplied

with detailed instructions for utilizing them so as again to make the code complete and up to date.

The able assistance of Linda Dean, the MTAS Sr. Word Processing Specialist who did all the typing on this project, and Dianna Habib, Administrative Services Assistant, is gratefully acknowledged.

Steve Lobertini
Codification Consultant

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

Section 12. Ordinances. All ordinances enacted for the Town of White Bluff shall pass two (2) readings by the Town Council, at least one (1) reading to be at a regular meeting of the Council, but before an ordinance becomes effective, it shall, on or before the next meeting after its passage, be signed and approved by the Mayor. The Mayor shall have veto power, and if he shall refuse to approve an ordinance, he shall return the same to the Council at its next meeting, with his reasons stated in writing for his refusal. Said ordinance shall not become binding unless the Council by the affirmative vote of four (4) members shall pass the same, notwithstanding the Mayor's veto. If the Mayor does not veto an ordinance as provided within ten (10) days, it shall be valid and enforceable without his signature and approval.

TITLE 1

GENERAL ADMINISTRATION¹

CHAPTER

1. TOWN COUNCIL.
2. MAYOR.
3. RECORDER.

CHAPTER 1

TOWN COUNCIL²

SECTION

- 1-101. Time and place of regular meetings.
- 1-102. Order of business.
- 1-103. General rules of order.
- 1-104. Municipal elections.

1-101. Time and place of regular meetings.³ The town council shall hold regular monthly meetings at 7:00 P.M. on the first Tuesday of each month at the White Bluff City Hall. (1983 Code, § 1-101, as amended by Ord. #118, Aug. 1991)

¹Charter references

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

Municipal code references

Appointment of parks director: § 2-105.

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

Election: § 8.

Powers: § 9.

³Charter reference

Meetings: § 11.

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

- (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 town council, and other officers.
- (7) Old business.
- (8) New business.
- (9) Adjournment. (1983 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 town 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. (1983 Code, § 1-103, modified)

1-104. Municipal elections. Municipal elections shall be held on the first (1st) Tuesday after the first Monday in November commencing in November 2012 to coincide with the state and federal general election, and every two (2) years thereafter. (as added by Ord. #325, March 2011 *Ch2_ 5-7-18*)

CHAPTER 2

MAYOR¹

SECTION

1-201. Generally supervises municipality's affairs.

1-202. Executes town's contracts.

1-203. Duties of mayor.

1-201. Generally supervises municipality's affairs. The mayor shall have general supervision of all municipal affairs and may require such reports from the officers and employees as he may reasonably deem necessary to carry out his executive responsibilities. (1983 Code, § 1-201)

1-202. Executes town's contracts. The mayor shall execute all contracts as authorized by the town council. (1983 Code, § 1-202)

1-203. Duties of mayor. (1) The mayor:

(a) Shall be the chief executive officer of the municipality and shall preside at meetings of the council;

(b) Shall communicate any information needed, and recommend measures the mayor deems expedient to the council;

(c) (i) Shall make appointments and dismissals of employees except officers and department heads, and shall report such appointments and dismissals to the council at its next regular meeting. May suspend officers and department heads for up to thirty (30) days.

(ii) The council shall confirm or reject the mayor's appointments and dismissals.

(d) (i) May call special meetings of the council upon adequate notice to the council and adequate public notice;

(ii) Shall state the matters to be considered at the special meeting and the action of the council shall be limited to those matters submitted;

(e) Shall countersign checks and drafts drawn upon the treasury by the treasurer and sign all contracts to which the municipality is a party;

(f) As a member of the council, the mayor shall have the power to cast a tie vote in all matters before the council in the event of a tie vote;

¹Charter references

Duties of mayor: §§ 10 and 11.

(g) Shall make appointments to boards and commissions as authorized by law.

(2) Unless otherwise designated by the council by ordinance, the mayor shall perform the following duties or may designate a department head or department heads to perform any of the following duties:

(a) Administer the business of the municipality;

(b) Make recommendations to the council for improving the quality and quantity of public services to be rendered by the officers and employees to the inhabitants of the municipality;

(c) Keep the council fully advised as to the conditions and needs of the municipality;

(d) Report to the council the condition of all property, real and personal, owned by the municipality and recommend repairs or replacements as needed;

(e) Recommend to the council and suggest the priority of programs or projects involving public works or public improvements that should be undertaken by the municipality;

(f) Recommend specific personnel positions, as may be required for the needs and operations of the municipality, and may propose personnel policies and procedures for approval of the council; and

(g) Employ, promote, discipline, suspend and discharge all employees and department heads, in accordance with personnel policies and procedures, if any, adopted by the council;

(h) Act as purchasing agent for the municipality in the purchase of all materials, supplies and equipment for the proper conduct of the municipality's business; provided, that all purchases shall be made in accordance with policies, practices and procedures established by the council;

(i) Prepare and submit the annual budget and capital program to the council for their adoption by ordinance; and

(j) Such other duties as may be designated or required by the council.

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 the sum of ten thousand dollars (\$10,000), with surety acceptable to the town council, before assuming the duties of his office. (1983 Code, § 1-301)

1-302. To keep minutes, etc. The recorder shall keep the minutes of all meetings of the town council and shall preserve the original copy of all ordinances in a separate ordinance book. (1983 Code, § 1-302)

1-303. To perform general administrative duties, etc. The recorder shall perform all administrative duties for the town council and for the Town of White Bluff which are not expressly assigned by the charter or this code to another corporate officer. He shall also have custody of and be responsible for maintaining all corporate bonds, records, and papers in such fireproof vault or safe as the Town of White Bluff shall provide. (1983 Code, § 1-303)

¹Charter references

Duties of the recorder: § 13.

Municipal code reference

Duties of recorder as purchasing officer: title 5, ch. 4.

TITLE 2**BOARDS AND COMMISSIONS, ETC.****CHAPTER**

1. PARKS AND RECREATION BOARD.
2. LIBRARY ADVISORY BOARD.

CHAPTER 1**PARKS AND RECREATION BOARD****SECTION**

- 2-101. Recreation advisory board created.
- 2-102. Membership.
- 2-103. Purpose.
- 2-104. Reports to town council.
- 2-105. Appointment of parks director.

2-101. Recreation advisory board created. In order to best promote public health, safety, morals, order, convenience, and the general welfare of the inhabitants of White Bluff, Tennessee, and to provide a general supervised recreational program, a recreational advisory board for White Bluff, Tennessee, is hereby created and established. (Ord. #169, April 1998)

2-102. Membership. The recreation advisory board shall consist of nine (9) members who shall be appointed by the mayor to serve various terms as provided herein. At least five (5) of the members must be residents of the Town of White Bluff and reside within the town limits. The other four (4) members may be either residents of the Town of White Bluff or non-residents and they shall serve for a period of one (1) year. Therefore, a minimum of five (5) appointments shall be made each year (4 members for 1-year terms and 1 member for a 5-year term). One term will expire each year for the next five (5) years but thereafter, each replacement board member shall serve for a period of five (5) years. The terms of office for the initial resident board members shall be as follows:

- 1 member for a 1-year term;
- 1 member for a 2-year term;
- 1 member for a 3-year term;
- 1 member for a 4-year term;
- 1 member for a 5-year term.

Each year, one board member's term shall expire and a replacement member shall be appointed for a term of five (5) years. One (1) terms will expire each year for the next five (5) years but thereafter, each replacement board member shall serve for a period of five (5) years. (Ord. #169, April 1998)

2-103. Purpose. It shall be the purpose and duty of the advisory board to study the recreation program for the Town of White Bluff and make recommendations to the mayor and town council for further development and upgrading of the recreational program. The advisory board shall not have authority to make any expenditures obligating the Town of White Bluff. The board shall make recommendations to the mayor and town council regarding the rules and regulations for the proper conduct of public recreation for the town. The board shall advise the town regarding the conduct of any form of recreation or cultural activity for the leisure time of the people in a constructive and wholesome manner. The implementation of all facets of the recreation program of the town shall be the responsibility of the mayor who may delegate these duties to the park manager as he deems appropriate. The advisory board may also solicit or accept any gifts or bequests of money or other personal property or any donation to be applied, principal or income, for either temporary or permanent use for playgrounds, ball parks, and other recreation purposes which shall be properly accounted for and deposited to the White Bluff Community Development Fund or the General Revenue Funds of the Town of White Bluff, as designated by each fund raising activity.

All purchases and expenditures for the recreation budget shall be made in accordance with the Town of White Bluff's purchasing procedures and only after action by the town council as required by its charter and ordinances. (Ord. #169, April 1998)

2-104. Reports to town council. The recreation advisory board shall make monthly reports of the board meetings in written form to the town council and such reports shall be retained as a permanent record at city hall. (Ord. #169, April 1998)

2-105. Appointment of parks director. There shall be created a position known as "parks director" who shall be appointed by the Mayor of the Town of White Bluff on an annual basis to manage and direct all town park property. (Ord. #157, Jan. 1997, as amended by Ord. #187, Dec. 1999)

CHAPTER 2

LIBRARY ADVISORY BOARD

SECTION

2-201. Created.

2-202. Appointments, membership, compensation.

2-203. Terms, election of officers, removal and vacancies.

2-204. Purpose.

2-205. Reports to town council.

2-201. Created. In order to best promote public health, safety, morals, order, convenience, and the general welfare of the inhabitants of White Bluff, Tennessee; and to provide a general supervised public library program, an advisory board for the Jennie Woodworth Library of White Bluff is hereby created and established. (as added by Ord. #302, Aug. 2009)

2-202. Appointments, membership, compensation. The mayor shall appoint a library advisory board of directors chosen from the White Bluff community at large who have expressed an interest in serving with reference to fitness for such office. The library advisory board of directors shall consist of not less than five (5) members or more than nine (9) members. At least five (5) of the members must be residents of the Town of White Bluff. Remaining board positions may be filled with either residents of the Town of White Bluff or non-residents. The mayor will serve as an ex-officio member of the library advisory board. Not more than one (1) additional member of the town council shall be, at any one (1) time, a member of such board. The directors shall serve without compensation. The board shall meet once a month. (as added by Ord. #302, Aug. 2009)

2-203. Terms, election of officers, removal and vacancies. Directors shall be appointed for three (3) years. Initial appointments and terms of office shall be those of the current library advisory board, three (3) of who shall be appointed for three (3) year terms and three (3) appointed for two (2) year terms. Thereafter the library advisory board of directors shall, before July 1 of each year, appoint replacement directors. Directors shall not serve for more than two (2) full terms in succession. Following such appointments, the directors shall meet and elect a chairman and such other officers as they deem necessary for one (1) year terms. The mayor may remove any director for misconduct or neglect of duty. Vacancies in the library advisory board of directors shall be filled for the unexpired term in the same manner as the original appointments. (as added by Ord. #302, Aug. 2009)

2-204. Purpose. It shall be the purpose and duty of the library advisory board to study the library program for the Jennie Woodworth Library of White

Bluff and make recommendations to the mayor and town council for further development and upgrading of the library offerings. The library advisory board shall not have the authority to make any expenditure obligating the Town of White Bluff. The library advisory board shall make recommendations to the mayor and town council regarding the operating rules and regulations for the proper conduct of the library for the town. The library advisory board shall advise the town regarding the library's programs and the proper conduct for such programs in a constructive and wholesome manner. The implementation of all facts of the library program of the town shall be the responsibility of the mayor who may delegate these duties to the appropriate library personnel as he/she deems appropriate. The library advisory board may also solicit or accept any gifts or bequests of money or other personal property or any donation to be applied, principal or income, for either temporary or permanent use for library materials and/or programs or other purposes which shall be properly accounted for and deposited to the library revenue line of the General Revenue Fund of the Town of White Bluff. All purchases and expenditures for the library budget shall be made in accordance with the Town of White Bluff's purchasing procedures and only after action by the mayor and town council as required by its charter and ordinances. (as added by Ord. #302, Aug. 2009)

2-205. Reports to town council. The library advisory board shall make monthly reports of the board meetings in written form to the town council and such reports shall be retained as a permanent record at town hall. (as added by Ord. #302, Aug. 2009)

TITLE 3**MUNICIPAL COURT¹****CHAPTER**

1. JUDICIAL DEPARTMENT.
2. COURT ADMINISTRATION.
3. WARRANTS, SUMMONSES AND SUBPOENAS.
4. BONDS AND APPEALS.
5. COURT CLERK.

CHAPTER 1**JUDICIAL DEPARTMENT****SECTION**

- 3-101. Judicial department established.
- 3-102. Number of judges.
- 3-103. Qualifications and term.
- 3-104. Jurisdiction and powers.
- 3-105. Bail.
- 3-106. Separation of powers.
- 3-107. Popular election of judge.
- 3-108. Term; election procedure.
- 3-109. Vacancy.
- 3-110. Compensation.

3-101. Judicial department established. The Judicial Department of the Town of White Bluff shall be established and administered in accordance with the following sections. (Ord. #137, Oct. 1993)

3-102. Number of judges. The town council shall establish from time to time, by ordinance, the number of persons who shall serve as city judge. By this section such number is established as one. (Ord. #137, Oct. 1993)

3-103. Qualifications and term. All persons serving as city judge shall meet the qualifications established by Article VI, § 4 of the Tennessee Constitution, to-wit: they shall be 30 years of age, shall before their election have been a resident of the State of Tennessee for five years and of the city for

¹Charter references

Authority to appoint city judge: § 23.

one (1) year, and shall be elected by the qualified voters of the city for a term of service of eight years,

(1) Except for certain instances in which a person may be appointed as city judge for a term which shall expire after the next applicable regular August general election, and

(2) Except for any initial terms of elected service which may be shorter, all as provided hereinafter. (Ord. #137, Oct. 1993)

3-104. Jurisdiction and powers. The jurisdiction of the city judge shall extend to the trial of all offenses against the ordinances of the city and concurrently with the Court of General Sessions of Dickson County, Tennessee, for violation of the criminal laws of the state. Costs in trials of offenses against the ordinances of the city shall be provided by ordinance. Costs in other matters shall be as established under general laws of the State of Tennessee. The city judge shall have the power to levy fines, penalties and costs, to issue all necessary process, to administer oaths, and to maintain order, including the power to punish for contempt by fine or confinement not exceeding the limits provided by general laws. (Ord. #137, Oct. 1993)

3-105. Bail. The bail of persons arrested and awaiting trials and persons appealing the decision of a city judge shall be fixed by the city judge and upon such security as in his discretion he deems necessary or as otherwise may be provided by ordinance or general law. (Ord. #137, Oct. 1993)

3-106. Separation of powers. The city judge shall be the exclusive judge of the law and facts in every case before him and no official or employee of the city shall attempt to influence his decision except through pertinent facts presented in court. (Ord. #137, Oct. 1993)

3-107. Popular election of judge. The popular election of the city judge is hereby chosen as an alternative to the present method of selecting the city judge as set out in the charter of the city, and all city judges shall be properly elected, subject to the provisions for initial appointments as provided for herein and appointments to fill any vacancy. (Ord. #137, Oct. 1993)

3-108. Term; election procedure. The term of office of a city judge shall be eight years, except for any initial terms that may be shorter as provided herein. Upon this section becoming effective, the council may appoint a qualified person to serve in the position of city judge until the next regular August general election. The first city judge popularly elected pursuant to this section and state law shall be elected at the next regular August general election that takes place at least 30 days after this section becomes effective. The person elected at the aforesaid election shall serve only until replaced by a successor to be chosen at the next regular judicial election held in accordance with Article

VII, § 5 of the Tennessee Constitution. All subsequent elections for city judge pursuant to this section and general laws shall be held in accordance with Article VII, § 5 of the Tennessee Constitution. (Ord. #137, Oct. 1993)

3-109. Vacancy. A vacancy in the office of city judge shall be filled by appointment by the council. The person appointed, however, may serve only until the next regular August general election. At such election, a person shall be elected to serve any unexpired term if the full term of his successor is not to be filled at such election. In the temporary absence or inability of a city judge, the council shall appoint a qualified person to serve until the judge's return. (Ord. #137, Oct. 1993)

3-110. Compensation. The salary and any other benefits relating to the office of all city judges shall be established by the council by ordinance prior to the commencement of the term of office and shall not be increased nor diminished during such term. The salary for the office of city judge is hereby fixed at one thousand dollars and no cents (\$1,000.00) per month. The salary shall be paid monthly from the general fund of the city. (Ord. #137, Oct. 1993, as amended by Ord. #258, Aug. 2006, and replaced by Ord. #365, Jan 2014 *Ch2_5-7-18*)

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. Jailer's fee affixed.
- 3-205. Jailer's fee collection.
- 3-206. Disturbance of proceedings.
- 3-207. Trial and disposition of cases.
- 3-208. Local litigation tax and clerk's fee.
- 3-209. Court security fee.
- 3-210. Officer's fee.

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 and costs imposed and whether collected; whether committed to workhouse; and all other information that may be relevant. (1983 Code, § 1-502)

3-202. Imposition of fines, penalties, and costs. (1) Municipal offenses. All fines, and costs, shall be imposed and recorded by the city judge on the city court docket in open court for each separate offense. Court costs, clerk's fee and officer's fee for municipal offenses shall be set as provided in Schedule "A" attached hereto and incorporated herein. There shall be a reduction in court costs for traffic citations paid prior to court.

(2) General sessions jurisdiction. All fines and costs in all cases involving criminal offenses as established under Tennessee law and occurring within the jurisdiction of the Town of White Bluff shall be imposed and recorded by the city judge on the city court docket in open court. Court costs, clerk's fee and all costs required under state statutes, shall be set as provided in Collective Schedule "B" attached hereto and incorporated herein, including an indigent defense fee of twelve dollars and fifty cents (\$12.50) which shall be paid to the public defender's office.

SCHEDULE "A"

Costs for Municipal Offenses¹
Including Minor Traffic Offenses

Municipal Court Costs	\$50.00
Municipal Court Costs (for traffic violations paid prior to court date)	37.50*
Court Clerk's Fee	46.25
Municipal Litigation Tax	13.75
Officer's Fee (with arrest)	40.00
Officer's Fee (with citation)	25.00
Court Security Fee**	25.00
Data Entry Fee	2.00
<hr/>	
Total Costs (with arrest)	\$177.00 **
Total Costs (with citation)	\$162.00 **
Total Costs (for traffic violations paid prior to court date)	\$124.50 **

* If traffic ticket is paid prior to Court date, Court costs will be reduced to \$37.50.

** Court security fee is waived if traffic citation is paid prior to Court.

¹ Plus fines as assessed by the Court.

COLLECTIVE SCHEDULE "B"

Costs for State of Tennessee Offenses

Worthless Checks/Forgeries

	<u>Payable To</u>	
Arrest Fee	White Bluff	\$40.00
CIC Tax	Department of Revenue	26.50
Clerk Fee	White Bluff	46.25
Data Entry Fee	White Bluff	2.00
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
District Attorney Fee	District Attorney	<i>(see Schedule "A" below)</i>
Public Defender Fee	Public Defender Conference	12.50
State Litigation Tax	Department of Revenue	29.50
Bond Fee	Dickson County Sheriff	5.00
Court Security Fee	White Bluff Police Department	25.00
Total Costs		\$252.75*

*Schedule "A"

<u>Check Amount</u>		
\$ 0.00 – \$ 9.00	\$ 5.00	(\$1.00 Clerk – \$ 4.00 D.A.)
\$ 10.00 – \$100.00	\$10.00	(\$1.00 Clerk – \$ 9.00 D.A.)
\$101.00 – \$300.00	\$30.00	(\$1.00 Clerk – \$29.00 D.A.)
\$301.00 – \$500.00	\$50.00	(\$1.00 Clerk – \$49.00 D.A.)
Over \$500.00	\$75.00	(\$1.00 Clerk – \$74.00 D.A.)

* **Plus District Attorney Fee.**

COLLECTIVE SCHEDULE "B"
Costs for State of Tennessee Offenses

Drug Offenses – No Lab (Paraphernalia)

	<i>Payable To</i>	
Alcohol/Drug T/F	Department of Revenue	\$100.00
Arrest Fee	White Bluff	40.00
CIC Tax	Department of Revenue	26.50
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Drug Test Fee (<i>if applicable</i>)	TBI (chemical unit)	(250.00)
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
Drug Court Treatment	Dickson County Trustee	70.00
Court Security Fee	White Bluff	25.00
State Drug Court Treatment	Department of Revenue	5.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$571.50

Does not include fine.

Drug Convictions (other than Paraphernalia)

	<i>Payable To</i>	
Alcohol/Drug T/F	Department of Revenue	\$100.00
Arrest Fee	White Bluff	40.00
CIC Tax	Department of Revenue	26.50
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Drug Court Treatment	Dickson County Trustee	70.00
State Drug Court Treatment	Department of Revenue	5.00
Drug Test Fee	TBI (chemical unit)	100.00
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
TBI Lab (Drug)	TN Bureau of Investigation	20.00
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$441.50

Does not include fine.

COLLECTIVE SCHEDULE "B"
Costs for State of Tennessee Offenses

Crimes Against Persons

	<i>Payable To</i>	
Arrest Fee	White Bluff	\$40.00*
CIC Tax	Department of Revenue	50.00
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$270.00

Does not include fine.

* **\$25.00 if a citation is issued instead of an arrest.**

Criminal Offenses for Property Claims

	<i>Payable To</i>	
Arrest Fee	White Bluff	\$40.00
CIC Tax	Department of Revenue	26.50
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$246.00

Does not include fine.

COLLECTIVE SCHEDULE "B"
Costs for State of Tennessee Offenses

DUI

	<u>Payable To</u>	
Alcohol/Drug T/F (DUI)	Department of Revenue	\$100.00
Arrest Fee	White Bluff	40.00
Blood Alcohol Test Fee	Department of Revenue	250.00
CIC Tax	Department of Revenue	26.50
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Impaired Driver Test Fund	DOS – Impaired Driver	5.00
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
TBI Lab (Alcohol)	TN Bureau of Investigation	17.50
TBIF – DUI/Revoke/Suspended	DOS – TBIF	15.00
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$634.00

Does not include fine.

Leaving Scene – Injury or Death

	<u>Payable To</u>	
Arrest Fee	White Bluff	\$40.00
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
TBIF – Leave Scene Injury/Death	DOS – TBIF	15.00
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$235.00

Add Fine.

COLLECTIVE SCHEDULE "B"
Costs for State of Tennessee Offenses

Probation Violation

	<i>Payable To</i>	
Arrest Fee	White Bluff	\$40.00
Municipal Clerk Fee	White Bluff	46.25
Court Security Fee	White Bluff	25.00
Service Fee Data	White Bluff	2.00
Total		\$113.25

Probation Violation – Drugs

	<i>Payable To</i>	
Arrest Fee	White Bluff	\$40.00
Municipal Clerk Fee	White Bluff	46.25
Drug Court Treatment Fund	Dickson County Trustee	70.00
State Drug Treatment Fund	Department of Revenue	5.00
Court Security Fee	White Bluff	25.00
Service Fee Data	White Bluff	2.00
Total		\$163.25

Reckless Intoxication

	<i>Payable To</i>	
Arrest Fee	White Bluff	\$40.00
Bond Fee (<i>optional</i>)	Dickson County Sheriff	5.00
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
TBIF – Reckless Driving	DOS – TBIF	30.00
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$255.00

COLLECTIVE SCHEDULE "B"
Costs for State of Tennessee Offenses

Revoked/Suspended/or Cancelled Drivers License

	<i>Payable To</i>	
Citation Fee	White Bluff	\$25.00
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
TBIF – DUI/Revoked/Suspended	DOS – TBIF	15.00
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$220.00*

* **Add Fine.**

Traffic Offenses – Non-Moving Violations

	<i>Payable To</i>	
Citation Fee	White Bluff	\$25.00
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Service Fee Data	White Bluff	2.00
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$163.00*

* **Add Fine.**

COLLECTIVE SCHEDULE "B"

Costs for State of Tennessee Offenses

Carry Weapon for Purpose of Going Armed

	<u>Payable To</u>	
Arrest Fee	White Bluff	\$40.00
CIC Tax	Department of Revenue	5.00
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
Victim Notification Fee	Department of Revenue	1.00
Municipal Court Cost	White Bluff	50.00
Court Security Fee	White Bluff	25.00
Total		\$225.00

Does not include fine.

Contempt/Failure to Appear

	<u>Payable To</u>	
Municipal Litigation Tax	White Bluff	\$13.75
Arrest Fee	White Bluff	40.00
Clerk Fee	White Bluff	46.25
Court Security Fee	White Bluff	25.00
Municipal Court Costs	White Bluff	50.00
Service Fee Data	White Bluff	2.00
Total		\$177.00

Does not include fine.

COLLECTIVE SCHEDULE "B"

Costs for State of Tennessee Offenses

Drag Racing

	<i>Payable To</i>	
Citation Fee	White Bluff	\$25.00
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
TBIF – Drag Racing	Department of Revenue	25.00
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$217.50

Does not include fine.

Orders of Protection

	<i>Payable To</i>	
Citation Fee	White Bluff	\$25.00
Court Clerk Fee	White Bluff	42.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Service Fee Data	White Bluff	2.00
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$159.00

COLLECTIVE SCHEDULE "B"

Costs for State of Tennessee Offenses

Public Intoxication

	<u>Payable To</u>	
Arrest Fee	White Bluff	\$40.00
Bond Fee <i>(optional)</i>	Dickson County Sheriff	5.00
Court Clerk Fee	White Bluff	46.25
Municipal Litigation Tax	White Bluff	13.75
Municipal Court Costs	White Bluff	50.00
Public Defender Fee	Public Defender Conference	12.50
Service Fee Data	White Bluff	2.00
State Litigation Tax	Department of Revenue	29.50
Court Security Fee	White Bluff	25.00
Victim Notification Fee	Department of Revenue	1.00
Total		\$225.00

(3) Electronic citation regulations and fees. (a) As used in this section, "electronic citation" means a written citation or an electronic citation prepared by a law enforcement officer on paper or on an electronic data device with the intent the citation shall be filed, electronically or otherwise, with a court having jurisdiction over the alleged offense.

(b) 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.

(c) Sunset provision. This section and its fee requirement shall terminate five (5) years from the date of adoption of the ordinance creating this section and the town's code shall be so annotated. (1983 Code, § 1-508, as amended by Ord. #120, Aug. 1991, Ord. #224, Jan. 2003, Ord. #225, Jan. 2003, Ord. #254, June 2006, Ord. #309, May 2010, Ord. #318, Dec. 2010 **Ch2_5-7-18**, and Ord. #382, Feb. 2016 **Ch2_5-7-18**)

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, costs, and forfeitures shall be recorded by him and paid over daily to Town of White Bluff. At the end of each month he shall submit to the town council a report accounting

for the collection or non-collection of all fines and costs imposed by his court during the current month and to date for the current fiscal year. (1983 Code, § 1-511)

3-204. Jailer's fee affixed. The jailer's fee for the Town of White Bluff is hereby affixed at twenty-five (\$25.00) dollars per misdemeanor prisoner per 24-hour period of confinement in the county jail or workhouse.¹ (Ord. #149, Feb. 1996)

3-205. Jailer's fee collection. The jailer's fee herein fixed shall be collected by the clerk of the appropriate court as part of the fines and costs imposed in each misdemeanor case upon a finding of guilt. (Ord. #149, Feb. 1996)

3-206. 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. (1983 Code, § 1-512)

3-207. 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. (1983 Code, § 1-506)

3-208. Local litigation tax and clerk's fee. (1) A local litigation tax in the amount of thirteen dollars and seventy-five cents (\$13.75) be assessed in all cases coming before the White Bluff Municipal Court and included in all bill of costs and charged to each defendant or party assessed with costs in the White Bluff City Court.

(2) The privilege taxes levied pursuant to this section shall be paid to the city recorder monthly to be used for any municipal purposes.

(3) A court clerk fee of forty-six dollars and twenty-five cents (\$46.25) shall be assessed in all cases coming before the White Bluff Municipal Court and included in the bill of costs and charged to each defendant or party assessed with costs in the White Bluff City Court.

(4) A municipal court cost fee of fifty dollars (\$50.00) shall be assessed in all cases coming before the White Bluff Municipal Court. The fee shall be reduced to thirty-seven dollars and fifty cents (\$37.50) for all traffic cases if the fine and court costs are paid prior to court. (Ord. #218, April 2002, as amended by Ord. #309, May 2010)

¹Municipal code reference
Workhouse: title 6.

3-209. Court security fee. A court security fee of twenty-five dollars (\$25.00) shall be assessed in all cases coming before the White Bluff Municipal Court. All revenues collected shall be allocated to the Town of White Bluff Police Department to defray the costs to the town for providing court security. (as added by Ord. #309, May 2010)

3-210. Officer's fee. An officer's fee shall be assessed in all traffic and criminal cases coming before the municipal court. The officer's fee for arrests shall be forty dollars (\$40.00) and for citations the fee shall be twenty-five dollars (\$25.00). (as added by Ord. #309, May 2010)

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. (1983 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. (1983 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. (1983 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. (1983 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, Sundays exclusive, appeal to the next term of the circuit court upon posting a proper appeal bond.¹ (1983 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, except that any person arrested for a traffic violation who has in his lawful possession a valid drivers' license issued by the State of Tennessee or any other state or territory or District of Columbia shall have the option of depositing his drivers' license with the officer or court demanding bail or other security, unless the penalty for the violation includes the mandatory revocation of the drivers' license for any period of time.

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 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 bonds

¹State law reference

Tennessee Code Annotated, § 27-5-101.

or sureties other than those described above shall be acceptable. (1983 Code, § 1-510)

CHAPTER 5

COURT CLERK

SECTION

- 3-501. Position of court clerk established.
- 3-502. Term of office.
- 3-503. Qualifications.
- 3-504. Salary.
- 3-505. Vacancies.
- 3-506. Duties of court clerk and assistant court clerk.
- 3-507. Issuance of arrest warrants.
- 3-508. Issuance of summonses.
- 3-509. Concurrent position.

3-501. Position of court clerk established. The position of court clerk and assistant court clerk for the Town of White Bluff is hereby established. (Ord. #199, Sept. 2000)

3-502. Term of office. The court clerk and assistant court clerk shall be appointed by the mayor for a four-year term. (Ord. #199, Sept. 2000)

3-503. Qualifications. The court clerk and the assistant court clerk shall be residents of the Town of White Bluff for one year prior to their appointment and a resident of the State of Tennessee for five (5) years immediately preceding his or her appointment, and at least thirty (30) years of age. (Ord. #199, Sept. 2000)

3-504. Salary. The salary for the court clerk and assistant court clerk shall be established annually as part of the annual budget for the Town of White Bluff. (Ord. #199, Sept. 2000)

3-505. Vacancies. Vacancies in the office of court clerk or assistant court clerk shall be filled by the mayor for the unexpired portion of the term. (Ord. #199, Sept. 2000)

3-506. Duties of court clerk and assistant court clerk. It shall be the duty of the court clerk and assistant court clerk to assist the city judge and keep a complete docket of all matters coming before the city court. The docket shall include for each defendant such information as his name, warrant and/or summons number, alleged offense, disposition, fines and costs imposed and whether or not collected, whether committed to a workhouse, and all other information that may be relevant. The court clerk shall also assist the city judge in the administration of the court and shall submit to the town council a

monthly report accounting for the collection or non-collection of all fines and costs imposed by the city court during the current month and to date for the current fiscal year. (Ord. #199, Sept. 2000)

3-507. Issuance of arrest warrants. The court clerk shall have the power of magistrates to issue warrants for the arrest of persons charged with violating municipal ordinances. (Ord. #199, Sept. 2000)

3-508. Issuance of summonses. When a complaint of an alleged ordinance violation is made to the city judge or the clerk, the judge or the clerk may in their 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 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 upon him, the cause shall be proceeded with ex parte and a judgment of the court shall be valid and binding subject to the defendant's right of appeal. (Ord. #199, Sept. 2000)

3-509. Concurrent position. The position of court clerk or assistant court clerk may be combined with the duties of recorder or assistant recorder as provided in title 1, chapter 3 of the White Bluff Municipal Code. (Ord. #199, Sept. 2000)

TITLE 4**MUNICIPAL PERSONNEL****CHAPTER**

1. SOCIAL SECURITY FOR OFFICERS AND EMPLOYEES.
2. PERSONNEL POLICY.
3. OCCUPATIONAL SAFETY AND HEALTH PROGRAM.
4. INFECTIOUS DISEASE CONTROL POLICY.
5. TRAVEL REIMBURSEMENT REGULATIONS.
6. EMPLOYEE TERMINATION POLICY.
7. CODE OF ETHICS.
8. NEPOTISM POLICY.

CHAPTER 1**SOCIAL SECURITY FOR OFFICERS AND EMPLOYEES****SECTION**

- 4-101. Policy and purpose as to coverage.
- 4-102. Necessary agreements to be executed.
- 4-103. Withholdings from salaries or wages.
- 4-104. Appropriations for employer's contributions.
- 4-105. Records and reports to be made.

4-101. Policy and purpose as to coverage. It is hereby declared to be the policy and purpose of the Town of White Bluff to provide for all eligible employees and officials of the municipality, whether employed in connection with a governmental or proprietary function, the benefits of the system of federal old age and survivors insurance. In pursuance of said policy, and for that purpose, the Town of White Bluff shall take such action as may be required by applicable state and federal laws or regulations. (1983 Code, § 1-701)

4-102. Necessary agreements to be executed. The mayor is hereby authorized and directed to execute all the necessary agreements and amendments thereto with the state executive director of old age insurance, as agent or agency, to secure coverage of employees and officials as provided in the preceding section. (1983 Code, § 1-702)

4-103. Withholdings from salaries or wages. Withholdings from the salaries or wages of employees and officials for the purpose provided in the first section of this chapter are hereby authorized to be made in the amounts and at such times as may be required by applicable state or federal laws or regulations,

and shall be paid over to the state or federal agency designated by said laws or regulations. (1983 Code, § 1-703)

4-104. Appropriations for employer's contributions. There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations for employer's contributions, and the same shall be paid over to the state or federal agency designated by said laws or regulations. (1983 Code, § 1-704)

4-105. Records and reports to be made. The recorder shall keep such records and make such reports as may be required by applicable state and federal laws or regulations. (1983 Code, § 1-705)

CHAPTER 2

PERSONNEL POLICY

SECTION

- 4-201. Personnel policy.
- 4-202. Employees.
- 4-203. Hiring procedures.
- 4-204. Benefits.
- 4-205. Grievance procedures.
- 4-206. State and federal personnel mandates.
- 4-207. Miscellaneous.
- 4-208. Dismissal.
- 4-209. Personnel policy changes.
- 4-210.--4-211. Deleted.

4-201. Personnel policy. (1) Purpose. The purpose of this chapter is to establish a system of personnel administration in the Town of White Bluff, Tennessee.

(2) At-will employer. The Town of White Bluff, Tennessee is an at-will employer. Nothing in this chapter may be construed as creating a property right or contract right to any job for any employee.

(3) Coverage. The following personnel are not covered by this policy, unless otherwise provided:

- (a) All elected officials.
- (b) Members of appointed boards and commissions.
- (c) Consultants, advisers, and legal counsel rendering temporary professional service.
- (d) The city attorney.
- (e) Independent contractors and/or contract employees.
- (f) Volunteer personnel.
- (g) The city judge.

All other employees of the municipal government are covered by this personnel policy. (as replaced by Ord. #333, Oct. 2011 *Ch2_5-7-19*)

4-202. Employees. (1) Full-time. Full-time employees are individuals employed by the municipal government who normally work forty (40) hours per week.

(2) Part-time. Part-time employees are individuals who may not work on a daily basis or work on a daily basis fewer than eight (8) hours a day and may work fewer than twenty-eight (28) hours per week or who are temporary and/or seasonal employees. (as replaced by Ord. #333, Oct. 2011 *Ch2_5-7-19*)

4-203. Hiring procedures. (1) Policy statement. The primary objective of this hiring policy is to ensure compliance with the law and to obtain qualified personnel to serve the citizens of the municipality. The municipality shall make reasonable accommodations in all hiring procedures for all persons with disabilities.

(2) Application. All persons seeking appointment or employment with the municipality must complete a standard application form provided by the municipal government. Applications for employment shall be accepted in the town hall during regular office hours only. Applications will remain on active status for six (6) months after accepted or until the job for which the application is submitted is filled, whichever period of time is less.

(3) Interviews. All appointments will be preceded by an interview with the department head.

(4) Pre-appointment exams. For certain positions, the employee may be required to undergo a validated physical agility examination related to the essential functions of the job, validated written and/or oral tests related to the essential functions of the job, drug testing, and, upon a conditional offer of employment, a medical examination to determine the employee's ability to perform the essential functions of the job. Reasonable accommodations shall be made in the physical agility exam for applicants with disabilities making a request for accommodations.

(5) Appointments, etc. All appointments shall be made in accordance with lawful provisions of the municipal charter if there are applicable provisions in the charter. (as replaced by Ord. #333, Oct. 2011 *Ch2_5-7-19*)

4-204. Benefits. (1) Holidays. Generally, full-time employees are allowed a day off with pay on the following holidays:

- (a) New Year's Day;
- (b) Martin Luther King Day;
- (c) Presidents Day;
- (d) Good Friday;
- (e) Memorial Day;
- (f) Independence Day;
- (g) Labor Day;
- (h) Veteran's Day;
- (i) Thanksgiving Day;
- (j) Day after Thanksgiving Day;
- (k) Christmas Eve;
- (l) Christmas Day; and
- (m) Day after Christmas Day (unless this day falls on a Saturday or Sunday).

Employees must be in a pay status on a work day before and on the work day after holiday, unless otherwise excused by the supervisor, to receive compensation for the holiday.

Any employee required to work on a regular holiday shall be granted eight (8) hours off on an alternate day approved by the supervisor or an additional eight (8) hours pay for the holiday.

(2) Vacation leave. All full-time employees of the municipality shall accrue vacation leave monthly upon the completion of each calendar month of service. Vacation leave will begin to accrue as of the first full month of employment, but cannot be taken until the employee has completed six (6) months of employment. As the number of years of service increases, the amount of leave granted increases and may accumulate to the maximum vacation hours accrued as shown in the table below:

Years of Service	Vacation Hours Accrued	
	Per Month	Per Yr.
1 full year up to 5 years	6.66	80
5 years up to 10 years	10	120
10 years and over	13.33	160

Unused vacation time does not carry over from year to year and shall be forfeited. Upon request of an employee, and with the approval of the employee's department head and the mayor, an employee may be paid for unused vacation time in lieu of paid vacation in the event of personnel shortages.

Vacation leave shall be taken at a time approved by the employee's supervisor. Upon separation, employees are entitled to be reimbursed for any unused vacation leave, not to exceed the maximum allowed for the years and months of service completed.

(3) Sick leave. All full-time employees shall accumulate eight (8) hours of sick leave with pay for each month of work completed for the municipality. Sick leave may be granted for any of the following reasons:

- (a) Personal illness or physical incapacity resulting from causes beyond the employee's control.
- (b) Exposure to contagious disease so that employee's presence at work might jeopardize the health of other employees.
- (c) Medical, dental, optical or other professional treatments or examinations.
- (d) Acute illness.

Sick leave shall be taken in one-half (1/2) day increments. An employee may accumulate up to a maximum of one hundred twenty (120) sick days. Employees shall not be paid for unused sick leave upon the employee's termination, resignation or retirement. A doctor's statement is required after three (3) days' absence.

(4) Bereavement leave. Employees shall be allowed bereavement leave up to a maximum of three (3) days in the event of the death of an immediate family member. An immediate family member is considered one (1) of the following; spouse, mother, father, brother, sister, grandparents, children, including stepchildren and adopted children, mother or father-in-law. (as replaced by Ord. #333, Oct. 2011 **Ch2_5-7-19**; and amended by Ord. #401, May 2019 **Ch2_5-7-19**)

4-205. Grievance procedures. (1) Grievance policy. The purpose of this section is to prescribe uniform disposition procedures of grievances presented by individual employees. A grievance is a written question, disagreement, or misunderstanding concerning administrative orders involving only the employee's work area, reasonable accommodations under Americans with Disabilities Act, physical facilities, unsafe equipment, or unsafe material used. The grievance must be submitted within five (5) working days of the incident causing the grievance.

(2) Employees must remember that there is no grievance until the department head or other appropriate person has been made aware of the dissatisfaction by written notice. Once this is done, the following steps are to be taken:

(a) Step 1. Discuss the problem with the immediate supervisor. If satisfaction is not obtained, the grievance is advanced to the second step.

(b) Step 2. Discuss the problem with the appropriate department head. If the Step 2 grievance is not resolved, it is advanced to the third step along with all documentation.

(c) Step 3. Discuss the problem with the mayor of the municipality. The mayor's decision may be the last and final step in the process. The decision of the mayor is final and binding to all parties involved.

(d) Step 4. At the mayor's discretion, any unresolved grievance may be referred to an arbitrator for resolution. The decision of the arbitration shall be binding on all parties. (as replaced by Ord. #333, Oct. 2011 **Ch2_5-7-19**)

4-206. State and federal personnel mandates. (1) Discrimination prohibited. The municipality is an equal opportunity employer. Except as otherwise permitted by law, the municipality will not discharge or fail or refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's race, color, religion, gender, or national origin, or because the individual is forty (40) or more years of age. The municipality will not discriminate against a qualified individual with a disability because of the disability in regard to job application procedures, hiring or discharge, employee

compensation, job training, or other terms, conditions, and privileges of employment. (Title VII of Civil Rights Act of 1964 - 42 U.S.C. section 2000e-2000e-15; Equal Pay Act 1963 - 29 U.S.C. section 206(d); Age Discrimination in Employment Act - 29 U.S.C. sections 621 et seq.; Americans With Disabilities Act 42 U.S.C. sections 506 et seq.)

(2) Workplace violence and sexual harassment prohibited.

(a) Workplace violence. The town is committed to preventing workplace violence and to maintaining a safe work environment. It is the policy of the Town of White Bluff 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 local government'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 harassment will be tolerated, including sexual harassment and harassment based on race, national origin, religion, disability, pregnancy, age, military status, sex or other protected category, as provided by law. This policy applies to all town employees, elected officials, appointed officials, part-time/temporary employees, and contractors.

The Town of White Bluff will not tolerate verbal or physical conduct by an employee which harasses, disrupts or interferes with another's work performance or which creates an intimidating, offensive or hostile environment.

(i) 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 slur; 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.

(ii) All weapons, and other dangerous or hazardous devices or substances are prohibited from town property, unless in the control of law enforcement or emergency personnel. Under no circumstances are the following items permitted on local

government property, including local government-owned parking areas, except when issued or sanctioned by the local government for use in the performance of the employee's job:

- (A) All types of firearms, switchblade knives, and knives with a blade longer than four inches (4");
- (B) Dangerous chemicals;
- (C) Explosives or blasting caps;
- (D) Chains; or
- (E) Other objects carried for the purposes of injury or intimidation.

(iii) Charges of violence and harassment may be reported to any supervisory employee of the local government, including the city recorder, human resource manager and the mayor. The town will promptly investigate reports of workplace violence including suspicious individuals or activities. The city recorder or human resource manager will be charged with investigating all cases of workplace violence and harassment. Depending on the severity of the charges or whether a crime is committed, the mayor may request that the police chief provide assistance to the city recorder or human resource manager or assume responsibility for the investigation. All employees are required to assist in the course of the investigation by providing testimony, statements and evidence, as required. Failure to cooperate may result in disciplinary action.

(iv) Copies of the investigative report with recommendations for appropriate action will be turned over to the mayor as appropriate for further action.

(v) 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.

(vi) Employees are encouraged to bring their disputes or differences with other employees to the attention of their supervisors or the human resource department before the situation escalates into potential violence. The town 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.

(b) Sexual harassment. (Note - The courts have determined that one of the best defenses to a sexual harassment claim is proof of a policy prohibiting the behavior and adequate training. Because the sexual harassment policy is so comprehensive, cities may want to consider passing this policy as an ordinance or resolution and use Option B [below] in the policy document.)

(i) Purpose. The Town of White Bluff may be held liable for the actions of all employees with regard to sexual harassment and will not tolerate sexual harassment of its employees. The local government will take immediate, positive steps to stop such harassment when it occurs.

The local government is responsible for acts of sexual harassment in the workplace when the local government (or its agents or supervisory employees) knows or should have known of the conduct, unless it can be shown that the local government took immediate and appropriate corrective action. The local government may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the local government (or its agents or supervisory employees) knows or should have known of the conduct and failed to take immediate and appropriate corrective action.

This policy applies to all officers and employees of the Town of White Bluff including, but not limited to: full and part-time employees, elected officials, seasonal and temporary employees, employees covered or exempt from the personnel rules or regulations of the local government, and employees working under contract for the local government. The following rules shall be strictly enforced.

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

- (A) Sexual harassment or unwelcome sexual advances;
- (B) Requests for sexual favors;
- (C) Explicit or implied job threats or promises in return for submission to sexual favors;
- (D) Verbal harassment of a sexual nature, such as lewd comments, sexual jokes or references, and offensive personal references;
- (E) Sex-oriented stories;
- (F) Displaying sexually explicit or pornographic material, no matter how the material is displayed;
- (G) Sexual assault on the job by supervisors, fellow employees, or, on occasion, non-employees; and/or
- (H) Demeaning insulting, intimidating or sexually suggestive written, recorded or electronically transmitted materials (such as email, instant message, 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.

(iii) Making sexual harassment complaints. An employee who feels he/she is subjected to sexual harassment should immediately contact a person (listed below) with whom the employee feels the most comfortable. (Any number of individuals may be chosen. The object is to give several options to a harassment victim in the event the harasser is the immediate supervisor.) Complaints may be made orally or in writing to:

- (A) The employee's immediate supervisor;
- (B) The employee's department head;
- (C) The human resource manager;
- (D) The city recorder;
- (E) The mayor; and/or
- (F) A member of the board of mayor and aldermen/commission/council.

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

- (A) His/her name, department, and position title;
- (B) The name of the person or people committing the sexual harassment, including their title(s), if known;
- (C) The specific nature of the sexual harassment, how long it has gone on, any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against the employee as a result of the harassment, or any other threats made against the employee as a result of the harassment;
- (D) Witnesses to the harassment; and
- (E) Whether the employee has previously reported the harassment and, if so, when and to whom.

(iv) 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 make written reports or verbally answer 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.

(v) Reporting and investigating sexual harassment complaints. The city recorder or human resource manager is the entity the local government designates as the investigator of sexual harassment complaints against employees. In the event the sexual harassment complaint is against the person named above, the investigator shall be a local government employee appointed by the mayor.

When an allegation of sexual harassment is made by any employee, the person to whom the complaint is made shall:

(A) Separate the complainant and accused party for the duration of the investigation; upon the approval of the department head and mayor.

(B) 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.

(C) Immediately prepare a report of the complaint according to the preceding section and submit it to the mayor;

(D) Make and keep a written record of the investigation at the time the verbal interview is in progress, including notes on:

(1) Verbal responses made to the investigator by the person complaining of sexual harassment;

(2) Witnesses interviewed during the investigation;

(3) The person against whom the complaint of sexual harassment was made; and

(4) Any other person contacted by the investigator in connection with the investigation

(E) Within fifteen (15) working days of receiving the complaint, the city recorder or human resource manager prepares and presents the findings to the mayor in a report, which will include:

(1) The written statement of the person complaining of sexual harassment;

(2) The written statements of witnesses;

(3) The written statement of the person against whom the complaint of sexual harassment was made; and

(4) All the investigator's notes connected to the investigation.

(F) Action on complaints of sexual harassment.

Upon receiving an investigation report of a sexual harassment complaint, the mayor shall immediately review the report. If the mayor determines that the report is not complete in some respect, he/she may question the person complaining of sexual harassment, the person against whom the complaint has been made, witnesses to the conduct in question, or any other person who may have knowledge about the harassment.

Based upon the report and his/her own investigation (where a separate investigation is made), the mayor shall, within a reasonable time, determine whether the conduct in question constitutes sexual harassment. In making that determination, the mayor shall look at the record as a whole and at the totality of circumstances, including the nature of the conduct, the context in which the alleged actions occurred, and the behavior of the person complaining. The decision of whether sexual harassment actually took place will be determined on a case-by-case basis.

If the mayor determines that the harassment complaint is founded, he/she shall take immediate and appropriate disciplinary action against the guilty employee, consistent with his/her authority under the local government charter, ordinances, resolutions, or rules governing his/her authority to discipline employees. The disciplinary action may include oral counseling, written reprimand, suspension, demotion, or termination depending upon the severity of the matter and circumstances surrounding the incident (s). A written record of disciplinary actions shall be maintained by the human resource department in the employee's personnel file.

If the mayor feels that the harassment warrants disciplinary action stronger than he/she is authorized to impose by the charter, ordinances, resolutions, or rules governing employee discipline, he/she shall make that determination known, along with the report of the investigator, to the governing body of the local government. If the governing body determines that the sexual harassment complaint is founded, it may discipline the employee consistent with its authority under the local government charter, ordinances, resolutions, or rules governing employee discipline.

The disciplinary action shall be consistent with the nature and severity of the offense, the employee's rank, and any other

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

In all events, an employee found guilty of sexual harassment shall be warned not to retaliate in any way against the person making the complaint, witnesses, or any other person connected with the investigation. All other town employees are also warned not to retaliate in any way to the above mentioned parties. Any such retaliation or harassment will be dealt with immediately and may include disciplinary action.

If the employee complaining of harassment is not satisfied with the manner in which the town addressed the complaint, the employee shall be given an opportunity to present a written appeal. The written appeal must specifically identify what aspect of the town's response was not satisfactory and why it was not satisfactory. The appeal must be submitted to the mayor within fifteen (15) business days from the date on which the disciplinary action was rendered. The mayor will render a written determination in the matter within fifteen (15) business days from receipt of the appeal. The decision of the mayor will be final in all such matters. The mayor has the authority to appoint a neutral third party (arbitrator) to be the final decision maker in lieu of the mayor when the mayor determines that a neutral third party is in the best interest of the town. In all cases where the complaint is filed against the mayor, a neutral third party, appointed by the town council, shall be used as a final decision-maker.

In cases where sexual harassment is committed by a non-employee against a local government employee in the workplace, the city recorder or human resource manager shall take whatever lawful action is necessary against the non-employee to bring the sexual harassment to an immediate end.

(vii) Obligation of employees.

Employees are not only encouraged to report instances of sexual harassment; they are obligated to report them. Employees are also obligated to cooperate in every harassment investigation. The obligation includes, but is not necessarily limited to, coming forward with evidence (both favorable and unfavorable) about a person accused of such conduct, fully and truthfully making

written reports, or verbally answering questions when required to do so by an investigator. Employees are also obligated to refrain from making bad faith accusations of sexual harassment.

Disciplinary action, up to and including termination, may be taken against employees who fail to report instances of sexual harassment, fail or refuse to cooperate in the sexual harassment investigation, or file a complaint of sexual harassment in bad faith.

(3) Occupational safety and health. The municipality shall provide job safety and health protection for all employees in accordance with the Occupation Safety and Health Administration (OSHA) Legislation (29 U.S.C. sections 656 et seq.) and the Tennessee OSHA Law (Tennessee Code Annotated, § 50-3-101 et seq.).

(4) Overtime compensation. The Fair Labor Standards Act (FLSA) shall govern the overtime compensation of municipal employees (29 C.F.R. sections 553.1 et seq.).

(5) Military leave/veterans' re-employment. All employees who are members of reserve components of the armed forces, including the National Guard, are entitled to leave while engaged in "duty or training in the service of this state, or of the United States, under competent orders," and they must be given such leave with pay not exceeding twenty (20) working days in any one (1) calendar year (Tennessee Code Annotated, § 8-33-109). All eligible employees shall be covered under the Uniform Services Employment and Re-Employment Rights Act as set forth in 38 U.S.C. 4301-4333.

(6) Family and medical leave. If the municipality has fifty (50) or more employees on the payroll an eligible employee (one who has been employed at least twelve (12) months and worked at least one thousand two hundred fifty (1,250) hours in the preceding twelve (12) months) will be provided twelve (12) calendar weeks of unpaid leave for medical conditions of the employee or his/her family members in accordance with the Family and Medical Leave Act (P.L. 103-3). The rights available to all municipal employees eligible for family and medical leave shall run concurrent with any other sick leave provided herein.

(7) Commercial driver's license. All employees that drive:

(a) A vehicle with a gross weight of more than twenty-six thousand (26,000) pounds;

(b) A trailer with a gross weight of more than ten thousand (10,000) pounds;

(c) A vehicle designed to transport more than fifteen (15) passengers, including the driver; and

(d) Any size vehicle hauling hazardous waste requiring placards are required to have a Tennessee Commercial Driver's License in accordance with Tennessee Code Annotated, § 55-50-101 et seq. Fire truck, police vehicle, and emergency medical vehicle operators are exempt from the C.D.L. requirements.

(8) Employee drug testing. All employees in safety-sensitive positions (such as gas employees, equipment/vehicle operators that require a commercial drivers license, 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). Other employees may be subject to drug testing in accordance with the drug testing policy of the municipality. The municipality's procedure for drug testing can be found in Resolution 07-03.

(9) Employee right to contact elected officials. No employee shall be disciplined or discriminated against for communicating with an elected official. However an employee may be reprimanded for making untrue allegations concerning any job-related matter (Tennessee Code Annotated, § 8-50-601-604).

(10) Civil leave. Civil leave with pay shall be granted to employees for the following reasons:

(a) Jury duty (Tennessee Code Annotated, § 22-4-108);

(b) To answer a subpoena to testify for the municipality.

(11) Voting. When elections are held in the state, leave for the purpose of voting, if requested, shall be in accordance with Tennessee Code Annotated, § 2-1-106.

(12) Political activity. Employees have the same rights as other citizens to be a candidate for state or local political office (except for membership on the municipal governing body) and to participate in political activities by supporting or opposing political parties, political candidates and petitions to government entities. No employee may campaign on municipal time or in municipal uniform nor use municipal equipment or supplies in any campaign or election. (Tennessee Code Annotated, § 7-51-1501).

(13) Travel policy. All employees, including elected and appointed officials, are required to comply with the municipality's travel policy, Ordinance No. 146, as required by Tennessee Code Annotated, § 6-54-901. (as replaced by Ord. #333, Oct. 2011 **Ch2_5-7-19**, and amended by Ord. #341, April 2012 **Ch2_5-7-19**)

4-207. Miscellaneous. (1) Outside employment. No full-time employee of the municipality may accept any outside employment without written authorization from the mayor.

(2) Use of municipal time, vehicles, facilities, etc. 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 municipality. Decisions about aid to charitable, civic or other organizations will be made exclusively by the governing body.

(3) Accepting of gratuities. No employee shall accept any money, other considerations, or favors from anyone other than the municipality for performing an act that he/she would be required or expected to perform in the regular course of his/her duties. No employee shall accept, directly or indirectly,

any gift, gratuity, or favor of any kind that might reasonably be interpreted as an attempt to influence his/her actions with respect to the municipality's business. (as replaced by Ord. #333, Oct. 2011 **Ch2_5-7-19**)

4-208. Dismissal. At-will. Employees may be dismissed for cause, for no cause, or for any cause as long as it does not violate federal and/or state law or the municipal charter. (as replaced by Ord. #333, Oct. 2011 **Ch2_5-7-19**)

4-209. Personnel policy changes. Nothing in this chapter may be construed as creating a property right or contract right to the job for any employee. The provisions of this personnel policy may be unilaterally changed by ordinance of the governing body from time to time as the need arises. (as replaced by Ord. #333, Oct. 2011 **Ch2_5-7-19**)

4-210.--4-211. Deleted. (as deleted by Ord. #333, Oct. 2011 **Ch2_5-7-19**)

CHAPTER 3

OCCUPATIONAL SAFETY AND HEALTH PROGRAM

SECTION

- 4-301. Title.
- 4-302. Purpose.
- 4-303. Coverage.
- 4-304. Standards authorized.
- 4-305. Variances from standards authorized.
- 4-306. Administration.
- 4-307. Funding the program.

4-301. Title. This section shall provide authority for establishing and administering the occupational safety and health program plan for the employees of the Town of White Bluff. (Ord. #215, March 2002, as replaced by Ord. #317, Oct. 2010 *Ch2_5-7-19*)

4-302. Purpose. The White Bluff Town Council, in electing to update their established program plan will maintain an effective occupational safety and health program for its employees and shall:

- (1) Provide a safe and healthful place and condition of employment that includes:
 - (a) Top management commitment and employee involvement;
 - (b) Continually analyze the worksite to identify all hazards and potential hazards;
 - (c) Develop and maintain methods for preventing or controlling existing or potential hazards; and
 - (d) Train managers, supervisors, and employees to understand and deal with worksite hazards.
- (2) Acquire, maintain and require the use of safety equipment, personal protective equipment and devices reasonably necessary to protect employees.
- (3) Make, keep, preserve, and make available to the Commissioner of Labor and Workforce Development of the State of Tennessee, his designated representatives, or persons within the Tennessee Department of Labor and Workforce Development to whom such responsibilities have been delegated, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.
- (4) Consult with the state commissioner of labor and workforce development with regard to the adequacy of the form and content of records.
- (5) Consult with the state commissioner of labor and workforce development, as appropriate, regarding safety and health problems which are

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

(6) Provide reasonable opportunity for the participation of employees in the effectuation of the objectives of this program, including the opportunity to make anonymous complaints concerning conditions or practices injurious to employee safety and health.

(7) Provide for education and training of personnel for the fair and efficient administration of occupational safety and health standards, and provide for education and notification of all employees of the existence of this program. (Ord. #215, March 2002, as replaced by Ord. #317, Oct. 2010 *Ch2_5-7-19*)

4-303. Coverage. The provisions of the occupational safety and health program plan for the employees of the Town of White Bluff shall apply to all employees of each administrative department, commission, board, division, or other agency of the Town of White Bluff whether part-time or full-time, seasonal or permanent. (Ord. #215, March 2002, as replaced by Ord. #317, Oct. 2010 *Ch2_5-7-19*)

4-304. Standards authorized. The occupational safety and health standards adopted by the White Bluff Town Council 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). (Ord. #215, March 2002, as replaced by Ord. #317, Oct. 2010 *Ch2_5-7-19*)

4-305. Variances from standards authorized. The White Bluff Town Council may, upon written application to the Commissioner of Labor and Workforce Development of the State of Tennessee, request an order granting a temporary variance from any approved standards. Applications for variances shall be in accordance with Rules of Tennessee Department of Labor and Workforce Development, Occupational Safety, Chapter 0800-1-2, as authorized by Tennessee Code Annotated, title 50. Prior to requesting such temporary variance, the White Bluff Town Council shall notify or serve notice to employees, their designated representatives, or interested parties and present them with an opportunity for a hearing. The posting of notice on the main bulletin board as designated by the White Bluff Town Council shall be deemed sufficient notice to employees. (Ord. #215, March 2002, as replaced by Ord. #317, Oct. 2010 *Ch2_5-7-19*)

4-306. Administration. For the purposes of this chapter, the street department superintendent is designated as the director of occupational safety and health to perform duties and to exercise powers assigned so as to plan,

develop, and administer this chapter. The director shall develop a plan of operation for the program and said plan shall become a part of this chapter when it satisfies all applicable sections of the Tennessee Occupational Safety and Health Act of 1972 and Part IV of the Tennessee Occupational Safety and Health Plan. (Ord. #215, March 2002, as replaced by Ord. #317, Oct. 2010 *Ch2_5-7-19*)

4-307. Funding the program. Sufficient funds for administering and staffing the program pursuant to this chapter shall be made available as authorized by the White Bluff Town Council. (Ord. #215, March 2002, as replaced by Ord. #317, Oct. 2010 *Ch2_5-7-19*)

CHAPTER 4

INFECTIOUS DISEASE CONTROL POLICY

SECTION

- 4-401. Purpose.
- 4-402. Coverage.
- 4-403. Administration.
- 4-404. Definitions.
- 4-405. Policy statement.
- 4-406. General guidelines.
- 4-407. Hepatitis B vaccinations.
- 4-408. Reporting potential exposure.
- 4-409. Hepatitis B virus post-exposure management.
- 4-410. Human immunodeficiency virus post-exposure management.
- 4-411. Disability benefits.
- 4-412. Training regular employees.
- 4-413. Training high risk employees.
- 4-414. Training new employees.
- 4-415. Records and reports.
- 4-416. Legal rights of victims of communicable diseases.
- 4-417. Fire and emergency medical services.
- 4-418. Law enforcement and security officers.
- 4-419. Housekeeping and sanitation.
- 4-420. Amendments.
- 4-421. Repeal.

4-401. Purpose. It is the responsibility of the Town of White Bluff to provide employees a place of employment which is free from recognized hazards that may cause death or serious physical harm. In providing services to the citizens of the Town of White Bluff, employees may come in contact with life-threatening infectious diseases which can be transmitted through job related activities. It is important that both citizens and employees are protected from the transmission of diseases just as it is equally important that neither is discriminated against because of basic misconceptions about various diseases and illnesses.

The purpose of this policy is to establish a comprehensive set of rules and regulations governing the prevention of discrimination and potential occupational exposure to Hepatitis B Virus (HBV), the Human Immunodeficiency Virus (HIV), and Tuberculosis (TB). (Ord. #127, March 1992)

4-402. Coverage. Occupational exposures may occur in many ways, including needle sticks, cut injuries or blood spills. Several classes of employees are assumed to be at high risk for blood borne infections due to their routinely

increased exposure to body fluids from potentially infected individuals. Those high risk occupations include but are not limited to:

- (1) Paramedics and emergency medical technicians;
- (2) Occupational nurses;
- (3) Housekeeping and laundry workers;
- (4) Police and security personnel;
- (5) Firefighters;
- (6) Sanitation and landfill workers; and
- (7) Any other employee deemed to be at high risk per this policy and an exposure determination. (Ord. #127, March 1992)

4-403. Administration. This infection control policy shall be administered by the mayor or his/her designated representative who shall have the following duties and responsibilities:

- (1) Exercise leadership in implementation and maintenance of an effective infection control policy subject to the provisions of this chapter, other ordinances, the town charter, and federal and state law relating to OSHA regulations;
- (2) Make an exposure determination for all employee positions to determine a possible exposure to blood or body fluids;
- (3) Maintain records of all employees and incidents subject to the provisions of this chapter;
- (4) Conduct periodic inspections to determine compliance with the infection control policy by municipal employees;
- (5) Coordinate and document all relevant training activities in support of the infection control policy;
- (6) Prepare and recommend to the town council any amendments or changes to the infection control policy;
- (7) Identify any and all housekeeping operations involving substantial risk of direct exposure to body fluids and shall address the proper precautions to be taken while cleaning rooms and blood spills; and
- (8) Perform such other duties and exercise such other authority as may be prescribed by the town council. (Ord. #127, March 1992)

4-404. Definitions. (1) "Body fluids" - fluids that have been recognized by the Center for Disease Control as directly linked to the transmission of HIV and/or HBV and/or to which universal precautions apply: blood, semen, blood products, vaginal secretions, cerebrospinal fluid, synovial fluid, pericardial fluid, amniotic fluid, and concentrated HIV or HBV viruses.

(2) "Exposure" - the contact with blood or other body fluids to which universal precautions apply through contact with open wounds, non-intact skin, or mucous membranes during the performance of an individual's normal job duties.

(3) "Hepatitis B Virus (HBV)" - a serious blood-borne virus with potential for life-threatening complications. Possible complications include: massive hepatic necrosis, cirrhosis of the liver, chronic active hepatitis, and hepatocellular carcinoma.

(4) "Human Immunodeficiency Virus (HIV)" - the virus that causes acquired immunodeficiency syndrome (AIDS). HIV is transmitted through sexual contact and exposure to infected blood or blood components and perinatally from mother to neonate.

(5) "Tuberculosis (TB)" - an acute or chronic communicable disease that usually affects the respiratory system, but may involve any system in the body.

(6) "Universal precautions" - refers to a system of infectious disease control which assumes that every direct contact with body fluid is infectious and requires every employee exposed to direct contact with potentially infectious materials to be protected as though such body fluid were HBV or HIV infected. (Ord. #127, March 1992)

4-405. Policy statement. All blood and other body fluids are potentially infectious for several blood-borne pathogens. Some body fluids can also transmit infections. For this reason, the Center for Disease Control developed the strategy that everyone should always take particular care when there is a potential exposure. These precautions have been termed "universal precautions."

Universal precautions stress that all persons should be assumed to be infectious for HIV and/or other blood-borne pathogens. Universal precautions apply to blood, tissues, and other body fluids which contain visible blood. Universal precautions also apply to semen, (although occupational risk or exposure is quite limited), vaginal secretions, and to cerebrospinal, synovial, pleural, peritoneal, pericardial and amniotic fluids. Universal precautions do not apply to feces, nasal secretions, human breast milk, sputum, saliva, sweat, tears, urine, and vomitus unless these substances contain visible blood. (Ord. #127, March 1992)

4-406. General guidelines. General guidelines which shall be used by everyone include:

(1) Think when responding to emergency calls and exercise common sense when there is potential exposure to blood or body fluids which require universal precautions.

(2) Keep all open cuts and abrasions covered with adhesive bandages which repel liquids.

(3) Soap and water kill many bacteria and viruses on contact. If hands are contaminated with blood or body fluids to which universal precautions apply, then wash immediately and thoroughly. Hands shall also be washed after gloves are removed even if the gloves appear to be intact. When soap and water

or handwashing facilities are not available, then use a waterless antiseptic hand cleaner according to the manufacturers recommendation for the product.

(4) All workers shall take precautions to prevent injuries caused by needles, scalpel blades, and other sharp instruments. To prevent needle stick injuries, needles shall not be recapped, purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand. After they are used, disposable syringes and needles, scalpel blades and other sharp items shall be placed in puncture resistant containers for disposal. The puncture resistant container shall be located as close as practical to the use area.

(5) The town will provide gloves of appropriate material, quality and size for each affected employee. The gloves are to be worn when there is contact (or when there is a potential contact) with blood or body fluids to which universal precautions apply:

(a) While handling an individual where exposure is possible;

(b) While cleaning or handling contaminated items or equipment;

(c) While cleaning up an area that has been contaminated with one of the above;

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

(6) Resuscitation equipment shall be used when necessary. (No transmission of HBV or HIV infection during mouth-to-mouth resuscitation has been documented.) However, because of the risk of salivary transmission of other infectious diseases and the theoretical risk of HIV or HBV transmission during artificial resuscitation, bags shall be used. Pocket mouth-to-mouth resuscitation masks designed to isolate emergency response personnel from contact with a victims' blood and blood contaminated saliva, respiratory secretion, and vomitus, are available to all personnel to provide or potentially provide emergency treatment.

(7) Masks or protective eyewear or face shields shall be worn during procedures that are likely to generate droplets of blood or body fluids to prevent exposure to mucous membranes of the mouth, nose, and eyes. They are not required for routine care.

(8) Gowns, aprons, or lab coats shall be worn during procedures that are likely to generate splashes of blood or body fluids.

(9) Areas and equipment contaminated with blood shall be cleaned as soon as possible. A household (chlorine) bleach solution (1 part chlorine to 10 parts water) shall be applied to the contaminated surface as a disinfectant leaving it on for a least thirty (30) seconds. A solution must be changed and re-mixed every twenty-four (24) hours to be effective.

(10) Contaminated clothing (or other articles) shall be handled carefully and washed as soon as possible. Laundry and dish washing cycles at 120° are adequate for decontamination.

(11) Place all disposable equipment (gloves, masks, gowns, etc...) in a clearly marked plastic bag. Place the bag in a second clearly marked bag (double bag). Seal and dispose of by placing in a designated "hazardous" dumpster. **NOTE:** Sharp objects must be placed in an impervious container and then taken to a hospital for disposal.

(12) Tags shall be used as a means of preventing accidental injury or illness to employees who are exposed to hazardous or potentially hazardous conditions, equipment or operations which are out of the ordinary, unexpected or not readily apparent. Tags shall be used until such time as the identified hazard is eliminated or the hazardous operation is completed.

All required tags shall meet the following criteria:

(a) Tags shall contain a signal word and a major message. The signal word shall be "BIOHAZARD", or the biological hazard symbol. The major message shall indicate the specific hazardous condition or the instruction to be communicated to employees.

(b) The signal word shall be readable at a minimum distance of five (5) feet or such greater distance as warranted by the hazard.

(c) All employees shall be informed of the meaning of the various tags used throughout the workplace and what special precautions are necessary.

(13) Linen soiled with blood or other potentially infectious materials shall be handled as little as possible and with minimum agitation to prevent contamination of the person handling the linen. All soiled linen shall be bagged at the location where it was used. It shall not be sorted or rinsed in the area. Soiled linen shall be placed and transported in bags that prevent leakage.

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

(14) Whenever possible, disposable equipment shall be used to minimize and contain clean-up. (Ord. #127, March 1992)

4-407. Hepatitis B vaccinations. The Town of White Bluff shall offer the appropriate Hepatitis B vaccination to employees at risk of exposure free of charge and in amounts and at times prescribed by standard medical practices. The vaccination shall be voluntarily administered. High risk employees who wish to take the HBV vaccination should notify their department head who shall make the appropriate arrangements through the Infectious Disease Control Coordinator. (Ord. #127, March 1992)

4-408. Reporting potential exposure. Town employees shall observe the following procedures for reporting a job exposure incident that may put them at risk for HIV or HBV infections (i.e., needle sticks, blood contact on broken skin, body fluid contact with eyes or mouth, etc...):

(1) Notify the infectious disease control coordinator of the contact incident and details thereof.

(2) Complete the appropriate accident reports and any other specific form required.

(3) Arrangements will be made for the person to be seen by a physician as with any job-related injury.

Once an exposure has occurred, a blood sample should be drawn after consent is obtained from the individual from whom exposure occurred and tested for Hepatitis B surface antigen (HBsAg) and/or antibody to human immunodeficiency virus (HIV antibody). Testing of the source individual should be done at a location where appropriate pretest counseling is available. Post-test counseling and referral for treatment should also be provided. (Ord. #127, March 1992)

4-409. Hepatitis B virus post-exposure management. For an exposure to a source individual found to be positive for HBsAg, the worker who has not previously been given the hepatitis B vaccine should receive the vaccine series. A single dose of hepatitis B immune globulin (HBIG) is also recommended, if it can be given within seven (7) days of exposure.

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

If the source individual is negative for HBsAg and the worker has not been vaccinated, this opportunity should be taken to provide the hepatitis B vaccine series. HBIG administration should be considered on an individual basis when the source individual is known or suspected to be at high risk of HBV infection. Management and treatment, if any, of previously vaccinated workers who receive an exposure from a source who refuses testing or is not identifiable should be individualized. (Ord. #127, March 1992)

4-410. Human immunodeficiency virus post-exposure management. For any exposure to a source individual who has AIDS, who is found to be positive for HIV infection, or who refuses testing, the worker should be counseled regarding the risk of infection and evaluated clinically and serologically for evidence of HIV infection as soon as possible after the exposure. The worker should be advised to report and seek medical evaluation for any acute febrile illness that occurs within twelve (12) weeks after the exposure.

Such an illness, particularly one characterized by fever, rash, or lymphadenopathy, may be indicative of recent HIV infection.

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

If the source individual was tested and found to be seronegative, baseline testing of the exposed worker with follow-up testing 12 weeks later may be performed if desired by the worker or recommended by the health care provider. If the source individual cannot be identified, decisions regarding appropriate follow-up should be individualized. Serologic testing should be made available by the town to all workers who may be concerned they have been infected with HIV through an occupational exposure. (Ord. #127, March 1992)

4-411. Disability benefits. Entitlement to disability benefits and any other benefits available for employees who suffer from on-the-job injuries will be determined by the Tennessee Worker's Compensations Bureau in accordance with the provisions of Tennessee Code Annotated, § 50-6-303. (Ord. #127, March 1992)

4-412. Training regular employees. On an annual basis all employees shall receive training and education on precautionary measures, epidemiology, modes of transmission and prevention of HIV/HBV infection and procedures to be used if they are exposed to needle sticks or body fluids. They shall also be counseled regarding possible risks to the fetus from HIV/HBV and other associated infectious agents. (Ord. #127, March 1992)

4-413. Training high risk employees. In addition to the above, high risk employees shall also receive training regarding the location and proper use of personal protective equipment. They shall be trained concerning proper work practices and understand the concept of "universal precautions" as it applies to their work situation. They shall also be trained about the meaning of color coding and other methods used to designate contaminated material. Where tags are used, training shall cover precautions to be used in handling contaminated material as per this policy. (Ord. #127, March 1992)

4-414. Training new employees. During the new employee's orientation to his/her job, all new employee will be trained on the effects of infectious disease prior to putting them to work. (Ord. #127, March 1992)

4-415. Records and reports. (1) Reports. Occupational injury and illness records shall be maintained by the infectious disease control coordinator. Statistics shall be maintained on the OSHA-200 report. Only those work-related injuries that involve loss of consciousness, transfer to another job, restriction of work or motion, or medical treatment are required to be put on the OSHA-200.

(2) Needle sticks. Needle sticks, like any other puncture wound, are considered injuries for recordkeeping purposes due to the instantaneous nature of the event. Therefore, any needle stick requiring medical treatment (i.e., gamma globulin, hepatitis B immune globulin, hepatitis B vaccine, etc.) shall be recorded.

(3) Prescription medication. Likewise, the use of prescription medication (beyond a single dose for minor injury or discomfort) is considered medical treatment. Since these types of treatment are considered necessary, and must be administered by physician or licensed medical personnel, such injuries cannot be considered minor and must be reported.

(4) Employee interviews. Should the town be inspected by the U.S. Department of Labor Office of Health Compliance, the compliance safety and health officer may wish to interview employees. Employees are expected to cooperate fully with the compliance officers. (Ord. #127, March 1992)

4-416. Legal rights of victims of communicable diseases. Victims of communicable diseases have the legal right to expect, and municipal employees, including police and emergency service officers are duty bound to provide, the same level of service and enforcement as any other individual would receive.

(1) Officers assume that a certain degree of risk exists in law enforcement and emergency service work and accept those risks with their individual appointments. This holds true with any potential risks of contacting a communicable disease as surely as it does with the risks of confronting an armed criminal.

(2) Any officer who refuses to take proper action in regard to victims of a communicable disease, when appropriate protective equipment is available, shall be subject to disciplinary measures along with civil and, or criminal prosecution.

(3) Whenever an officer mentions in a report that an individual has or may have a communicable disease, he shall write "contains confidential medical information" across the top margin of the first page of the report.

(4) The officer's supervisor shall ensure that the above statement is on all reports requiring that statement at the time the report is reviewed and initiated by the supervisor.

(5) The supervisor disseminating newspaper releases shall make certain the confidential information is not given out to the news media.

(6) All requests (including subpoenas) for copies of reports marked "contains confidential medical information" shall be referred to the city attorney when the incident involves an indictable or juvenile offense.

(7) Prior approval shall be obtained from the city attorney before advising a victim of sexual assault that the suspect has, or is suspected of having a communicable disease.

(8) All circumstance, not covered in this policy, that may arise concerning releasing confidential information regarding a victim, or suspected victim, of a communicable disease shall be referred directly to the appropriate department head or city attorney.

(9) Victims of a communicable disease and their families have a right to conduct their lives without fear of discrimination. An employee shall not make public, directly or indirectly, the identity of a victim or suspected victim of a communicable disease.

(10) Whenever an employee finds it necessary to notify another employee, police officer, firefighter, emergency service officer, or health care provider that a victim has or is suspected of having a communicable disease, that information shall be conveyed in a dignified, discrete and confidential manner. The person to whom the information is being conveyed should be reminded that the information is confidential and that it should not be treated as public information.

(11) Any employee who disseminates confidential information in regard to a victim, or suspected victim of a communicable disease in violation of this policy shall be subject to serious disciplinary action and/or civil/and/or criminal prosecution. (Ord. #127, March 1992)

4-417. Fire and emergency medical services. These guidelines apply to fire and emergency medical services. This includes structural fire fighters, paramedics, emergency medical technicians, and advanced life support personnel. Fire and emergency medical services personnel are engaged in the delivery of medical care in the pre-hospital setting. The following guidelines are intended to assist these personnel in making decisions concerning use of personal protective equipment and resuscitation equipment, as well as for decontamination, disinfection, and disposal procedures.

(1) Appropriate personal protective equipment shall be made available routinely by the city to reduce the risk of exposure as defined above. For many situations, the chance that the rescuer will be exposed to blood and other body fluids can be determined in advance. Therefore, if the chances of being exposed to blood is high (e.g., CPR, IV insertion, trauma, delivering babies, etc.), the employee shall put on protective attire before beginning patient care.

(2) Disposable gloves shall be a standard component of emergency response equipment, and shall be donned by all personnel prior to initiating any emergency patient care tasks involving exposure to blood or other body fluids. Extra pairs shall always be available. For situations where large amounts of

blood are likely to be encountered, it is important that gloves fit tightly at the wrist to prevent blood contamination of hands around the cuff. For multiple trauma victims, gloves should be changed between patient contacts, if the emergency situation allows.

Greater personal protective equipment measures are indicated for situations where broken glass and sharp edges are likely to be encountered, such as extricating a person from an automobile wreck. Structural fire-fighting gloves that meet the Federal OSHA requirements for fire-fighters gloves shall be worn in any situation where sharp or rough surfaces are likely to be encountered.

While wearing gloves, avoid handling personal items, such as combs and pens, that could become soiled or contaminated. Gloves that have become contaminated with blood or other body fluids should be removed as soon as possible, taking care to avoid skin contact with the exterior surface. Contaminated gloves shall be placed and transported in bags that prevent leakage and shall be disposed of properly. Reusable gloves shall be cleaned and disinfected immediately.

(3) Masks, eyewear, and gowns shall be present on all emergency vehicles that respond or potentially respond to medical emergencies or victim rescues. These protective barriers shall be used in accordance with the level of exposure encountered. Minor lacerations or small amounts of blood do not merit the same extent of barrier use as required for exsanguinating victims or massive arterial bleeding.

Management of the patient who is not bleeding, and who has no bloody body fluids present, should not routinely require use of barrier precautions. Masks and eyewear shall be worn together, or a faceshield shall be used by all personnel prior to any situation where splashes of blood or other body fluids are likely to occur. Gowns or aprons shall be worn to protect clothing from splashes with blood. If large splashes or quantities of blood are present or anticipated, impervious gowns or aprons shall be worn. An extra change of work clothing should also be available at all times.

(4) Disposable resuscitation equipment and devices shall be used once and disposed of or, if reusable, thoroughly cleaned and disinfected after each use. Mechanical respiratory assist devices such as bag-valve masks or oxygen demand valve resuscitators shall be available on all emergency vehicles and to all emergency response personnel who respond or potentially respond to medical emergencies of victim rescues. Pocket mouth-to-mouth resuscitation masks designed to isolate emergency response personnel from contact with a victims' blood and blood contaminated saliva, respiratory secretions, and vomitus shall be provided to all personnel who provide or potentially provide emergency treatment. (Ord. #127, March 1992)

4-418. Law enforcement and security officers. Law enforcement officers and security personnel may face the risk of exposure to blood during the

conduct of their duties. There is an extremely diverse range of potential situations which may occur in the control of persons with unpredictable, violent, or psychotic behaviors. Therefore, informed judgment of the individual officer is paramount when unusual circumstances or events arise.

The following guidelines are intended to serve as adjunct to rational decision making in those situations where specific guidelines do not exist, particularly where immediate action is required to preserve life or prevent significant injury.

(1) Law enforcement and security personnel are exposed to a range of assaultive and disruptive behavior through which they may potentially become exposed to blood or other body fluids containing blood. Behaviors of particular concern are biting, attacks resulting in blood exposure, and attacks with sharp objects. Such behavior may occur in a range of law-enforcement situations including arrests, routine interrogations, domestic disputes, and lockup operations. Hand-to-hand combat may result in bleeding and may thus incur a greater chance for blood-to-blood exposure.

In all cases, extreme caution must be used in dealing with suspects if there is any indication of assaultive or combative behavior. When blood is present and a suspect is combative or threatening to staff, gloves should always be put on as soon as conditions permit. In case of blood contamination of clothing, an extra change of clothing should be available at all times.

(2) Law enforcement personnel should also be concerned about infection through the administration of cardiopulmonary resuscitation. Protective masks or airways shall also be available to officers and provided with the proper training in their use.

(3) An officer should use great caution in searching the clothing of suspects. Individual discretion, based on the circumstances at hand, should determine if a suspect or prisoner should empty his/her own pockets or if the officer should use his own skills in determining the contents of a suspect's clothing. When a search is warranted the following guidelines shall be used.:

(a) A safe distance should always be maintained between the officer and the suspect.

(b) Protective gloves should be worn if exposure to blood is likely to be encountered.

(c) Protective gloves should be used for all body cavity searches.

(d) If cotton gloves are to be worn when working with evidence of potential latent fingerprints value at the crime scene, they can be worn over protective disposable gloves when exposure to blood may occur.

(e) Always carry a flashlight, even during the daylight shifts, to search hidden areas. Whenever possible, use long-handled mirrors and flashlights to search under car seats.

(f) If searching a purse, carefully empty contents directly from the purse, by turning it upside down over a table.

(g) Use puncture-proof containers to store sharp instruments and clearly mark plastic bags to store other possibly contaminated items.

(h) To avoid tearing gloves, use evidence tape instead of metal staples to seal evidence.

(i) When possible evidence items should be air dried before sealing in plastic.

(4) Officers and crime scene technicians may confront unusual hazards, especially when the crime scene involves violent behavior, such as a homicide where large amounts of blood are present. Protective gloves shall be available and worn in this setting. In addition, for very large spills, consideration should be given to other protective clothing, such as overalls, aprons, boots, or protective shoe covers. They should be changed if torn or soiled, and always removed prior to leaving the scene. While wearing gloves, avoid handling personal items, such as combs and pens, that could become soiled or contaminated.

(5) Face masks and eye protection or a face shield are required for laboratory and evidence technicians whose jobs entail potential exposure to blood via a splash to the face, mouth, nose, or eyes. Airborne particles of dried blood may be generated when a stain is scraped.

(6) While processing the crime scene, personnel should be alert for the presence of sharp objects such as hypodermic needles, knives, razors, broken glass, nails, or other sharp objects.

(7) For detectives, investigators, evidence technicians, and others who may have to touch or remove a body, the response should be the same as for situations requiring CPR or first aid;

(a) Wear gloves and cover all cuts and abrasions to create a barrier and carefully wash all exposed areas after any contact with blood.

(b) The precautions to be used with blood and deceased persons should also be used when handling amputated limbs, hands, or other body parts.

(8) Protective masks and eyewear, laboratory coats, gloves, and waterproof aprons should be worn when performing or attending all autopsies. All autopsy materials should be considered infectious for both HIV and HBV. Onlookers with an opportunity for exposure to blood splashes should be similarly protected. (Ord. #127, March 1992)

4-419. Housekeeping and sanitation. All places of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition. When a blood or body fluid spill occurs, one of the following disinfecting techniques shall be used:

(1) A chemical germicide that is approved for use as a hospital disinfectant shall be used.

(2) A product registered by the Environmental Protection Agency as being effective against HIV shall be used.

(3) A solution of 5.25% sodium hypochlorite (household bleach) diluted between 1:10 and 1:100 with water.

Any receptacle used for decaying or rotten solids or liquid waste or refuse shall be so constricted that it does not leak and may be thoroughly cleaned and maintained in a sanitary condition. Such a receptacle shall be equipped with a solid, tight-fitting cover, unless it can be maintained in a sanitary condition with a cover.

All sweeping, solid or liquid wastes, refuse, and garbage shall be removed in such a manner to avoid creating a menace to health and as often as necessary or appropriate to maintain the place of employment in a sanitary condition. (Ord. #127, March 1992)

4-420. Amendments. Amendments or revisions of these rules may be recommended for adoption by any elected official or by department heads. Such amendments or revisions of these rules shall be by ordinance and shall become effective after public hearing and approval by the governing body. (Ord. #127, March 1992)

4-421. Repeal. If any provision of this chapter, or if any policy or order thereunder, or the application of any provision to any person or circumstances is held invalid, the remainder of the chapter, and the application of the provision of this chapter, or of the policy or order to persons or circumstances other than those to which it is held invalid, shall not be affected thereby. (Ord. #127, March 1992)

CHAPTER 5

TRAVEL REIMBURSEMENT REGULATIONS

SECTION

- 4-501. Enforcement.
- 4-502. Travel policy.
- 4-503. Travel reimbursement rate schedules.
- 4-504. Administrative procedures.

4-501. Enforcement. The Chief Administrative Officer (CAO) of the town or his or her designee shall be responsible for the enforcement of these travel regulations. (Ord. #146, Dec. 1995)

4-502. Travel policy. (1) In the interpretation and application of this chapter, the term "traveler" or "authorized travel" means any elected or appointed municipal officer or employee, including members of municipal boards and committees appointed by the mayor or the municipal governing body, and the employees of such boards and committees who are traveling on official municipal business and whose travel was authorized in accordance with this chapter. "Authorized traveler" shall not include the spouse, children, other relatives, friends, or companions accompanying the authorized traveler on town business, unless the person(s) otherwise qualifies as an authorized traveler under this chapter.

(2) Authorized travelers are entitled to reimbursement of certain expenditures incurred while traveling on official business for the town. Reimbursable expenses shall include expenses for transportation; lodging; meals; registration fees for conferences, conventions, and seminars; and other actual and necessary expenses related to official business as determined by the CAO. Under certain conditions, entertainment expenses may be eligible for reimbursement.

(3) Authorized travelers can request either a travel advance for the projected cost of authorized travel, or advance billing directly to the town for registration fees, air fares, meals, lodging, conferences, and similar expenses.

Travel advance requests aren't considered documentation of travel expenses. If travel advances exceed documented expenses, the traveler must immediately reimburse the town. It will be the responsibility of the CAO to initiate action to recover any undocumented travel advances.

(4) Travel advances are available only for special travel and only after completion and approval of the travel authorization form.

(5) The travel expense reimbursement form will be used to document all expense claims.

(6) To qualify for reimbursement, travel expenses must be:

(a) Directly related to the conduct of the town business for which travel was authorized; and

(b) Actual, reasonable, and necessary under the circumstances. The CAO may make exceptions for unusual circumstances.

Expenses considered excessive won't be allowed.

(7) Claims of five dollars (\$5.00) or more for travel expense reimbursement must be supported by the original paid receipt for lodging, vehicle rental, phone call, public carrier travel, conference fee, and other reimbursable costs.

(8) Any person attempting to defraud the town or misuse town travel funds is subject to legal action for recovery of fraudulent travel claims and/or advances.

(9) Mileage and motel expenses incurred within the town aren't ordinarily considered eligible expenses for reimbursement. (Ord. #146, Dec. 1995)

4-503. Travel reimbursement rate schedules. Authorized travelers shall be reimbursed according to the federal travel regulation rates. The town's travel reimbursement rates will automatically change when the federal rates are adjusted.

The municipality may pay directly to the provider for expenses such as meals, lodging, and registration fees for conferences, conventions, seminars, and other education programs. (Ord. #146, Dec. 1995)

4-504. Administrative procedures. The town adopts and incorporates by reference--as if fully set out herein--the administrative procedures submitted by MTAS to, and approved by letter by, the Comptroller of the Treasury, State of Tennessee, in June 1993. A copy of the administrative procedures is on file in the office of the town recorder.

This chapter shall take effect upon its final reading by the municipal governing body. It shall cover all travel and expenses occurring on or after October 1, 1995. (Ord. #146, Dec. 1995)

CHAPTER 6**EMPLOYEE TERMINATION POLICY****SECTION**

4-601. Termination policy.

4-601. Termination policy. (1) An employee with any length of service may be terminated without notice or consideration for, but not limited to, theft, failure to fulfill duties and job requirements, insubordination, and/or conduct unbecoming a city employee.

(2) An employee with any length of service shall have the right to stand and face his accuser. The employee can at this time answer any and all charges placed against him.

(3) The terminated aggrieved employee shall, at his own expense, be allowed to carry his case before a mutually agreed arbitrator. The decision of the arbitrator shall be final and binding upon both the employee and the city.

(4) New employees must serve a one year probation period. During the probation period an employee may be dismissed for any reason with no appeal rights.

(5) An employee with five years or more continuous full-time service shall be entitled to one month of severance pay for every full year worked, should he be terminated without just cause or should the city have a reduction in force.

(6) No employee shall be terminated solely to avoid severance rights of five years.

(7) This policy shall apply to all current and future employees.
(Ord. #104, June 1990)

CHAPTER 7

CODE OF ETHICS

SECTION

- 4-701. Applicability.
- 4-702. Definition of "personal interest."
- 4-703. Disclosure of personal interest by official with vote.
- 4-704. Disclosure of personal interest in non-voting matters.
- 4-705. Acceptance of gratuities, etc.
- 4-706. Use of information.
- 4-707. Use of municipal time, facilities, etc.
- 4-708. Use of position or authority.
- 4-709. Outside employment.
- 4-710. Ethics complaints.
- 4-711. Violations.

4-701. Applicability. This chapter is the code of ethics for personnel of the municipality. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the municipality. The words "municipal" and "municipality" include these separate entities. (as added by Ord. #259, Sept. 2006)

4-702. Definition of "personal interest." (1) For purposes of §§ 4-703 and 4-704, "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;
- (b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or
- (c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s), stepparent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).

(2) The words "employment interest" include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.

(3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter. (as added by Ord. #259, Sept. 2006)

4-703. 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 himself from voting on the measure. (as added by Ord. #259, Sept. 2006)

4-704. 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. #259, Sept. 2006)

4-705. 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 municipality:

(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing municipal business. (as added by Ord. #259, Sept. 2006)

4-706. 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. #259, Sept. 2006)

4-707. 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 governing body to be in the best interests of the municipality. (as added by Ord. #259, Sept. 2006)

4-708. 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 municipality.

(2) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. (as added by Ord. #259, Sept. 2006)

4-709. Outside employment. An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy. (as added by Ord. #259, Sept. 2006)

4-710. Ethics complaints. (1) The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this charter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.

(2) (a) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his own initiative when he acquires information indicating a possible violation, and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.

(b) The city attorney may request the governing body to hire another attorney, individual, or entity to act as ethics officer when he has or will have a conflict of interests in a particular matter.

(c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body, the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or other individual or entity chosen by the governing body.

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

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation or a civil service policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics. (as added by Ord. #259, Sept. 2006)

4-711. 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 governing body. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action. (as added by Ord. #259, Sept. 2006)

CHAPTER 8

NEPOTISM POLICY

SECTION

4-801. Nepotism policy.

4-801. Nepotism policy. (1) For the purposes of this chapter, the term "immediate family member" shall mean the spouse, mother, father, brother, sister, children, grandparents, grandchildren, guardian, step-mother, step-father, stepbrother, step-sister, half-brother, half-sister, child or stepchild, uncle, aunt, nephew, niece or any person having the same relationship with the mayor's or a councilperson's spouse.

(2) No officer or employee of the town or a town agency shall advocate, recommend, or cause the employment, appointment, promotion, transfer, or advancement of a family member to an office or position of employment with the town or a town agency unless no other qualified applicants are available.

(3) No officer or employee of the town or a town agency shall supervise or manage the work of a family member.

(4) No officer or employee shall participate in any action relating to the employment or discipline of a family member, except that this prohibition shall not prevent an elected or appointed official from voting on or participating in the development of a budget which includes compensation for a family member, provided that the family member is included only as a member of a class of persons or a group and that the family member benefits to no greater extent than any other similarly situated member of the class or group.

(5) The prohibitions in this section shall not apply to any relationship or situation that would violate the prohibition, but which existed prior to the final adoption of this ordinance.

(6) Should any section, paragraph, sentence, clause, or phrase of this chapter, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this chapter be pre-empted by state or federal law or regulation, such decision or legislation shall not affect the validity of the remaining portions of this chapter or its application to other persons or circumstances.

(7) All ordinances or parts of ordinances which are inconsistent with this section are hereby repealed to the extent of such inconsistency. (as added by Ord. #316, Oct. 2010 *Ch2 5-7-19*)

TITLE 5**MUNICIPAL FINANCE AND TAXATION**¹**CHAPTER**

1. MISCELLANEOUS.
2. REAL PROPERTY TAXES.
3. PRIVILEGE TAXES.
4. WHOLESALE BEER TAX.
5. MUNICIPAL PURCHASING AGENT AND PROCEDURES.
6. DEBT POLICY.

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

- 5-101. Depository for municipal funds.
5-102. Budget process regulated.

5-101. Depository for municipal funds. Be it enacted that upon board approval the City Recorder for the Town of White Bluff shall have the authority to transfer funds, open checking and savings account, and obtain certificates of deposits on behalf of the Town of White Bluff in such financial institutions with branches or locations within the municipal boundaries of the Town of White Bluff. (1983 Code, § 6-101, as amended by Ord. #184, Nov. 1999)

5-102. Budget process regulated. Prior to the approval of any amendment to the annual budget that would increase appropriations for the expenditure of city funds, the city council shall approve a resolution that identifies a corresponding source of funds to cover the proposed additional expenditure, and/or identifies a corresponding reduction in expenditure to compensate for the proposed additional expenditure.

Nothing in this chapter shall be construed or interpreted as an expansion or limitation of any power or authority granted to the municipality by the State of Tennessee. (1983 Code, § 6-502)

¹Charter references
Taxing authority: § 19.

CHAPTER 2

REAL PROPERTY TAXES

SECTION

5-201. When due and payable.

5-202. When delinquent--penalty and interest.

5-201. When due and payable. Taxes levied by the town against real property shall become due and payable annually on the first Monday of November of the year for which levied. (1983 Code, § 6-201)

5-202. 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 thereafter bear interest at the rate of interest of one (1%) percent per month until paid. In addition to the payment of interest at the rate of twelve (12%) percent, there shall be assessed a penalty of one-half ($\frac{1}{2}$) of one (1%) percent per month on such delinquent taxes until fully paid.¹ (1983 Code, § 6-202, as amended by Ord. #170, April 1998)

¹Charter and state law references

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

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

CHAPTER 3

PRIVILEGE TAXES

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, § 67-4-701, et seq.) are hereby expressly enacted, ordained, and levied on the businesses, business activities, vocations, and occupations carried on within the Town of White Bluff at the maximum rate prescribed by the provisions of the "Business Tax Act." (1983 Code, § 6-301, as amended by Ord. #272, Aug. 2007)

5-302. License required. No person shall exercise any such privilege within the Town of White Bluff 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. (1983 Code, § 6-302)

CHAPTER 4

WHOLESALE BEER TAX**SECTION**

5-401. To be collected.

5-401. To be collected. The recorder is hereby directed to take appropriate action to assure payment to the Town of White Bluff of the wholesale beer tax levied by the "Wholesale Beer Tax Act," as set out in Tennessee Code Annotated, title 57, chapter 6.¹ (1983 Code, § 6-401)

¹State law reference

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

CHAPTER 5

MUNICIPAL PURCHASING AGENT AND PROCEDURES**SECTION**

5-501. Office of purchasing agent created.

5-502. Duties of purchasing agent; purchasing procedures defined.

5-503. Limitations on revising purchasing procedures.

5-504. Expenditures without advertisement.

5-501. Office of purchasing agent created. As provided in Tennessee Code Annotated, § 6-56-301, *et seq.*, the office of purchasing agent is hereby created and the city recorder shall faithfully discharge the duties of said office or appoint an individual to make purchases for the town.¹ Purchases shall be made in accordance with the Municipal Purchasing Law of 1983 and amendments thereto, this chapter and purchasing procedures approved by the governing body. (1983 Code, § 1-1101)

5-502. Duties of purchasing agent; purchasing procedures defined. The purchasing agent, or designated representative, as provided herein, shall purchase materials, supplies, services and equipment, provide for leases and lease-purchases and dispose of surplus property in accordance with purchasing procedures approved by the governing body and filed with the city recorder. (1983 Code, § 1-1102)

5-503. Limitation on revising purchasing procedures. After initial approval by resolution of the governing body of this town, changes or revisions to the purchasing procedures shall be made only by resolution. (1983 Code, § 1-1103)

5-504. Expenditures without advertisement. Pursuant to Tennessee Code Annotated, §§ 6-56-305 and 6-56-306, the mayor and council, by a majority vote, shall have the authority to authorize purchases, leases and expenditures for necessary town services and equipment and to conduct the business of the town government up to the maximum sum of ten thousand dollars (\$10,000.00) for each expenditure without the necessity of public advertisement. Each department shall obtain at least three (3) bids if at all possible for purchases from one thousand dollars (\$1,000.00) to ten thousand dollars (\$10,000.00) with documentation and there shall be no split orders that would cause the total purchase to exceed ten thousand dollars (\$10,000.00). (Ord. #145, Dec. 1995 as

¹Municipal code reference

Duties of city recorder: title 1, ch. 3.

amended by Ord. #164, Oct. 1997, and replaced by Ord. #314, Oct. 2010
Ch2_5-7-19)

CHAPTER 6**DEBT POLICY**¹**SECTION**

- 5-601. Definition of debt.
- 5-602. Approval of debt.
- 5-603. Transparency.
- 5-604. Role of debt.
- 5-605. Types and limits of debt.
- 5-606. Use of variable rate debt.
- 5-607. Use of derivatives.
- 5-608. Cost of debt.
- 5-609. Refinancing outstanding debt.
- 5-610. Professional services.
- 5-611. Conflicts.
- 5-612. Review of policy.
- 5-613. Compliance.

5-601. Definition of debt. All obligations of the town to repay, with or without interest, in installments and/or at a later date, some amount of money utilized for the purchases, construction, or operation of town resources. This includes but is not limited to notes, bond issues, capital leases, and loans of any type (whether from an outside source such as a bank or from another internal fund). (as added by Ord. #337, Dec. 2011 ***Ch2_5-7-19***)

5-602. Approval of debt. Bond anticipations notes, capital outlay notes, grant anticipation notes, and tax and revenue anticipation notes will be submitted to the State of Tennessee Comptroller's Office and the town council prior to issuance or entering into the obligation. A plan for refunding debt issues will also be submitted to the comptroller's office prior to issuance. Capital or equipment leases may be entered into by the town council; however, details on the lease agreement will be forwarded to the comptroller's office on the specified form within forty-five (45) days. (as added by Ord. #337, Dec. 2011 ***Ch2_5-7-19***)

¹State law references

Tennessee Code Annotated, part 21- local government public obligation law

Tennessee Code Annotated, 7, part 9- contracts, leases and lease purchase agreements

5-603. Transparency. (1) The town shall comply with legal requirements for notice and for public meetings related to debt issuance.

(2) All notices shall be posted in the customary and required posting locations, including as required local newspapers, bulletin boards, and websites.

(3) All cost (including principal, interest, issuance, continuing and one (1) time) shall be clearly presented and disclosed to the citizens, town council, and other stakeholders in a timely manner.

(4) The terms and life of each debt issue shall be clearly presented and disclosed to the citizens/members, town council, and other stakeholders in a timely manner.

(5) A debt service schedule outlining the rate of retirement for the principal amount shall be clearly presented and disclosed to the citizens/members, town council and other stakeholders in a timely manner. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-604. Role of debt. (1) Long-term debt shall not be used to finance current operations. Long-term debt may be used for capital purchases or construction identified through the capital improvement, regional development, transportation, or master process or plan. Short-term debt may be used for certain projects and equipment financing as well as for operational borrowing; however, the town will minimize the use of short-term cash flow borrowings by maintaining adequate working capital and close budget management.

(2) In accordance with generally accepted accounting principles and state law, the maturity of the underlying debt will not be more than the useful life of the assets purchased or built with the debt, not to exceed thirty (30) years; however, an exception may be made with respect to federally sponsored loans, provided such an exception is consistent with law and accepted practices. Debt issued for operating expenses must be repaid within the same fiscal year of issuance of incurrence. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-605. Types and limits of debt. (1) The town will seek to limit total outstanding debt service obligations to twenty-five percent (25%) of general fund annual revenues excluding overlapping debt, enterprise debt, and revenue debt.

(2) The limitation on total outstanding debt must be reviewed prior to the issuance of any new debt.

(3) The town's total outstanding debt obligation will be monitored and reported to the town council by the city recorder during the annual budget process. The city recorder shall monitor the maturities and terms and conditions of all obligations to ensure compliance. The city recorder shall also report to the town council any matter that adversely affects the credit or financial integrity of the town.

(4) The town is authorized to issue general obligations bonds, revenue bonds, TIFs, loans, notes and other debt allowed by law.

(5) The town will seek to structure debt with level or declining debt service payments over the life of each individual bond issue or loan.

(6) As a rule, the town will not backload, use "wrap-around" techniques, balloon payments or other exotic formats to pursue the financing of projects. When refunding opportunities, natural disasters, other non-general fund revenues, or other external factors occur, the town may utilize non-level debt methods. However, the use of such methods must be thoroughly discussed in a public meeting and the mayor and governing body must determine such use is justified and in the best interest of the town.

(7) The town may use capital leases to finance short-term projects.

(8) Bonds backed with a general obligations pledge often have lower interest rates than revenue bonds. The town may use its general obligation pledge with revenue bond issues when the populations served by the revenue bond projects overlap or significantly are the same as the property tax base of the town. The town council and management are committed to maintaining rates and fee structures of revenue supported debt at levels that will not require a subsidy from the town's general fund. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-606. Use of variable rate debt. (1) The town recognizes the value of variable rate debt obligations and that cities have greatly benefitted from the use of variable rate debt in the financing of needed infrastructure and capital improvements.

(2) However, the town also recognizes there are inherent risks associated with the use of variable rate debt and will implements steps to mitigate these risks; including:

(a) The town will annually include in its budget an interest rate assumption for any outstanding variable rate debt that takes market fluctuations affecting the rate of interest into consideration.

(b) Prior to entering into any variable rate debt obligation that is backed by insurance and secured by a liquidity provider, the town council shall be informed of the potential affect on rates as well as any additional costs that might be incurred should the insurance fail.

(c) Prior to entering into any variable rate debt obligation that is backed by a letter of credit provider, the town council shall be informed of the potential affect on rates as well as any additional costs that might be incurred should the letter of credit fail.

(d) Prior to entering into any variable rate debt obligation, the town council will be informed of any terms, conditions, fees, or other costs associated with the prepayment of variable rate debt obligations.

(e) The town shall consult with persons familiar with the arbitrage rules to determine applicability, legal responsibility, and potential consequences associated with any variable rate debt obligation. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-607. Use of derivatives. (1) The town chooses not to use derivative or other exotic financial structures in the management of the town's debt portfolio.

(2) Prior to any reversal of this provision:

(a) A written management report outlining the potential benefits and consequences of utilizing these structures must be submitted to the town council; and

(b) The town council must adopt a specific amendment to this policy concerning the use of derivatives or interest rate agreements that complies with the state funding board guidelines. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-608. Cost of debt. (1) All costs associated with the initial issuance or incurrence of debt, management and repayment of debt (including interest, principal, and fees or charges) shall be disclosed prior to action by the town council in accordance with the notice requirements stated above.

(2) In cases of variable interest or non-specified costs, detailed explanation of the assumptions shall be provided along with the complete estimate of total costs anticipated to be incurred as part of the debt issue.

(3) Costs related to the repayment of debt, including liabilities for future years, shall be provided in context of the annual budgets from which such payments will be funded (i.e., general obligations bonds in context of the general fund, revenue bonds in context of the dedicated revenue stream and related expenditures, loans and notes). (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-609. Refinancing outstanding debt. (1) The town will refund debt when it is in the best financial interest of the town to do so, and the chief financial officer shall have the responsibility to analyze outstanding bond issues for refunding opportunities. The decision to refinance must be explicitly approved by the governing body, and all plans for current or advance refunding of debt must be in compliance with state laws and regulations.

(2) The chief financial officer will consider the following issues when analyzing possible refunding opportunities:

(a) Onerous restrictions- debt may be refinanced to eliminate onerous or restrictive covenants contained in existing debt documents, or to take advantage of changing financial conditions or interest rates.

(b) Restructuring for economic purposes- the town will refund debt when it is in the best financial interest of the town to do so. Such refunding may include restructuring to meet unanticipated revenue expectations, achieve cost savings, mitigate irregular debt service payments, or to release reserve funds. Current refunding opportunities may be considered by the chief financial officer if the refunding generates positive present value savings, and the chief financial officer must establish a minimum present value savings threshold for any refinancing.

(c) Term of refunding issues- the town will refund bonds within the term of the originally issued debt. However, the chief financial officer may consider maturity extension, when necessary to achieve a desired outcome, provided such extension is legally permissible. The chief financial officer may also consider shortening the term of the originally issued debt to realize greater savings. The remaining useful life of the financed facility and the concept of inter-generational equity should guide this decision.

(d) Escrow structuring- the town shall utilize the least costly securities available in structuring refunding escrows. Under no circumstances shall an underwriter, agent or financial advisor sell escrow securities to the town from its own account.

(e) Arbitrage- the town shall consult with persons familiar with the arbitrage rules to determine applicability, legal responsibility, and potential consequences associated with any refunding. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-610. Professional services. The town shall require all professionals engaged in the process of issuing debt to clearly disclose all compensation and consideration received related to services provided in the debt issuance process by both the town and the lender or conduit issuer, if any. This includes "soft" costs or compensations in lieu of direct payments.

(1) Counsel. The town shall enter into an engagement letter agreement with each lawyer or law firm representing the town in a debt transaction. (No engagement letter is required by any lawyer who is an employee of the town or lawyer or law firm which is under a general appointment or contract to serve as counsel to the town. The town does not need an engagement letter with counsel not representing the town, such as underwriters' counsel.)

(2) If the town chooses to hire financial advisors the town shall enter into a written agreement with each person or firm serving as financial advisor in debt management and transactions. Whether in a competitive or negotiated sale, the financial advisor shall not be permitted to bid on, privately place or underwrite an issue for which they are or have been providing advisory services for the issuance.

(3) Underwriter. If there is an underwriter, the town shall require the underwriter to clearly identify itself in writing (e.g., in a response to a request for proposals or in promotional materials provided to an issuer) as an underwriter and not as a financial advisor from the earliest stages of its relationship with the town with respect to that issue. The underwriter must clarify its primary role as a purchaser of securities in an arm's-length commercial transaction and that it has financial and other interests that differ from those of the town. The underwriter in a publicly offered, negotiated sale shall be required to provide pricing information both as to interest rates and to

takedown per maturity to the governing body in advance of the pricing of the debt. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-611. Conflicts. (1) Professionals involved in a debt transaction hired or compensated by the town shall be required to disclose to the town existing client and business relationships between and among the professionals to a transaction (including but not limited to financial advisor, swap advisor, bond counsel, swap counsel, trustee, paying agent, liquidity or credit enhancement provider, underwriter, counterparty, and remarketing agent), as well as conduit issuers, sponsoring organizations and program administrator. This disclosure shall include that information reasonable sufficient to allow the town to appreciate the significance of the relationships.

(2) Professionals who become involved in the debt transaction as a result of a bid submitted in a widely and publicly advertised competitive sale conducted using an industry standard, electronic bidding platform are not subject to this disclosure. No disclosure is required that would violate any rule or regulation of professional conduct. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-612. Review of policy. This policy shall be reviewed at least annually by the town council with the approval of the annual budget. Any amendments shall be considered and approved in the same process as the initial adoption of the Policy, with opportunity for public input. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

5-613. Compliance. The city recorder is responsible for ensuring compliance with this policy. (as added by Ord. #337, Dec. 2011 *Ch2_5-7-19*)

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

1. POLICE AND ARREST.
2. WORKHOUSE.

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 in making arrests.
- 6-106. Disposition of persons arrested.
- 6-107. Police department records.
- 6-108. Emergency assistance policy.
- 6-109. Animal control officer.
- 6-110. Impoundment of vehicles.

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. (1983 Code, § 1-401)

6-102. Policemen to preserve law and order, etc. Policemen shall preserve law and order within the Town of White Bluff. They shall patrol the Town of White Bluff and shall assist the city court during the trial of cases. Policemen shall also promptly serve any legal process issued by the city court. (1983 Code, § 1-402)

6-103. Policemen to wear uniforms and be armed. All policemen shall wear such uniform and badge as the town council shall authorize and shall carry a service pistol and billy club at all times while on duty unless otherwise expressly directed by the chief for a special assignment. (1983 Code, § 1-403)

¹Municipal code reference

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

6-104. When policemen to make arrests¹. 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. (1983 Code, § 1-404)

6-105. Policemen may require assistance in making arrests. It shall be unlawful for any male person willfully to refuse to aid a policeman in making a lawful arrest when such a person's assistance is requested by the policeman and is reasonably necessary to effect the arrest. (1983 Code, § 1-405)

6-106. Disposition of persons arrested. Unless otherwise authorized by law, when any person is arrested for any offense other than one involving drunkenness he shall be brought before the city court for immediate trial or allowed to post bond. However, any person arrested for a traffic violation who has in his lawful possession a valid driver's license issued by the State of Tennessee or any other state or territory or the District of Columbia shall have the option of depositing his/her driver's license with the officer or court demanding bail or other security, unless the penalty for the violation includes the mandatory revocation of the driver's license for a period of time. When the arrested person is drunk or when the city judge is not immediately available or the alleged offender is not able to post the required bond, he shall be confined. (1983 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 of the Town of White Bluff.

(2) All arrests made by policemen.

(3) All police investigations made, funerals convoyed, fire calls answered, and other miscellaneous activities of the police department. (1983 Code, § 1-407)

6-108. Emergency assistance policy.¹ The emergency assistance policy presented by the fire and police departments is hereby approved. (1983 Code, § 1-408)

¹Ordinance #90, authorizes an emergency assistance policy for the fire and police departments. This policy is of record in the office of the recorder.

6-109. Animal control officer. An animal control officer may be appointed to serve the town from time to time in the discretion of the council. The animal control officer's duties shall be restricted to the enforcement of the provisions of title 10 of this municipal code. The animal control officer shall be under the supervision and shall obey and comply with the orders of the police chief and the mayor and otherwise comply with such administrative rules and regulations as may be promulgated from time to time. The animal control officer shall have authority to issue citations and enforce the terms of the animal control ordinances, but shall in no event have the authority to make arrests. (as added by Ord. #252, April 2006)

6-110. Impoundment of vehicles. (1) 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 thirty-five dollars (\$35.00) per day for each motor vehicle stored in the impoundment lot. Any part of a day shall count as a whole day.

(2) Amendment to fees. The Council for the Town of White Bluff can change the storage cost fee of an impounded vehicle only by ordinance. (as added by Ord. #394, July 2018 *Ch2_5-7-19*)

CHAPTER 2**WORKHOUSE¹****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. (1983 Code, § 1-601)

6-202. Inmates to be worked. All persons committed to the workhouse, to the extent that their physical condition shall permit, shall be required to perform such public work or labor as may be lawfully prescribed for the county prisoners. (1983 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 and costs assessed against him. (1983 Code, § 1-603)

¹Municipal code reference
Jailer's fee: § 3-204.

TITLE 7

FIRE PROTECTION AND FIREWORKS

CHAPTER

1. GENERAL PROVISIONS.
2. FIRE CODE.
3. FIRE DEPARTMENT.
4. FIREWORKS.
5. SPECTATOR AND VEHICLE CONTROL.
6. RURAL FIRE SERVICE.

CHAPTER 1

GENERAL PROVISIONS

SECTION

7-101. Fire limits described.

7-101. Fire limits described. The corporate fire limits shall be as set by the town council. (1983 Code, § 7-101, modified)

CHAPTER 2

FIRE CODE¹

SECTION

- 7-201. Fire code adopted.
- 7-202. Enforcement.
- 7-203. Definition of "municipality."
- 7-204. Storage of explosives, flammable liquids, etc.
- 7-205. Gasoline trucks.
- 7-206. Variances.
- 7-207. Violations.

7-201. Fire code adopted. Pursuant to authority granted by Tennessee Code Annotated, §§ 6-54-501 through 6-54-506, and for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, the International Fire Code,² 2006 edition, including any subsequent future amendments and modifications thereto approved and adopted by the International Code Council is hereby adopted by reference and included as a part of this code. Pursuant to the requirement of Tennessee Code Annotated, § 6-54-502, one (1) copy of the fire prevention code has been filed with the city recorder and are available for public use and inspection. Said fire prevention code is adopted and incorporated as fully as if set out at length herein and shall be controlling within the corporate limits. (1983 Code, § 7-201, modified, as amended by Ord. #342, May 2012 *Ch2_5-7-19*)

7-202. Enforcement. The fire prevention code herein adopted by reference shall be enforced by the chief of the fire department. He shall have the same powers as the state fire marshal. (1983 Code, § 7-202)

7-203. Definition of "municipality." Whenever the word "municipality" is used in the fire prevention code herein adopted, it shall be held to mean the Town of White Bluff, Tennessee. (1983 Code, § 7-203)

7-204. Storage of explosives, flammable liquids, etc. The limits referred to in § 1901.42 of the fire prevention code, in which storage of explosives and blasting agents is prohibited, are hereby declared to be the fire limits as set out in § 7-101 in this code.

¹Municipal code reference

Building, utility and housing codes: title 12.

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

The limits referred to in § 902.2.1 of the fire prevention code, in which storage of flammable liquids in outside above ground tanks is prohibited, are hereby declared to be the fire limits as set out in § 7-101 of this code.

The limits referred to in § 906.1 of the fire prevention code, are hereby declared to be the fire limits as set out in § 7-101 in this code.

The limits referred to in § 1701.4.2 in the fire prevention code, in which bulk storage of liquefied petroleum gas is restricted, are hereby declared to be the fire limits as set out in § 7-101 of this code. (1983 Code, § 7-204, modified)

7-205. 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. (1983 Code, § 7-205)

7-206. Variances. The chief of the fire department shall have the power to modify any of the provisions of the fire prevention code hereby adopted on application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of this code, provided that the spirit of the fire prevention code shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the chief of the fire department thereon shall be entered upon the records of the department and a signed copy shall be furnished the applicant.

Whenever the chief of the fire department shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the true intent and meaning of the fire prevention code have been construed or wrongly interpreted, the applicant may appeal from the decision of the chief of the fire department to the Town Council of the Town of White Bluff within thirty (30) days from the date of the decision appealed. (1983 Code, § 7-206)

7-207. Violations. It shall be unlawful for any person to violate any of the provisions of this chapter or the fire prevention code hereby adopted, or fail to comply therewith, or violate or fail to comply with any order made thereunder; or build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken; or fail to comply with such an order as affirmed or modified by the Town Council of White Bluff 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. (1983 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.
- 7-307. Chief to be assistant to state officer.

7-301. Establishment, equipment, and membership. There is hereby established a voluntary fire department to be supported and equipped from appropriations by the town council of the municipality. All apparatus, equipment, and supplies shall be purchased by or through the Town of White Bluff and shall be and remain the property of this municipality. The fire department shall be composed of a chief appointed by the town council and such number of physically-fit subordinate officers and firemen as the town council shall approve. (1983 Code, § 7-301, modified)

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

- (1) To enforce fire prevention regulations.
- (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. (1983 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 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. (1983 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

¹Municipal code reference

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

to the mayor once each month, and at the end of the year a detailed annual report shall be made. (1983 Code, § 7-304)

7-305. Tenure and compensation of members. The chief shall hold office so long as his conduct and efficiency are satisfactory to the town council. However, so that adequate discipline may be maintained, the chief or mayor 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 town council.

All personnel of the fire department shall receive such compensation for their services as the board of mayor and aldermen may from time to time prescribe. (1983 Code, § 7-305)

7-306. Chief responsible for training. The chief of the fire department, shall be fully responsible for the training of the firemen, and the minimum training shall consist of having the personnel take the fire apparatus out for practice operations not less than once a month. (1983 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. (1983 Code, § 7-308)

CHAPTER 4

FIREWORKS

SECTION

- 7-401. Common fireworks.
- 7-402. Display and fireworks shows.
- 7-403. Pyrotechnic compositions.
- 7-404. Certificate of competency for operator.
- 7-405. Financial responsibility.
- 7-406. Penalty for violation.
- 7-407. Compliance with fireworks code for the State of Tennessee.

7-401. Common fireworks. (1) Definition. The term "common fireworks" shall mean any small firework device designed primarily to produce visible effects by combustion and which must comply with the construction, chemical composition and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in title 16, Code of Federal Regulations, part 1507. Some small devices designed to produce audible affects are included, such as whistling devices, ground devices containing fifty (50) mg or less of explosive composition, and serial devices containing one hundred thirty (130) mg or less of explosive composition. Common fireworks are classified as Class C explosives by the U.S. Department of Transportation.

(2) Public use regulated. No person, or persons, shall shoot, fire or explode any fireworks within the city limits, corporate boundaries, of the Town of White Bluff, Tennessee, unless such person or persons obtain a permit from the Town of White Bluff Fire Department. No permit shall be issued except for special occasions, holidays, and times and circumstances as may be designated or provided hereafter by the town council by motion and as permitted herein.

(3) Sale and storage regulated. No person, or persons, firm, or corporation shall sell, unless an application has been completed and an annual permit shall be issued by the town and upon the payment of an annual permit fee in the amount of one thousand dollars (\$1,000.00). The permit shall be effective for sales from June 20th through July 5th of each and every year and from December 26th through January 5th of each and every year. Each business may use one (1) tent at each location which may be erected beginning on June 14th and must be taken down no later than July 10th of each year and on December 26th and taken down no later than January 5th of each year. Each permit holder must comply with all state and federal laws regarding the sale and transportation of fireworks and comply with all fire ordinances, fire codes, and zoning ordinances presently in effect in the Town of White Bluff including those regarding building restrictions, set-backs and zoning regulations and ordinances, except as otherwise allowed herein. (Ord. #234, May 2004)

7-402. Displays and fireworks shows. (1) Permit. It shall be unlawful for anyone to fire, explode or display fireworks within the municipal boundaries of the Town of White Bluff unless such person has a special effects permit and paid an application fee of one hundred dollars (\$100.00).

(2) Application. Each person desiring to display or discharge fireworks must submit an application for a permit on forms furnished by the Town of White Bluff Fire Department fifteen (15) days in advance of the date of the display. Any denial of an application by the fire chief for a display under this subsection shall be for a just cause, and the applicant shall be notified of such denial in writing within twenty-four (24) hours of such denial.

(3) Display of special effects or pyrotechnic show. The display of special effects and pyrotechnic shows shall only be permitted under the approval of the fire marshal, who must be present at the display, or his designee. (Ord. #234, May 2004)

7-403. Pyrotechnic compositions. (1) Uses. Only approved types and amounts of pyrotechnic compositions, as listed on the permit application, may be used. Pyrotechnic compositions are to be ignited or exploded only in an approved type of container or by an operator holding a valid certificate of competency.

(2) Pyrotechnic devices. Only approved types and amounts of pyrotechnic devices, as listed on the permit application, may be used. Pyrotechnic devices are to be ignited or exploded by an operator holding a valid certificate of competency.

(3) Prohibited pyrotechnic compositions. The following materials shall not be used in special effects materials:

- (a) Fulminate of mercury;
- (b) Carbon tetrachloride for making black smoke;
- (c) Benzoyl peroxide;
- (d) Black powder. (Ord. #234, May 2004)

7-404. Certificate of competency for operator. Every display of special effects shall be handled by a competent operator certified as such by the town fire department. Such operator shall have a certificate of competency in his possession when engaged in conducting a special effects display or pyrotechnic display and shall exhibit the same upon the request of any authorized person or municipal official. (Ord. #234, May 2004)

7-405. Financial responsibility. Before any permit for pyrotechnic displays or sale of fireworks is issued, the person, firm or corporation making application therefore, shall furnish proof of financial responsibility to satisfy claims for damages to property or persons or injuries arising out of any act or omission on the part of such person, firm or corporation, or any agent or

employee thereof, in such amounts, character or form as the Town of White Bluff determines necessary for the protection of the public. (Ord. #234, May 2004)

7-406. Penalty for violation. Any person or persons violating this chapter shall be punishable by a fine of not more than one hundred dollars (\$100.00) for each day that a violation exists and not more than thirty (30) days in jail, or both, for each violation. (Ord. #234, May 2004)

7-407. Compliance with fireworks code for the State of Tennessee. Prior to the issuance of a permit all applicants for the sale or display of fireworks must comply with § 68-104-101, et seq., or additions thereto, and must have all licenses and permits required by the State of Tennessee. (Ord. #234, May 2004)

CHAPTER 5

SPECTATOR AND VEHICLE CONTROL

SECTION

7-501. Interfering with fire department at the location of a fire or other calamity prohibited.

7-502. Enforcement.

7-503. Identification of security firemen.

7-504. Security firemen not to be armed.

7-505. Violators responsible for cost of vehicle or other property removal.

7-501. Interfering with fire department at the location of a fire or other calamity prohibited. It shall be unlawful for any person to sit, stand, lie or move about by foot, or to park, place or drive about any vehicle in such a manner that it interferes with, obstructs, blocks, or delays the movement of fire department personnel and equipment at the location of a fire or other calamity or interferes with, obstructs or blocks the entrance and the exits from the location of the fire or other calamity. (1983 Code, § 7-501)

7-502. Enforcement. The police department shall have the primary responsibility for enforcing this chapter, but in the absence of a police officer the senior fire department officer present at the location of the fire or other calamity shall have the discretionary authority to designate security firemen in such numbers as he deems appropriate to secure the location and protect the free movement of fire department and other emergency service personnel and equipment coming to, working at, and leaving the location. In making a determination of whether and how many such security firemen to designate, the senior fire officer shall take into consideration the following immediate and prospective conditions: size and nature of the fire or calamity; need for additional emergency personnel and equipment; condition and availability of location entrance and exit routes; the number of spectators and spectator vehicles at the location; and the levels of personal injury and property destruction.

Firemen designated as security firemen shall have the authority to order the movement of persons and vehicles at the location of fires and other calamities, to arrest spectators and other persons in violation of this chapter, and to remove vehicles and other transportable property positioned in violation of this chapter. (1983 Code, § 7-502)

7-503. Identification of security firemen. Firemen designated by the senior fire department officer to secure the location of the fire or other calamity and to protect the free movement of emergency service personnel and equipment coming to, working at and leaving the location shall, while performing that duty,

be conspicuously identified by markings designated by the chief of the fire department. (1983 Code, § 7-503)

7-504. Security firemen not to be armed. Firemen designated as security firemen under this chapter shall not carry, use or display any firearm or other weapon in the course of performing their functions. (1983 Code, § 7-504)

7-505. Violators responsible for cost of vehicle or other property removal. The owner of any vehicle or other property removed from the location of a fire or the calamity under the provisions of this chapter shall be responsible for the cost of removal, including, but not limited to, towing and wrecker fees. (1983 Code, § 7-504)

CHAPTER 6

RURAL FIRE SERVICE

SECTION

- 7-601. Authority; limitation; subscription agreement.
- 7-602. Priority of service.
- 7-603. Subscription charges.
- 7-604. Reduced fee for senior citizens and disabled persons.
- 7-605. Application.
- 7-606. Limitation of liability.
- 7-607. Acceptance of application.
- 7-608. Commencement of service.
- 7-609. Subscribe address.

7-601. Authority; limitation; subscription agreement. (1) The Town of White Bluff Fire Department is authorized to offer rural fire service to business owners and residences outside the corporate city limits for the Town of White Bluff limited to those areas as shown on the rural fire service map maintained by the fire chief.

(2) The maximum number of subscribers shall be limited as may be determined in the discretion of the fire chief in consultation with the mayor for the Town of White Bluff.

(3) All subscribers must complete and submit an annual subscription agreement on the forms approved by the town council and the fire chief and only in compliance with this chapter. (Ord. #228, May 2003)

7-602. Priority of service. (1) Businesses and residences within the Town of White Bluff shall be given priority by the fire department in responding to any emergency. To the extent that the fire department has personnel and equipment available to respond to a rural fire or other emergency, the fire chief or senior officer on duty at the time of the call for service shall respond to current subscribers.

(2) If the fire department has responded to a rural fire call and the fire chief or senior officer determines that there is a fire call inside the city limits and there is not otherwise sufficient equipment or men available to respond to that call, then in such event the White Bluff Fire Department and its personnel may withdraw from the rural fire call and respond to the fire call within the corporate limits of the Town of White Bluff. (Ord. #228, May 2003)

7-603. Subscription charges. (1) The annual fee for the fire service subscription shall be one hundred fifty dollars (\$150.00) for each residential dwelling and five hundred dollars (\$500.00) for each commercial building. For commercial buildings of less than five thousand (5,000) square feet, the

subscription fee may be reduced to two hundred fifty dollars (\$250.00) if the business does not store or sell hazardous wastes, explosive materials, or petroleum products.

(2) The subscription fee shall be paid annually on or before July 1 of each year and shall terminate June 30 of each year. For those subscribers who apply mid year, the fee shall be prorated.

(3) For all members of the White Bluff Fire Department who live outside the city limits, they shall be entitled to receive rural fire service at no charge if they live within the rural service area.

(4) For each fire call made to a rural subscriber, a fee shall be assessed to that subscriber's insurance company in the amount of five hundred dollars (\$500.00). If the subscriber's insurance policy does not cover this charge or pays a lesser amount, the fee shall be waived or reduced. Each subscriber shall provide the name of their insurance agency, insurance company, and policy number for each fire insurance policy in effect during the subscription period.

(5) All fees collected for subscription charges shall be included within the White Bluff Fire Department budget and used to upgrade equipment and hire and train personnel. (Ord. #228, May 2003)

7-604. Reduced fee for senior citizens and disabled persons.

(1) The subscription fee shall be seventy five dollars (\$75.00) per year for residential property owners who are sixty-five (65) years of age or older and have an annual income of less than twelve thousand two hundred dollars (\$12,200.00) per year (or as annually adjusted as determined by the Dickson County Trustee's Office).

(2) Disabled persons shall also be allowed to pay a reduced annual subscription fee of seventy-five dollars (\$75.00) per year if they are approved as a disabled person under the rules applicable to the Dickson County Trustee's Office for disabled persons who are considered disabled by the Social Security Administration or by the Veterans Administration for disabled veterans who also have income of less than twelve thousand two hundred dollars (\$12,200.00) per year (or as annual adjusted as determined by the Dickson County Trustee's Office). (Ord. #228, May 2003)

7-605. Application. (1) Each business owner or resident shall submit a separate application for each residence or each business.

(2) The annual fee shall be paid in advance at the time of the submission of the application. No partial payments shall be allowed. If the applicant fails to renew the fire service by the anniversary date, the service shall be cancelled and a twenty-five dollar (\$25.00) reinstatement fee shall be assessed for all late renewals.

(3) All applications shall contain a 911 street address, telephone number of the owner or occupant, daytime and evening phone numbers, and a general description of the property. (Ord. #228, May 2003)

7-606. Limitation of liability. (1) The Town of White Bluff shall not be responsible for damages or injuries to subscribers or their property due to the unavailability of personnel or equipment under any circumstances.

(2) The Town of White Bluff Fire Department shall not be responsible for any damages incurred by any subscriber due to the Fire Department's failure to respond, failure to respond timely, failure to stop or prevent the spread of a fire, or for any incidental or consequential damages incurred as a result of water damage, structural damage, or damage to the premises caused by the fire department's response to the fire or emergency. It shall be a condition of each subscriber that this limitation shall be a condition of the rural fire service subscription agreement. The Town of White Bluff's liability shall be limited as provided by Tennessee Code Annotated, § 29-20-101, et seq. (Ord. #228, May 2003)

7-607. Acceptance of application. It shall be in the sole discretion of the Town of White Bluff Fire Chief to reject or accept a subscription for rural fire service. The fire chief may use his discretion in making this decision and he shall also have the right to reject renewal applications in his sole discretion. (Ord. #228, May 2003)

7-608. Commencement of service. Subscribers shall not be covered for rural fire service until an application has been received and approved by the fire chief or his designated assistant. In no event, shall service commence until seven (7) days after the application has been received and approved. (Ord. #228, May 2003)

7-609. Subscriber address. Each subscriber shall maintain a 911 street address number located on the residence, mail box, or roadside sign and it must be visible from the road. (Ord. #228, May 2003)

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

1. INTOXICATING LIQUORS.
2. BEER.
3. LIQUOR BY THE DRINK.

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

- 8-101. Definitions.
- 8-102. Scope of chapter.
- 8-103. State law controlling.
- 8-104. Restrictions.
- 8-105. Privilege license required.
- 8-106. Regulation of retail liquor stores.
- 8-107. Sales locations to conform to zoning laws.
- 8-108. Control of locations.
- 8-109. Inspection fees.
- 8-110. Contents of application for certificate of good moral character.
- 8-111. Certificate of good moral character.
- 8-112. No restrictions on number of stores.
- 8-113. Processing applications.
- 8-114. Advertising.
- 8-115. Certificate of moral character revoked by non-use.
- 8-116. Violations.
- 8-117. Consumption of liquor in certain places unlawful.
- 8-118. Privilege tax on selling at retail alcoholic beverages for consumption on the premises.

8-101. Definitions. Whenever used in this chapter unless the context requires otherwise:

¹Municipal code references

Prohibiting driving under the influence: title 15.

Prohibiting minors in beer places, public drunkenness, and drinking beer in public: title 11.

State law reference

Tennessee Code Annotated, title 57.

(1) "Alcoholic beverage" or "beverages" or "intoxicating liquor" mean and include alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, and wine and capable of being consumed by a human being, other than patented medicine, beer, or wine, where the latter two (2) have an alcoholic content of five percent (5%) by weight or less.

(2) "Domicile" means and includes present and continuous actual physical residence with an established permanent residence.

(3) "Person" means any natural person as well as any corporation, partnership, firm, or association.

(4) "Retailer" or "dealer" means any person who sells at retail any beverage covered by this chapter.

(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) "Town" means the Town of White Bluff, Tennessee.

(7) "Town Council" refers to the Town Council of the Town of White Bluff.

(8) Words importing the masculine gender shall include the feminine and the neuter, and a singular shall include the plural. (1983 Code, § 2-101, as replaced by Ord. #291, Feb. 2009)

8-102. Scope of chapter. It shall be unlawful to store, transport, sell, give away, distribute, possess, or receive alcoholic beverages in the town unless provisions of this chapter and the laws of the State of Tennessee and the state rules and regulations of the Alcoholic Beverage Commission have been complied with.

Nothing in this chapter regulates the transportation, storage, sale, distribution, possession, or receipt of or tax upon any beverage of alcoholic content of five percent (5%) by weight or less, and no portion of this code related thereto is modified by this chapter. (as added by Ord. #291, Feb. 2009)

8-103. State law controlling. No person, firm, corporation, association, or partnership shall engage in the retail liquor business unless all the necessary state licenses and permits have been obtained. (as added by Ord. #291, Feb. 2009)

8-104. Restrictions. (1) Public office. No person or member of a firm, corporation, or partnership shall operate a retail store for the sale of alcoholic beverages herein defined if he is a holder of a public office, either appointive or elective, or who is a public employee either national, state, city, or county. It shall be unlawful for any such person to have any interest in such retail business directly or indirectly, either proprietary or by means of any loan, mortgage, or lien, or to participate in the profits of any such business.

(2) Domicile. No person or member of a firm, corporation, partnership, or association shall own or operate a retail store for the sale of alcoholic

beverages as herein defined if he or she is not a resident of Dickson County, Tennessee; and in the case of a corporation, firm, association or partnership, this domicile requirement shall apply to all owners or principle officers.

(3) Citizenship. No person shall own or be employed in the storage, sale, or distribution of alcoholic beverages except a citizen of the United States.

(4) Age limit. No retailer or any employee thereof engaged in any activity covered by this chapter shall be a person under the age of eighteen (18) years, and it shall be unlawful for any retailer or employee to permit any such person under said age on his place of business to engage in the sale of alcoholic beverages. Further, it shall be unlawful for any minor to misrepresent his age in purchasing or attempting to purchase alcoholic beverages.

(5) Employees. No retailer shall employ in the sale, storage, 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 or of any law regulating intoxicating liquors, and in the case an employee should be so convicted, he shall immediately be discharged.

(6) Transfer or sale of license. The holder of a license may not sell, assign, or transfer such license to any other person, and said license shall be good and valid only for the calendar year in which the same was issued.

(7) Restrictions cumulative. The provisions of this section shall be in addition to any other restrictions or conditions which may be contained elsewhere in the provisions of this chapter. (as added by Ord. #291, Feb. 2009)

8-105. Privilege license required. The privilege license shall be levied on the business in accordance with the provisions of the "Business Tax Act" as enacted by the 87th General Assembly of Tennessee by Chapter 387 of the Public Acts of 1971, as amended. (as added by Ord. #291, Feb. 2009)

8-106. Regulation of retail liquor stores. (1) No retailer shall, directly or indirectly, operate more than one (1) licensed retail business in this state. "Indirectly" means any kind of interest in such a retail business by way of stock ownership, loan, partner's interest or otherwise. A landlord shall be deemed to have an indirect interest in such a retail business when the lease agreement is based upon a percentage of profits or any other factor based upon sales of alcoholic beverages by the tenant as distinguished from being simply an interest in land for a period of time at a definite rate.

(2) No retailer shall offer or make any discount in the sale or delivery of liquors in case quantities. No reduction in the standard price per case shall be made for sales in excess of one (1) case.

(3) No retailer shall sell any alcoholic beverages to any person who is legally intoxicated, nor shall any retailer selling alcoholic beverages sell to any person accompanied by a person who is legally intoxicated.

(4) No retailer shall sell any alcoholic beverages to a minor.

(5) No retail package store shall sell or give away any alcoholic beverages between eleven o'clock P.M. (11:00 P.M.) on Saturday and eight o'clock (8:00 A.M.) on Monday of each week. No retail store shall sell, give away or otherwise dispense alcoholic beverages except between the hours of eight o'clock A.M. (8:00 A.M.) and eleven o'clock P.M. (11:00 P.M.) on Monday through Saturday. The store may not be open to the general public except during regular business hours.

(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 merchandise unless the retailer shall also possess such documentation to demonstrate that the taxes imposed in this chapter have been paid.

(8) No retailer shall sell or give away any alcoholic beverages on the following holidays: Christmas, Thanksgiving, Labor Day, New Year's Day and the Fourth of July. (as added by Ord. #291, Feb. 2009)

8-107. Sales locations to conform to zoning laws. It shall be unlawful for any person to operate or maintain a liquor store for the retail sale of alcoholic beverages in the Town of White Bluff unless the location of the liquor store shall only be in a C-2 zone, as appears on the date of application on the official zoning map of the Town of White Bluff. Provided, further, that no certificate of good moral character shall be issued by the mayor and/or town council in any case until the location of said proposed liquor store has been approved by the town council. As a further limitation on the location of retail liquor stores for the sale of alcoholic beverages, no location for same shall be approved when in the opinion of the town council, expressed by a majority vote thereof; the operation of such liquor store at the location would be harmful to the public interest. (as added by Ord. #291, Feb. 2009)

8-108. Control of locations. No retail liquor store shall be located except on the ground floor, and the store shall have one main entrance opening on a public street and no other entrance for use by the public except as hereinafter provided. When a retail store is located on the corner of two (2) streets, such retail store may maintain a door opening on each of the public streets. All liquor stores shall be of a permanent type construction and no store shall be located in a mobile home or other movable type building. All buildings shall be in compliance with the state regulations for the operation of retail liquor stores. (as added by Ord. #291, Feb. 2009)

8-109. Inspection fees. (1) Amount. There is hereby levied an inspection fee of eight percent (8%) on the gross purchase price of alcoholic

beverages purchased by retail dealers in the Town of White Bluff for the purpose of resale.

(2) Collection. The inspection fee shall be collected by the wholesaler and transmitted to the town treasurer not later than the 20th day of each month for the preceding month. (as added by Ord. #291, Feb. 2009)

8-110. Contents of application for certificate of good moral character. Each applicant for a certificate of good moral character shall file an application for same on a form provided by the Town of White Bluff. Such application shall be accomplished by instructions thereof. A copy of each application form, questionnaire, partnership agreement, or any other form or material required to be filed with the State of Tennessee Alcoholic Beverage Commission in connection with this application shall be attached to the town application form and shall become a permanent part thereof as if fully and completely copied verbatim therein. The application form shall be signed and verified by each person to have any interest in the license either as owner, partner, stockholder, director, or otherwise. If at any time the applicable state statutes shall be changed so as to dispense with the requirement of a certificate of good moral character, no original or renewal license shall be issued until an application in the same form has been filed with the town recorder. (as added by Ord. #291, Feb. 2009)

8-111. Certificate of good moral character. A certificate of good moral character shall be signed by the mayor and a majority of the town council while in session and conditioned upon the applicant fulfilling the following requirements:

(1) The applicant or applicants who are to be in actual charge of the business are to be of good moral character and are to be personally known to a majority of the town council; or

(2) If a corporation, partnership, association, or firm, the executive officers of those in control are to be of good moral character and personally known to a majority of the town council; and

(3) The applicant has not violated any of the provisions of this chapter or the laws of the State of Tennessee and of the United States which regulate the control of intoxicating liquors, within ten (10) years prior to the date of this application. (as added by Ord. #291, Feb. 2009)

8-112. No restrictions on number of stores. There shall be no restriction on the number of stores for the sale of alcoholic beverages as herein defined. (as added by Ord. #291, Feb. 2009)

8-113. Processing applications. (1) Applications for renewal of license by the licensee will be processed in the same manner and under the same conditions as a new application.

(2) Application for employee's permit to serve as an employee in the place of business of a retail liquor store under the provisions of Tennessee Code Annotated, § 57-3-204, shall submit the name of such employee to the chief of police. (as added by Ord. #291, Feb. 2009)

8-114. Advertising. All advertising shall comply with the Town of White Bluff municipal sign ordinances and Tennessee Code Annotated, § 57-3-104(c)(9). (as added by Ord. #291, Feb. 2009)

8-115. Certificate of moral character revoked by non-use. Any applicant who has obtained a certificate of good moral character from the mayor and a majority of the town council as provided hereinafter, must, within six (6) months, open a store for the retail sale of alcoholic beverages to the public or said certificate of good moral character will be automatically revoked by the passage of said time. A certification thereof will be forwarded immediately to the Alcoholic Beverage Commission of the State of Tennessee and the license issued to said applicant shall be considered to have been cancelled and revoked. (as added by Ord. #291, Feb. 2009)

8-116. Violations. Any violation of the provisions of this chapter shall constitute a misdemeanor and upon conviction be punishable by fine in accordance with the general penalty clause for this code. In such instances, it shall be mandatory for the town judge immediately to certify said conviction, whether appealed or not, directly to the Tennessee Alcoholic Beverage Commission, together with petition that all licenses be revoked, pursuant to the provisions of Tennessee Code Annotated, § 57-3-101 through § 57-3-412, and the rules and regulations of said commission. (as added by Ord. #291, Feb. 2009)

8-117. Consumption of liquor in certain places unlawful. It shall be unlawful for any person or persons to drink whiskey, liquor, wine, and every liquid containing alcoholic spirits of over five percent (5%) while riding in or driving a motor vehicle in a park, road, a public place, a public place being defined as any park, street, roadway, or right-of-way for same, or any private property which is used for public parking.

Where any person or persons are observed with open bottles or containers of any kind containing whiskey or any of the above defined substances, there shall be a prima facie case that the occupants of said vehicle, or the other places defined herein, have been drinking from such containers. (as added by Ord. #291, Feb. 2009)

CHAPTER 2

BEER¹

SECTION

- 8-201. Beer board established.
- 8-202. Meetings of the beer board.
- 8-203. Record of beer board proceedings to be kept.
- 8-204. Requirements for beer board quorum and action.
- 8-205. Powers and duties of the beer board.
- 8-206. "Beer" defined.
- 8-207. Permit required for engaging in beer business.
- 8-208. Beer permits shall be restrictive.
- 8-209. Interference with public health, safety, and morals prohibited.
- 8-210. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-211. Prohibited conduct or activities by beer permit holders.
- 8-212. Revocation of beer permits.
- 8-213. Beer permits to be reviewed annually.
- 8-214. Beer permit applications shall provide documentation of registration for sales tax.
- 8-215. Privilege tax.
- 8-216. Multiple offenses.
- 8-217. Violations.
- 8-218. Special event permits.
- 8-219. Beer permit classification.
- 8-220. "Church" and "school" defined.
- 8-221. Beer board special events subcommittee created.

8-201. Beer board established. There is hereby established a beer board to be composed of all the members of the town council. A chairman shall be elected annually by the board from among its members. All members of the beer board shall serve without additional compensation. (1983 Code, § 2-201)

¹Municipal code references

General business regulations: title 9.

Prohibition of minors in beer places and drinking beer on streets etc.: title 11.

State 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).

8-202. Meetings of the beer board. All meetings of the beer board shall be open to the public. The board shall hold regular meetings in the city hall at such times as it shall prescribe. When there is business to come before the beer board, a special meeting may be called by the chairman provided he gives a reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place. (1983 Code, § 2-202)

8-203. Record of beer board proceedings to be kept. The recorder shall make a record of the proceedings of all meetings of the beer board. The record shall be a public record and shall contain at least the following: The date of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions, 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. (1983 Code, § 2-203)

8-204. Requirements for beer board quorum and action. The attendance of at least a majority of the members of the beer 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. (1983 Code, § 2-204)

8-205. Powers and duties of the beer board. The beer 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 the Town of White Bluff in accordance with the provisions of this chapter. (1983 Code, § 2-205)

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. (1983 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 beer 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 Town of White Bluff, Tennessee. Each applicant must be of good moral character and certify that he has read and is familiar with the provisions of this chapter. (Ord. #138, Jan. 1993)

8-208. Beer permits shall be restrictive. (1) 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 shall be issued for either off premises consumption or on-premises consumption. An initial applicant may apply for both types of permits and pay a single two hundred fifty dollar (\$250.00) application fee pursuant to § 8-207, but must pay a one hundred dollar (\$100.00) annual privilege tax for each permit. An applicant that currently holds a permit for off-premises consumption must pay an application fee of two hundred fifty dollars (\$250.00) for on-premises consumption, and pay the annual privilege tax for each permit. 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 beer board.

(2) All permit applicants for on-premises consumption of beer and renewals of permits must appear before the beer board and meet the following additional requirements:

(a) The location of the establishment must be in a C-1 or C-2 zone.

(b) The establishment must offer and serve retail food sales for on-premises consumption and food must be available at all times that beer is being sold.

(c) There must be seating for at least forty (40) patrons with at least eighty percent (80%) of the seating in booths or tables.

(d) Beer sales cannot exceed fifty percent (50%) of gross revenues of the establishment.

(e) The holder or applicant must appear before the beer board upon no less than ten (10) days notice and produce such sales tax records, wholesale beer and food purchases, and such other records that the board deems necessary to determine the permit holder's compliance with this ordinance.

(f) Permit holders who also hold a current liquor-by-the-drink permit from the Tennessee Alcoholic Beverage Commission are exempt from subsections (c), (d) and (e) as these holders are regulated by the Tennessee Alcoholic Beverage Commission. (1983 Code, § 2-208, as amended by Ord. #293, Feb. 2009)

8-209. Interference with public health, safety, and morals prohibited. No permit authorizing the sale of beer will be issued when such business could 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, or morals of the citizens of the Town of White Bluff. In no event will a permit be issued authorizing the storage, sale, or manufacture

of beer at places within three hundred feet (300') of any school, church, or other such place of public gathering, measured in a straight line distance from the nearest corner of the church or school to the nearest corner of the establishment seeking a permit. In instances where the applicant or business holds a current Tennessee Alcoholic Beverage Commission license to sell on-premises alcoholic beverages, liquor-by-the-drink, then in such event the distance restriction shall be controlled by the Tennessee Alcoholic Beverage Commission regulations. (1983 Code, § 8-210, as amended by Ord. #179, April 1999, Ord. #250, March 2006, Ord. #300, July 2009, and replaced by Ord. #377, July 2015 *Ch2-5-7-19*)

8-210. 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 for which the applicant has been convicted within ten (10) years prior to the filing of the permit application. (1983 Code, § 2-211, modified)

8-211. 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 person under eighteen (18) years of age in the sale, storage, distribution, or manufacture of beer.
- (3) Make or allow any sale of package beer for off-premises consumption between the hours of 12:00 midnight and 6:00 A.M. during any night of the week. It is further provided that the sale of beer for on-premises consumption shall be prohibited between the hours of 12:00 midnight and 11:00 A.M. The sale of package beer or beer for on-premises consumption on Sunday shall not commence prior to 12:00 noon and shall terminate at 12:00 midnight. For beer permit holders who also hold a current state license for on-premises consumption of alcoholic beverages, the hours of sale shall be the same as set by the alcoholic beverages commission, except the hours of sale on Sundays shall not be allowed prior to 12:00 noon and shall cease at 12:00 midnight.
- (4) Make or allow any sale of beer to anyone under the age of twenty-one (21) years.
- (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 feeble-minded, insane, or 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) Allow dancing, live entertainment or any musical performance on the premises.

(10) Allow pool or billiard playing in the same room where beer is sold and/or consumed.

(11) Fail to provide and maintain separate sanitary toilet facilities for men and women. (1983 Code, §2-212, as amended by Ord. #153, April 1996, modified, and amended by Ord. #291, Feb. 2009, and Ord. #303, Aug. 2009)

8-212. Revocation of beer permits. (1) The beer board shall have the power to revoke or suspend any beer permit issued under the provisions of this chapter when the holder thereof is guilty of violating any of the terms of § 8-201, et seq. However, no beer permit shall be revoked or suspended unless there has been a public hearing held by the beer board after reasonable notice to all known parties in interest. Revocation proceedings may be initiated by the police chief or by any member of the beer board.

(2) **Definitions.** (a) As used in this part, unless the context otherwise requires: the definition for the terms shall be as follows:

(i) Beer has the same meaning as such word as defined in Tennessee Code Annotated, § 57-5-101(b);

(ii) "Beer board" means the Town of White Bluff entity issuing beer permits;

(iii) "Certified clerk" means a clerk who has successfully satisfied the training requirements provided under Tennessee law under Title 39, Chapter 15, Part 4, Title 57, Chapter 5 relative to the sale of beer for off premises consumption, and said clerk has received certification from a responsible vendor training program as defined in that section;

(iv) "Clerk" means any person working in a capacity to sell beer directly to consumers for off premises consumption;

(v) "Commission" means the alcoholic beverage commission;

(vi) "Responsible vendor" means a vendor that has received certification from the commission;

(vii) "Responsible vendor training program" means a training program related to the responsible sale of beer for off-premises consumption which has met all the statutory and regulatory requirements set forth under Tennessee law and by the alcoholic beverage commission rules and regulations; and

(viii) "Vendor" means a person, corporation, or other entity that has been issued a permit to sell beer.

(b) **Violations.** The beer board may suspend a permit holder's license for a maximum of thirty (30) days for first offenses. In the beer board's discretion, at the time it imposes a suspension, it may offer the permit holder the option 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 a person under twenty-one (21) years of age; and for all other violations, a civil penalty not to exceed one thousand dollars (\$1,000.00). If a civil penalty is offered as an alternative to suspension, the holder shall have seven (7) days within which to pay the civil penalty before the suspension may be imposed. If the civil penalty is paid within that time, the suspension shall be deemed withdrawn. Payment of the civil penalty in lieu of suspension by the permit holder shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the town may impose.

(3) Multiple offenses. If any permit holder is found guilty or pleads guilty to any violation of the provisions of this chapter, and has also had one (1) previous violation within the prior five (5) years, the license must be suspended for a period of no less than thirty (30) days. Permit holders who have been found guilty of any violation of the provisions of this chapter and have had more than two (2) violations within five (5) years prior to the date of a new violation, shall have their license revoked.

(4) Violations. Any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty clause of the White Bluff Municipal Code. Each day a violation shall be allowed to continue shall constitute a separate offense.

(5) Violations by responsible vendors. (a) A permit issued to permit holder who is a responsible vendor may not be suspended or revoked by the beer board based upon a clerk's illegal sale of beer to a minor who is not of lawful drinking age if the clerk is properly certified and has attended annual meetings since the original certification or is within sixty-one (61) days of the date of hire at the time of such violation.

(b) Notwithstanding the provisions of subsection (a), the beer board shall have the authority to revoke the vendor's permit, certified as a responsible vendor, if the vendor had knowledge of the violation or should have known about such violation, or participated or committed such violation. In such event the beer board may punish or penalize the vendor for violation under these circumstances as if such vendor was not certified as a responsible vendor.

(c) If the State of Tennessee Alcoholic Beverage Commission revokes a vendor's status as a certified responsible vendor, no exemption of penalties shall be allowed under this section.

(6) Penalties for responsible vendor violations. (a) The beer board shall not revoke or suspend the permit of a responsible vendor for a clerk's illegal sale of beer to a minor if the permit or license holder and the clerk making the sale have complied with the requirements of section 7 of the Responsible Vendor Act, but the beer board may impose on such 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.

(b) Permanent revocation of beer permits held by a responsible vendor may only be imposed if the permit holder has at least two (2) violations within a twelve (12) month time period.

(c) Revocation of beer permits applies only to that permit holder (and/or agents thereof) at that location. Revocation of beer permits will not stay with the property if the property changes hands, nor may the board apply penalties, suspensions or revocations to other beer permits held by the permittee at other locations. Revocation of a beer permit at one location should not be the sole disqualifying factor when considering the issuance of beer permits at other locations. (1983 Code, § 2-213, as amended by Ord. #198, Sept. 2000, modified, and amended by Ord. #276, Sept. 2007)

8-213. Beer permits to be reviewed annually. All beer permits issued as of January 1, 1975, shall be reviewed annually and will be issued based upon provisions contained in the municipal code of the town of White Bluff. (1983 Code, § 2-214)

8-214. Beer permit applications shall provide documentation of registration for sales tax. Before issuing a beer permit approved by the town council the recorder shall receive from the applicant for such permit such documentation issued by the State of Tennessee Department of Revenue demonstrating that the applicant is duly registered for the sales tax.

In the event the applicant fails or refuses to present the recorder with the above documentation, the recorder shall not issue the permit even though it has been approved by the town council. (Ord. #119, Aug. 1991)

8-215. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer an annual privilege tax of one hundred dollars (\$100.00). Any person, firm corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax on January 1, 1994, and each successive January 1, to the Town of White Bluff, Tennessee. At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date. (Ord. #138, Jan. 1993)

8-216. Multiple offenses. If any permit holder is found guilty or pleads guilty to any violation of the provisions of this chapter, and has also had one (1) previous violation within the prior five (5) years, the license must be suspended for a period of no less than thirty (30) days. (Ord. #198, April 2000)

8-217. Violations. Except as provided in § 8-213, any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty clause of this code. Each day a violation shall be allowed to continue shall constitute a separate offense. (Ord. #198, April 2000)

8-218. Special event permits. (1) The Town of White Bluff Beer Board is authorized to issue special event permits to individuals and organizations.

(2) The special event permit shall not be issued for longer than one (1) forty-eight (48) hour period unless otherwise specified, subject to the limitations on the hours of sale imposed by law.

(3) The application for the special event permit shall require identifying information of the individual and/or organization and state the location of the premises upon which alcoholic beverages shall be served and the purpose for the request of the license. The town has the right to perform a background check on the individual or organization requesting the special event beer permit and has the right to deny a special event permit based on the findings of the background check.

(4) No individual or organization granted a special event permit shall purchase, for sale or distribution, beer from any source other than a licensee as provided pursuant to state law.

(5) Failure of the special event permittee to abide by the conditions of the permit and all laws of the State of Tennessee and the Town of White Bluff will result in a denial of a special event beer permit for the sale of beer for a minimum period of one (1) year.

(6) The cost for the permit is one hundred dollars (\$100.00) and must be paid in full prior to the consideration for a special event permit by the Town of White Bluff Beer Board. (as added by Ord. #375, March 2015 *Ch2_5-7-19*)

8-219. Beer permit classification. There shall be five (5) classes or kinds of permits issued by the beer permit board as follows.

(1) Manufacturers. A manufacturer's permit to a manufacturer of beer, for the manufacture, possession, storage, sale, distribution, and transportation of the product of the manufacturer which product may be consumed upon the premises of the manufacturer to the extent permitted by state law of general application.

(2) Off-sale. An "off-sale" permit to any person, entity, or legal organization engaged in the sale of beer where it is not to be consumed by the purchaser upon or near the premises of the seller.

(3) On-sale. An "on-sale" permit to any person or legal organization engaged in the sale of beer where it is to be consumed by the purchaser or his guests upon the premises of the seller, and provided beer may also be sold in hotel rooms of regularly conducted hotels and in regularly incorporated clubs and lodges upon their obtaining the required permit.

(a) Anyone applying for or obtaining an on-sale permit may also sell beer to go so a patron may take beer with him purchased at such place after consuming beer. This will be known as a "joint" permit and shall cost an additional two hundred fifty dollars (\$250.00) at the time the application is made, or at any subsequent time when it is sought to change the type permit.

(b) No alcoholic beverage shall be consumed in the parking lot of any establishment possessing an on-sale permit, except that, with prior approval of the beer board, through the application and approval of a special permit, as defined under this chapter, for special events no longer than three (3) consecutive calendar days, permittees may allow consumption of alcoholic beverages sold by the permittee within an area that is roped off or otherwise separated by a continuous fence or other type of barrier from the remaining portion of their parking lot, both ends of which terminate at the permittee's building, deck, porch, patio, or other such attached structure, and provided further, that such permittee provides for an adequate number of private security personnel, as regulated by the Town of White Bluff, to prevent unlawful use or possession of alcoholic beverages and to enhance public safety.

(4) Special events permit. A "special events" permit is required to be issued to any person, entity, or organization engaged in the sale of such beverages where they are to be consumed by the purchaser or his guests upon the premises of the seller, including, but not limited to, any location the purchaser has rented for the purpose of the special event. The special events permit will be issued for the fee of one hundred dollars (\$100.00), after approval by the Town of White Bluff beer board. Prior notification must be made in writing thirty (30) days prior to the event with the organization holding the event and location where the event is to be held. Each permit will be issued for a specific date and a specific period of time. The specific period of time will not contradict any existing state or town ordinances or regulations.

(5) Caterer permit. A "caterer" permit to any person, entity, or legal organization conducting a food and beverage catering business who or which has been previously issued a liquor by the drink certificate from the Tennessee Alcoholic Beverage Commission. The liquor by the drink certificate must be current and not expired or revoked at the time of application for the caterer permit. The caterer permit will be issued for the fee of one hundred dollars (\$100.00), after approval by the Town of White Bluff Beer Board. (as added by Ord. #376A, July 2015 *Ch2_5-7-19*)

8-220. "Church" and "school" defined. (1) A "church" shall be a place where religious services are held at least once a week, the premises occupied for church purposes exclusively, the premises is owned by the church, and which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(2) A school shall be a school operated by the public school system of Dickson County or a private school accredited or approved by the State of Tennessee. (as added by Ord. #380, Nov. 2015 **Ch2_5-7-19**)

8-221. Beer board special events subcommittee created. There shall be established a standing subcommittee that is specifically tasked with reviewing any and all special event beer permits that are submitted to the Town of White Bluff.

(1) The subcommittee. The mayor, the chief of police, and the public works director shall comprise the three (3) members of the subcommittee. If in the event a named member cannot serve on the subcommittee, the mayor shall designate another individual to fill the seat. The subcommittee shall be tasked with reviewing any and all special event beer permits that are submitted to the Town of White Bluff.

(2) Duties. The subcommittee shall review all special event beer permits and approve or deny said permits based upon the rules and regulations outlined by the Municipal Code of the Town of White Bluff.

(3) Reporting. The subcommittee shall prepare a list of all special event beer applications, their status, and whether or not an application was approved or denied. If an application was denied, the subcommittee shall succinctly explain why. Said list shall be presented to the Town of White Bluff Beer Board at the board's regularly scheduled meeting in the form of a report on all applications that have been submitted since the last beer board meeting. Based upon these reports, the beer board may recommend to the town council any changes that the beer board determines should be made for the town council's approval. (as added by Ord. #381, Feb. 2016 **Ch2_5-7-19**)

CHAPTER 3

LIQUOR BY THE DRINK

SECTION

8-301. Annual privilege tax.

8-301. Annual privilege tax. There is here and now levied an annual privilege tax for collection from every person or entity which engages in the business of selling at retail alcoholic beverages for on-premises consumption within the municipal limits of the Town of White Bluff, to-wit:

License Fees

Restaurants:

Liquor and wine

75-125 seats	\$ 600.00
126-175 seats	\$ 750.00
176-225 seats	\$ 800.00
226-275 seats	\$ 900.00
276 seats and over	\$1,000.00

Wine only

40-125 seats	\$120.00
126-175 seats	\$150.00
176-225 seats	\$160.00
226-275 seats	\$180.00
276 seats and over	\$200.00

(as added by Ord. #292, Feb. 2009)

TITLE 9**BUSINESS, PEDDLERS, SOLICITORS, ETC.¹****CHAPTER**

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

CHAPTER 1**GENERALLY****SECTION**

9-101. "Going out of business" sales.

9-101. "Going out of business" sales. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1983 Code, § 5-101)

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.

CHAPTER 2**PEDDLERS, ETC.**¹**SECTION**

- 9-201. Permit required.
- 9-202. Exemptions.
- 9-203. Application for permit.
- 9-204. Issuance or refusal of permit.
- 9-205. Appeal.
- 9-206. Bond.
- 9-207. Loud noises and speaking devices.
- 9-208. Use of streets.
- 9-209. Exhibition of permit.
- 9-210. Policemen to enforce.
- 9-211. Revocation or suspension of permit.
- 9-212. Reapplication.
- 9-213. Expiration and renewal of permit.

9-201. Permit required. It shall be unlawful for any peddler, canvasser or solicitor, or transient merchant to ply his trade within the corporate limits of the Town of White Bluff without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1983 Code, § 5-201)

9-202. Exemptions. The terms of this chapter shall not be applicable 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 bona fide charitable, religious, patriotic or philanthropic organizations. (1983 Code, § 5-202)

9-203. Application for permit. Applicants for a permit under this chapter must file with the city recorder a sworn written application containing the following:

- (1) Name and physical description of applicant.
- (2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.
- (3) A brief description of the nature of the business and the goods to be sold.

¹Municipal code references
Privilege taxes: title 5.

(4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.

(5) The length of time for which the right to do business is desired.

(6) A recent clear photograph approximately two (2) inches square showing the head and shoulders of the applicant.

(7) The names of at least two (2) reputable local property owners who will certify as to the applicant's good moral reputation and business responsibility, or in lieu of the names of references, such other available evidence as will enable an investigator to evaluate properly the applicant's moral reputation and business responsibility, or in lieu of the names of references, such other available evidence as will enable an investigator to properly evaluate the applicant's moral reputation and business responsibility.

(8) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed therefor.

(9) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities.

(10) At the time of filing the application, a fee of fifty dollars (\$50.00) shall be paid to the municipality to cover the cost of investigating the facts stated therein. (1983 Code, § 5-203, modified)

9-204. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the city recorder within seventy-two (72) hours.

(2) If as a result of such investigation the chief reports the applicant's moral reputation and/or business responsibility to be unsatisfactory the city recorder shall notify the applicant that his application is disapproved and that no permit will be issued.

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the city recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The city recorder shall keep a permanent record of all permits issued. (1983 Code, § 5-204)

9-205. Appeal. Any person aggrieved by the action of the chief of police and/or the city recorder in the denial of a permit shall have the right to appeal to the governing body. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at

least five (5) days prior to the date set for hearing, or 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. (1983 Code, § 5-205)

9-206. Bond. Every permittee shall file with the city recorder a surety bond running to the municipality in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of the Town of White Bluff 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 Town of White Bluff 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 municipality 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. (1983 Code, § 5-206)

9-207. Loud noises and speaking devices. No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks or other public places of the Town of White Bluff or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1983 Code, § 5-207)

9-208. Use of streets. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of such streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1983 Code, § 5-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any policeman or citizen. (1983 Code, § 5-209)

9-210. Policemen to enforce. It shall be the duty of all policemen to see that the provisions of this chapter are enforced. (1983 Code, § 5-210)

9-211. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the town council after notice and hearing, for any of the following causes:

(a) Fraud, misrepresentation, or incorrect statement contained in the application for permit, or made in the course of carrying on the business of solicitor, canvasser, peddler, transient merchant, itinerant merchant, or itinerant vendor.

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

(d) Conducting the business of peddler, canvasser, solicitor, transient merchant, itinerant merchant, or itinerant vendor, as the case may be, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

(2) Notice of the hearing for 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 hearing. Such notice shall be mailed to the permittee at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

(3) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (1983 Code, § 5-211)

9-212. Reapplication. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1983 Code, § 5-212)

9-213. Expiration and renewal of permit. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1983 Code, § 5-213)

CHAPTER 3

CHARITABLE SOLICITORS

SECTION

- 9-301. Permit required.
- 9-302. Prerequisites for a permit.
- 9-303. Denial of a permit.
- 9-304. Exhibition of permit.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose within the Town of White Bluff without a permit from the city recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1983 Code, § 5-301)

9-302. Prerequisites for a permit. The recorder shall issue a permit authorizing charitable or religious solicitations when, after a reasonable investigation, he finds the following facts to exist:

(1) The applicant has a good character and reputation for honesty and integrity, or if the applicant is not an individual person, that every member, managing officer or agent of the applicant has a good character or reputation for honesty and integrity.

(2) The control and supervision of the solicitation will be under responsible and reliable persons.

(3) The applicant has not engaged in any fraudulent transaction or enterprise.

(4) The solicitation will not be a fraud on the public but will be for a bona fide charitable or religious purpose.

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1983 Code, § 5-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the town council if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1983 Code, § 5-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any policeman or person solicited. (1983 Code, § 5-304)

CHAPTER 4

CHARITABLE ROADBLOCKS

SECTION

- 9-401. Definitions.
- 9-402. Eligibility.
- 9-403. Exemptions.
- 9-404. Restrictions.
- 9-405. Permits.
- 9-406. Records.
- 9-407. Identification.
- 9-408. Violations.

9-401. Definitions. As used in this chapter:

(1) "Charitable originations" means a group which is or holds itself out to be benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious, or for the benefit of law enforcement personnel, firefighters, or others who protect public safety.

(2) "Contributions" means the promise or grant of any money or property of any kind of valuer including the payment or promise to pay in consideration of sale, performance or show of any kind which is advertised or offered in conjunction with the name of that charity.

(3) "Professional solicitor" means any person who, for financial or other consideration, solicits contributions for or on behalf of, a charitable organization.

(4) "Solicitation roadblock" shall mean the solicitation by any person of money on or in the right-of-way of any street, road, highway, or any other public way and place generally open to, and used by, the public for travel in or upon motor vehicles.

(5) "Street," "road," "highway," and "public way and place" shall include the paved or unpaved portion of any street, road, highway, or public place, the entire width of the public right-of-way extending laterally therefrom, dividers, medians, and abutting or adjoining sidewalks or other pedestrian pathways generally open to the public for pedestrian traffic. (Ord. #214, Nov. 2001, as replaced by Ord. #357, March 2013 **Ch2_5-7-19**)

9-402. Eligibility. Charitable organizations desiring to conduct a solicitation roadblock shall meet all the requirements set forth in this section:

(1) Have their principal headquarters and meeting place within the municipal boundaries of the Town of White Bluff; and

(2) Must be on file with the internal revenue service as a subchapter 501(c)3 or 4 organization. (Ord. #214, Nov. 2001, as replaced by Ord. #357, March 2013 **Ch2_5-7-19**)

9-403. Exemptions. The eligibility requirements stated in § 9-402(1) and (2) shall not apply to bona fide religious institutions, educational institutions, volunteer fire departments, rescue squads, non-profit athletic organizations, animal rescue groups or local civil defense organizations. (Ord. #214, Nov. 2001, as replaced by Ord. #357, March 2013 *Ch2_5-7-19*)

9-404. Restrictions. Restrictions shall be as follows:

- (1) Road block permit is non-transferable.
- (2) Only one (1) road block permit issued per weekend.
- (3) Scheduling of roadblocks shall be based upon order in which the permit applications are filed. No permit shall be filed for more than thirty (30) days prior to the requested date.
- (4) No organization shall be awarded more than two (2) permits per year.
- (5) Roadblocks shall only be conducted at the intersection of Hwy 47 North and Hwy 70.
- (6) No one under the age of eighteen (18) shall be allowed to participate in a roadblock.
- (7) Roadblocks shall be limited to seven (7) active participants at any one (1) time.
- (8) All participants shall be dressed in orange safety vests or similar OSHA approved reflective attire and bright orange cones shall be strategically placed at the intersection to alert the public of the roadblock.
- (9) Roadblocks shall be limited to Saturdays and/or Sundays from 7:00 A.M. to 12:00 P.M. (noon).
- (10) All organizations shall clean up litter generated by their solicitation activities. (Ord. #214, Nov. 2001, as replaced by Ord. #357, March 2013 *Ch2_5-7-19*)

9-405. Permits. Every charitable organization, which intends to solicit roadblock contributions within the Town of White Bluff, shall, prior to any solicitation:

- (1) File an application for permit¹ including a copy of documentation from Internal Revenue Service showing 501(c)3 or 4 status with the Town of White Bluff Recorder. Any application permit which contains false, misleading, deceptive, or incomplete information or documentation shall be considered insufficient or incomplete and will be rejected.
- (2) Any applicant who is denied approval of registration may have a reconstruction of its denial by requesting, in writing, a hearing before the town

¹The charitable roadblock permit application, and any amendments thereto, may be found in the recorder's office.

council. (Ord. #214, Nov. 2001, as replaced by Ord. #357, March 2013 *Ch2_5-7-19*)

9-406. Records. True and accurate fiscal records, including but not limited to, all income and expenses, shall be made available, upon request, to the Town of White Bluff. (Ord. #214, Nov. 2001, as replaced by Ord. #357, March 2013 *Ch2_5-7-19*)

9-407. Identification. Identification requirements are:

(1) Each participant shall wear identification on their persons to include participants name and organization that they are representing.

(2) Each participant shall be required to have and produce on demand or display, identification indicating that the participant has been duly authorized by the organization for which the participant is soliciting.

(3) There shall be a visible notice posted at the intersection, at each collection point, identifying the soliciting organization. (Ord. #214, Nov. 2001, as replaced by Ord. #357, March 2013 *Ch2_5-7-19*)

9-408. Violations. Any person or organization violating this chapter shall be subject to punishment under the general penalty provision of the Town of White Bluff Municipal Code. (Ord. #214, Nov. 2001, as replaced by Ord. #357, March 2013 *Ch2_5-7-19*)

CHAPTER 5**CABLE TELEVISION****SECTION**

9-501. To be furnished under franchise.

9-501. To be furnished under franchise. Cable television service shall be furnished to the Town of White Bluff and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the Town of White Bluff and its inhabitants and the grantee of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.¹ (1983 Code, § 13-401)

¹For complete details relating to the cable television franchise agreement see Ordinance #61 and 61A, the latter of which transferred the franchise right from CET, Inc. to Galaxy Cablevision, Inc. and made other changes in the franchise agreement. Ordinance #93 transferred the license from Exxex 1985-2 Limited Partnership to U.S. Cable Television Group, L.P. All ordinances are of record in the office of the city recorder.

CHAPTER 6

ADULT-ORIENTED ESTABLISHMENTS

SECTION

- 9-601. Purpose.
- 9-602. Definitions.
- 9-603. License required.
- 9-604. Application for license.
- 9-605. Standards for issuance of license.
- 9-606. Permit required.
- 9-607. Application for permit.
- 9-608. Standards for issuance of permit.
- 9-609. Fees.
- 9-610. Display of license or permit.
- 9-611. Renewal of license or permit.
- 9-612. Revocation of license or permit.
- 9-613. Hours of operation.
- 9-614. Responsibilities of the operator.
- 9-615. Prohibitions and unlawful sexual acts.
- 9-616. Penalties and prosecution.
- 9-616. Severability

9-601. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the town. It is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-602. Definitions. For the purpose of this chapter, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context.

(1) "Adult-oriented establishment" shall include, but not be limited to, "adult bookstore," "adult motion picture theaters," "adult mini-motion picture establishments," or "adult cabaret," and further means any premises to which the public patrons or members (regardless of whether or not the establishment is categorized as a private or members only club) are invited or admitted and/or which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer

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

(2) "Adult bookstore" means an establishment having as a substantial portion of its stock in trade ("substantial portion" meaning over twenty percent (20%) of floor area, or over twenty percent (20%) of inventory by units or value, or over twenty percent (20%) of revenues, or an inventory of two hundred (200) or more units) in books, films, video cassettes, compact discs, computer software, computer generated images or text, or magazines and other periodicals or publications or reproductions of any kind which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined below, and including adult-oriented films, movies, or live entertainment, for observation by patrons therein.

(3) "Adult motion picture theater" means an enclosed building with a capacity of fifty (50) or more persons regularly used for presenting materials having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, for observation by any means by patrons therein.

(4) "Adult mini-motion picture theater" means an enclosed building with a capacity of less than fifty (50) persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below, for observation by any means by patrons therein.

(5) "Adult cabaret" is defined to mean an establishment which features as a principle use of its business, entertainers and/or waiters and/or bartenders and/or any other employee or independent contractor, who expose to public view of the patrons within said establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material; including swim suits, lingerie or latex covering. "Adult cabarets" shall include commercial establishments which feature entertainment of an erotic nature including exotic dancers, table dancers, private dancers, strippers, male or female impersonators, or similar entertainers.

(6) "Employee" means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult-oriented establishment.

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

(8) "Adult entertainment" means any exhibition of any adult-oriented: motion pictures, live performance, computer or CD Rom generated images, displays of adult- oriented images or performances derived or taken from the internet, displays or dance of any type, which has a substantial portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal or partial removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

(9) "Mayor and council" means the Board of Mayor and Council members of the Town of White Bluff, Tennessee.

(10) "Operator" means any person, partnership, corporation, or entity of any type or character operating, conducting or maintaining an adult-oriented establishment.

(11) "Specified sexual activities" means:

(a) Human genitals in a state of actual or simulated sexual stimulation or arousal;

(b) Acts or simulated acts of human masturbation, sexual intercourse or sodomy;

(c) Fondling or erotic touching of human genitals, pubic region, buttock or female breasts.

(12) "Specified anatomical areas" means:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic region;

(ii) Buttocks;

(iii) Female breasts below a point immediately above the top of the areola; and

(b) Human male genitals in an actual or simulated discernibly turgid state, even if completely opaquely covered. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-603. License required. (1) Except as provided in subsection (5) below, from and after the effective date of this chapter, no adult-oriented establishment shall be operated or maintained in the Town of White Bluff without first obtaining a license to operate issued by the Town of White Bluff.

(2) A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one (1) adult-oriented establishment must have a license for them.

(3) No license or interest in a license may be transferred to any person, partnership, or corporation.

(4) It shall be unlawful for any entertainer, employee or operator to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed adult-oriented establishment.

(5) All existing adult-oriented establishments at the time of the passage of this chapter must submit an application for a license within one hundred twenty (120) days of the passage of this chapter on second and final reading. If a license is not issued within said one hundred twenty (20) day period, then such existing adult-oriented establishment shall cease operations.

(6) No license may be issued for any location unless the premises is lawfully zoned for adult-oriented establishments and unless all requirements of the zoning ordinance are complied with. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-604. Application for license. (1) Any person, partnership, or corporation desiring to secure a license shall make application to the Police Chief of the Town of White Bluff. The application shall be filed in triplicate with and dated by the police chief. A copy of the application shall be distributed promptly by the police chief to the city recorder and to the applicant.

(2) The application for a license shall be upon a form provided by the police chief. An applicant for a license including any partner or limited partner of the partnership applicant, and any officer or director of the corporate applicant and any stockholder holding more than five percent (5%) of the stock of a corporate applicant, or any other person who is interested directly in the ownership or operation of the business (including, but not limited to, all holders of any interest in land of members of any limited liability company) shall furnish the following information under oath:

(a) Name and addresses, including all aliases.

(b) Written proof that the individual(s) is at least eighteen (18) years of age.

(c) All residential addresses of the applicant(s) for the past three (3) years.

(d) The applicants' height, weight, color of eyes and hair.

(e) The business, occupation or employment of the applicant(s) for five (5) years immediately preceding the date of the application.

(f) Whether the applicant(s) previously operated in this or any other county, town or state under an adult-oriented establishment license or similar business license; whether the applicant(s) has ever had such a license revoked or suspended, the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.

(g) All criminal statutes, whether federal or state, or town ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.

(h) Fingerprints and two (2) portrait photographs at least two inches by two inches (2"x2") of each applicant.

(i) The address of the adult-oriented establishment to be operated by the applicant(s).

(j) The names and addresses of all persons, partnerships, limited liability entities, or corporations holding any beneficial interest in the real estate upon which such adult-oriented establishment is to be operated, including but not limited to, contract purchasers or sellers, beneficiaries of land trust or lessees subletting to applicant.

(k) If the premises are leased or being purchased under contract, a copy of such lease or contract shall accompany the application.

(l) The length of time each applicant has been a resident of the Town of White Bluff, or its environs, immediately preceding the date of the application.

(m) If the applicant is a limited liability entity, the applicant shall specify the name, the date and state of organization, the name and address of the registered agent and the name and address of each member of the limited liability entity.

(n) A statement by the applicant that he or she is familiar with the provisions of this chapter and is in compliance with them.

(o) All inventory, equipment, or supplies which are to be leased, purchased, held in consignment or in any other fashion kept on the premises or any part or portion thereof for storage, display, any other use therein, or in connection with the operation of said establishment, or for resale, shall be identified in writing accompanying the application specifically designating the distributor business name, address phone number, and representative's name.

(p) Evidence in form deemed sufficient to the town manager that the location for the proposed adult-oriented establishment complies with all requirements of the zoning ordinances as now existing or hereafter amended.

(3) Within ten (10) days of receiving the results of the investigation conducted by the Town of White Bluff Police Department, the police chief shall notify the applicant that his/her application is conditionally granted, denied or held for further investigation. Such additional investigation shall not exceed thirty (30) days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the police chief shall advise the applicant in writing whether the application is granted or denied. All licenses shall be further held pending consideration of the required special use zoning permit by the mayor and council.

(4) Whenever an application is denied or held for further investigation, the police chief shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter before the mayor

and council at which time the applicant may present evidence as to why his/her license should not be denied. The board shall hear evidence as to the basis of the denial and shall affirm or reject the denial of any application at the hearing. Any applicant who is denied a license for an adult-oriented establishment, may have the right for judicial review of such denial.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the police chief.

(6) The applicant shall provide with his/her application, a diagram, drawn to scale of the premises, including the location and layout of all booths and stages and the location of the clerk/manager's stand or counter. Though the diagram shall be drawn to scale, it does not have to be professionally prepared.

(7) If any of the information on the application changes over the course of the time for which the license is issued, including any changes in the physical layout of the premises, the licensee shall inform the town, in writing, of the changes. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-605. Standards for issuance of license. (1) Physical layout of sexually oriented business.

(a) Any sexually oriented business having available for customers, patrons or members any booth, for the viewing of any sexually oriented entertainment, including but not limited to sexually oriented films, sexually oriented movies, sexually oriented videos, shall submit a diagram and the diagram submitted be substantially the same as the structure observed by the inspector. Further, the structure and the diagram shall comply with the following requirements:

(i) Access. Each booth shall be totally accessible to and from aisles and public areas of the sexually oriented business and shall be unobstructed by any door, gate, lock or other control-type devices.

(ii) Construction. Every booth shall meet the following construction requirements:

(A) Each booth shall be separated from adjacent booths and any nonpublic areas by a solid or opaque wall:

(B) Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same;

(C) All walls shall be solid and without any openings, extended from the floor to a height of not less

than six feet (6') and be light colored, nonabsorbent, smooth textured and easily cleanable;

(D) The floor must be light colored, nonabsorbent, smooth textured and easily cleanable; and

(E) The lighting level of each booth shall be a minimum of ten (10) foot-candles at all times as measured from the floor.

(b) The provisions enunciated in subsection (1)(a) above shall not apply to bathrooms unless the bathroom contains any equipment which would allow the viewing of sexually oriented films, sexually oriented movies, sexually oriented videos or the like.

(c) Any live performance of sexually oriented entertainment shall occur upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest customer. A six-foot (6') boundary from the outer edge of the stage shall be indicated on the floor by a rail, barrier, lighting, luminous tape or paint, or any other method which will make the boundary visible in a darkened condition s that the customer will not invade the six-foot boundary from the stage with any portion of his/her body.

(2) Applicant.

(a) To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

(i) If the applicant is an individual:

(A) The applicant shall be at least eighteen (18) years of age.

(B) The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

(C) The applicant shall not have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.

(ii) If the applicant is a corporation:

(A) All officers, directors and stockholders required to be named under § 9-603 shall be at least eighteen (18) years of age.

(B) No officer, director or stockholder required to be named under § 9-603 shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of application.

(iii) If the applicant is a partnership, joint venture, limited liability entity, or any other type of organization where two (2) or more persons have a financial interest:

(A) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age.

(B) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

(C) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.

(b) No license shall be issued unless the Town of White Bluff Police Department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the police chief no later than twenty (20) days after the date of the application. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-606. Permit required. In addition to the license requirements previously set forth for owners and operators of "adult-oriented establishments," no person shall be an employee or entertainer in an adult-oriented establishment without first obtaining a valid permit issued by the police chief. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-607. Application for permit. (1) Any person desiring to secure a permit as an employee or entertainer shall make application to the police chief. The application shall be filed in triplicate with and dated by the police chief. A copy of the application shall be distributed promptly by the police chief to the city recorder and to the applicant.

(2) The application for a permit shall be upon a form provided by the police chief. An applicant for a permit shall furnish the following information under oath:

- (a) Name and address, including all aliases.
- (b) Written proof that the individual is at least eighteen (18) years of age.
- (c) All residential addresses of the applicant for the past three (3) years.
- (d) The applicant's height, weight, color of eyes, and hair.
- (e) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application.

(f) Whether the applicant, while previously operating in this or any other town or state under an adult-oriented establishment permit or similar business for whom applicant was employed or associated at the time, has ever had such a permit revoked or suspended, the reason therefor, and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation.

(g) All criminal statutes, whether federal, state or town ordinance violation, convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.

(h) Fingerprints and two (2) portrait photographs at least two inches by two inches (2"x2") of the applicant.

(i) The length of time the applicant has been a resident of the Town of White Bluff, or its environs, immediately preceding the date of the application.

(j) A statement by the applicant that he or she is familiar with the provisions of this chapter and is in compliance with them.

(3) Within ten (10) days of receiving the results of the investigation conducted by the Town of White Bluff Police Department, the police chief shall notify the applicant that his application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigations, the police chief shall advise the applicant in writing whether the application is granted or denied.

(4) Whenever an application is denied or held for further investigation, the police chief shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter before the mayor and council at which time the applicant may present evidence bearing upon the question.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the police chief. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-608. Standards for issuance of permit. (1) To receive a permit as an employee or entertainer, an applicant must meet the following standards:

(a) The applicant shall be at least eighteen (18) years of age.

(b) The applicant shall not have been convicted of or pleaded no contest to a felony or any crime involving moral turpitude or prostitution, obscenity or other crime of a sexual nature (including violation of similar

adult-oriented establishment laws or ordinances) in any jurisdiction within five (5) years immediately preceding the date of the application.

(c) The applicant shall not have been found to violate any provision of this chapter within five (5) years immediately preceding the date of the application.

(2) No permit shall be issued until the Town of White Bluff Police Department has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the police chief not later than twenty (20) days after the date of the application. (as added by Ord. #347, June 2012 **Ch2_5-7-19**)

9-609. Fees. (1) A license fee of five hundred dollars (\$500.00) shall be submitted with the application for a license. If the application is denied, one-half (%) of the fee shall be returned.

(2) A permit fee of one hundred dollars (\$100.00) shall be submitted with the application for a permit. If the application is denied, one-half (1/2) of the fee shall be returned. (as added by Ord. #347, June 2012 **Ch2_5-7-19**)

9-610. Display of license or permit. (1) The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

(2) The permit shall be carried by an employee and/or entertainer upon his or her person and shall be displayed upon request of a customer, any member of the Town of White Bluff Police Department, or any person designated by the mayor and council.

(3) If the business for which a license was issued ceases to exist in that a majority of the business assets have been liquidated, or the business has closed and ceased operations, then the license shall be returned to the town and cease to be valid. (as added by Ord. #347, June 2012 **Ch2_5-7-19**)

9-611. Renewal of license or permit. (1) Every license issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the police chief. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the police chief. A copy of the application for renewal shall be distributed promptly by the police chief to the city recorder and to the operator. The application for renewal shall be a form provided by the police chief and shall contain such information and data, given under oath or affirmation, as may be required by the mayor and council.

(2) A license renewal fee of five hundred dollars (\$500.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of one hundred dollars (\$100.00) shall be assessed against the applicant

who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned.

(3) If the Town of White Bluff Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the police chief.

(4) Every permit issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance unless sooner revoked, and must be renewed before an employee and/or entertainer is allowed to continue employment in an adult-oriented establishment in the following calendar year. Any employee and/or entertainer desiring to renew a permit shall make application to the police chief. The application for renewal must be filed not later than sixty (60) days before the permit expires. The application for renewal shall be filed in triplicate with and dated by the police chief. A copy of the application for renewal shall be distributed promptly by the police chief to the city recorder and to the employee. The application for renewal shall be upon a form provided by the police chief and shall contain such information and data, given under oath or affirmation, as may be required by the mayor and council.

(5) A permit renewal fee of one hundred dollars (\$100.00) shall be submitted with the application for renewal. In addition to said renewal fee, a late penalty of fifty dollars (\$50.00) shall be assessed against the applicant who files for renewal less than sixty (60) days before the license expires. If the application is denied one-half (1/2) of the fee shall be returned.

(6) If the Town of White Bluff Police Department is aware of any information bearing on the employee's qualifications, that information shall be filed in writing with the police chief. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-612. Revocation of license or permit. (1) The police chief shall revoke a license or permit for any of the following reasons:

(a) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

(b) The operator, entertainer, or any employee of the operator, violates any provision of this chapter or any rule or regulation adopted by the town council pursuant to this chapter; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the town council shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

(c) The operator or employee becomes ineligible to obtain a license or permit.

(d) Any cost or fee required to be paid by this chapter is not paid.

(e) An operator employs an employee who does not have a permit or provide space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit.

(f) Any intoxicating liquor, cereal malt beverage, narcotic or controlled substance is allowed to be sold or consumed on the licensed premises.

(g) Any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any adult-oriented entertainment or adult-oriented material.

(h) Any operator, employee or entertainer denies access of law enforcement personnel to any portion of the licensed premises wherein adult-oriented entertainment is permitted or to any portion of the licensed premises wherein adult-oriented material is displayed or sold.

(i) Any operator allows continuing violations of the rules and regulations of the Dickson County Health Department.

(j) Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition.

(k) Any minor is found to be loitering about or frequenting the premises.

(2) The police chief, before revoking or suspending any license or permit, shall give the operator or employee at least ten (10) days' written notice of the charges against him or her and the opportunity for a public hearing before the mayor and council, at which time the operator or employee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

(3) The transfer of a license or any interest in a license shall automatically and immediately revoke the license. The transfer of any interest in a non-individual operator's license shall automatically and immediately revoke the license held by the operator. Such license shall thereby become null and void.

(4) Any operator or employee whose license or permit is revoked shall not be eligible to receive a license or permit for five (5) years from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for two (2) years from the date of revocation of the license. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-613. Hours of operation. (1) No adult-oriented establishment shall be open between the hours of 1:00 A.M. and 8:00 A.M. Monday through Saturday, and between the hours of 1:00 A.M. and 12:00 P.M. on Sunday.

(2) All adult-oriented establishments shall be open to inspection at all reasonable times by the Town of White Bluff Police Department, the Dickson County Sheriff's Department, or such other persons as the mayor and council may designate. (as added by Ord. #347, June 2012 *Ch2_5-7-19*)

9-614. Responsibilities of the operator. (1) The operator shall maintain a register of all employees and/or entertainers showing the name, and aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, Social Security number, date of employment and termination, and duties of each employee and such other information as may be required by the mayor and council. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

(2) The operator shall make the register of the employees available immediately for inspection by police upon demand of a member of the White Bluff Police Department at all reasonable times.

(3) Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(4) An operator shall be responsible for the conduct of all employees and/or entertainers while on the licensed premises and any act or omission of any employees and/or entertainer constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(5) There shall be posted and conspicuously displayed in the common areas of each adult-oriented establishment a list of any and all entertainment provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the Town of White Bluff Police Department at all reasonable times.

(6) No employee of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or to allow any minor to view adult entertainment as defined herein.

(7) Every adult-oriented establishment shall be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be visible from the common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. It shall be unlawful to install booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose, but especially for the purpose of secluded viewing of adult-oriented motion pictures or other types of adult entertainment.

(8) The operator shall be responsible for and shall provide that any room or area used for the purpose of viewing adult-oriented motion pictures or

other types of live adult entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirety.

(9) No operator, entertainer, or employee of an adult-oriented establishment shall demand or collect all or any portion of a fee for entertainment before its completion.

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

This adult-oriented establishment is regulated by the Town of White Bluff Municipal Code which provides that no customer shall be permitted to have any physical contact with any entertainer on the premises during any performance. All performances shall only occur upon a stage at least eighteen inches (18") above the immediate floor level and at least six feet from the nearest customer. Entertainers are:

(a) Not permitted to engage in any type of sexual conduct;

(b) Not permitted to expose their sex organs;

(c) Not permitted to demand or collect all or any portion of a fee for entertainment before its completion.

(11) Live sexually oriented entertainment shall not be permitted in booths. (as added by Ord. #347, June 2012 **Ch2_5-7-19**)

9-615. Prohibitions and unlawful sexual acts. (1) No operator, entertainer, or employee of an adult-oriented establishment shall permit to be performed, offer to perform, perform or allow customers, employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

(2) No operator, entertainer, or employee shall encourage or permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus or genitals of any other person.

(3) No operator, entertainer, or employee shall encourage or permit any other person upon the premises to touch, caress, or fondle his or her breasts, buttocks, anus or genitals.

(4) No operator, entertainer, employee, or customer shall be unclothed or in such attire, costume, or clothing so as to expose to view any portion of the sex organs, breasts or buttocks of said operator, entertainer, or employee with the intent to arouse or gratify the sexual desires of the operator, entertainer, employee or customer.

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

(6) Only one (1) individual shall occupy a booth at any time. No occupant of a booth shall engage in any type of copulation, masturbation or the display or specified anatomical areas as defined herein or cause any bodily

discharge or urine, feces or semen while in the booth. No individual shall damage or deface any portion of the booth.

(7) Live sexually oriented entertainment shall not be permitted in booths.

(8) No customer shall invade the six-foot (6') boundary as required to be designated by § 9-605(1)(c). (as added by Ord. #347, June 2012 **Ch2_5-7-19**)

9-616. Penalties and prosecution. (1) Any person, partnership, corporation, or other business entity that is found to have violated this chapter shall be fined a definite sum not exceeding five hundred dollars (\$500.00) for each violation and shall result in the suspension or revocation of any permit or license.

(2) Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation. (as added by Ord. #347, June 2012 **Ch2_5-7-19**)

9-617. Severability. If a part of this chapter is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this chapter is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. (as added by Ord. #347, June 2012 **Ch2_5-7-19**)

TITLE 10**ANIMAL CONTROL****CHAPTER**

1. IN GENERAL.
2. DOMESTIC PETS.
3. BIRD SANCTUARY.
4. CONTROL OF VICIOUS AND DANGEROUS DOGS.

CHAPTER 1**IN GENERAL****SECTION**

- 10-101. Running at large prohibited.
- 10-102. Keeping near a residence or business restricted.
- 10-103. Pen or enclosure to be kept clean.
- 10-104. Adequate food, water, and shelter, etc., to be provided.
- 10-105. Keeping in such manner as to become a nuisance prohibited.
- 10-106. Cruel treatment prohibited.
- 10-107. Seizure and disposition of animals.
- 10-108. 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, goats, or any chickens, ducks, geese, turkeys, or other domestic fowl, cattle, or livestock, knowingly or negligently to permit any of them to run at large in any street, alley, or unenclosed lot within the corporate limits. Provided, however, that the foregoing restrictions of this section shall not apply to those additions to the town known as the newly annexed areas. (1983 Code, § 3-101)

10-102. Keeping near a residence or business restricted. No person shall keep or allow any other animal or fowl enumerated in the preceding section to come within one thousand (1,000) feet of any residence, place of business, or public street, without a permit from the mayor. The mayor shall issue a permit only when in his sound judgment the keeping of such an animal in a yard or building under the circumstances as set forth in the application for the permit will not injuriously affect the public health. (1983 Code, § 3-102)

10-103. Pen or enclosure to be kept clean. When animals or fowls are kept within the corporate limits, the building, structure, corral, pen, or enclosure in which they are kept shall at all times be maintained in a clean and sanitary condition. (1983 Code, § 3-103)

10-104. Adequate food, water, and shelter, etc., to be provided. No animal or fowl shall be kept or confined in any place where the food, water, shelter, and ventilation are not adequate and sufficient for the preservation of its health and safe condition.

All feed shall be stored and kept in a rat-proof and fly-tight building, box, or receptacle. (1983 Code, § 3-104)

10-105. 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 because of either noise, odor, contagious disease, or other reason. (1983 Code, § 3-105)

10-106. Cruel treatment prohibited. It shall be unlawful for any person to beat or otherwise abuse or injure any dumb animal or fowl. (1983 Code, § 3-106)

10-107. Seizure and disposition of animals. Any animal or fowl found running at large or otherwise being kept in violation of this chapter may be seized by the animal control officer or by any police officer and confined in a pound provided or designated by the town council. If the owner is known he shall be given notice in person, by telephone, or by a postcard addressed to his last-known mailing address. If the owner is not known or cannot be located, a notice describing the impounded animal or fowl will be posted in at least three (3) public places within the Town of White Bluff. In either case the notice shall state that the impounded animal or fowl must be claimed within five (5) days by paying the pound costs or the same will be humanely destroyed or sold. If not claimed by the owner, the animal or fowl shall be sold or humanely destroyed, or it may otherwise be disposed of as authorized by the town council.

The pound keeper shall collect from each person claiming an impounded animal or fowl a reasonable fee, to cover the costs of impoundment and maintenance. (1983 Code, § 3-107, as amended by Ord. #251, April 2006)

10-108. Inspections of premises. For the purpose of making inspections to insure compliance with the provisions of this title, the health officer, or his authorized representative, 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. (1983 Code, § 3-108)

CHAPTER 2

DOMESTIC PETS

SECTION

- 10-201. Rabies vaccination and registration required.
- 10-202. Pets to wear tags.
- 10-203. Running at large prohibited.
- 10-204. Vicious dogs to be securely restrained.
- 10-205. Noisy pets prohibited.
- 10-206. Confinement of pets suspected of being rabid.
- 10-207. Seizure and disposition of pets.

10-201. Rabies vaccination and registration required. It shall be unlawful for any person to own, keep, or harbor any pet without having the same duly vaccinated against rabies and registered in accordance with the provisions of the "Tennessee Anti-Rabies Law"¹ or other applicable law. (Ord. #148, Jan. 1996)

10-202. Pets to wear tags. It shall be unlawful for any person to own, keep, or harbor any pet which does not wear a tag evidencing the vaccination and registration required by the preceding section. (Ord. #148, Jan. 1996)

10-203. Running at large prohibited.² It shall be unlawful for any person knowingly to permit any pet owned by him or under his control to run at large within the corporate limits. Provided, however, that the foregoing restrictions of this section shall not apply to pets on leash or to pets otherwise exempted by law. (Ord. #148, Jan. 1996)

10-204. Vicious dogs to be securely restrained. It shall be unlawful for any person to own or keep any dog known to be vicious or dangerous unless such dog is so confined and/or otherwise securely restrained as to reasonably provide for the protection of other animals and persons. (Ord. #148, Jan. 1996)

10-205. Noisy pets prohibited. No person shall own, keep, or harbor any pet which, by loud and frequent barking, whining, or howling, disturbs the peace and quiet of any neighborhood. (Ord. #148, Jan. 1996)

¹State law reference

Tennessee Code Annotated, §§ 68-8-101 through 68-8-114.

²State law reference

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

10-206. Confinement of pets suspected of being rabid. If any pet has bitten any person or is suspected of having bitten any person or is for any reason suspected of being infected with rabies, the chief of police may cause such pet to be confined or isolated for such time as he deems reasonably necessary to determine if such pet is rabid. (Ord. #148, Jan. 1996)

10-207. Seizure and disposition of pets. (1) Any pet found running at large may be seized by any police officer or animal control officer. Upon seizure, the pet shall be placed in a pound provided or designated by the town council. If said pet is wearing a tag, the owner shall be notified in person, by telephone, or by postcard addressed to his last known mailing address to appear within five (5) days and redeem his pet by paying a thirty dollar (\$30.00) pick-up fee and five dollars (\$5.00) for each day the pet has been impounded, or the pet will be humanely destroyed or sold.

(2) Because of its viciousness or its apparent infection with rabies, a pet found running at large that cannot be safely impounded may be summarily destroyed by any policeman

(3) Adoption of unclaimed pets. For any dog or cat found running at large and impounded by the Town of White Bluff that has not been claimed by its owner within five (5) days as provided in subsection (1) above, any interested person may adopt the pet by paying the Town of White Bluff the thirty dollar (\$30.00) impoundment fee plus thirty-five dollars (\$35.00) for the spaying and neutering of the pet. The thirty-five dollar (\$35.00) fee collected by the town may be paid any local veterinarian agreeing to spay or neuter the pet for the thirty-five dollar (\$35.00) charge.

(4) Definition of pet. A pet shall include dogs, cats, domestic pig, domestic fowl, or any domestic pet knowingly kept at a personal residence. (Ord. #148, Jan. 1996, as amended by Ord. #299, July 2009)

CHAPTER 3**BIRD SANCTUARY****SECTION**

10-301. Boundaries.

10-302. Violations.

10-303. Penalties.

10-301. Boundaries. The entire area embraced within the corporate limits of the Town of White Bluff be, and the same is hereby designated as, a bird sanctuary. (1983 Code, § 3-301)

10-302. Violations. It shall be unlawful to trap, shoot, hunt, or attempt to shoot or molest in any manner any bird or wild fowl; or to rob birds nests or wild fowl nests, excepting crow, starling, house sparrow, and/or any other bird deemed a public nuisance and/or a public health hazard by vote of the council; and game birds in season. (1983 Code, § 3-302)

10-303. Penalties. Anyone violating the provisions of this chapter shall be punished by a fine of not more than \$100.00. (1983 Code, § 3-303, modified)

CHAPTER 4**CONTROL OF VICIOUS AND DANGEROUS DOGS****SECTION**

- 10-401. Definitions.
- 10-402. Confinement.
- 10-403. Leash and muzzle.
- 10-404. Signs.
- 10-405. Animal control officer.
- 10-406. Impoundment and destruction.
- 10-407. Notice of impoundment.
- 10-408. Hearing on impoundment/destruction.
- 10-409. Penalties.

10-401. Definitions. (1) "Owner" means any person, firm, corporation, organization or department possessing or harboring or having the care or custody of a dog.

(2) "Vicious dog" means: (a) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals; or

(b) Any dog which, without provocation, attacks or bites, or has attacked or bitten, a human being or domestic animal; or

(c) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

(3) Vicious dog is "unconfined" if the dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the dog. The pen or structure must have secure sides and a secure top attached to the sides which shall be made of eleven (11) gauge wire, or stronger and inspected and approved by the animal control officer or the codes administrator. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot (1'). All such pens or structures must be adequately lighted and kept in a clean and sanitary condition. (as added by Ord. #249, Feb. 2006)

10-402. Confinement. The owner of a vicious dog shall not permit the dog to go unconfined. (as added by Ord. #249, Feb. 2006)

10-403. Leash and muzzle. No person shall permit a vicious dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than four feet (4') in length. No person shall permit a vicious dog to be kept on a chain, rope or other type of leash outside of its kennel or pen unless a person of suitable age and discretion is in physical control of the leash. Vicious dogs may not be leashed to adjacent objects such as trees, posts, buildings, or

structures. In addition, all dangerous dogs on a leash outside the animal's kennel or pen must be muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals. (as added by Ord. #249, Feb. 2006)

10-404. Signs. The owner of a vicious dog shall display in a prominent place on his or her premises, clearly visible from the street curb, a visible warning sign stating "Vicious Dog on Premises," which shall be written in black letters no less than five inches (5") in height and printed on a white background. A similar sign is required to be posted on the pen or kennel of the animal. (as added by Ord. #249, Feb. 2006)

10-405. Animal control officer. The animal control officer or any police officer of the Town of White Bluff shall have the authority to enforce this chapter without a warrant if he observes a violation occurring in his presence. He shall also have the authority to impound animals as otherwise authorized in the municipal code. (as added by Ord. #249, Feb. 2006)

10-406. Impoundment and destruction. The White Bluff City Judge may order the impoundment and destruction of a vicious dog where:

- (1) The dog has attacked, bitten or injured a human being or domestic animal; or
- (2) The owner of a vicious dog as defined herein has failed to comply with the requirements and conditions for keeping a vicious dog as defined herein; or
- (3) All fines or costs imposed under this chapter have become final orders, and remain unpaid; or
- (4) The dog poses a threat of serious harm to the public health or safety. (as added by Ord. #249, Feb. 2006)

10-407. Notice of impoundment. Within five (5) days after impoundment, the animal control officer shall notify the dog's owner in writing of the impoundment. (as added by Ord. #249, Feb. 2006)

10-408. Hearing on impoundment/destruction. (1) The owner of an impounded dog shall have the right to file, within five (5) days after receiving notice, a written request for a hearing to contest the impoundment.

(2) The hearing shall be before the White Bluff City Judge, but 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.

(3) After considering all of the relevant evidence, the city judge shall issue a decision and may order the destruction of the impounded dog, or may release the dog 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.

(4) If the owner of an impounded dog fails to appear at a hearing, or fails to request a hearing within the allotted time, the dog may be destroyed. (as added by Ord. #249, Feb. 2006)

10-409. Penalties. Whoever violates any provision of this section 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, and for each day that the owner continues in violation, in addition to other penalties that may be imposed by the city judge. (as added by Ord. #249, Feb. 2006)

TITLE 11

MUNICIPAL OFFENSES¹

CHAPTER

1. OFFENSES AGAINST THE PEACE AND QUIET.
2. INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL.
3. FIREARMS, WEAPONS AND MISSILES.
4. TRESPASSING AND INTERFERENCE WITH TRAFFIC.
5. MISCELLANEOUS.

CHAPTER 1

OFFENSES AGAINST THE PEACE AND QUIET

SECTION

- 11-101. Disturbing the peace.
 11-102. Anti-noise regulations.

11-101. 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. (1983 Code, § 10-202)

11-102. 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, street car, or vehicle while not in

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.

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 nor 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 persons 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, street car, or vehicle so out of repair, so loaded, or in such manner as to cause loud and unnecessary grating, grinding, rattling, or other noise.

(f) Blowing whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper city authorities of the Town of White Bluff.

(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 mayor granted for a period while the emergency continues not to exceed thirty (30) days. If the mayor should determine that the public health and safety will not be impaired by the erection, demolition, alteration, or repair of any building or the excavation of streets and highways between

the hours of 6:00 P.M. and 7:00 A.M., and if he shall further determine that loss or inconvenience would result to any party in interest through delay, he may grant permission for such work to be done between the hours of 6:00 P.M. and 7:00 A.M. upon application being made at the time the permit for the work is awarded or during the process of the work.

(i) Noises near schools, hospitals, churches, etc. The creation of any excessive noise on any street adjacent to any hospital or adjacent to any school, institution of learning, church, or court while the same is in session.

(j) Loading and unloading operations. The creation of any loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates, and other containers.

(k) Noises to attract attention. The use of any drum, loudspeaker, or other instrument or device emitting noise for the purpose of attracting attention to any performance, show, or sale or display of merchandise.

(l) Loudspeakers or amplifiers on vehicles. The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other purposes.

(2) Exceptions. None of the terms or prohibitions hereof shall apply to or be enforced against:

(a) Municipal vehicles. Any vehicle of the Town of White Bluff while engaged upon necessary public business.

(b) Repair of streets, etc. Excavations or repairs of bridges, streets, or highways at night, by or on behalf of the town, the county, or the state, when the public welfare and convenience renders it impracticable to perform such work during the day.

(c) Noncommercial and nonprofit use of loudspeakers or amplifiers. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character and in the course of advertising functions sponsored by nonprofit organizations. However, no such use shall be made until a permit therefor is secured from the 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. (1983 Code, § 10-234)

CHAPTER 2**INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL****SECTION**

11-201. Impersonating a government officer or employee.

11-202. False emergency alarms.

11-201. Impersonating a government officer or employee. No person other than an official police officer of the Town of White Bluff shall wear the uniform, apparel, or badge, or carry any identification card or other insignia of office like or similar to, or a colorable imitation of that adopted and worn or carried by the official police officers of the Town of White Bluff. Furthermore, no person shall deceitfully impersonate or represent that he is any other government officer or employee. (1983 Code, § 10-211)

11-202. 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. (1983 Code, § 10-217)

CHAPTER 3

FIREARMS, WEAPONS AND MISSILES

SECTION

11-301. Air rifles, etc.

11-302. Throwing missiles.

11-303. Weapons and firearms generally.

11-304. Handguns in parks, nature trails, etc. prohibited.

11-305. Indoor firing ranges.

11-301. Air rifles, etc. It shall be unlawful for any person in the Town of White Bluff to discharge any air gun, air pistol, air rifle, "BB" gun, or sling shot capable of discharging a metal bullet or pellet, whether propelled by spring, compressed air, expanding gas, explosive, or other force-producing means or method. (1983 Code, § 10-213)

11-302. Throwing missiles. It shall be unlawful for any person to maliciously throw any stone, snowball, bottle, or any other missile upon or at any vehicle, building, tree, or other public or private property or upon or at any person. (1983 Code, § 10-214)

11-303. Weapons and firearms generally. It shall be unlawful for any unauthorized person to discharge a firearm within the Town of White Bluff, Tennessee.

Persons wishing to raise money for a charitable organization may obtain a permit from the recorder to sponsor target shooting contests. In order to obtain a permit, the applicant must:

(1) Present evidence demonstrating the charitable organization sponsoring the event.

(2) Agree that the only firearms to be used at these events will be shotguns.

(3) Agree that the location of these events shall be in a sparsely populated area to be approved by the White Bluff Chief of Police. (Ord. #103, Aug. 1990)

11-304. Handguns in parks, nature trails, etc. prohibited.

(1) Any person authorized to carry a handgun under Tennessee Code Annotated, § 39-17-1351, is prohibited from possessing any handgun while within a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway, or other similar public place that is owned or operated by the Town of White Bluff or any of its instrumentalities. This prohibition of handguns within any municipal park applies to the entire park, notwithstanding the provisions of Tennessee Code Annotated,

§ 39-17-1311(b)(1)(I). However, this section does not prohibit lawful possession of any handgun in accordance with Tennessee Code Annotated, § 39-17-1311(b)(1)(A)--(H).

(2) The Town of White Bluff shall display signs in prominent locations about the public recreational property, at least six inches (6") high and fourteen inches (14") wide, stating:

MISDEMEANOR. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF ELEVEN (11) MONTHS AND TWENTY-NINE (29) DAYS AND A FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) FOR CARRYING WEAPONS ON OR IN PUBLIC RECREATIONAL PROPERTY.

(3) If a part of this section is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this section is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. (as added by Ord. #304, Aug. 2009)

11-305. Indoor firing ranges. Indoor firing ranges shall be permitted as set forth below.

(1) Due to the specific safety concerns and noise impacts associated with indoor firing ranges, such establishments shall be operated so as to minimize risk of personal injury and adverse effects on adjoining properties. Indoor firing range may be operated only in locations authorized under the town's zoning ordinance and shall be subject to the written approval of the chief of police. The decision of the chief of police shall be rendered within forty-five (45) days of his receipt of a completed application for approval of an indoor firing range. Approval of the chief of police shall be contingent upon the following.

(a) The owners and employees of such establishments shall be free of any criminal record involving any felony or any weapons violation, and shall be subject to initial and annual background investigations.

(b) The chief of police may require, as a condition of approval for all firing ranges, proof of applicable certifications by governmental or professional agencies.

(c) If the operator is not the owner of the property on which the firing range is to be located, the operator shall submit evidence that the property owner has agreed to allow the proposed firing range to be operated on the property.

(d) The operator of the proposed firing range shall agree to each of the following conditions:

(i) The location, design, construction and operation of the facility shall fully comply with the provisions of title 12 (building, utility, etc. codes) of the municipal code and any applicable

regulations in the municipal zoning ordinance. Upon approval of the application for operation by the chief of police, a plan shall be submitted to the codes department in accordance with said provisions. Failure to comply with said provisions shall result in revocation of any approval granted by the chief of police.

(ii) Noise levels from the firing range as measured from the outside shall not exceed fifty-five (55) decibels.

(iii) Hours of operation shall be limited to 7:00 A.M. -11:00 P.M.

(iv) Prior to commencement of operations, the operator shall provide evidence of liability insurance in an amount not less than one million dollars (\$1,000,000.00) and in a form acceptable to the town attorney, and shall provide annual verification of coverage. Such insurance shall name the town as an additional insured party.

(e) Each operator of a firing range shall sign an indemnification agreement, under which the operator shall save and hold the town, its elected and appointed officials, and its employees acting within the scope of their duties, harmless from and against any and all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising out of the acts or omissions of said operator and the operator's agents and employees.

(2) The approval of the chief of police for the operation of an indoor firing range shall be applicable to the operator to whom the approval is granted, and may not be transferred to another operator, without the further written approval of the chief of police.

(3) The approval of the chief of police for the operation of an indoor firing range may be withdrawn at any time for failure of the operators to comply with the requirements of this section, or with any other applicable federal, state or local law, code or regulation.

(4) Denial of a request for approval or the withdrawal of approval by the chief of police may be appealed to the mayor, provided that any such appeal must be submitted in writing within fifteen (15) days of the decision rendered by the chief of police. The mayor shall conduct a hearing within fifteen (15) days after receiving a written appeal of the decision of the chief of police. At such hearing, the mayor shall hear from both the person who submitted the appeal and the chief of police, as well as any witnesses presented on their behalf. The mayor's decision to uphold or overturn the decision of the chief of police shall be rendered within fifteen (15) days of the hearing. (as added by Ord. #353, Aug. 2012 *Ch2_5-7-19*)

CHAPTER 4

TRESPASSING AND INTERFERENCE WITH TRAFFIC

SECTION

11-401. Trespassing.

11-402. Trespassing on trains.

11-403. Interference with traffic.

11-401. 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. (1983 Code, § 10-226)

11-402. 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. (1983 Code, § 10-221)

11-403. 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. (1983 Code, § 10-233)

CHAPTER 5**MISCELLANEOUS****SECTION**

- 11-501. Abandoned refrigerators, etc.
- 11-502. Caves, wells, cisterns, etc.
- 11-503. Posting notices, etc.
- 11-504. Curfew for minors.
- 11-505. Wearing masks.
- 11-506. Tobacco products on municipal property.

11-501. 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. (1983 Code, § 10-223)

11-502. 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. (1983 Code, § 10-232)

11-503. 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. (1983 Code, § 10-227)

11-504. Curfew for minors. It shall be unlawful for any minor, under the age of eighteen (18) years, to be abroad at night between 11:00 P.M. and 5:30 A.M. unless upon a legitimate errand for, or accompanied by, a parent, guardian, or other adult person having lawful custody of such minor. (1983 Code, § 10-224)

11-505. 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. (1983 Code, § 10-236)

11-506. Tobacco products on municipal property. (1) The use of tobacco products, including cigars, cigarettes, pipes and smokeless tobacco products including snuff, chewing tobacco and similar products are prohibited for use inside of all municipal buildings. Use of tobacco products shall also be prohibited within twenty-five feet (25') of the entrance of any municipal building.

(2) The use of tobacco products, including cigars, cigarettes, pipes and smokeless tobacco products including snuff, chewing tobacco and similar products are restricted and prohibited for use on municipal park property except for those areas identified as "smoking areas" which shall be established by the parks board.

(3) That a violation of this section shall be enforced pursuant to title 15, chapter 7, of the White Bluff Municipal Code and subject to maximum fines and court costs as provided by the municipal code. (as added by Ord. #301, Aug. 2009)

TITLE 12

BUILDING, UTILITY, ETC. CODES

CHAPTER

1. CODES ADOPTED BY REFERENCE.
2. [REPEALED.]
3. ELECTRICAL CODE.
4. [REPEALED.]
5. [REPEALED.]
6. CODES DEPARTMENT.
7. BOARD OF ADJUSTMENT AND APPEALS.
8. [REPEALED.]
9. [REPEALED.]
10. [REPEALED.]

CHAPTER 1

CODES ADOPTED BY REFERENCE¹

SECTION

- 12-101. Codes adopted.
 12-102. Modifications.
 12-103. Available in recorder's office.
 12-104. Violations.

12-101. Codes adopted. The following codes, published by the International Code Council,² are hereby adopted by reference as though they were copied herein fully:

International Residential Code, 2009 edition;
International Building Code, 2009 edition;
International Existing Building Code, 2009 edition;
International Mechanical Code, 2009 edition;
International Fuel Gas Code, 2009 edition;
International Plumbing Code, 2009 edition;

¹Municipal code references

Fire protection, fireworks, and explosives: title 7.

Planning and zoning: title 14.

Streets and other public ways and places: title 16.

Utilities and services: titles 18 and 19.

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

International Energy Conservation Code, 2009 edition;
International Property Maintenance Code, 2009 edition. (1983 Code, § 4-101, modified, as replaced by Ord. #289, Sept. 2008 and Ord. #371, Sept. 2014 *Ch2_5-7-19*)

12-102. Modifications. As developed by the International Code Council, Inc.

NOTING THE FOLLOWING CHANGES:

Fees for building permits, demolition permits, excavation, etc. related to shall remain as adopted.

The height of weeds stated in section 302.4 of the International Property Maintenance Code shall be limited to twelve inches (12").

R313.1 Townhouse automatic fire sprinkler systems. An automatic residential fire sprinkler system shall be installed in townhouses. Exception: shall be replaced in its entirety to say "An automatic residential fire sprinkler system shall not be required if a two (2) hour fire resistance rated fire wall exists between units if such walls do not contain plumbing and/or mechanical equipment, ducts, or vents in the common wall."

R313.2 One- and two-family dwellings automatic fire systems. shall be replaced in its entirety to say "An automatic residential fire sprinkler system in one (1) and two (2) family dwellings is optional."

Appendix P of the International Residential Code shall be adopted in its entirety. (1983 Code, § 4-102, as replaced by Ord. #289, Sept. 2008 and Ord. #371, Sept. 2014 *Ch2_5-7-19*; and amended by Ord. #384, May 2016 *Ch2_5-7-19*)

12-103. Available in recorder's office. Pursuant to the requirements of the Tennessee Code Annotated, § 6-54-502, one (1) copy of each code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public. (1983 Code, § 4-103, modified, as amended by Ord. #289, Sept. 2008)

12-104. Violations. It shall be unlawful for any person to violate or fail to comply with any provision of the codes as herein adopted by reference and modified. (1983 Code, § 4-104, as amended by Ord. #289, Sept. 2008)

CHAPTER 2

[REPEALED]

(as repealed by Ord. #289, Sept. 2008)

CHAPTER 3

ELECTRICAL CODE

- 12-301. Electrical code adopted.
- 12-302. Available in recorder's office.
- 12-303. Permit required for doing electrical work.
- 12-304. Violations.
- 12-305. Enforcement.
- 12-306. Fees.

12-301. Electrical code adopted. Pursuant to authority granted by Tennessee Code Annotated, §§ 6-54-501 through 6-54-506, and for the purpose of providing practical minimum standards for the safeguarding of persons and of buildings and their contents from hazards arising from the use of electricity for light, heat, power, radio, signaling, or for other purposes, the National Electrical Code,¹ 2002 edition, including any subsequent future amendments and modifications thereto approved and adopted by the National Fire Protection Association, is hereby adopted and incorporated by reference as a part of this code and is hereinafter referred to as the electrical code. (1983 Code, § 4-301, modified)

12-302. Available in recorder's office. Pursuant to the requirements of Tennessee Code Annotated, § 6-54-502, one (1) copy of the electrical code has been placed on file in the recorder's office and shall be kept there for the use and inspection of the public. (1983 Code, § 4-302, modified)

12-303. Permit required for doing electrical work. No electrical work shall be done within Town of White Bluff until a permit therefor has been issued by the town. The term "electrical work" shall not be deemed to include minor repairs that do not involve the installation of new wire, conduits, machinery, apparatus, or other electrical devices generally requiring the services of an electrician. (1983 Code, § 4-303)

12-304. Violations. It shall be unlawful for any person to do or authorize any electrical work or to use any electricity in such manner or under such circumstances as not to comply with this chapter and/or the requirements and standards prescribed by the electrical code. (1983 Code, § 4-304)

¹Copies of this code may be purchased from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 12269-9101.

12-305. Enforcement. The electrical inspector shall be such person as the mayor shall appoint or designate. It shall be his duty to enforce compliance with this chapter and the electrical code as herein adopted by reference. He is authorized and directed to make such inspections of electrical equipment and wiring, etc., as are necessary to insure compliance with the applicable regulations, and may enter any premises or building at any reasonable time for the purpose of discharging his duties. He is authorized to refuse or discontinue electrical service to any person or place not complying with this chapter and/or the electrical code. (1983 Code, § 4-305)

12-306. Fees. The electrical inspector shall collect fees that have been established by the Codes Department of White Bluff, Tennessee. The range of these fees shall be printed inside all three (3) copies of the National Electrical Code. (1983 Code, § 4-306)

CHAPTER 4

[REPEALED]

(as repealed by Ord. #289, Sept. 2008)

CHAPTER 5

[REPEALED]

(as repealed by Ord. #289, Sept. 2008)

CHAPTER 6

CODES DEPARTMENT

SECTION

12-601. Appointment.

12-602. Term of office.

12-603. Definition of duties or objectives.

12-604. Procedures.

12-601. Appointment. There is hereby established a Codes Department of the Town of White Bluff, Tennessee. The town council shall appoint any individual that it deems appropriate to become the administrator of the Codes Department of White Bluff. (1983 Code, § 4-601)

12-602. Term of office. The administrator of the codes department shall hold office so long as his conduct and efficiency are satisfactory to the town council. The administrator may be suspended up to thirty (30) days by the mayor, but may be dismissed only by the town council. (1983 Code, § 4-602)

12-603. Definition of duties or objectives. (1) The primary duty of the codes administrator shall be the coordination of all necessary inspections for property, structures and buildings, as well as the maintaining of all inspection records. Such records shall be incorporated into a semi-annual, written report of the functions of the codes department to the town council.

(2) The codes administrator shall be responsible for appointing as necessary on a part-time specific case basis individuals to perform inspections for the various codes contained within the municipal codes. Further, duties would include the submission of individual names and their qualifications for specific duties for approval by the town council. No individual may be employed for any position that has not been previously approved by the council nor any individual be employed in any area beyond what was specifically approved by the town council.

(3) The building codes officer shall assess a permit fee: (a) For each mobile home of one hundred fifty dollars (\$150.00) per unit. A double-wide mobile home is considered two (2) units. For all other structures, the building permit fee is set at thirty dollars (\$30.00) per square foot.

(b) For any remodeling, alteration, or rehabilitation of existing structures, a permit is required with the permit fee set at one hundred dollars (\$100.00) for each residential permit and one hundred fifty dollars (\$150.00) for each commercial permit, which fees shall include no more than four (4) inspection visits by codes personnel.

(c) In the event the codes officer deems it necessary to make additional inspections of the premises due to substandard construction, a twenty-five dollar (\$25.00) inspection fee for each additional inspection shall be assessed.

(d) For all residential or commercial remodeling, alteration or rehabilitation, a permit is required if the owner of the property is:

- (i) Changing the existing foundation of the building;
- (ii) Moving or installing load bearing walls;
- (iii) Installing or moving any plumbing;
- (iv) Installing a new heating, ventilation and air conditioning (HVAC) system;
- (v) Relocating or installing any electrical circuits or fixtures;
- (vi) When the codes officer determines that an inspection is required to insure the new work is in compliance with current building codes;

(e) The building inspector's compensation is set at sixty (60%) percent of fees charged for mobile homes and forty (40%) percent of all other fees.

(4) The codes administrator shall be responsible for submission of the annual budget for the various code functions within this section of the municipal codes. Further, the administrator shall submit any necessary values or changes in values as they pertain to the fees associated with issuance of permits for the codes to the town council for final approval.

(5) The codes administrator shall be present at all meetings of the board of adjustments and appeals or shall appoint a representative from those individuals employed either permanently or part-time from the inspection departments of the codes. (1983 Code, § 4-603, as amended by Ord. #163, Oct. 1997, Ord. #245, Oct. 2005, and Ord. #307, Feb. 2010)

12-604. Procedures. (1) The codes department shall establish rules and regulations for its own procedure.

(2) The codes administrator shall submit monthly reports to the town council concerning:

- (a) Activities of the department since the previous report.
- (b) Decisions which have been submitted by the board of appeals and adjustments.
- (c) Any necessary details of the administration of the various codes of this section.

(3) The codes administrator shall approve of any purchases of materials necessary for the continued operation of the codes. (1983 Code, § 4-604)

CHAPTER 7

BOARD OF ADJUSTMENT AND APPEALS

SECTION

12-701. Appointment.

12-702. Term of office.

12-703. Definition of duties.

12-704. Procedures.

12-701. Appointment. There is hereby established a board to be designated as the board of adjustments and appeals. This board shall consist of three (3) members at large from the building industry. The board shall be appointed by the chief appointing authority. (1983 Code, § 4-701)

12-702. Term of office. Of the members first appointed, one (1) shall be for a term of one (1) year, one (1) for a term of two (2) years, and one (1) for a term of three (3) years. Thereafter members shall be appointed for terms of three (3) years.

Vacancies shall be filled for unexpired terms in the manner in which original appointments are made. Continued absence of any member from regular meeting of the board shall, at the discretion of the chief appointing authority, render any such member liable to immediate removal from office. (1983 Code, § 4-702)

12-703. Definition of duties. (1) Whenever the building official, gas inspector, plumbing inspector, electrical inspector, or any other inspector for the codes department shall reject or refuse to approve the mode or manner of provision of construction materials to be used in the erection or alteration of a building or structure, or when it is claimed that the provisions of any codes does not apply, or that an equally good or more desirable alternative to methods or materials can be used in any specific case, or when it is claimed that the true intent and meanings of these codes or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner or his duly authorized agent may appeal from the decision of any and all officials or inspectors to the board of adjustments and appeals. Notice of the appeal shall be in writing and filed within ninety (90) days after the decision is rendered by the official or inspector. A fee of ten and 00/100 (\$10.00) dollars shall accompany such notice of appeal.

(2) The board of adjustments and appeals, when so appealed to and after a hearing, may vary the application of any of these codes to any particular case when in its opinion, the enforcement thereof would be manifest injustice, and would be contrary to the spirit and purpose of these codes or public interest,

or when, in its opinion the interpretation of the official or inspector should be modified or reversed.

(3) A decision of the board of adjustment and appeals to vary the application of any provision of these codes or to modify an order of the official or inspectors shall specify in what manner such variation or modification is made, the conditions upon which it is made and the reasons therefore.

(4) Every decision shall be final, subject, however, to such remedy as any aggrieved party might have at law or in equity. It shall be in writing and shall indicate the vote upon the decision. Every decision shall be sent by mail or otherwise to the appellant and an additional copy to be filed by the codes department.

(5) Other duties may include the receiving and hearing of complaints from the general public in relationship to existing structure that are considered to be in violation to existing codes. Such complaints must be in writing describing the property, building or structures in question as well as specifically stating the reasons for the complaint and the appropriate portion of which codes the violation effects. A ten and 00/100 (\$10.00) dollar fee must accompany each complaint. Only upon unanimous consent of the board under such circumstances will inspections be made on the subject properties, structures or buildings, by the appropriate code official or inspector.

(6) The board may act upon its own volition for the submission of properties, structures or buildings for inspection which are felt to be in violation of any or all parts of any codes adopted by the Town of White Bluff. Upon unanimous consent by the board of issuance of an order for inspection by an official or inspector of the related code may be submitted. Such order must be recorded in the minutes of the meeting. The subsequent inspection should relate only to the subject section of the codes for which the order is made unless dangerous conditions are discovered or observed. (1983 Code, § 4-703)

12-704. Procedures. (1) The board shall establish rules and regulations for its own procedure. The board shall meet at regular intervals, to be determined by the chairman, or in any event, the board shall meet within ten (10) working days after notice of appeal has been made.

(2) The codes administrator shall act as secretary of the board and shall make a detailed record of all its proceedings, which shall set for the reasons for its decisions, the vote of each member participating therein, the absence of a member, and any failure of a member to vote. (1983 Code, § 4-704)

CHAPTER 8

[REPEALED]

(as repealed by Ord. #289, Sept. 2008)

CHAPTER 9

[REPEALED]

(as repealed by Ord. #289, Sept. 2008)

CHAPTER 10

[REPEALED]

(as repealed by Ord. #289, Sept. 2008)

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APPENDIX A

ENFORCING STORMWATER AND PRETREATMENT ORDINANCES THROUGH THE ADMINISTRATIVE PROCESS, INCLUDING THE USE OF CIVIL PENALTIES

GENERALLY

Several statutes in Tennessee authorize the enforcement of municipal ordinances administratively, and include as an administrative enforcement mechanism, the imposition by the enforcing municipal official or body, of a monetary civil penalty. However, this treatment of administrative hearings is principally concerned with certain statutes that allow municipalities to adopt sewer pretreatment and stormwater ordinances, and that authorize municipal officials and boards to enforce those ordinances administratively through the imposition of civil monetary penalties for violations of those ordinances.

- Tennessee Code Annotated, § 69-3-125: Under this statute, municipal officials can levy civil monetary penalties up to \$10,000 per day for certain pretreatment ordinance violations.
- Tennessee Code Annotated, § 69-221-1106: Under this statute, municipal officials can levy civil monetary penalties up to \$5,000 per day for stormwater ordinance violations.

Two of the principal questions this treatment will consider are:

- Will such civil monetary penalties pass legal muster?
- What are the legal rules governing administrative hearings?

CIVIL MONETARY PENALTIES FOR PRETREATMENT AND STORMWATER ORDINANCE VIOLATIONS ARE PRESCRIBED BY STATUTE

Tennessee Code Annotated, § 69-3-115(a)(1) (Pretreatment ordinance)

As indicated above Tennessee Code Annotated, § 69-3-101 et seq., speaks both of civil and criminal penalties. But that statutory scheme clearly discriminates with respect to who can levy those civil and criminal penalties. As will be shown below, municipal administrative agencies are authorized to levy only civil penalties.

Civil Penalties

- Tennessee Code Annotated, § 69-3-115(a)(1) authorizes the commissioner to impose civil penalties of up to \$10,000 per day for various violations contained in that statute.

The same statute contains a list of things the commissioner must consider in determining the amount of a civil penalty, and provides that the penalty is clearly collected through the courts as a civil judgment.

- Tennessee Code Annotated, § 69-3-125 authorizes the "local administrative officer" to impose civil penalties of up to \$10,000 per day for various violations contained in that statute. The same statute also contains a list of things the local administrative officer must consider in determining the amount of the civil penalty, and likewise clearly provides that the penalty is collected through the courts as a civil judgment.

Criminal Penalties

- Tennessee Code Annotated, § 69-3-115(b) provides for certain criminal penalties for pretreatment violations. It declares that "Any person polluting the waters of this state or violating or failing, neglecting, or refusing to comply with any of the provisions of this part, commits a Class C Misdemeanor. Each day upon which such violation occurs constitutes a separate offense. Tennessee Code Annotated, § 69-3-115(c) provides that, "Any person who willfully and knowingly falsifies any records [etc.] required by the board or the commissioner or who willfully and knowingly pollutes the waters of the state, or who willfully fails, neglects or refuses to comply with any of the provisions of this part commits a Class E Felony and shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) or incarceration or both." However, Tennessee Code Annotated, § 69-3-115(d) says that "No warrant or indictment under this part shall be issued except upon application by the board or the commissioner or upon such application authorized in writing by either of them." Those criminal violations are obviously charged in a court, and the criminal penalties imposed for those violations, are imposed by a court.

But when the pretreatment statute speaks of civil penalties it is obviously referring to those penalties levied by the state administrative agents, and by municipal administrative agents, rather than by a court. Nothing in the pretreatment statutes, nor in any other statute that applies to sewer use ordinances, authorizes the local administrative officer or entity to impose criminal penalties for the violation of a municipality's sewer use ordinances.

Tennessee Code Annotated, § 68-221-1106 (Stormwater Ordinance)

This statute provides that a municipality may adopt an ordinance or resolution providing that any person violating the provisions of any ordinance or resolution regulating storm water discharges or facilities "shall be subject to a civil penalty of not less than fifty dollars (\$50) per day or more than \$5,000 per day for each day of violation. Each day of violation may constitute a separate violation."

The Problem of Article VI, § 14 Of The Tennessee Constitution On "Fines" In Municipal Ordinance Violation Cases

Generally

Where a municipal court levies fines of greater than \$50 in municipal ordinance violation cases, it runs head on into Article VI, § 14, of the Tennessee Constitution, which provides that:

No fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine shall be more than fifty dollars.

City of Chattanooga v. Davis

In City of Chattanooga v. Davis, above, the Tennessee Supreme Court held that the levy of municipal civil penalties in excess of \$50 violated Article VI, § 14, of the Tennessee Constitution, where their purpose was punitive, rather than remedial. That case also involved the consolidated case of Barrett v. Metropolitan Government of Nashville-Davidson County.

The City of Chattanooga is a home rule city.¹ In City of Chattanooga v. Davis, the city court fined Davis \$300 for reckless driving, under the authority Tennessee Code Annotated, § 6-54-306 gives home rule municipalities to levy monetary penalties of up to \$500. In Barrett v. Metropolitan Government of Nashville-Davidson County. Title 16 of the Nashville-Davidson County Metropolitan Code regulated buildings and construction. The Nashville-Davidson County Metropolitan Court levied on Barrett a civil penalty of \$500 for each of five civil warrants issued over a period of months for various building code violations, and violating a stop work order. It is worthwhile to note that Tennessee Code Annotated, § 7-3-507, provides that:

All metropolitan governments are empowered to set a penalty of up to five hundred dollars (\$500) per day for each day during which the violation of ordinances, laws or regulation of such metropolitan government continues or occurs. [The statute prescribes lesser penalties for certain housing and zoning violations].

[The constitutionality of that statute under Article VI, § 14, of the Tennessee

¹There are 14 home rule cities in Tennessee: Chattanooga, Clinton, East Ridge, Etowah, Johnson City, Lenoir City, Memphis, Oak Ridge, Red Bank, Sevierville, Sweetwater, Whitwell, Knoxville, and Mt. Juliet.

Constitution was not an issue in Barrett; indeed, it was not even mentioned except in a footnote in connection with Davis.

In overturning the \$300 fine on both Davis and Barrett, the court declared that the \$50 fine limitation in Article 6, § 14 applied to punitive, but not to remedial fines. Whether a fine was punitive or remedial depends upon a two-step inquiry:

Is the language of the pertinent ordinances punitive or remedial?

Is the "actual purpose and effect" of the ordinances punitive or remedial?

The "fine" or "civil penalty" in both Davis and Barrett was punitive rather than remedial because, under a "totality of circumstances" test, the intent of the fine was to punish the defendant rather than to remedy the violations at issue. In Davis, more so than in Barrett, the language of the ordinance was clearly punitive.

Article 6, § 14 does not apply to administrative penalties

There are no cases dealing with the question of whether Article 6, § 14 of the Tennessee Constitution applies to administrative penalties imposed by local government officials or boards. However, Tenn. Op. Atty. Gen. No. 05-056 (April 20, 2005) opines that the administrative penalty of \$1,500 beer boards are authorized to levy under Tennessee Code Annotated, § 57-5-108(a) (A) are not intercepted by \$50 fine limitation contained in Article VI, § 14 of the Tennessee Constitution under the logic of Dickson v. State, 116 S.W.3d 738 (Tenn. Ct. App. 2003).

That case considered the question of whether a \$15,000 fine levied by the Petroleum Underground Storage Tank Division of the Department of Environment and Conservation, under the authority of the Underground Petroleum Storage Act, codified at Tennessee Code Annotated, § 68-215-101 et seq., was subject to the \$50 fine limitation contained in Article 6, § 14.

The answer was no, held the Court, reasoning that the \$50 fine limitation in Article 6, § 14, applied only to fines levied by the judiciary and not to the government as a whole. For that reason, it did not apply to administrative agencies. (The court did conclude that had the fine been levied by a court, it would have been punitive rather than remedial and subject to Article VI, § 14). Presumably, the same logic would apply to municipal administrative penalties.

The recent unreported case of Barrett v. Tennessee Occupational and Health Review Commission, 2007 WL 4562889 (Tenn. Ct. App.) is consistent with Dickson v. State. There, a TOSHA employee inspected Barrett's construction site, and cited him for several violations. After a hearing before the Tennessee Occupational Safety and

Health Review Commission, Barrett was fined \$950. Barrett appealed, arguing that the fine violated the \$50 fine limit of Article 6, § 14 of the Tennessee Constitution. The Court rejected that argument, concluding that Dickson had been correctly decided, "unless the Supreme court instructs us otherwise." [At 3] With respect to Barrett's argument that the \$950 fine was "punitive" under City of Chattanooga v. Davis, the Court declared that "Dickson tells us that regardless of the punitive nature of a fine, Article VI, § 14 does apply to a state agency. Dickson, 1216 S.W.3d 740." [At 3-4] In Footnote 3 of that case, the Court also pointed out that:

"The commissioner of labor and workforce development has the authority to assess monetary penalties as provided in §§ 50-3-402- 3-408 for any violation of this chapter or of any standard, rule or order adopted by regulation promulgated by the commission pursuant to this chapter." The statute goes on to provide for the assessment of a penalty up to \$7,000 for both serious and non-serious violations. Tenn. Code Ann. § 50-3-403 and 50-3-405 (2005). [At 4]

Selected Statutes Governing Pretreatment And Stormwater Ordinances Enforcement

Pretreatment ordinances

Tennessee Code Annotated, §§ 69-3-123-124, contain procedures for handling pretreatment violations by the "local administrative officer" and the "local hearing authority." The latter statute contains the standards for hearings. Among the hearing requirements are notice of a hearing, a verbatim record of the hearing and findings of facts and conclusions of law, and the right to appeal final orders.

In providing that any person (including industrial users) who violate various enumerated pretreatment requirements can be fined up to \$10,000 per day, Tennessee Code Annotated, § 63-3-125, lists the factors that the local administrative office may consider in assessing the fine-

- Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
- Damages to the pretreatment agency, including compensation for the damage or destruction of the facilities of the publically owned treatment works, and also including any penalties, costs and attorneys' fees incurred by the pretreatment agency as the result of the illegal activity, as well as the expenses involved in enforcing this section and the costs involved in rectifying any damages;
- Cause of the discharge or violation;
- Severity of the discharge and its effect upon the facilities of the publically owned

treatment works and upon the quality of the receiving waters;

- Effectiveness of action taken by the violator to cease the violation;
- The technical and economic reasonableness of reducing or eliminating the discharge; and
- The economic benefit gained by the violator.

The same statute provides that the local hearing authority may establish by regulation a schedule of the amount of civil penalty that can be assessed by the local administrative officer for certain specific violations or categories of violations.

Tennessee Code Annotated, §§ 69-3-123-126 also contain other remedies for pretreatment violations, including the recovery of damages caused by pretreatment violations.

Stormwater ordinances

Tennessee Code Annotated, § 68-221-1101, et seq. is the state law that authorizes municipalities and counties to adopt stormwater ordinances (in the case of municipalities) and resolutions (in the case of counties). Public officials familiar with the enforcement of building, utility, and housing codes will recognize that the MTAS model stormwater ordinance has two significant things in common with those codes: both contain detailed rules and regulations governing the subject matter they regulate, and both contain an administrative process for addressing violations of those rules and regulations. For that reason, it is likely that public officials who enforce building, utility and housing codes are generally a good source of information on the legal and practical pitfalls in the administrative enforcement process.

Tennessee Code Annotated, § 68-221-1106, requires a municipality that assesses a penalty for a stormwater ordinance violation to provide the violator "reasonable notice of the assessment..." It also requires a municipality to "establish a procedure for a review of the civil penalty or damage assessment by either the governing body of the municipality or a board established to hear appeals by any person incurring a damage assessment or a civil penalty."

With respect to civil monetary penalties that can be imposed by a town administratively for stormwater ordinance violations, Tennessee Code Annotated, § 68-221-1101 et seq., authorizes municipalities to:

- Impose a penalty of not less than \$50 nor more than \$5,000 per day for the violation of any stormwater ordinance or resolution. The amount of the penalty is to be

calculated based on seven (7) factors:

- (1) The harm done to the public health or environment;
- (2) Whether the town penalty imposed will be a substantial economic deterrent;
- (3) The economic benefit gained by the violator;
- (4) The amount of effort put forth by the violator to remedy the violation;
- (5) Any unusual or extraordinary enforcement costs incurred by the municipality;
- (6) The amount of penalty established by ordinance or resolution for specific categories of violations; and
- (7) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

• Assess damages to the municipality "proximately" caused by the violator. [Tennessee Code Annotated, § 68-221-106]

Proof In Pretreatment And Stormwater Cases Resolved Administratively

The common law writ of certiorari (Tennessee Code Annotated, § 27-8-101) and sometimes the statutory writ of certiorari (Tennessee Code Annotated, § 27-8-102) (Tennessee Code Annotated, § 27-9-101 et seq. supplies the procedural framework for both writs), are the avenues for appeals from the decisions of governmental administrative bodies and officers. It is not worthwhile here to attempt to make a lucid distinction between the two writs. What is pertinent here is that under the common law writ of certiorari, under which most challenges to administrative decisions will be brought, those decisions will be upheld by the courts if there is "any material evidence" to support the administrative decision at issue.

There are few cases involving administrative hearings and monetary penalties in the enforcement of pretreatment ordinances, and no cases involving stormwater ordinances. However, the recent case of Leonard Plating Company v. Metropolitan Government of Nashville and Davidson County, 213 S.W.3d 898 (Tenn.Ct.App. 2006) (Permission to appeal denied by Supreme Court, December 27, 2006), reflects an appeal of the administrative decisions of local government officials pertinent to the enforcement of pretreatment regulations. It is a good model for the application of the law governing the standard of proof that applies to a government's administrative

decisions.

In that case, an inspection of Metro's sewer lines connected to Leonard Plating Company's plant disclosed damages to a significant length of Metro's sewer lines. Metro. Water Services charged Leonard Plating with violations of its pretreatment permit, and after a hearing imposed penalties on that company of \$1,362.50, and assessed it damages of \$306,380 under Tennessee Code Annotated, § 69-3-126(a), which authorizes a local government to assess a pretreatment violator for damages caused by its violation. On Leonard Plating's appeal to the Metro. Wastewater Hearing Authority, the Authority affirmed Metro. Water Service's assessment. Leonard Plating appealed the Authority's decision to the Davidson County Chancery Court, which overturned the Authority's assessment, for three reasons: (1) The record did not contain material evidence to establish that the wastewater discharge from Leonard Plating's plant had caused the damage to the sewer pipes; (2) The Authority had improperly placed the burden on Leonard Plating to prove that the damage to the sewer lines had not been caused by the wastewater from its plant; (3) The Authority had relied solely on its own expertise to make up for the lack of other evidence connecting Leonard Plating's wastewater to the damage to the sewer pipes.

The Court of Appeals overturned the Davidson County Chancery Court's decision, in language that I will quote at length because it is highly instructive on the standard of proof that applies in the case of an administrative penalty appealed to the chancery court,

... we find that the trial court exceeded its authority by weighing the evidence. Because we have determined that the record contains material evidence to support the Authority's decision, we reverse the trial court's conclusion that the record does not contain sufficient evidence to support the Authority's conclusion that the wastewater discharge from Leonard Plating's plant caused the damage to the sewer lines. [At 903]

The court said this about the scope of review of administrative decisions:

The scope of review afforded by a common-law writ of certiorari is extremely limited. [Citations omitted by me.] Reviewing courts may grant relief only when the board or agency whose decision is being reviewed has exceeded its jurisdiction or has acted illegally, arbitrarily, or fraudulently. Tenn. Code Ann. § 27-8-101 (2000). [Other citations omitted by me.]

Review under a common-law writ of certiorari does not extend to a redetermination of the facts found by the board or agency whose decision is being reviewed. [Citations omitted by me.] The courts may not (1) inquire into the intrinsic correctness of the decision, (2) reweigh the evidence, or (3)

substitute their judgment for that of the board of agency. However, they may review the record solely to determine whether it contains any material evidence to support the decisions because a decision without evidentiary support is an arbitrary one. [Citations omitted by me.]

Ascertaining whether the record contains material evidence to support the board's or agency's decision is a question of law. [Citation omitted.] For the purpose of this inquiry, "material evidence" is relevant evidence that a reasonable person would accept as adequate to support a rational conclusion. [Citations omitted by me.] The amount of material evidence required to support a board's or agency's decision must exceed a scintilla of evidence but may be less than a preponderance of the evidence. [Citation omitted by me.] [At 903-04]

The trial court's dissatisfaction with the evidence establishing that the damage to metro's sewer lines was not justified under the above scope of review, concluded the court of appeals:

While the [trial] court determined that the record contained sufficient evidence to conclude that Leonard Plating had violated its permit by discharging wastewater into the sewer plant that exceeded the permissible level of acidity, the court decided that the record does not contain material evidence establishing that the wastewater from Leonard's Plating plant caused the damage to the sewer line. We have determined that the trial court reached this result by impermissibly weighing the evidence. [At 904]

The court of appeals focused on the trial court's choosing between the evidence that the damage was caused by Leonard Plating and the evidence that the damage could have had other causes. In particular the court of appeals pointed to the testimony of a Mr. Wingo for Metro that:

"...acid is not very friendly to concrete pipe" and that discharges with level of acidity similar to the one involved in this case could damage concrete pipes in "a matter of a few months." He also testified that he had observed damaged sewer pipe "strikingly similar" to the damaged pipe involved in this case at other plating companies. [At 904]

The trial court characterized Mr. Wingo's testimony as "equivocal and inconclusive," then turned its attention to the evidence presented by Leonard Plating, stating, declaring that:

Detracting from the claim that the petitioner's discharge corroded the pipe was the testimony of Mr. Kisselvoich, a consultant with an environmental firm of PSI. He testified that the activity of the former occupant of the building, a

barbeque [sic] restaurant known as Coursey's, had deposited food in the pipe, and that he could not say that the pH level of the petitioner had caused the pipe to wear out.

The court of appeals also noted that the trial court had determined that a Mr. Powers testimony had "detracted" from placing causation on the petitioner [Leonard Plating], apparently referring to Footnote 17 in which the court of appeals noted that "Mr. Power speculated that the damage could have been caused by tomato acid." [At 905]

The court of appeals view of the trial court's weighing of evidence was plain:

The trial court's memorandum reflects that it overstepped the permissible boundaries of the search for material evidence. The Metropolitan Government presented evidence establishing (1) that the wastewater from Leonard Plating comprised essentially all of the flow in the most severely damaged sewer pipes, (2) that Leonard Plating uses acids in its electroplating processes which it discharges into the sewer, (3) that until July, 2002 Leonard Plating made no effort to monitor or control the acidity of its wastewater, and (4) that samples of the wastewater discharged for Leonard Plating's plant exceeded permissible levels of acidity. All of this is material evidence upon which a reasonable person could rely to make a rational decision that the excess acidity in Leonard Plating's wastewater caused the damage in the sewer pipes that required them to be replaced. Although the trial court acknowledged this evidence, it went further and weighed the Metropolitan government's evidence against the evidence offered by Leonard Plating. This a trial court cannot do when reviewing a board's or agency's decision pursuant to a common law writ of certiorari. [At 905]

On the question of who had the burden of proof in an administrative hearing, the court of appeals observed that "The trial court had found as a matter of law that Authority had impermissibly placed the burden on Leonard Plating to provide that the acid in its wastewater had not caused the damage to the sewer pipes that required their replacement...." [At 905] But the court of appeals explained how the burden of proof works in administrative hearings:

The Metropolitan Government proved (1) that the sewer line serving Leonard Plating was severely damaged, (2) that the damage was consistent with damage caused by acid, (3) that sewer lines serving other electroplating businesses had similar damage, and (4) that Leonard Plating's wastewater was acidic enough to cause the sort of damage observed in the sewer lines. This evidence, circumstantial as it is, was sufficient to make out a prima facie case that the wastewater from Leonard Plating caused the damage that required the sewer

line to be replaced. It was also sufficient to shift the burden of going forward with the evidence to Leonard Plating to prove that the damage was caused by something else.

The Authority's deliberations reflect the fact that its members accredited the Metropolitan Government's evidence that the wastewater from Leonard Plating plant had damaged the sewer lines and that the wastewater exceeded the pH limits in Leonard Plating's permit. The Authority's comments that concerned the trial court simply reflect that its members decided that Leonard Plating had failed to produce sufficient evidence to rebut the Metropolitan Government's evidence. The Authority did not improperly allocate the burden of proof. To the contrary, its reasoning is entirely consistent with a rational and reasonable assessment of the evidence. [At 905-06]

Finally, the court of appeals addressed the trial court's conclusion that the members of the Authority based their decision on their own knowledge and expertise rather than on the evidence:

One of the principal reasons for the creation of administrative agencies is the expectation that the agency members will bring substantive expertise to the matters within their jurisdiction. 1 CHARLES H. KOCH, ADMINISTRATIVE LAW AND PRACTICE § 1.2(G), AT 9 (2D ED. Supp. 2002-03) (KOCH). Thus, the expertise of members of administrative boards and commissions plays a central role in administrative proceedings. *Martin v. Sizemore*, 78 S.W.3d at 269. Agencies are not law juries, 2 RICHARD J. PIERCE, JR. ADMINISTRATIVE LAW TREATISE § 10.2, AT 708 (4TH ED. 2002), and, therefore, they are permitted to rely on their expertise in evaluating the evidence submitted to them as long as they disclose they are doing so. 3 KOCH § 9.2[4], at 5.

However, a board's or agency's findings must be based on evidence presented to them. Courts should decline to accept agency findings that are not supported by evidence simply because the findings were made by experts. 3 KOCH § 12, 24[3](a), at 222. Accordingly, this court has held that members of boards and agencies cannot rely on their own expertise as a substitute for expert testimony that should have been presented during the hearing because doing so seriously compromises the fairness of the administrative proceedings. *Martin v. Sizemore*, 68 S.W.3d at 269-70. [At 906]

There was no "evidentiary void" in this case, concluded the court of appeals:

The record in this case contains evidence regarding the acidity of the wastewater discharged by Leonard Plating, the history of Leonard Plating's

failure to monitor or mitigate the acidity of its wastewater, the fact that Leonard Plating's wastewater accounted for virtually all of the flow in the sewer lines, the similarity between the damage to the sewer line serving Leonard Plating and the damage found in sewer lines serving other electroplating businesses, and the conclusion of an expert employed by Metro Water Services that the damage to the sewer line was caused by acid. This evidence provided an ample basis for the chairman of the Authority and the other members, in the exercise of their training and experience, to conclude that the damage to the sewer pipes was caused by the excess acidity of the wastewater discharged from Leonard Plating. [At 907]

The unreported case of Hariess v. City of Kingsnort, 1998 WL 131519 (Tenn. App. 1998), also discusses other legal issues involved in the appeals from administrative decisions. There, under the authority of Tennessee Code Annotated, § 13-21-101 et seq., the city had adopted the ordinance required by that statute, which contained an administrative process for handling dilapidated structures. The city issued two demolition orders under that ordinance against structures owned by Hariess. Hariess appealed on a number of grounds:

1. That the person who served as the investigator and the hearing officer was the same person, which Hariess argued resulted in (1) a denial of due process, and (2) a biased decision, given that the investigating/hearing officer was also a city employee;
2. The hearing officer's decision was arbitrary and capricious, or unsupported by the evidence;
3. The ordinances of the city were facially unconstitutional.

The court's scope of review of the administrative decision of the investigating/hearing officer was limited, said the Court:

Common law certiorari, as provided in T.C.A. § 27-8-101 (Supp. 1997), is available for judicial review of a decision of an administrative body acting in a judicial or quasi-judicial capacity. Davidson v. Carr, 659 S.W.2d 361, 363 (Tenn. 1983). The Supreme Court has stated that...administrative decisions are presumed to be valid and a heavy burden of proof rests upon the shoulders of the party who challenges that action, McCallen v. City of Memphis, 786 S.W.2d 633, 641 (Tenn. 1990). Generally speaking, review of an administrative decision by way of the common law writ is confined to the question of whether the inferior board or tribunal has exceeded its jurisdiction or acted illegally, arbitrarily, capriciously, or fraudulently. T.C.A. § 27-8-101 (Supp. 1997). [Remaining citation omitted] This question typically involves a determination of whether the

record contains material evidence to support the decision below. [Citations omitted.]... If a reviewing court determines that there is no material evidence to support an administrative decision, it must conclude that the administrative body acted illegally. [Citation omitted.] An administrative decision may be found to be illegal, arbitrary or fraudulent in other circumstances as well- for example, where the standards of due process have not been met, where a constitutional or statutory provision has been violated, or where some unlawful procedure has been followed. [Citations omitted.]... The reviewing court does not inquire into the correctness of the inferior tribunal's finding of fact [Citations omitted]; nor is it permitted to weigh the evidence. [Citations omitted] Moreover, the reviewing court "should refrain from substituting its judgment for the broad discretionary authority of the local government body." [Citation omitted.]

Under that standard, the Court replied to the first two arguments as follows:

[The Supreme Court has stated] the mere fact that both investigative and adjudicative functions have been granted to an administrative body...does not itself create an unconstitutional risk of bias in an administrative adjudication....[citations omitted.]

It cited Withrow v. Larkin, 421 U.S. 35 [parallel citations omitted], in which the United States Supreme Court declared that:

[t]he contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a ... difficult burden of persuasion to carry. [Citation omitted.] [At 5]

Harless offered no evidence of bias on the part of the investigator/hearing officer, and the record did not indicate that his dual roles resulted in a denial of due process. The record clearly showed that the structures met the standards for demolition under the Slum Clearance Statute. Harless could not question the constitutionality of the statute because he had not notified the attorney general as he was required to do under Tennessee Code Annotated, § 29-14-107(b).

Necessity for adequate proof in administrative hearings

While the level of proof supporting a government's administrative decisions is relatively low, the evidence supporting those decisions must meet the standards required by law or ordinance.

The plaintiff in Bovd v. Forbes, 2003 Tenn. App. LEXIS 760, raised the issue of

whether the administrative officer made the value/cost of repair findings as required by the City of Jackson's ordinance adopted under Tennessee Code Annotated, § 13-21-101 et seq. That ordinance provided that "if the repair, alteration or improvement cost exceeds seventy-five (75) percent of the taxable value of the property, the director may order the structure to be removed or demolished." [At 5] The Court, concluding that the ordinance had not been followed, reasoned that:

By his own testimony, James Maholmes, the housing code enforcement officer at the time notice was sent and the improvements were demolished, admitted that the City made no estimates of the repair costs. Ronald Boyd testified that the property had a total tax appraisal value of \$140,600. Therefore, in order for Maholmes to order demolition pursuant to the City's Ordinance 12-708, the cost of repairing the improvements would need to exceed \$105,450. Given that the parties stipulated the improvements themselves were only worth \$49,000 and that the only problems with the property were broken windows and unhinged doors, we conclude that the record supports the finding that the City failed to prove it had made a determination that the cost of repairs would exceed 75% of the property value. [At 5]

Violations of Stormwater Ordinances Can Also be Made Municipal Ordinance Violations Subject to Trial In Municipal Court

Tennessee Code Annotated, § 68-221-1101 et seq., appears to contemplate that violations of the stormwater ordinance are to be "tried" administratively, and that the violator's appeal of administrative decisions be appealed by writ or certiorari to the circuit or chancery court, under Tennessee Code Annotated, title 27, chapter 8. However, under Vandergriff v. City of Chattanooga, 44 F. Supp.2d 927 (E.D. Tenn. 1998), and Rush v. City of Chattanooga, 1999 WL 459153 (6th Cir. Tenn.) (Unreported), apparently a municipality can make a violation of the stormwater ordinance a municipal ordinance violation triable in municipal courts.

APPENDIX B

**INSPECTION AND MAINTENANCE AGREEMENT FOR PRIVATE
STORMWATER MANAGEMENT FACILITIES**

Property Identification ("Property"):

Town Use:

Map: _____ Parcel No. _____ Land Dist. Permit No.: _____
Record Book: _____ Page No. _____

Project Name: _____
Project Address: _____
Owner(s): _____
Owner Address: _____
Town: _____ 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 Town of White Bluff, Tennessee ("Town").

WHEREAS, the Town has adopted a Stormwater Ordinance to prevent surface water quality degradation from development or redevelopment activities within its jurisdiction, and the Town has adopted surface water quality regulations as required and such regulations are contained in the Stormwater Management chapter of the Town 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 Town has reviewed and approved, and a copy of which will be maintained at the Town. 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 Town of the Plan, the Owner does hereby covenant and agree with the Town 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 Town may require that the Owner's records be submitted to the Town.

3. If it is later determined that any future NPDES permit for the Town clearly directs Owners or the Town 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 Town 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 Town 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 Town finds that the Owner has not maintained the facilities, the Town 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 Town, the Town may enter the property and take any action necessary to maintain or repair the stormwater management facilities; PROVIDED, HOWEVER, that the Town 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 Town.

6. If the Town incurs expenses in maintaining the stormwater control facilities, and the Owner fails to reimburse the Town for such expenses within 45 days after a written notice, the Town 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 Town 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 Town 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 Town, its

officers, agents or employees, the Town shall notify the Owner, who shall defend at Owner's expense any suit or other claim. If any judgment or claims against the Town shall be allowed, the Owner shall pay all costs and expenses in connection therewith. The Town 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 Town, at Owner's expense, shall record this Agreement with the Register of Deeds of Dickson 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 § 14-506 of the town's stormwater ordinance and certify to the Town 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 Town 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 Town if all or a portion of the Property is subdivided or assembled with other property.

Owner: _____
Signature by Individual

Date: _____

Owner: _____

Date: _____

Signature by Individual

State of Tennessee, County of Dickson

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 Town of White Bluff, Tennessee

State of Tennessee County of Dickson

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 Town 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: _____

APPENDIX C

THE LAW OF RESTRICTIVE COVENANTS THAT RUN WITH THE LAND AND STORMWATER MAINTENANCE

Sid Hemsley
MTAS
February 15, 2011

The law of restrictive covenants, in one sentence

When a covenant runs with the land liability to assume its burdens or right to use its benefits passes to the landowner's assignees. Such a covenant is a promise, the effect of which is to bind the promisor and his lawful successors to the burdened land for the benefit of the promisee and his lawful successors to the benefitted land. [Tennessee Supreme Court, in American Oil Company v. Rasar, 308 S.W.2d (Tenn. 1957), at 941.]

Two kinds of restrictive covenants in Tennessee

- Real covenants, or covenants that run with the land at law. These covenants require that:

- (1) The covenants must "touch and concern" the land;
- (2) The original covenanting parties intended the covenant to run;
- (3) Some form of privity of estate;
- (4) The covenant be in writing.

- Equitable servitudes (variously called "reciprocal negative easements," "implied equitable reciprocal servitudes," and "equitable restrictions."). These covenants require that:

- (1) The covenants must "touch and concern" the land;
- (2) The original covenanting parties intended the covenant to run with the land;

Montie, Diane, *A Survey Of The Law Of Restrictive Covenants That Run With The Land In Tennessee*, 50 Tenn. Law Review 149 (1982). Also see Tennsco Corporation v. Attea, 2002 WL 1298808 (Tenn. Ct. App.) for probably the shortest primer on restrictive covenants].

Restrictive covenants are tied to land development

It is said in Montie, Diane, that:

The law relating to restrictive covenants has changed little during the last one hundred years in Tennessee, but the reasons for using restrictive covenants have changed to reflect a more complex society. Historically, the usual purpose of restrictive covenants was to protect the grantor's residence. Today, the use of the land is more complex. Subdivisions, condominiums, apartments, and single family residences require diversified land use planning to protect those communities of purchasers. [At 149]

One of the modern complexities of the development of land, for whatever its intended use, is that such development is subject to stormwater management requirements. A tool for managing stormwater that appears in stormwater regulations is the maintenance agreement for the stormwater facilities that appear in developments. Those maintenance agreements commonly contain restrictive covenants that run with the land, that obligate both present and subsequent owners of the property to continue the maintenance of the stormwater facilities.

For example, the Knox County Stormwater Maintenance Manual contains a document entitled COVENANTS FOR PERMANENT MAINTENANCE OF STORMWATER FACILITIES, which contains various covenants the property owner must agree to as a condition of the development of his property. Paragraph 5 provides that:

To ensure that subsequent property owners have notice of these Covenants and the obligations therein, the Property owner will include in all instruments conveying any or all of the above described property on which the stormwater and/or water quality facilities are located, the specific instrument numbered referencing these Covenants and the recorded subdivision plat as indicated in paragraph 12 herein.

Paragraph 11 provides that "These Covenants are permanent and shall run with the land."

Questions related to restrictive covenants in stormwater context

Similar documents are used by cities and counties across Tennessee and in other states. Such maintenance agreements that run with the land raised at least two questions in the stormwater seminars held last year:

1. What is the legal status of such agreements, applying as they do, to the subsequent development of property?

As far as I can determine, there are no Tennessee cases involving stormwater infrastructure. But for reasons that will appear below, restrictive covenants containing stormwater infrastructure generally arise from new property development mandates and agreements between local governments and developers. For that reason such restrictive covenants will generally reflect real covenants running with the land at law. However, where, for some reason, the restrictive covenant fail the real covenants test, equity might, depending on the circumstances, intervene to impose the covenants as an equitable servitude.

2. What is the legal status of such agreements with respect to property that has already been developed?

For reasons that will appear below, generally, such agreements with respect to such property will probably neither qualify as real covenants that run with the land at law, nor as equitable servitudes.

Restrictive covenants are contracts between the parties to them

Restrictive covenants are contracts between the parties to them. Maples Homeowner's Association, Inc. v. T & R Nashville Limited Partnership, 993 S.W.2d 36 (Tenn. Ct. App. 1999), says on that subject:

Covenants, conditions and restrictions such as the ones contained in the Maples Declarations are property interests that run with the land. [Citations omitted by me.] They arise, however, from a series of overlapping contractual transactions. [Citations omitted by me.] Accordingly, they should be viewed as contracts. [Citations omitted by me.], and they should be construed using the rules of construction generally applicable to the construction of other contracts ... [Citations omitted by me.]

The courts enforce restrictive covenants according to the clearly expressed intentions of the parties manifested in the restrictions themselves. [Citations omitted by me.] We give the terms used in restrictions their fair and reasonable meaning... [Citations omitted by me.], and we decline to extend them beyond their clearly expressed scope. [Citations omitted by me.] We also construe the terms of a restriction in light of the context in which they appear.

When the restrictions terms are capable of more than one construction, we should adopt the construction that advances the unrestricted use of the property. [Citations omitted by me.] We should also resolve ambiguities in the restrictions against the party who drafted them ... [Citations omitted by me.], and finally we should resolve all doubts concerning covenants applicability against the covenant. [Citations omitted by me.] [At 38-39]

While the Maples Declarations were part of a property development scheme that reflected real covenants that ran with the land at law, the contractual aspect of restrictive covenants applies to both kinds of restrictive covenants. We will see below that equitable servitudes reflect the intent of the original covenanting parties even where that intent does not necessarily appear in one or more deeds in the chain of title reflecting the conveyance of the property at issue.

It is also said in Gambrell v. Nivens, 275 S.W.3d 429 (Tenn. Ct. App. 2008), that:

An owner of land may sell portions of it and make restrictions as to its use for the benefit of himself as well as for the benefit of those to whom he sells. [Citations omitted by me.] Even though Tennessee law does not favor private restrictions upon the use and enjoyment of land, our courts will enforce the covenants as they would contracts, according to the clearly expressed intention of the parties. [Citations omitted by me.] Covenants that fail the more exacting requirements for real covenants at law may still be enforced in equity as an equitable servitude. An equitable servitude is a "covenant respecting the use of land enforceable against successor owners or possessors in equity regardless of its enforceability at law." [Citation omitted by me.] [At 436*37]

Differences and similarities between the two kinds of restrictive covenants

It was said in Turnlev v. Garfinkel, 362 S.W.2d 921, that:

It is a common practice for developers of high-class residential subdivisions to provide restrictions to protect the beauty of the neighborhood and the value of the property for residential use. Such restrictions are usually regarded as covenants running with the land, binding on anyone who purchases with notice of them, and enforceable by the owner of any of the lots so protected.... [At 923]

The Court appears to have been speaking of covenants that run with the land at law. As the Court itself noted, the lots were part of a subdivision approved by the Davidson County Planning Commission and recorded in the registrar's office, and that the subdivision's developer had filed a set of restrictive covenants that were referred to and made a part of the deeds conveying the lots at issue. There were 11 covenants "and provide that they are deemed covenants running with the land until December

1985."

Citing that case, Maples Homeowner's Association, Inc., above, declared that, "Covenants, conditions and restrictions such as the ones contained in the Maples Declarations are property interests that run with the land." [At 38-39] The "Maples Declarations involved a planned unit development named The Maples under the Horizontal Property Act," codified in Tennessee Code Annotated, §§ 66-27-101-123. In describing The Maples Declarations, the Court declared that:

The Maples Declarations contain a fairly standard set of land use restrictions as well as a mechanism for their enforcement. They establish a homeowner's association whose membership consists of the "owners of lots" in The Maples, and Article VH(l) provides in part:

The Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. [At 37] [Emphasis is mine.]

Montie, Diane, above, says, "The restrictive covenant is generally created by a specific grant in a deed or by reference in a deed to a general plan of development." [At 150]

The touch and concern requirement

With respect to the "touch and concern" requirement, it is said in Gambrell v. Nivens, 275 S.W.3d (Tenn. Ct. App. 2008), that:

Although there is some dispute among authorities as to the test [that the covenant must "touch and concern" the land, there is little question that building restrictions embodied in a covenant between owners in fee satisfy this test, both as to the benefit and the burden. [Citing unreported Attea v. Tenssco, 2002 WL 1298808 (Tenn. Ct. App.).

Also see Arthur v. Lake Tansi Village, Inc., 590 S.W.2d 923 (Tenn. 1979).
Intention of parties that covenant run with the land

With respect to the requirement that the covenanting parties intended that the covenant run with the land, it is further said in Gambrell, above, that:

The covenants in Tenssco and Essary failed to express a substantive element of a real covenant at law, the intent to bind the successors, heirs, and assigns. Equity requires proof of the same substantive intent but does not confine the

scope of inquiry to the language of the covenant itself. Nonetheless, Tennsco and Essary together stand for the proposition that our courts will broaden the scope of inquiry only where the vendor imposed the restrictions according to a general plan of development. A development plan logically supports a finding that the parties intended the covenant to run with the land and bind the grantees' successors, assigns and heirs. The very concept of a development plan and the subsequent expectations of the purchasers require the individual burdens and their corresponding benefits to inhere in the land and to benefit and bind whoever occupies that land. This much seems implicit, for a common plan would crumble if the burdens and benefits were merely personal to the contracting parties. [At 441-42] [Emphasis is mine.]

In Essary v. Cox, 844 S.W.2d 169 (Tenn. Ct. App. 1992), the Essarys owned a service station, and on an adjoining lot, a convenience store. They sold the convenience store the deed to which contained this covenant: "It is expressly understood and agreed that the above described premises [the convenience store] shall not be used for the purpose of any sales of oil and gas supplies or products." The convenience store was subsequently resold several times, the deeds to which contained mention of the covenant. But on the sale of the convenience store to Cox in 1989, the deed, at the request of Cox, did not contain the covenant. In 1985, the Essarys had also sold their service station adjacent to the convenience store, to their children. The Essary children subsequently sued Cox for selling oil and gas supplies from the convenience store in violation of the "restrictive covenant" that appeared in the first deed of sale of the convenience store.

The court held that there was not a restrictive covenant running with the land, for two reasons:

First, the covenant in the deed of the first sale of the convenience store by the Essarys did not contain language indicating that it applied to "the parties successors and assigns, i.e. remote grantees." The Court pointed to Lowe v. Wilson, 250 S.W.2d 366 (1952), in which the Tennessee Supreme Court had held that even this language in a deed did not qualify as a restrictive covenant:

It is hereby agreed and understood between the parties hereto that no beer, beverages, or intoxicants of any kind or character shall ever be sold upon the lot or parcel of land herein conveyed, and this agreement is a part of the consideration for this sale. [At172]

Second:

In cases involving a common development plan, therefore, courts have demonstrated a willingness to enforce restrictive covenants, in the form of

equitable servitude, under the rationale that a remote grantee's knowledge of such restrictions may be imputed from the existence of a common plan as evidenced in deeds or on the plat itself...Outside the context of restrictions which evidence a common development plan, however, Plaintiffs have cited no authority in this jurisdiction for the proposition that restrictive covenants may be imposed on remote grantees based upon their knowledge of the existence of a prior restriction. [At 171]

In *Tennsco*, above, the Daugherty's owned a large piece of property north of Cool Springs Shopping Center in Williamson County, in the middle of which their historic home sat. They sold the property north and south of their home to Wills, "effectively dividing the property into three parts," according to the Court. The Daugherty's deed to Wills contained this restriction:

This conveyance is made subject to the restriction that any buildings constructed on the land shall be single family dwellings of traditional design at least 4,000 square feet in size and on lots of one (1) acre or more.

Wills subsequently quit-claimed the property to Mallory Park, "subject to all restrictions, easements and encumbrances or [sic] record." Park gave *Tennsco* a deed of trust to secure a loan. He defaulted on the loan and conveyed the property to *Tennsco*, but the deed did not contain those restrictions. Two conveyances later, the property ended up in Attea's hands, and he attempted to enforce the restrictions contained in Daugherty's deed to Wills.

The Court held that the restriction did not operate as a restrictive covenant that ran with the land. It met the requirement for a real covenant that ran with the land at law as to the "touch and concern" requirement because the covenant was a building restriction. But it failed the intent of the original covenanting parties that the covenant run with the land because the covenant did not include the magic words that it bound the heirs and assigns of the grantees.

As to the enforceability of the restrictions as equitable servitude, the Court said:

Therefore, in order to enforce an equitable servitude or a reciprocal negative easement it must appear that the grantor had in mind a general plan of development and intended for the restrictive covenant to benefit all the property involved [At 3] [Citations omitted.]

It also declared that:

We think the undisputed facts show that there was no general plan or scheme of development adopted to cover the property held by the Daughertys. As the

trial judge observed there was no map or sales brochures showing the restriction. And there is no restriction on the property the Daughertys retained. When they conveyed the property to the Butters, they did not include any restrictions. Since, there was no reciprocal easement, the conclusion is inescapable that the restriction placed in the Wills deed was personal to the Daughertys. [At 3]

General plan of development required in both kinds of restrictive covenants

That general rule applies in Tennessee, to both types of restrictive covenants. The Tennessee Supreme Court said in Land Developers v. Maxwell, 537 S.W.2d 2d 904 (Tenn. 1976), that:

Ordinarily when the owner of a tract of land subdivides it and sells different lots to separate grantees, and puts in each deed restrictions upon the use of the property conveyed, in accordance with a general building improvement or development plan, such restrictions may be enforced by any grantee against any other grantee. Likewise, the property remaining in the hands of the vendor may also be held in equity to be subject to a servitude so as not to be used in a manner different from that contained in the restrictions..... This rule was recognized in this state in the leading case of *Ridley v. Haiman*, 164 Tenn. 239, 47 S.W.2d 750 (1932)...

It appears that the Court was speaking of two classes of restrictive covenants: The first is those put in each deed to each grantee of separate lots, "in accordance with a general building, improvement or development plan...." and which appear to meet all the requirements of covenants that run with the land at law; and the property remaining in the hands of the vendor which "may also be held in equity to be subject to a servitude so as not to be used in a manner different from that contained in the restrictions." In this case, the Court held that:

Upon the facts shown in this record, we have no hesitancy in holding that the unsold lands of Mr. M.L.Tipton, and his corporation, here in issue, were restricted in his hands by essentially the same covenants as he had imposed in the deed to his various grantees, by an equitable servitude because there seems to be little question but that he did intend a general plan of development of the entire area as a residential "suburb" or subdivision. [At 913]

When do restrictive covenants take effect?

It is said in East Sevier County Utility District of Sevier County v. Wachovia Bank & Trust Company, 570 S.W.2d 850 (Tenn. 1978), that:

Likewise, petitioner now concedes that none of the restrictive covenants could be given retroactive effect, absent an express contract so providing, although its contentions in the trial court in that regard were unclear and seem to have been to the contrary....We have already stated that no set of covenants should be given any general retroactive effect. [At 852-53]

Southern Advertising Co. Inc. v. Sherman, 38 S.W.2d 491 (Tenn. Ct. App. 1957), also declares that:

If it is a covenant running with the land, at least in the absence of an expressed contrary intention, its operation must be confined to the property as it existed at the time of the covenant. And the rule of strict construction applies when an attempt is made to apply the covenant to other lands. [At 493]

Remedies for the violation of both kinds of restrictive covenants

It is said in *Monte, Diane*, that, "A complainant can sue either at law or equity to enforce restrictive covenants." At law, the remedy for the violation of restrictive covenants that run with the land at law is damages. At equity, the remedies of specific performance and injunction have been used to enforce restrictive covenants.

But that distinction appears to be meaningless. In most of the Tennessee cases in which the violation of restrictive covenants is an issue by far the most requested remedy in both kinds of covenants, is the enforcement of the restrictive covenants rather than damages. A large number of those cases requesting the enforcement of restrictive covenants involve alleged covenants that do not qualify as real covenants that run with the land at law, but where the court is being asked to find a restrictive covenant in the form of an equitable servitude.

APPENDIX D

CONFLICTS BETWEEN MUNICIPAL BUILDING CODES AND STORMWATER REGULATIONS

Sid Hemsley and John Chlarson
MTAS, 2010
February 8, 2011

Tennessee Code Annotated, § 68-120-101 et seq., authorizes the state fire marshal to adopt statewide building and fire safety code standards, which municipalities can choose to adopt under the statutory scheme. Municipalities that choose to adopt and enforce building construction standards for one and two family dwellings will adopt the International Residential Code. Municipalities that choose to adopt and enforce building and fire safety code standards for other buildings, will adopt the International Building Code, and either the International Fire Code or the Uniform Fire Code.

It is made unlawful in Tennessee Code Annotated, § 68-120-102(a) to:

- (1) Construct, alter or repair any building or structure....in violation of any rule duly promulgated as provided in this chapter; or
- (2) Maintain, occupy or use a building or structure or part of any building or structure that has been erected or altered in violation of any rule promulgated as provided in this chapter.

Tennessee Code Annotated, § 68-120-106, which is part of the above statutory scheme, further provides that:

The state fire marshal, such fire marshal's deputies and assistants, including all municipal fire prevention or building or officials in those municipalities having such officers, and where no such officer exists, the chief of the fire department of every incorporated city or place in which a fire department is established, and the mayor of each incorporated place in which no fire department exists, and all state officials, now having jurisdiction or as directed by the governor, or county officers having jurisdiction in regard to any matter regulated in this chapter shall have concurrent jurisdiction. No regulation shall be issued or enforced by any such official that is in conflict with the provisions of this chapter. The provisions of this chapter shall supercede all less stringent provisions of municipal ordinances. [Emphasis is mine.]

It is also a Class B Misdemeanor for any person "who violates a provision of this chapter or fails to comply with this chapter, or with any requirements of this chapter, or who erects, constructs, alters, or has erected, constructed or altered a building or structure in violation of this chapter [Emphasis is mine .]

The unreported case of Wilkes v. Shaw Enterprises, 2008 WL 695882 (Tenn. Ct. App.), also said in finding for the plaintiff in his complaint that the defendant contractor did not install flashing and weep holes in connection with brick veneer walls of his house, as required by the county building code:

Under the statutory framework, the county attorney or any other official vested with enforcement powers, such as the Maury County Office of Building and Zoning, may institute an injunction to prevent the violation of the code. Tenn. Code Ann. § 5-20-104. Further, any person who violates the adopted code provision commits a Class C Misdemeanor. Tenn. Code Ann. 5-20-105. Therefore, according to the applicable statutes, state law in this situation requires compliance with the adopted 1995 CABO One and Two Family Residential Code. [At 7]

Under those two state statutes, it appears that neither municipalities nor counties can adopt building code provisions that are less stringent than are the provisions of the building and fire codes adopted by the state and approved by the state for adoption by local governments.

It remains to be seen whether there will be municipal building codes that conflict with stormwater regulations and what the legal outcome of such conflicts will be.

ORDINANCE NO. 240**AN ORDINANCE ADOPTING AND ENACTING A CODIFICATION AND REVISION OF THE ORDINANCES OF THE TOWN OF WHITE BLUFF TENNESSEE.**

WHEREAS some of the ordinances of the Town of White Bluff are obsolete, and

WHEREAS some of the other ordinances of the town are inconsistent with each other or are otherwise inadequate, and

WHEREAS the Town Council of the Town of White Bluff, 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 "WHITE BLUFF Municipal Code," now, therefore:

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WHITE BLUFF, TENNESSEE, THAT:

Section 1. Ordinances codified. The ordinances of the town of a general, continuing, and permanent application or of a penal nature, as codified and revised in the following "titles," namely "titles" 1 to 20, both inclusive, are ordained and adopted as the "White Bluff Municipal Code," hereinafter referred to as the "municipal code."

Section 2. Ordinances repealed. All ordinances of a general, continuing, and permanent application or of a penal nature not contained in the municipal code are hereby repealed from and after the effective date of said code, except as hereinafter provided in Section 3 below.

Section 3. Ordinances saved from repeal. The repeal provided for in Section 2 of this ordinance shall not affect: Any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of the municipal code; any ordinance or resolution promising or requiring the payment of money by or to the town or authorizing the issuance of any bonds or other evidence of said town's indebtedness; any appropriation ordinance or ordinance providing for the levy of taxes or any budget ordinance; any contract or obligation assumed by or in favor of said town; any ordinance establishing a social security system or providing coverage under that system; any administrative ordinances or resolutions not in conflict or inconsistent with the provisions of such code; the portion of any ordinance not in conflict with such code which regulates speed,

direction of travel, passing, stopping, yielding, standing, or parking on any specifically named public street or way; any right or franchise granted by the town; any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way; any ordinance establishing and prescribing the grade of any street; any ordinance providing for local improvements and special assessments therefor; any ordinance dedicating or accepting any plat or subdivision; any prosecution, suit, or other proceeding pending or any judgment rendered on or prior to the effective date of said code; any zoning ordinance or amendment thereto or amendment to the zoning map; nor shall such repeal affect any ordinance annexing territory to the town.

Section 4. Continuation of existing provisions. Insofar as the provisions of the municipal code are the same as those of ordinances existing and in force on its effective date, said provisions shall be considered to be continuations thereof and not as new enactments.

Section 5. Penalty clause. Unless otherwise specified in a title, chapter or section of the municipal code, including the codes and ordinances adopted by reference, whenever in the municipal code any act is prohibited or is made or declared to be a civil offense, or whenever in the municipal code the doing of any act is required or the failure to do any act is declared to be a civil offense, the violation of any such provision of the municipal code shall be punished by a civil penalty of not more than 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 civil penalty is

¹State law reference

For authority to allow deferred payment of fines, or payment by installments, see Tennessee Code Annotated, § 40-24-101 et seq.

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 board of mayor and aldermen, by motion or resolution, shall fix, and change from time to time as considered necessary, the prices to be charged for copies of the municipal code and revisions thereto. After adoption of the municipal code, each ordinance affecting the code shall be adopted as amending, adding, or deleting, by numbers, specific chapters or sections of said code. Periodically thereafter all affected pages of the municipal code shall be revised to reflect such amended, added, or deleted material and shall be distributed to town officers and employees having copies of said code and to other persons who have requested and paid for current revisions. Notes shall be inserted at the end of amended or new sections, referring to the numbers of ordinances making the amendments or adding the new provisions, and such references shall be cumulative if a section is amended more than once in order that the current copy of the municipal code will contain references to all ordinances responsible for current provisions. One copy of the municipal code as originally adopted and one copy of each amending ordinance thereafter adopted shall be furnished to the Municipal Technical Advisory Service immediately upon final passage and adoption.

Section 8. Construction of conflicting provisions. Where any provision of the municipal code is in conflict with any other provision in said code, the provision which establishes the higher standard for the promotion and protection of the public health, safety, and welfare shall prevail.

Section 9. Code available for public use. A copy of the municipal code shall be kept available in the recorder's office for public use and inspection at all reasonable times.

Section 10. Date of effect. This ordinance shall take effect from and after its final passage, the public welfare requiring it, and the municipal code, including all the codes and ordinances therein adopted by reference, shall be effective on and after that date.

Passed 1st reading, February 1, 2005.

Passed 2nd reading, March 1, 2005.

Danny Williams
Mayor

Melody Pinnio
Recorder