THE

CLEVELAND

MUNICIPAL

CODE

Prepared by the

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

in cooperation with the

TENNESSEE MUNICIPAL LEAGUE

March 1996

CITY OF CLEVELAND, TENNESSEE

MAYOR

Tom Rowland

VICE MAYOR

Avery Johnson

COUNCIL MEMBERS

Richard L. Banks
Bill Estes
Dale Hughes
David May, Jr.
Charlie McKenzie
George Poe, Jr.

CITY MANAGER

Janice S. Casteel

CITY CLERK

Michael L. Keith

PREFACE

The Cleveland Municipal Code contains the codification and revision of the ordinances of the City of Cleveland, 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 clerk for a comprehensive and up to date review of the city's ordinances.

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

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

(1) That all ordinances relating to subjects treated in the code or which should be added to the code are adopted as amending, adding, or deleting specific chapters or sections of the code (see section 8 of the adopting ordinance).

(2) That one copy of every ordinance adopted by the city is kept in a separate ordinance book and forwarded to MTAS annually.

(3) That the city agrees to reimburse MTAS for the actual costs of reproducing replacement pages for the code (no charge is made for the consultant's work, and reproduction costs are usually nominal).

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

The able assistance of Sandy Selvage, the MTAS Sr. Word Processing Specialist who did all the typing on this project, and Tracy Gardner, Administrative Services Assistant, is gratefully acknowledged.

Steve Lobertini
Codification Specialist

ORDINANCE ADOPTION PROCEDURES PRESCRIBED BY THE CITY CHARTER

Style and passage of ordinances. The style of all city ordinances shall be: "Be it ordained by the city council of the City of Cleveland." Each ordinance shall be passed at two separate meetings on two separate days before the same is operative. However, at least thirteen (13) days shall have lapsed between the first and final passage of any ordinance. A reasonable number of written copies of ordinances shall be available to the public at the meetings and at city hall before the second and final passage by the city council. Ordinances, resolutions and other measures of the city council shall be passed by an affirmative vote of a majority of the council members present and voting. Abstentions shall be counted neither as a yes nor a no vote. (art. IV, § 10)

CHARTER OF THE CITY OF CLEVELAND, TENNESSEE[1]

CHAPTER NO. 78

HOUSE BILL NO. 1649

By Representative Stockburger

Substituted for: Senate Bill No. 1633

By Senator Patten

AN ACT to amend in its entirety the present Charter of the City of Cleveland, Tennessee, which is Chapter 307 of the Acts of Tennessee of 1903 and Chapter 204 of the Acts of Tennessee of 1909, as amended by Chapter 286 of the Acts of Tennessee of 1909, Chapter 286 of the Private Acts of 1911, Chapter 124 of the Private Acts of 1913, Chapter 213 of the Private Acts of 1913, Chapter 165 of the Private Acts of 1915, Chapter 631 of the Private Acts of 1919, Chapter 705 of the Private Acts of 1921, Chapter 57 of the Private Acts of 1923, Chapter 459 of the Private Acts of 1923, Chapter 236 of the Private Acts of 1931, Chapter 409 of the Private Acts of 1933, Chapter 452 of the Private Acts of 1935, Chapter 450 of the Private Acts of 1937, Chapters 352, 527, 528, 530, 532 and 802 of the Private Acts of 1949, Chapters 187 and 196 of the Private Acts of 1953, Chapter 449 of the Private Acts of 1953, Chapter 201 of the Private Acts of 1955, Chapter 348 of the Private Acts of 1959, Chapter 400 of the Private Acts of 1961, Chapter 85 of the Private Acts of 1967, Chapter 156 of the Private Acts of 1969, Chapter 287 of the Private Acts of 1970, Chapter 176 of the Private Acts of 1971, Chapter 80 of the Private Acts of 1975, Chapter 116 of the Private Acts of 1977, Chapters 348 and 349 of the Private Acts of 1982, and all acts amendatory thereto.

WHEREAS, the City of Cleveland, Tennessee is incorporated by Chapter 307 of the Acts of Tennessee of 1903, as amended; and

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[1]Priv. Acts 1993, ch. 78, is the current basic charter act for the City of Cleveland, Tennessee. The text of the basic charter act set out herein includes all its amendments through the 2011 session of the Tennessee General Assembly. Sections of the charter which have been amended contain at the end of those sections the citation to the official act or acts constituting the amendment or amendments. No other changes have been made to the charter except the addition of a table of contents to facilitate its use. A list of all the acts including the basic charter appears at the end of the charter.

WHEREAS, it now appears that the interest of the City of Cleveland will be served if the charter is further amended and consolidated; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 307 of the Acts of Tennessee of 1903 and Chapter 204 of the Acts of Tennessee of 1909, as amended by Chapter 286 of the Acts of Tennessee of 1909, Chapter 286 of the Private Acts of 1911, Chapter 124 of the Private Acts of 1913, Chapter 213 of the Private Acts of 1913, Chapter 165 of the Private Acts of 1915, Chapter 631 of the Private Acts of 1919, Chapter 705 of the Private Acts of 1921, Chapter 57 of the Private Acts of 1923, Chapter 459 of the Private Acts of 1923, Chapter 236 of the Private Acts of 1931, Chapter 409 of the Private Acts of 1933, Chapter 452 of the Private Acts of 1935, Chapter 450 of the Private Acts of 1937, Chapters 352, 527, 528, 530 532 and 802 of the Private Acts of 1949, Chapters 187 and 196 of the Private Acts of 1953, Chapter 449 of the Private Acts of 1953, Chapter 201 of the Private Acts of 1955, Chapter 348 of the Private Acts of 1959, Chapter 400 of the Private Acts of 1961, Chapter 85 of the Private Acts of 1967, Chapter 156 of the Private Acts of 1969, Chapter 287 of the Private Acts of 1970, Chapter 176 of the Private Acts of 1971, Chapter 80 of the Private Acts of 1975, Chapter 116 of the Private Acts of 1977, Chapters 348 and 349 of the Private Acts of 1982, and all acts amendatory thereto are amended in their entirety to read as follows:

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ARTICLE I

Incorporation, Boundaries

Section 1. Incorporation. The Town of Cleveland in the County of Bradley, and the inhabitants thereof, are hereby constituted a body politic and corporate under the style and name of the "City of Cleveland", and under that name may have perpetual succession; may sue and be sued; plead and be impleaded in all the courts; may purchase, receive and hold real, personal and mixed property within or without such city, for municipal purposes, and may sell, lease, or dispose of the same for the benefit of such city; and may do all other acts touching the same as a natural person; and may have and use a common seal, which may be changed at its pleasure.

Section 2. Boundaries. The boundaries of the City of Cleveland, shall be as fixed by Section 1 of Chapter 286 of the Acts of Tennessee of 1909, as amended, and any annexations[1] or detachments of territory made pursuant to law.

ARTICLE II

Powers

Section 1. General Powers. The city council shall have the management and control of the city finances and all property of the corporation, real, personal and mixed, and shall have the power to:

(1) Assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation and privileges taxable by law for state, county or municipal purposes;

(2) Adopt classifications of the subjects and objects of taxation that are not contrary to law;

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[1]Annexation ordinances are of record in the office of the city clerk.

(3) Make special assessments for local improvements;

(4) Contract and be contracted with;

(5) Incur debts by borrowing money or otherwise and give any appropriate evidence thereof in the manner hereinafter provided;

(6) Issue and give, sell, pledge or in any manner dispose of negotiable or non-negotiable interest-bearing or noninterest-bearing bonds, warrants, promissory notes or orders of the municipality in accordance with state law;

(7) Expend the money of the municipality for all lawful purposes;

(8) Acquire or receive and hold, maintain, improve, sell, lease, mortgage, pledge or otherwise dispose of property, real or personal, and any estate or interest therein within or without the municipality or state;

(9) Condemn property, real or personal, or any easement, interest or estate or use therein, either within or without the municipality, for present or future public use; the condemnation shall be effected in accordance with the term and provisions of state law;

(10) Take and hold property within or without the municipality or state upon trust and administer trusts for the public benefit;

(11) Acquire, construct, own, operate and maintain or sell, lease, mortgage, pledge or otherwise dispose of public utilities and telecommunications systems or any estate or interest therein, or any other utility or service to the municipality, its inhabitants or any part thereof; and, further, may issue debt for these purposes under the Local Government Public Obligations Act or other pertinent state law;

(12) Grant to any person, firm, association or corporation (including the municipality) franchises for public utilities, telecommunications systems, and public services to be furnished both inside and outside the municipality and inhabitants therein. The power to grant franchises embraces the power to grant exclusive franchises. Whenever an exclusive franchise is granted, it shall be exclusive not only as against any other person, firm, association, or corporation. Franchises may be granted for a period of time to be fixed by the city council, but not to exceed twenty (20) years. The council may prescribe in each grant of a franchise, the rate, fares, charges and regulations that may be made by the grantee of the franchise in accordance with state and federal law. Franchises may by their terms apply to the territory within the corporate limits of the municipality at the date of the franchises, and may also apply to any or all

subsequent modifications to the corporate limits, and to the existing streets, alleys and thoroughfares that thereafter may be opened;

(13) Make contracts with any person, firm, association or corporation for public utilities, telecommunications systems, and public services to be furnished both inside and outside the municipality and inhabitants therein. The power to make contracts embraces the power to make exclusive contracts. When an exclusive contract is entered into, it shall be exclusive against any other person, firm, association or corporation. These contracts may be entered into for a period of twenty (20) years or less, but not longer. The council may prescribe in each such contract entered into, the rates, fares, charges, and regulations that may be made by the person, firm, association or corporation with whom the contract is made. Such contracts may by their terms apply to the territory within the corporate limits of the municipality at the date of the contract, may also apply to any or all subsequent modifications to the corporate limits, and to the then existing streets, alleys and thoroughfares and to any other streets, alleys and other thoroughfares that thereafter may be opened;

(14) Prescribe reasonable regulations regarding the construction, maintenance, equipment, operation and service of public utilities and telecommunications systems, compel reasonable extensions of facilities for these services, and assess fees for the use of, or impact upon these services. Nothing herein shall be construed to permit the alteration or impairment of any of the terms or provisions of any exclusive franchise granted or of any exclusive contract entered into under subdivisions (12) and (13);

(15) Establish, open, relocate, vacate, alter, widen, extend, grade, improve, repair, construct, reconstruct, maintain, light, sprinkle and clean public highways, streets, boulevards, parkways, sidewalks, alleys, parks, public grounds, public facilities, libraries and squares, wharves, bridges, viaducts, subways, tunnels, sewers and drains within or without the corporate limits, regulate their use within or without the corporate limits, assess fees for the use of or impact upon such property and facilities, and take and appropriate property therefor under the provisions provided by the general laws of the state;

(16) Construct, improve, reconstruct and reimprove by opening, extending, widening, grading, curbing, guttering, paving, graveling, macadamizing, draining or otherwise improving any streets, highways, avenues, alleys or other public places within and without the corporate limits, and assess a portion of the cost of these improvements on the property abutting on or adjacent to these streets, highways or alleys under, and as provided by, state law;

(17) Assess against abutting property within and without the corporate limits the cost of planting shade trees, removing from sidewalks all accumulations of snow, ice, and earth, cutting and removing obnoxious weeds and rubbish, street lighting, street sweeping, street sprinkling, street flushing, and street oiling, the cleaning and rendering sanitary or removal, abolishing, and prohibiting of closets and privies, in such manner as may be provided by general law or by ordinance of the council;

(18) Acquire, purchase, provide for, construct, regulate and maintain and do all things relating to all marketplaces, public buildings, bridges, sewers and other structures, works and improvements inside and outside the municipality;

(19) Collect and dispose of drainage, sewage, ashes, garbage, refuse or other waste, or license and regulate their collection and disposal inside and outside the municipality, and the cost of collection, regulation, or disposal may be funded by taxation, special assessment to the property owner, user fees or other charges;

(20) License and regulate all persons, firms, corporations, companies and associations engaged in any business, occupation, calling, profession or trade not prohibited by law;

(21) Impose a license tax upon any animal, thing, business, vocation, pursuit, privilege or calling not prohibited by law;

(22) Define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, business, occupations, callings, trades, use of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers;

(23) Prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained;

(24) Inspect, test, measure and weigh any article for consumption or use within the municipality, and charge reasonable fees therefor, and provide standards of weights, tests and measures;

(25) Regulate the location, bulk, occupancy, area, lot, location, height, construction and materials of all buildings and structures, and inspect all buildings, lands and places as to their condition for health, cleanliness and

safety, and when necessary, prevent their use and require any alteration or changes necessary to make them healthful, clean or safe;

(26) Provide and maintain charitable, educational, recreative, curative, corrective, detentive, or penal institutions, departments, functions, facilities, instrumentalities, conveniences and services;

(27) Purchase or construct, maintain and establish a workhouse for the confinement and detention of any person convicted in the city court of offenses against the laws and ordinances of the municipality who fails to secure the fine imposed upon such person, or contract with the county to keep these persons in the workhouse of the county and provide by that contract and by ordinance for the commitment of these persons to the workhouse so provided until the fines are paid;

(28)

(A) Enforce any ordinance by fines, forfeitures, and penalties, and by other actions or proceedings in any court of competent jurisdiction; and

(B) No fine, forfeiture or penalty may exceed fifty dollars ($50.00) or the maximum allowable under general state law, whichever is greater, for violation of municipal ordinances;

(29) Establish, maintain and operate a complete educational system within the municipality, establish and determine the membership of a board of education and endow that board with all authority to operate the school system pursuant to state statute and this charter, review annually the operating budget of the school system and appropriate revenue to support the approved budget, purchase or otherwise acquire land for school buildings, playgrounds and other purposes necessary to the operation of the school system, purchase or erect all buildings, and do all other acts necessary for the establishment of such educational system;

(30) Regulate, tax, license or suppress the keeping or going at large of animals within the municipality, impound them, and in default of redemption, sell or kill them;

(31) Call elections as herein provided;

(32) By ordinance, assess, impose, levy and collect impact fees from new land developments within the municipal limits, provided that the impact fees are limited to the reasonably anticipated costs of public improvements generated

by such developments, and provided that the impact fee system and formula is prescribed by ordinance; and

(33) To make regulations to secure the general health, safety and welfare of the inhabitants, and to require the owners of property to keep, maintain and repair their property in a manner both safe and conducive to the good health, safety and welfare of the citizens of the city. For that purpose the city shall have the right to adopt ordinances requiring property owners at their expense to repair, close or demolish unsafe and unhealthy structures on their property and requiring property owners at their expense to remove from their property unsafe and unhealthy man-made and natural material, including junk motorized and non-motorized vehicles and carriages of every kind and description, debris, trash, litter and garbage, and growth of vegetation, including weeds, trees, vines, grass and underbrush, and upon the failure or refusal of any property owner to comply with such ordinances, to repair, close or demolish such structures, or to remove from the property such man-made and natural material at the city's expense. The city shall file with the register of deeds in the county where the property lies notice of the city's expense, which notice shall be a lien on the property in favor of the city, second only to liens of the state, county and city for property taxes, any lien of the city, for special assessments, and any valid lien, right or interest in such property duly recorded or perfected, prior to the filing of such notice, and the expenses shall be collected by the city's tax collector at the same time and in the same manner as property taxes are collected.

(34) Have and exercise all powers that now or hereafter it would be competent for this charter specifically to enumerate, as fully and completely as though these powers were specifically enumerated.

(35) In exercising the foregoing powers, the following actions shall be by ordinance:

(a) Any action required by general law to be by ordinance;

(b) Any action required by this charter to be by ordinance;

(c) Any action that levies a tax;

(d) Any action that makes a special assessment;

(e) Any action that is permanent in nature; and

(f) Any action that has a regulatory or penal effect.[As amended by Priv. Acts 1994, ch. 165, § 1; Priv. Acts 2001, ch. 24; and Priv. Acts of 2009, ch. 17]

ARTICLE III

Elections

Section 1. Date of general city election. A general city election shall be held on the same date as the regular August election in 1996 and each even-numbered year thereafter. [As replaced by Priv. Acts 1994, ch. 165, § 2]

Section 2. General election laws apply. All elections shall be conducted by the commissioners of elections of Bradley County in accordance with the general election laws of the state and this charter.

Section 3. Voter qualification requirements. Persons meeting the residency requirements prescribed by the election laws of the State of Tennessee and persons owning at least fifty percent (50%) fee simple interest in a parcel of real property of at least five thousand (5,000) square feet within one (1) of the councilmanic districts of the City of Cleveland for a period of six (6) months prior to an election and who are otherwise qualified to vote in State elections shall be eligible to vote in city elections, provided the person is properly registered in accordance with the applicable laws of the State of Tennessee. Non-resident property owners who own property in more than one (1) councilmanic district must declare both the district in which the owner elects to vote, and the piece of property being utilized to provide such voting privilege, and such declaration shall be permanent unless the owner sells the property in the district. The city council may authorize the ballots for these non-resident property owners be cast by mail. [As amended by Priv. Acts 1997, ch. 12, § 1 and ch. 85, § 1]

Section 4. Election and transition procedure. At the first regular city commission meeting in September, 1993, following the general city election held on August 5, 1993 the two commissioners elected in that general city election and the incumbent two commissioners and the mayor shall be officially known and designated as the city council of the City of Cleveland. The two (2) council members elected in the general city election held on August 5, 1993 shall have their term of office extended until their successors are elected in the general city election held on the first Thursday following the first Tuesday of August of 1998. The mayor and the two council members whose terms of office are scheduled to end when their successors are elected in the general city election held on the first Thursday of August of 1995, shall have their term of office extended until their successors have been elected in the general city election held on the first Thursday following the first Tuesday of August of 1996.

Following the action of the mayor and council members at the first council meeting in December, 1993, to establish and adopt councilmanic districts, the city council shall consist of a mayor and seven (7) council members. The mayor and two (2) council members shall be elected at large and five (5) council members shall be elected from their respective councilmanic districts; the term of office for the mayor and council members shall be four (4) years and shall be staggered. Districts shall be reviewed and adjusted decennially by ordinance following each national census. The mayor and four (4) council members who hold office on the date of the first regular council meeting in September, 1993 shall define and adopt councilmanic district descriptions by November 1, 1993. Following the establishment and adoption of five (5) councilmanic districts, the mayor and four (4) council members shall, at the first regular council meeting in December, 1993, appoint three (3) additional council members, one (1) each respectively from councilmanic district numbers 1, 2, and 3, who shall immediately take office and become council members, and who shall serve until their successors have been elected in the general city election in August, 1996. The two (2) council members elected in the general city election held on August 5, 1993 shall be designated the council members at large and the other two council members who were elected in the general city election held in August, 1991, shall be designated council members for councilmanic districts 4 and 5 respectively.

In the general city election held on the first Thursday following the first Tuesday of August 1996 the mayoral candidate and the council candidates from each of the five councilmanic districts receiving the highest number of votes shall be declared to be elected; the mayor and the council members elected from councilmanic districts 1 and 2 shall serve for a term of two (2) years. The council members elected from councilmanic districts 3, 4, and 5 shall be elected for a term of four (4) years. However, at each and every city election thereafter the successors to the office of mayor and councilmanic district members shall be elected for a term of four (4) years, unless they are being elected to fill an unexpired term. In the general city election held on the first Thursday following the first Tuesday of August 1998, the council member candidate at large receiving the highest number of votes shall be elected for a term of four (4) years and the council member candidate at large receiving the second highest number of votes shall be elected for a term of two (2) years. However, at each and every city election thereafter, the successors to the office of council member at large shall be elected for a term of four (4) years, unless they are being elected to fill an unexpired term. Any mayor and council member shall be eligible for re-election. Nothing in this act shall be construed as having the effect of removing an incumbent from office or abridging the terms of any official prior to the end of the term for which such incumbent was elected. The mayor and council members elected in any general city election shall commence their term by taking their oath of office at the beginning of the first regular council meeting

in September following the regular city election or at 3:00 p.m. on the second Monday of September following the regular city election, whichever occurs first. At the first regular city council meeting in September following the regular city election in August 1993, the city clerk shall become acting city manager and shall hold such position until a city manager has been appointed or until the city council appoints a different person as acting city manager. The city council shall proceed with the recruitment and appointment of a city manager and shall have made such appointment by March 31, 1994. During the period of transition the mayor shall retain his right to vote as a member of the city council and shall forfeit his veto power until the five (5) councilmanic districts have been established and the three (3) additional council members have been appointed.

ARTICLE IV

City Council

Section 1. Composition. In accordance with Article III, Section 4, paragraphs 2 and 3, the governing body of Cleveland shall consist of the mayor and seven (7) council members elected by the voters of Cleveland pursuant to the provisions of this charter, and shall be known as the city council. As provided herein, the mayor and two (2) council members shall be elected from the city at-large and the remaining five (5) council members shall be elected from their respective councilmanic districts. The term of office for the mayor and all council members shall be four (4) years; and as herein provided their terms shall be staggered.

Section 2. Election of vice-mayor. The city council, at the first regular meeting in October, 1993, and at the first regular meeting in October following the general city election in every even numbered year thereafter, shall elect one of their number as vice-mayor to carry out the duties of mayor in his/her absence, for a term of two (2) years. If the office of mayor shall become vacant, the vice-mayor shall automatically become mayor for the remainder of the unexpired term; and in the latter event, the council shall elect another of its members to the office of vice-mayor to serve during the remainder of the unexpired term. The council shall, in accordance with the provisions of Section 7 of this article, fill the vacancy in the council created by the vice-mayor becoming mayor.

Section 3. Qualifications for office. The mayor and council members shall be qualified voters of the city at least twenty-one (21) years of age, and shall hold no other elected public office. No other person shall be eligible for the office of mayor or council member at large unless he shall have been for at least one (1) year next preceding his election a resident of the City of Cleveland. Candidates shall be permitted to file a nominating petition for only one office in

any general city election. No person shall be eligible to the district office of council member unless he shall have been for at least one (1) year next preceding his election a resident of the councilmanic district in which he seeks election. No person shall become mayor or council member who has been convicted of malfeasance in office or a crime involving moral turpitude. A mayor or a council member who files a nominating petition for mayor or a council position other than his own and whose own position is not up for re-election must resign his current position as mayor or council member at least thirty (30) days prior to the filing deadline for nominating petitions for the next general city election.

Section 4. Salaries. The city council may set the annual salary of the city council by ordinance, but no ordinance establishing or increasing such salary shall become effective until the expiration of the current terms of the mayor and all council members; provided, however, that until said salaries are so set the salary of the mayor and each council member shall be four hundred dollars ($400) per month.[1] The council shall adopt an ordinance or resolution authorizing and regulating the reimbursement of municipal officers and employees for the expenses they incur in the performance of the duties of their offices or employment. The mayor and council members shall be entitled to reimbursement under the provisions of that ordinance or resolution.

Section 5. Time and place of meetings. The city council shall, by ordinance, fix the time and place at which the regular meetings of the city council shall be held. Until otherwise provided by ordinance, the regular meeting of the city council shall be held at 3:00 p.m. on the second and fourth Monday of each month. When such day falls on a legal holiday, the meeting shall be on the next following day unless otherwise prescribed by the city council. Whenever in the opinion of the mayor or any three (3) council members, the welfare of the city demands it, the city manager shall call a special meeting of the city council.

Section 6. The office of mayor. The mayor shall preside at all meetings of the city council at which he is present, and in his absence, the vice-mayor shall preside, and in the absence of the mayor and vice-mayor, the city council shall designate one of their number to preside. The mayor shall be the ceremonial head of the city. The mayor shall have a voice but no vote, and shall have veto power over all actions of the city council except the appointment of a vice-mayor, the appointment to fill a vacancy on the city council, or the

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[1]Ordinance of Sept. 2, 1998 sets the salary of the mayor at $12,000.00 per annum, payable at $1,000.00 per month, and the salary for each council member at $7,200.00 per annum, payable at $600.00 per month.

declaration of a vacancy. The mayor must exercise said veto within five (5) days of final adoption by the city council. He shall notify each council member, if available, of his actions, together with his reasons therefor within the five (5) day period. The council shall have thirty (30) days or until the next regular council meeting, whichever comes first, to override said veto. It shall require an affirmative vote of at least five (5) members of the council to override the mayor's veto. Abstentions shall be counted neither as a yes or a no vote.

Section 7. Vacancies. A vacancy shall exist, and the city council shall declare the same, by resolution, if the mayor or a council member either resigns, dies, moves their residence from the city or respective councilmanic district, is convicted of malfeasance or misfeasance in office, a felony, a violation of this charter or election laws of the state, or a crime involving moral turpitude, or fails to attend three (3) consecutive regular meetings of the city council without being excused by a majority vote of the city council present and voting. Abstentions shall be counted neither as a yes nor a no vote. Provided, however, that no member of the city council can resign his or her position for the purpose of being appointed to a longer term on the city council. Any vacancy in the city council or the office of mayor shall be filled by appointment made by the remaining members thereof, and the council member so appointed shall be a qualified resident of his or her respective councilmanic district for district positions or the City of Cleveland for the at large positions or the office of mayor and shall serve until the next general city election. The successor elected in the general city election shall serve the remainder of the unexpired term. In the event of the occurrence of any vacancy in the city council or the office of mayor which may, under the provisions of this section, be filled by appointment by the remaining council members, and such remaining council members shall fail or neglect to fill such vacancy within thirty (30) days of its occurrence, it shall be the duty of the election commissioners of Bradley County, upon certification of such facts to them by the mayor or any council member, to call and cause to be held, as hereinabove provided, a special election for the purpose of filling such vacancy for the remainder of the unexpired term, provided such certification be made to the election commissioners for Bradley County within sufficient time to permit the holding of such special election at least one hundred eighty (180) days prior to the general city election. [As amended by Priv. Acts 2004, ch. 86, and replaced by Priv. Acts 2010, ch. 39, § 1]

Section 8. Oath of office. The mayor, council members, and city judge before entering upon their duties, shall each take and subscribe and file with the city manager an oath or affirmation that they will support the Constitution of the United States and of the State of Tennessee and the charter and ordinances of the City of Cleveland, and that they will faithfully discharge the duties of their office.

Section 9. Quorum, attendance, and adjournment. A majority of all the members of said council, excluding vacancies, shall constitute a quorum, but a smaller number may adjourn from day to day and may compel the attendance of the absentees in such manner and under such penalties as the city council may provide. A regular meeting at which a quorum is present may be adjourned by a majority vote, either from day to day, or from time to time; but no such adjournment shall be taken to a date beyond the next regular meeting; and any adjourned meeting shall continue as a regular meeting throughout such adjournment.

Section 10. Style and passage of ordinances. The style of all city ordinances shall be: "Be it ordained by the city council of the City of Cleveland." Each ordinance shall be passed at two separate meetings on two separate days before the same is operative. However, at least twelve (12) days shall have lapsed between the first and final passage of any ordinance. A reasonable number of written copies of ordinances shall be available to the public at the meetings and at city hall before the second and final passage by the city council. Ordinances, resolutions and other measures of the city council shall be passed by an affirmative vote of a majority of the council members present and voting. Abstentions shall be counted neither as a yes nor a no vote. [As amended by Priv. Acts 2010, ch. 39, § 2]

ARTICLE V

City Manager

Section 1. City manager appointment, salary, removal. The city council shall appoint and fix the salary of the city manager, who shall serve at the will of the city council. The city manager shall be appointed by virtue of experience and/or educational qualifications for this position. Neither the mayor nor any member of the city council shall be eligible for appointment as city manager until two (2) years has elapsed after such member shall have ceased to be mayor or a member of the city council.

Section 2. Residence. Residence in the city at the time of appointment of a city manager shall not be required as a condition of the appointment, but within ninety (90) days after reporting for work, the city manager must become a resident of the City of Cleveland.

Section 3. Absence of the city manager. In the temporary absence or disability of the city manager, the assistant city manager, if such position be established, or any other department head designated by the city manager shall serve as acting city manager. If and when the city manager's absence exceeds

thirty consecutive days, the city council shall have the right to appoint another department head or another city employee the acting city manager.

Section 4. Powers and duties of the city manager. The city manager shall be the chief administrative officer of the city. The city manager shall be responsible to the city council for the administration of all city affairs placed in his charge by or under this charter. The city manager shall have the following powers and duties:

(1) To appoint and, when deemed necessary for the good of the service, suspend or remove all city employees and appointive officers provided for by or under this charter or personnel rules adopted pursuant to this charter.

(2) To direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law.

(3) To attend all council meetings and have the right to take part in discussion, but may not vote.

(4) To see that all laws, provisions of this charter and acts of the board, subject to enforcement by the city manager or by officers subject to his direction and supervision, are faithfully executed.

(5) To prepare and submit the annual budget and an annual capital budget update to the city council at the appropriate time.

(6) To submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each month and at the end of the fiscal year.

(7) To make such other reports as the city council may require concerning the operations of city departments, offices and agencies subject to the city managers direction and supervision.

(8) To keep the city council fully advised as to the financial condition and future needs of the city and make such recommendations to the city council concerning the affairs of the city as he deems desirable. The city council may not remove these powers and duties from the city manager but may require the city manager to perform such other duties as are specified in this charter or as may be required by the city council.

Section 5. Council - administrative relations. The city council and its members shall deal with the administrative services of the city only through the

city manager, except for the purpose of inquiry, and neither the city council nor any member thereof shall give orders or instructions to any subordinates of the city manager. The city manager shall take orders and instructions from the council only when sitting in a duly convened meeting of the city council, and no individual member shall give any orders or instructions to the city manager.

Section 6. Removal of city manager. The city manager shall not be removed from office, other than for misconduct in office, during or within a period of ninety (90) days following the beginning of a new term of office next succeeding any general municipal election held in the city, at which election a new member of the city council is elected, or when a new member is appointed. The purpose of this provision is to allow any newly elected or appointed member of the city council to observe the actions and ability of the city manager in the performance of the powers and duties of his office. After the expiration of the ninety (90) day period aforementioned, the city manager may be removed only by a majority vote of the city council present and voting. Abstentions shall be counted neither as a yes nor a no vote.

ARTICLE VI

City Clerk

Section 1. Appointment, compensation, and specific requirements, powers, and duties of office. The city clerk shall be appointed by the city manager and shall be the head of the department of finance. He shall receive a salary to be fixed by the city council and shall be bonded in such amount as may be provided by ordinance. He shall by his signature and the city seal, attest all instruments signed in the name of the city. He shall have power to administer oaths.

Section 2. Shall keep minutes. It shall be the duty of the city clerk to be present at all meetings of the city council and to keep a full and accurate record of all business transacted by the same, to be preserved in permanent book form.

Section 3. Shall be custodian of public records, bonds, etc. The city clerk shall have custody of and preserve in his office, the city seal, the public records, original rolls of ordinances, ordinance books, minutes of the city council, contracts, bonds, title deeds, certificates and papers, all official indemnity or surety bonds (except his own bond, which shall be in the custody of the city manager), and all other bonds, oaths and affirmations and all other records, papers and documents not required by this charter or by ordinance to be deposited elsewhere, and register them by numbers, dates and contents, and keep an accurate and modern index thereof.

Section 4. Shall provide and certify copies of records, papers, etc. The city clerk shall provide, and, when required by any office or person, certify copies of records, papers and documents in his office and charge therefor, for the use of the city, such fees as may be provided by ordinance; and shall cause copies of ordinances to be printed, as may be directed by the city council, and kept in his office for distribution.

Section 5. Shall generally supervise and keep records of fiscal affairs. The city clerk as the head of the department of finance, shall exercise a general supervision over the fiscal affairs of the city, and general accounting supervision over all the city's property, assets and claims, and the disposition thereof. He shall be the general accountant and internal auditor of the city; he shall have custody of all papers, records and vouchers relating to the fiscal affairs of the city, and the records in his office shall show the financial operations and condition, property, assets, claims and liability of the city, all expenditures authorized and all contracts in which the city is interested.

Section 6. Shall be treasurer. The city clerk shall be the treasurer of the city; as such it shall be his duty to collect, receive and receipt for the taxes and all monies, other revenues and bonds from all departments of the city, and the proceeds of its bond issues, and to disburse the same.

Section 7. Shall perform any other duties imposed. The city clerk shall also perform any other duties imposed upon him by this charter or by ordinance.

Section 8. Absence of city clerk. In the temporary absence or disability of the city clerk, the assistant city clerk, if such position be established, or another employee within the finance department designated by the city manager shall serve as acting city clerk.

ARTICLE VII

City Attorney

Section 1. Qualifications. The city attorney shall be an attorney at law entitled to practice in the courts of the State of Tennessee.

Section 2. Appointment, duties, and compensation. The city attorney shall be appointed by the city council and shall direct the management of all litigation in which the city is a party, including the function of prosecuting attorney in the city court; represent the city in all legal matters and proceedings in which the city is a party or interested, or in which any of its officers is officially interested; attend all meetings of the city council; advise the city council and committees or members thereof, the city manager, and the heads of

all departments and divisions as to all legal questions affecting the city's interests; and approve as to form all contracts, deeds, bonds, ordinances, resolutions and other documents to be signed in the name of or made by or with the city. His compensation shall be as fixed by the city council and he shall serve at the will of the city council. Residence in the city at the time of appointment of a city attorney shall not be required as a condition of the appointment, but within six (6) months following the appointment the city attorney must become a resident of the City of Cleveland.

ARTICLE VIII

Administration

Section 1. Departments, offices and agencies generally. The city council may establish city departments, offices or agencies in addition to those created by this charter, and may prescribe the functions of all departments, offices and agencies not inconsistent with this charter. Departments, offices and agencies created by the city council may be abolished or combined by the council.

Section 2. Direction and supervision of departments, offices, or agencies. All departments, offices and agencies under the direction and supervision of the city manager shall be administered by an officer appointed by and subject to the direction and supervision of the city manager. The city manager may serve as the head of one (1) or more such departments, offices or agencies or may appoint one (1) person as the head of two (2) or more of them.

Section 3. Personnel rules. The city council shall adopt personnel rules which shall it include but not be limited to:

(1) A job classification plan;

(2) A pay plan;

(3) The hours of work, attendance regulations and provisions for sick and vacation leave;

(4) A rule addressing conflict of interest of city employees in the performance of their duties. If personnel rules and regulations exist, the city manager shall be granted the powers formerly held by the individual commissioners and city commission, with the present personnel rules being maintained until new personnel rules are approved.

Section 4. Officers, employees, etc., who handle money shall be bonded. The city manager and every officer, agent and employee having duties

embracing the receipt, disbursement, custody, or handling of money shall, before entering upon his duties, execute a surety bond with some surety company authorized to do business in the state of Tennessee, as surety, in such amount as shall be prescribed by ordinance or this charter. All such bonds and sureties shall be subject to the approval of the city council, and the city council may provide for blanket bonds. The cost of all bonds shall be an expense of the city.

ARTICLE IX

Finance

Section 1. Fiscal year. The fiscal year of the city shall begin on the first day of July and end on the last day of June.

Section 2. Annual departmental budgets required. The adoption of an annual budge for each department shall be a prerequisite to the appropriation of money for municipal purposes and the levy of property taxes.

Section 3. City manager required to prepare and submit annual budget and explanatory message. At least sixty (60) days before the beginning of the fiscal year the city manager shall prepare and submit to the city council a budget for the ensuing fiscal year and an accompanying message. However, the proposed budget must be received only thirty (30) days prior to the beginning of the next fiscal year if the City Council and the City Manager have participated in a budget planning retreat, at which the City Council has provided direction on its major goals and objectives for the coming fiscal year. The city manager's message shall explain the budget both in fiscal terms and in terms of work programs. It shall outline the proposed financial policies of the city for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the city's debt position and include such other material as the manager deems desirable. [As amended by Priv. Acts 1999, ch. 12, § 1]

Section 4. Required content and organization of budget. The budget shall provide a complete financial plan of all city funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the city manager deems desirable or the city council may require.

Section 5. Amendments to budget, when budget must be adopted, and effect of adoption. After the first reading the city council may adopt the budget with or without amendment, but no amendment shall decrease expenditures required by law for debt service. The budget shall be adopted for the ensuing fiscal year before the end of the current fiscal year. Adoption of the budget shall

constitute appropriations of the amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed.

Section 6. Supplemental appropriations. If during the fiscal year the city manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the city council by ordinance may make supplemental appropriations for the year up to the amount of such excess.

Section 7. Deficits. If at any time during the fiscal year it appears probable to the city manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the city council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The city council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may by ordinance reduce appropriations.

Section 8. Transfer of unencumbered appropriations. At any time during the fiscal year the city manager may transfer part or all of any unencumbered appropriation balance among programs within a department, office or agency and, upon a written request by the city manager, the city council may by resolution transfer part or all of any unencumbered accumulated balances from one department, office, or agency to another.

Section 9. Lapsing of appropriations. Every appropriation shall lapse at the end of the fiscal year to the extent that it has not been expended or encumbered.

Section 10. Incurrence and discharge of obligations. No payment shall be made or obligation incurred against any appropriation unless the city manager or an officer designated by him first certifies that an appropriation has been made for that purpose and that there is unexpended and unencumbered in the appropriation for this purpose an amount sufficient to meet the obligation or to make the expenditure. However, except where prohibited by law, nothing herein shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year.

Section 11. Accounting records and audits. There shall be installed and maintained adequate accounting records in accordance with generally accepted principles of municipal accounting. The same account titles shall be used throughout the accounting records, the budget and financial statements. Constant and comprehensive budgetary control shall be maintained. An audit

of the financial affairs of the city shall be required by action of the city council and same be made after the end of each fiscal year by a public accountant skilled in such work. Any taxpayer may file a bill in chancery court to compel the city council to have the audit made if such accountant has not been employed within one (1) month after the end of the fiscal year.

Section 12. Competitive bidding and purchasing procedures. Purchasing and bidding procedures shall be established by ordinance in accordance with state law.

ARTICLE X

Taxation

Section 1. Assessment and levy. All property within the city not exempt by general law shall be assessed for taxation upon the same principles established in regard to state and county taxation. Assessments made by the county tax assessor may be adopted by the city.

Section 2. Due and delinquent dates; penalties and interest. Property taxes shall be payable on and after the first day in October of each year, and shall become delinquent on the first day of March following. The city council by ordinance shall fix penalties and interest on delinquent taxes.

Section 3. Collection of delinquent taxes. The City Council may provide by ordinance for the collection of delinquent real property taxes by the City Clerk as provided by general law; or by the City Attorney acting in accordance with general laws providing for the collection of delinquent city or county taxes; or by the use of any other available legal process and remedies. If not otherwise collected, the City Attorney, or other attorney designated by the City Council, shall file suit for collection of all delinquent taxes not later than eighteen (18) months following date of delinquency. Delinquent personal property taxes may be collected by distress warrants issued by the City Clerk and placed in the hands of the Police Chief for collection or by any other means as provided for in Tennessee Code Annotated, Section 67-5-2003. [As amended by Priv. Acts 1999, ch. 52, § 1]

Section 4. County may collect taxes. The city may contract with the county for the collection of city taxes. The contract may provide for reasonable fees to be paid to the county for this service.

Section 5. Taxes not to be excused. No officer or employee of the city shall have the authority to excuse taxes, penalties, interest, special assessments

or other charges due the city, but errors may be corrected when authorized by the city council.

Section 6. Alternative disposition of residential property. Property purchased by the City at delinquent tax sales and through other general laws of the state governing municipal condemnation and acquisition of dilapidated property, may be retained by the City for public purposes or sold for private or government use. However, for the purpose of insuring that any such property that is located in a residential zone is attractive and healthy and is returned to the City's tax roll, the City may give or sell at nominal consideration such property to Habitat for Humanity or other similar organization; provided, that the organization agrees to construct, reconstruct, or refurbish a dwelling on such property and under its charter and/or bylaws to sell or give such property to a private property owner. [As added by Priv. Acts 1997, ch. 86, § 1]

ARTICLE XI

City Court

Section 1. City court established. There is hereby established within the City of Cleveland a city court, which shall have jurisdiction over all infractions of municipal ordinances of the City of Cleveland. The city judge shall try all of the persons charged with violation of the ordinances of the city, and shall have the power to levy fines, penalties and forfeitures not exceeding fifty dollars ($50.00) or the maximum allowable under general state law, whichever is greater, for each offense, and to impose such costs as the council may by ordinance establish. The city judge is authorized to offer persons assessed a fine or penalty and costs for the violation of a municipal ordinance the option of performing community service for the city in lieu of paying all or a portion of the fine or penalty and costs; provided that the city has first by ordinance established a community service system. Under any such community service system, the fine or penalty and costs imposed shall be worked off on an hourly basis at a rate at least equal to the regular minimum wage prescribed by the Fair Labor Standards Act. In accordance with Section 2 (b) of this Article, jurisdiction of the city court may also include concurrent jurisdiction with courts of general sessions in an cases of the violation of criminal laws committed within the corporate limit of the City of Cleveland, including the jurisdiction to conduct preliminary examinations and bind over defendants to the grand jury for indictment.

Section 2. Appointment, election, qualifications, oath, compensation, and restrictions on office of city judge.

(a) (city judge) The city council, at the first regular meeting in September, 1996, following the general city election of August, 1996, and at the first regular meeting in September following the general city election in every even numbered year thereafter, shall appoint a city judge. The city judge holding office at the time of adoption of this city charter, or the successor to the city judge should a vacancy occur, shall continue to serve as city judge until he is reappointed or his successor is appointed at the first regular meeting of the city council in September, 1996. Only registered voters who are thirty (30) years of age, licensed to practice law in the State of Tennessee, have been a resident of the State of Tennessee for five (5) years and a resident of the City of Cleveland for one (1) year shall be eligible for appointment to the office of city judge. The city judge's term of office shall begin with the oath of office following his appointment by the city council. The oath of office shall be the same as the oath required for the mayor or council members. The city council shall set the salary of the city judge each year with the adoption of the budget.

(b) (City judge with concurrent jurisdiction with general sessions court) The city council may, by ordinance, determine that the city court shall exercise its concurrent jurisdiction with general sessions court beginning with the next general city election. Such ordinance must be passed at least six months prior to the next regular city election. Such ordinance shall also provide for the election of a city judge at the next regular city election. The qualifications for an elected city judge shall be the same as those for appointed civil judge. The initial term of office for an elected city judge shall be for such period of time as is necessary to align the subsequent elections for the city judge with the state general election for general sessions and other inferior court judges. The term of office for subsequent elected city judges exercising concurrent jurisdiction shall be eight (8) years and they shall hold office until their successors are elected and qualified and have taken their oath of office on the first day of September following their election. The city judge shall be eligible for re-election. The compensation of a city judge with concurrent jurisdiction with general sessions courts shall be the greater of fifteen thousand dollars ($15,000) per year or such amount as may be established in general law for the city of Cleveland's classification. The city judge's compensation cannot be adjusted during his term of office. Elected city judges exercising concurrent jurisdiction shall not be eligible to hold other elective or appointive offices for the City of Cleveland, or to hold another position of employment with the City of Cleveland.

Section 3. City court clerk election, qualifications, oath and compensation. At the time the city council adopts an ordinance authorizing the

city court to exercise its concurrent jurisdiction with general sessions courts, the city council shall within that same ordinance authorize the election of a city court clerk at the next regular city election. Only registered voters who have been residents of the City of Cleveland for one (1) year shall be eligible to seek the office of city court clerk. The initial term of office for an elected city court clerk shall be for such period of time as is necessary to align the subsequent elections of the city court clerk with the state general election for inferior court clerks. The term of office for subsequent city court clerks shall be four (4) years and they shall take office on the first day of September following the regular city election in August. They shall take the same oath of office as required of the city judge and they shall serve until their successors have been elected and qualified. The city court clerk shall be eligible for re-election. The compensation of the city court clerk shall be the greater of ten thousand dollars ($10,000) per year or such amount as may be established in general law for the City of Cleveland's classification. The city court clerk's compensation cannot be adjusted during his term of office.

Section 4. Court policies and procedures. The policies and procedures governing the day-to-day operations of the court shall be provided by ordinance.

Section 5. City judge to be exclusive judge of law and facts. 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.

ARTICLE XII

Miscellaneous and Transitional Provisions

Section 1. Corporate existence, existing ordinances and resolutions. The corporate existence of the City of Cleveland is continued. All existing ordinances, resolutions or other actions of the city council not inconsistent with this charter shall remain in full force and effect until amended or repealed in the manner herein provided.

Section 2. Expiration of terms of elected officers. The mayor and commission members in office when this act is ratified shall continue in office as the mayor and council members until their successors are elected and qualified.

Section 3. Legal effect of this act. This act is declared to be a public act, and may be read in evidence in all courts of law and equity. All ordinances and resolutions and proceedings of the city council created by this charter may be proven by the seal of said corporation, attested by the city clerk, and, when

certified by the city clerk, shall be received in evidence in all courts and places without further proof.

Section 4. Conflicting acts. All acts and parts of acts in conflict with this act be and the same are hereby repealed from and after the effective date of this act as hereinafter provided.

Section 5. Severability. If any article, section, subsection, paragraph, sentence, or part of this charter shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair any other parts of this charter unless it clearly appears that such other parts are necessarily dependent upon the part or parts held to be invalid or unconstitutional. It is the legislative intent in enacting this charter that each article, section, subsection, paragraph, sentence, or part be enacted separately and independently of each other.

Section 6. Gender. Wherever, in this charter, "man, men, him, his" or their related pronouns may appear, either as words or as parts of words, they have been used for literary purposes and are meant in their generic sense (i.e., to include all humankind-both female and male sexes).

SECTION 2. This act shall have no effect unless it is approved by a majority of the number of qualified voters of the City of Cleveland voting in an election on the question of whether or not the act should be approved. The ballots used in the regular election to be held on August 5, 1993, shall have printed on them the substance of this act and the voters shall vote for or against its approval. The votes cast on the question shall be canvassed and the results proclaimed by the county election commissioners and certified by them to the Secretary of State as provided by law in the case of general elections. The qualifications of voters voting on the question shall be the same as those required for participation in general elections. All laws applicable to general elections shall apply to the determination of the approval or rejection of this act.

SECTION 3. For the purpose of approving or rejecting the provisions of this act, as provided in Section 2, it shall be effective upon becoming a law, the public welfare requiring it, but for all other purposes the provisions of the act shall be effective only upon being approved as provided in Section 2.

PASSED: MAY 5, 1993

s/ Jimmy Naifeh
JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

s/ John S. Wilder
JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of May 1993

s/ Ned McWherter
NED McWHERTER, GOVERNOR

ACTS COMPRISING THE CHARTER OF THE CITY OF CLEVELAND, TENNESSEE

YEAR	CHAPTER	SUBJECT
1993	78	Basic charter act.
1994	165	Amended art. II, § 1, subsection (29) relative to powers of city council and replaced art. III, § 1 relative to city elections.
1994	199	Not ratified
1997	12	Amended art. III, § 3 relative to non-resident property owners ballots may be cast by mail.
1997	85	Amended art. III, § 3 relative to real property ownership and voter qualification requirements.
1997	86	Adds § 6 to art. X relative to alternative disposition of residential property.
1999	12	Amended art. IX, § 3 relative to the proposed budget and budget planning retreat.
1999	52	Amended art. X, § 3 relative to collection of delinquent taxes.
2001	24	Amended art. II, § 1 by adding a new subsection (33) and renumbering the existing subsection as (34).
2004	86	Amended art. IV, § 7 relative to vacancy in city council or the office of mayor.
2009	17	Amended art. II by deleting working "by ordinance" and adding new section (35).

YEAR	CHAPTER	SUBJECT
2010	39	Replaced art. IV, § 7 relative to vacancies in city council; amended art. IV, § 10, changing number of days lapse between readings to pass ordinances.

TITLE 1

GENERAL ADMINISTRATION[1]

CHAPTER

1. CITY COUNCIL.
2. MAYOR.
3. CITY CLERK.
4. CITY MANAGER.
5. CITY ATTORNEY.

CHAPTER 1

CITY COUNCIL[2]

SECTION

1-101. Regular meetings.
1-102. Adjourned meetings; extra sessions.
1-103. Quorum.
1-104. Order of business before city council.
1-105. Points of order.
1-106. Resolutions and ordinances to be written and seconded.
1-107. Discussion by council to be limited.
1-108. Requirements for passage of motions, resolutions and ordinances.
1-109. Method of voting on ordinances.

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[1]Charter references
See the charter index, the charter itself, and footnote references to the charter in the front of this code.
Municipal code references
Building, plumbing, electrical and gas inspectors: title 12.
Fire department: title 7.
Utilities: titles 18 and 19.
Wastewater treatment: title 18.
Zoning: title 14.

[2]Charter references
Compensation: art. IV, § 4.
Composition: art. IV, § 1.
General powers: art. II, § 1.
Qualifications: art. IV, § 3.
Quorum: art. IV, § 9.
Vacancies in office: art. IV, § 7.

1-110. Method for placing items on the agenda.
1-111. [Repealed.]

1-101. Regular meetings. The city council shall meet in two (2) regular monthly sessions on the second and fourth Mondays of each month in the year or at such other convenient monthly meeting dates as may be fixed by said city council. Both meetings shall be held at 4:00 p.m.

The meeting room for the city council shall be the Cleveland Municipal Building at 190 Church Street, N.E. (1981 Code, § 2-16, as amended by Ord. of 11/12/02)

1-102. Adjourned meetings; extra sessions. The city council shall have the power to adjourn a regular meeting of the city council to such time as they may designate. The mayor or 3 members of the council may direct the city manager, in writing, to call a special meeting of the city council. The written direction to the councilmen shall state the object or purpose of the meeting. The city manager shall call the meeting for no earlier than 24 hours following the receipt of his written notice from the mayor/or council members and shall provide public notice and a written notice of the meeting to the mayor and all members of the city council. Only business stated in the notice of this called meeting can be transacted in the called meeting. (1981 Code, § 2-17, modified)

1-103. Quorum. A majority of all members of the city council, excluding vacancies, shall, at all times, constitute a quorum for the transaction of all business, but a smaller number may adjourn from day to day. (1981 Code, § 2-18, modified)

1-104. Order of business before city council. The minutes of the preceding meeting shall be read at each meeting unless the clerk shall, at least forty-eight (48) hours prior to each meeting, submit to the city council a written copy of said minutes and a majority of the entire council agrees to waive the reading of said minutes; and after the same have been acted upon, the following order shall be observed in the transaction of business:

(1) Hearing petitions and communications.
(2) Consent agenda.
(3) Unfinished business.
(4) Reports of council members.
(5) New business and ordinances. (1981 Code, § 2-21, as replaced by Ord. #2003-32, Nov. 2003)

1-105. General rules of order. The rules of order and parliamentary procedure contained in Robert's Rules of Order, Newly Revised, shall govern the transaction of business by and before the city council at its meetings in all cases to which they are applicable and in which they are not inconsistent with provisions of the charter or this code. (1981 Code, § 2-23, modified)

1-106. Resolutions and ordinances to be written and seconded. All resolutions and ordinances shall be reduced to writing, and distributed to the council before or at the meeting in which they are introduced and debated. (1981 Code, § 2-24, modified)

1-107. Discussion by council to be limited. No council member shall be allowed to speak more than twice on the same ordinance, resolution or motion, without the consent of the majority of the council. (1981 Code, § 2-25, modified)

1-108. Requirements for passage of motions, resolutions and ordinances. It shall only be necessary for motions and resolutions to be passed one (1) time; all ordinances shall pass by a majority vote of the members present and voting at two (2) separate meetings. However, at least twelve (12) days shall have lapsed between the first and final passage of any ordinance. (1981 Code, § 2-26, modified, as replaced by Ord. #2011-15, Sept. 2011)

1-109. Method of voting on ordinances. In the passage of ordinances the clerk shall call the roll of the council members, and they shall vote, via voice, except when directed by the mayor to vote by public ballot. Also, upon the request of any member, the vote shall be taken by public ballot. Council members shall sign their respective public ballot and all public ballots taken by the council shall be open for public inspection. (1981 Code, § 2-27, modified)

1-110. Method for placing items on the agenda. (1) The mayor, any councilmember, or the city manager may have any item placed on the agenda for either a work session or a meeting by notifying the city clerk by noon on the Tuesday before the work session or meeting of the subject matter and all attachments which will be presented to the city council as part of the request. The city clerk shall include this information in the agenda packet for the city council. No item may be added to the agenda after this deadline except by the affirmative vote of at least a simple majority of those councilmembers present.

(2) Any citizen wishing to address the city council at either a work session or a meeting on a matter not on the agenda, must notify the city clerk by noon on the Tuesday before the work session or meeting of the subject matter and provide all attachments which will be presented to the city council as part of the address. The city clerk shall include this information in the agenda packet for the city council. No presentations may be made to the city council at a work session or meeting unless the presenter has complied with the provisions of this subsection. However, the city council, by the affirmative vote of at least a simple majority of those councilmembers present, may agree to hear the matter. (as added by Ord. of June 1998)

1-111. [Repealed.] (as added by Ord. of June 1998, and repealed by Ord. of 8/13/2001)

CHAPTER 2

MAYOR[1]

SECTION

1-201. Powers and duties.
1-202. Declaration of state of emergency - line of succession.

1-201. Power and duties. The mayor shall preside at all meetings of the city council at which he is present, and in his absence, the vice-mayor shall preside, and in the absence of the mayor and vice-mayor, the city council shall designate one of their number to preside. The mayor shall be the ceremonial head of the city. The mayor shall have a voice but no vote, and shall have veto power over all actions of the city council except the appointment of a vice-mayor, the appointment to fill a vacancy on the city council, or the declaration of a vacancy. The mayor must exercise said veto within five (5) days of final adoption by the city council. He shall notify each council member, if available, of his actions, together with his reasons therefor within the five (5) day period. The council shall have thirty (30) days or until the next regular council meeting, whichever comes first, to override said veto. It shall require an affirmative vote of at least five (5) members of the council to override the mayor's veto. Abstentions shall be counted neither as a yes or a no vote.

1-202. Declaration of state of emergency - line of succession.

(1) Pursuant to the Mutual Aid and Emergency and Disaster Assistance Agreement Act of 2004, codified at Tennessee Code Annotated 58-88-101, et seq., the mayor may declare a local state of emergency for the City of Cleveland by execute order consistent with and governed by the provisions of Tennessee Code Annotated 58-2-110(3)(A)(v).

(2) In the event the mayor is ill, out of town, or otherwise unavailable to act, then the vice-mayor is hereby given the power to declare a local state of emergency consistent with Tennessee Code Annotated 58-8-104.

(3) In the event the mayor and vice-mayor are both ill, out of town, or otherwise unavailable to act, then the city manager is hereby given the power to declare a local state of emergency consistent with Tennessee Code Annotated 58-8-104.

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[1]Charter references
Compensation: art. IV, § 4.
Duties: art. IV, § 6.
Oath: art. IV, § 8.
Vacancy in office: art. IV, § 7.

(4) In the event the mayor, vice mayor and city manager are all ill, out of town, or otherwise unable to act in the event of an emergency, then either at-large city council member is hereby given the power to declare a local state of emergency consistent with Tennessee Code Annotated 58-8-104. (as added by Ord. #2004-46, Jan. 2005)

CHAPTER 3

CITY CLERK[1]

SECTION

1-301. Appointment, compensation, and specific requirements, powers and duties of office.
1-302. Shall keep minutes.
1-303. Shall be custodian of public records, bonds, etc.
1-304. Shall provide and certify copies of records, papers, etc.
1-305. Shall generally supervise and keep records of fiscal affairs.
1-306. Shall be treasurer.
1-307. Shall perform any other duties imposed.
1-308. Absence of city clerk.

1-301. Appointment, compensation, and specific requirements, powers, and duties of office. The city clerk shall be appointed by the city manager and shall be the head of the department of finance. He shall receive a salary to be fixed by the city council and shall be bonded in such amount as may be provided by ordinance. He shall by his signature and the city seal, attest all instruments signed in the name of the city. He shall have power to administer oaths.

1-302. Shall keep minutes. It shall be the duty of the city clerk to be present at all meetings of the city council and to keep a full and accurate record of all business transacted by the same, to be preserved in permanent book form. (1981 Code, § 2-92, modified)

1-303. Shall be custodian of public records, bonds, etc. The city clerk shall have custody of and preserve in his office, the city seal, the public records, original rolls of ordinances, ordinance books, minutes of the city council, contracts, bonds, title deeds, certificates and papers, all official indemnity or surety bonds (except his own bond, which shall be in the custody of the city manager), and all other bonds, oaths and affirmations and all other records, papers and documents not required by the charter or by ordinance to be deposited elsewhere, and register them by numbers, dates and contents, and keep an accurate and modern index thereof. (1981 Code, §§ 2-93, 2-94, and 2-96, modified)

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[1]Charter references
Appointment: art. VI, § 1.
Compensation: art. VI, § 1.
Vacancy in office: art. VI, § 8.

1-304. <u>Shall provide and certify copies of records, papers, etc</u>. The city clerk shall provide, and, when required by any office or person, certify copies of records, papers and documents in his office and charge therefor, for the use of the city, such fees as may be provided by ordinance; and shall cause copies of ordinances to be printed, as may be directed by the city council, and kept in his office for distribution.

1-305. <u>Shall generally supervise and keep records of fiscal affairs</u>. The city clerk as the head of the department of finance, shall exercise a general supervision over the fiscal affairs of the city, and general accounting supervision over all the city's property, assets and claims, and the disposition thereof. He shall be the general accountant and internal auditor of the city; he shall have custody of all papers, records and vouchers relating to the fiscal affairs of the city, and the records in his office shall show the financial operations and condition, property, assets, claims and liability of the city, all expenditures authorized and all contracts in which the city is interested. (1981 Code, § 2-97, modified)

1-306. <u>Shall be treasurer</u>. The city clerk shall be the treasurer of the city; as such it shall be his duty to collect, receive and receipt for the taxes and all monies, other revenues and bonds from all departments of the city, and the proceeds of its bond issues, and to disburse the same. (1981 Code, § 2-95, modified)

1-307. <u>Shall perform any other duties imposed</u>. The city clerk shall also perform any other duties imposed upon him by the charter or by ordinance.

1-308. <u>Absence of city clerk</u>. In the temporary absence or disability of the city clerk, the assistant city clerk, if such position be established, or another employee within the finance department designated by the city manager shall serve as acting city clerk.

CHAPTER 4

CITY MANAGER[1]

SECTION

1-401. Duties and powers.

1-401. Duties and powers. The city manager shall be the chief administrative officer of the city and shall exercise such authority and control over such departments, officers and employees as the charter prescribes, and shall perform all other duties required of him pursuant to the charter.

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[1]Charter references
Appointment: art. V, § 1.
Bond: art. VIII, § 4.
Compensation: art. V, § 1.
Powers and duties: art. V, § 4.
Removal from office: art. V, § 6.
Vacancy in office: art. V, § 3.

CHAPTER 5

CITY ATTORNEY[1]

SECTION

1-501. Appointment, duties, and compensation.
1-502. Additional counsel authorized.
1-503. When incompetent by reason of interest, etc.
1-504. Compensation.

1-501. Appointment, duties, and compensation. The city attorney shall be appointed by the city council and shall direct the management of all litigation in which the city is a party, including the function of prosecuting attorney in the city court; represent the city in all legal matters and proceedings in which the city is a party or interested, or in which any of its officers is officially interested; attend all meetings of the city council; advise the city council and committees or members thereof, the city manager, and the heads of all departments and divisions as to all legal questions affecting the city's interests; and approve as to form all contracts, deeds, bonds, ordinances, resolutions and other documents to be signed in the name of or made by or with the city. His compensation shall be as fixed by the city council and he shall serve at the will of the city council. Residence in the city at the time of appointment of a city attorney shall not be required as a condition of the appointment, but within six (6) months following the appointment the city attorney must become a resident of the City of Cleveland. (1981 Code, §§ 2-76 and 2-77, modified)

1-502. Additional counsel authorized. In all suits by or against the corporation in which a large amount or an important principle is involved, the city council may, if it deems it necessary, employ additional counsel, and stipulate to pay reasonable fees. (1981 Code, § 2-78, modified)

1-503. When incompetent by reason of interest, etc. When the city attorney is incompetent by reason of interest or otherwise to represent the city in any matter arising, the city council shall have power to employ another attorney to represent the city; and it shall contract in advance to pay only such fee as is reasonable for the services such attorney may render. (1981 Code, § 2-79, modified)

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[1]Charter references
Appointment: art. VII, § 2.
Compensation: art. VII, § 2.
Duties: art. VII, § 2.
Qualifications: art. VII, § 1.

1-504. <u>Compensation</u>. The city attorney shall receive a fixed salary as set by the city council. (1981 Code, § 2-80, modified)November 28, 2011

TITLE 2

BOARDS AND COMMISSIONS, ETC.

CHAPTER

1. MUNICIPAL AIRPORT AUTHORITY.
2. ANIMAL SHELTER ADVISORY BOARD.
3. BOARD OF PUBLIC UTILITIES.
4. PARK ADVISORY BOARD.
5. JOHNSTON PARK ADVISORY BOARD.
6. ATTENDANCE REQUIREMENT FOR ALL BOARDS AND COMMISSIONS.
7. LEONARD FLETCHER PARK ADVISORY BOARD.

CHAPTER 1

MUNICIPAL AIRPORT AUTHORITY[1]

SECTION

2-101. Created and composition.
2-102. Appointment of members; terms; vacancies.
2-103. Oath of office.
2-104. Authority.

2-101. Created and composition. There is hereby created and established a Municipal Airport Authority for the City of Cleveland, Tennessee, consisting of five commissioners of the authority, appointed by the City Council of Cleveland, Tennessee (1981 Code, § 3-16, as replaced by Ord. #2004-36, Sept. 2004)

2-102. Appointment of members; terms; vacancies. The city council shall appoint and approve the commissioners of the municipal airport authority as provided by Tennessee Code Annotated, § 42-3-101 et seq., and otherwise, as provided by the laws of the State of Tennessee. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4) and five (5) years, respectively. Thereafter, each commissioner shall be appointed for a term of five (5) years. Vacancies occurring otherwise than by the expiration of terms shall be filled for the unexpired term in the same manner as the original appointment. (1981 Code, § 3-17, as replaced by Ord. #2004-36, Sept. 2004)

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[1]Municipal code reference
Airport zoning regulations: title 14.
State law reference
Municipal airports: Tennessee Code Annotated, § 42-5-101 et seq.

2-103. Oath of office. The commissioners of the municipal airport authority shall, as provided by Tennessee Code Annotated, § 42-3-103, present to the Tennessee Secretary of State an application signed, subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State of Tennessee, to take and certify oaths, who shall certify upon the application that such officer personally knows the commissioners, and knows them to be the officers as appointed in the application and that each subscribed and swore thereto in the officer's presence, which will be set forth (without any detail other than mere recital) the following:

(1) The Cleveland City Council, by ordinance or resolution, created a municipal airport authority and thereafter appointed them as commissioners;

(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into, and taking oath of office, and that they desire the municipal airport authority to become a public body corporate and politic under this chapter;

(3) The term of office of each of the commissioners;

(4) The name which is proposed for the corporation; and

(5) The location of the principal office of the proposed corporation. (1981 Code, § 3-18, as replaced by Ord. #2004-36, Sept. 2004)

2-104. Authority. The municipal airport authority is hereby vested with all authority to control and regulate any and all operations of any municipal airport located in the corporate jurisdiction of the City of Cleveland, Tennessee, as provided by the laws of the State of Tennessee, and in accordance with the rules adopted by the city council and/or duly created and established by the municipal airport authority. (as added by Ord. #2004-36, Sept. 2004)

CHAPTER 2

ANIMAL SHELTER ADVISORY BOARD

SECTION

2-201. Created.
2-202. Membership.
2-203. Duties and responsibilities.

2-201. Created. There is hereby created an animal shelter advisory board for the City of Cleveland, Tennessee, to be designated as the "animal shelter advisory board." (1981 Code, § 5-101, modified)

2-202. Membership. The animal shelter advisory board shall consist of seven (7) members, no more than two (2) of which shall be veterinarians. The seven (7) members shall hold office for the term as follows: Two (2) for three (3) years; three (3) for two (2) years; two (2) for one (1) year, and shall be appointed by the city council for such terms. Thereafter, such members shall be appointed for terms of three (3) years or until their successors are appointed; however, any members may be removed for cause at any time by the city council. The animal shelter advisory board shall serve without compensation. (1981 Code, § 5-102, as amended by Ord. #2003-35, Dec. 2003)

2-203. Duties and responsibilities. The animal shelter advisory board shall be responsible for advising the city manager and city council in the formulating of written policies and procedures necessary for the operation of the Cleveland Animal Shelter. (1981 Code, § 5-103, modified)

CHAPTER 3

BOARD OF PUBLIC UTILITIES

SECTION

2-301. Definitions.
2-302. Creation and membership.
2-303. Meetings and organization.
2-304. Powers and duties; appointment of general manager.
2-305. Contracts, leases and agreements.
2-306. Reports to city council.
2-307. Annual budget.
2-308. Compensation.
2-309. Removal of board members.
2-310. Board to have jurisdiction over waterworks and sewerage works.
2-311. Board to assume debts and obligations of waterworks and sewerage works and to pay tax equivalents to the city.

2-301. Definitions. As used in this chapter the following words shall have the meanings ascribed thereto:

(1) "Board" shall mean the board of public utilities of the City of Cleveland, Tennessee.

(2) "Member" shall mean an individual member of such board.

(3) "City council" shall mean the governing body of the City of Cleveland, Tennessee.

(4) "System" shall mean the electric distribution system, the water system and the sewer system of the City of Cleveland, Tennessee.

(5) "Act," unless otherwise specified, shall mean Chapter 33, of the Public Acts of Tennessee, Extraordinary Session, 1935, as amended.

(6) "Person" shall mean either male or female and reference to the male gender herein shall include the female gender. (1981 Code, § 23-171, modified)

2-302. Creation and membership. The board of public utilities as hereby created shall consist of five (5) members. No person shall be eligible to be a member of the board unless he shall be a property holder and resident of the City of Cleveland and shall have resided for at least one (1) year prior to his appointment, and shall be at least twenty-five (25) years of age. No regular compensated officer or employee of the City of Cleveland shall be eligible for appointment until at least one (1) year after the expiration of the term of his public office, except that one (1) member of the board shall be chosen as hereinafter provided from the city council.

The four (4) appointed members of the board shall be appointed so that the term of one (1) member shall expire on July 1 of each year. All except initial

appointees and those appointed to serve unexpired terms shall serve four-year terms.

The fifth member of the board shall be the mayor or council member of the City of Cleveland who is named and designated by the city council. His tenure on said board shall be confined to his tenure of office as mayor or councilman.

Vacancies on the board shall be filled for the unexpired term only. New members, either for the purpose of filling a vacancy or for a full term, shall be selected and appointed by the city council. Each member shall hold his office until his successor is appointed and qualified. (1981 Code, § 23-172, modified)

2-303. <u>Meetings and organization</u>. (1) The board shall within ten (10) days after its selection nominate and elect a chairman who shall preside over its meetings and a vice-chairman who shall preside in the absence or disability of the chairman. The board shall also select a secretary and treasurer or it may select one person to hold both offices who shall be designated as secretary-treasurer. This office may be held by one of the members or some competent person who is not a member of the board. If a member, he shall receive no additional salary for such service; however, the board may provide for the payment of a reasonable salary for the secretary and treasurer or secretary-treasurer if such officer is not a member of the board nor a member of the city council of the City of Cleveland. Said officer shall be selected upon his merits and ability to perform the work required, and shall hold office at the will of the board subject to the provisions hereof.

(2) A new election of officers of the board shall be held at the first regular meeting of the board held following the appointment of a new member for a full term. However, officers once elected shall hold office until their successors are elected and qualified or until they cease to be members.

(3) The board shall have the right to adopt bylaws, rules and regulations not inconsistent herewith and not inconsistent with the laws of the land, the Charter and ordinances of the City of Cleveland, or the duly authorized and executed contracts of the City of Cleveland or the board. The board may provide for the time, place and manner of holding its regular and special meetings, and all such meetings shall be public and no action shall be taken except by a majority of the board. Three (3) members of the board shall constitute a quorum, but a smaller number may adjourn from day to day. The secretary-treasurer and general manager herein provided for shall attend all meetings of the board and shall have a seat, and voice, but no vote, in such meetings unless the secretary-treasurer is also a member of the board. Actions of the board may be made by motion or resolution on single readings effective immediately. (1981 Code, § 23-173, modified)

2-304. <u>Powers and duties; appointment of general manager</u>.

(1) The board shall employ a competent and well qualified man to serve as general manager of the system who shall have sufficient training and experience to enable him to operate said system efficiently and economically, and whose salary shall be fixed by the board. He shall be employed for such length of time as the board may desire, not to exceed four (4) years at one time, but he may be re-elected from time to time at the expiration of his term of office. He may sooner be discharged at any regular meeting of the board for incompetency, for default in office, failure to perform the duties of his office, failure to comply with the rules and regulations of the board or for any malfeasance or misfeasance in office. However, no employee of the board shall be discharged because of political affiliations, and no person who is a member of an immediate family of any member of the board, either by blood or marriage, shall be employed by said board. It shall be the duty of the members of said board and the employees thereof to operate the system in a manner most consistent with sound economy and to public advantage, and to carry out the duties of their respective office without political or personal favor and without discrimination.

(2) The board shall have the power to select, employ and fix the salaries of officers and employees of the system, but may delegate this power to the general manager of the system except for the fixing of salaries of the general manager and the secretary-treasurer.

(3) Said board shall have full charge of operating, equipping, maintaining, extending and servicing said system, of making disbursements of its funds in accordance with law and ordinances and contracts made and entered into by the city, and of collecting all moneys due the system. It shall keep all necessary and proper books and records of said funds, and of all records and accounts of the system, and shall keep its funds in special bank account or accounts kept for that purpose. It shall have them audited annually, and shall have them always available for inspection by the duly authorized representatives of the city. Said board shall require a fidelity bond with a corporate surety from all officers or persons charged with the handling and safekeeping of any of its funds. The cost of auditing, the cost of surety bonds and other expenses required by this chapter which are necessary to the operating of the system or the performance of the duties of the board shall be paid by said board and shall be paid out of revenues collected by and from the system. All disbursements made by the board shall be first approved by a majority of the board.

(4) Said board shall have the right to extend or enlarge said system, the right to contract and to be contracted with, the right to exercise the rights of eminent domain, in the name of the City of Cleveland, by and with the consent of the city council, the right to institute suit and defend suits brought against it, the right to employ counsel, and in general to do all acts and things necessary for the operation and maintenance of the system.

(5) Said board shall be required to give full effect to the contracts with the Tennessee Valley Authority, and others, with reference to the acquisition and purchase of the distribution system, as well as the power contract between the Tennessee Valley Authority and the City of Cleveland; shall collect all bills when due and shall neither donate electric power or energy, water or sewer service nor make any deviations from the established price thereof to any user of electricity, water or sewer service. In order to comply with the provisions of this subsection said board shall rigidly enforce the collection of bills for electric, water and sewer service and shall, within the time prescribed by its rules and regulations, discontinue the electric, water or sewer service for the nonpayment of bills.

(6) Said board shall be subject to the advice, direction and supervision of the city council, and the electric, water and sewer systems are under the ultimate control of the city council acting by and through the utility board.

(7) The board shall fix rates to be charged for services rendered by the system, which rates shall be fair, reasonable and uniform for all customers within the same class and different rate schedules may be applied to different classes of customers, as determined by the board. Rates within the city may be less, but not greater than rates for the same service outside the city. The rates for electric service shall be fixed in conformity with the resale rates that the city is required to charge by the city's contractual obligations with the Tennessee Valley Authority, either under the existing contractual rate or under the rates as may be revised pursuant to said contract. (1981 Code, § 23-174, modified)

2-305. <u>Contracts, leases and agreements</u>. The board may, in the operation of the system by itself or by its duly authorized officers and employees, execute deeds and enter into leases, contracts and agreements, provided their terms of such leases, deeds, contracts and agreements, shall not conflict with the provisions of this chapter and shall be limited to a period of time, which will expire on or before twenty (20) years from the date thereof; provided, however, that longer term contracts may be made by and with the written authorization of the city council. All contracts whereby the system agrees to supply electric service for a longer period than one (1) year from the execution of such contracts shall be subject to the condition that the rates at which such service is to be provided after the expiration of one (1) year from the date of the contract, shall conform to the rates being charged other customers for similar service. The time limit prescribed in this paragraph for the duration of contracts and agreements shall not apply to bond issues. The authority given the board by this section shall not be construed to give the board authority to sell or lease all or a major portion of this system unless the transaction is duly approved by the city council, in conformity with the bond resolution, being an ordinance which shall not be passed as an emergency ordinance. (1981 Code, § 23-175, modified)

2-306. <u>Reports to the city council</u>. It shall be the duty of the board to make semi-annual reports to the city council of the City of Cleveland showing in detail the financial condition of the system, together with a complete operating statement thereof for the period preceding, and shall furnish any other information relative to said system, as may be required by the city council. Said reports shall be kept on file at the city clerk's office and open to inspection at all reasonable hours to taxpayers and the users of electricity, water or sewer service within the system, as well as to their agents and attorneys. (1981 Code, § 23-176, modified)

2-307. <u>Annual budget</u>. The board shall prepare and adopt an annual budget for the system which budget shall be approved by the city council before the budget becomes effective. (1981 Code, § 23-177, modified)

2-308. <u>Compensation</u>. Members of the board shall receive no salary for their services, but shall be required to meet at least once each month in regular meeting. They shall each be entitled to receive a fee of two hundred dollars ($200.00) for each meeting actually attended, either regular or special; but not to exceed twenty four hundred dollars ($2,400.00) total attendance compensation per annum per member. All members of the board shall receive an additional allowance not to exceed twenty-five dollars ($25.00) per month for the water system and twenty-five dollars ($25.00) per month for the wastewater system for attendance at meetings for each of these additional utilities but not to exceed a total of six hundred dollars ($600.00) per annum per member for these two additional utilities. But this limitation in payment of attendance fees shall in no way affect the number of meetings which the board may hold in any one (1) month. In addition to said allowance for attendance, board members shall be paid for their actual and necessary traveling expenses, if any, in the performance of the duties of their office. (1981 Code, § 23-178, as amended by Ord. of 8/23/99)

2-309. <u>Removal of board members</u>. Any member of the board may be removed for cause in the manner provided by the General Ouster Law of the State of Tennessee. The city council of the City of Cleveland may by an affirmative vote of the majority of the entire city council remove any member of the board of public utilities for misfeasance or malfeasance, or any other sufficient and just cause, not inconsistent with the provisions hereof, after due trial before the city council following ten (10) days' notice in writing of the specific charges against him. (1981 Code, § 23-179, modified)

2-310. <u>Board to have jurisdiction over waterworks and sewerage works</u>. All jurisdiction over the municipal waterworks and sewerage works now vested in the city council is hereby transferred to and conferred upon the board of public utilities. The board shall keep separate accounts for the electric

plant and each works, making due and proper allocation of all joint expenses, revenues, and property valuations. (1981 Code, § 23-180, modified)

2-311. Board to assume debts and obligations of waterworks and sewerage works and to pay tax equivalents to the city. The board of public utilities shall assume responsibility for meeting all debts and obligations of the waterworks and sewerage works. Further, the board shall pay to the municipal general fund from the electric system each year a tax equivalent payment covering the properties and operations of the electric works. This payment shall be in addition to any debt service required to meet the bonded indebtedness of the utilities and shall be in an amount determined by the city council at the time of adoption of the annual budget. (1981 Code, § 23-181, modified)

CHAPTER 4

PARK ADVISORY BOARD

SECTION

2-401. Established; membership; terms.

2-401. Established; membership; terms. There is hereby established a Park Advisory Board for the City of Cleveland, Tennessee, which shall consist of seven (7) persons to be appointed by the city council to serve for terms of three (3) years or until their successors are appointed, except that the members of the board first appointed shall be appointed for such terms that the term of one member shall expire annually. The members of said board shall serve without pay. Vacancies in said board occurring otherwise than by expiration of term shall be filled by the city council. The board shall have all those powers and duties set forth in Tennessee Code Annotated, § 11-24-10. The park advisory board shall not be responsible for the supervision of staff, the hiring or dismissal of staff, the expenditure of public funds, or enforcement of rules and regulations governing parks and recreation facilities or programs. However, the park advisory board may make recommendations to the city council, the city manager, and the parks and recreation director on any matter pertaining to the improvement, growth, operation, and expansion of the parks and recreation programs operated by the City of Cleveland. (as replaced by Ord. #2006-2, Jan. 2006)

CHAPTER 5

JOHNSTON PARK ADVISORY BOARD

SECTION

2-501. Established; membership; terms.

2-501. Established; membership; terms. There is hereby established a park advisory board for the City of Cleveland, Tennessee, which shall consist of eight persons to be appointed by the city council to serve for terms of three (3) years or until their successors are appointed, except that the members of the board first appointed shall be appointed for such terms that the term of one member shall expire annually. The members of said board shall serve without pay. Vacancies in said board occurring otherwise than by expiration of term shall be filled by the city council. The function of the Johnston Park Advisory Board shall be to counsel and advise the recreation director of improvements needed for the park.

CHAPTER 6

ATTENDANCE REQUIREMENT FOR ALL BOARDS AND COMMISSIONS

SECTION

2-601. Attendance requirement for all boards and commissions appointed by the mayor or city council.

2-601. Attendance requirement for all boards and commissions appointed by the mayor or city council. (1) Intent and purpose; applicability. It is the intent of the city council and the mayor that the appointed members of all boards and commissions attend meetings as much as possible in order to contribute effectively. However, it is also recognized that appointed members may miss meetings from time to time due to various reasons.

The purpose of this section is to provide for attendance requirements for members of all boards and commissions appointed by either the city council or the mayor.

This section is intended to be applicable to all boards and commissions whose members are appointed by either the mayor or the city council. It is recognized that the members of some boards and commissions are appointed by the city council, and the members of some boards and commissions are appointed by the mayor.

It is also recognized that the mayor has certain statutory authority over the appointment and removal of members of the planning commission, and to the extent that there is any conflict between any state statutory provisions relating to the planning commission and this section, the provisions of state law will take precedence and control.

(2) General rule applicable to members of all boards and committees. The appointed term of any member who fails to comply with the applicable attendance requirements set forth herein shall automatically expire and the member shall then be replaced with another appointee, unless the member is re-appointed in accordance with the provisions of subsection (3).

(3) Effect of removal; reappointment of removed members. As a general rule, any member whose term expires due to lack of compliance with the applicable attendance requirements for that board or commission shall not be eligible for reappointment to said board or commission for at least one (1) year.

However, if a board member's term expires due to lack of attendance caused by personal health reasons or other exceptional circumstances, the member may be eligible for reappointment without waiting a full year. However, to be eligible for reappointment without waiting a full year, the member must petition the mayor or the city council in writing for reinstatement as a member of said board or commission. The petition for reinstatement shall be addressed

to the mayor if the mayor is responsible for making the appointment. The petition for reinstatement shall be addressed to the city council if the city council is responsible for making the appointment.

In the written petition, the member must demonstrate to the mayor or the city council that the member's failure to comply with the applicable attendance requirements was due to personal health reasons or other exceptional circumstances, and that the member's health has improved or the other exceptional circumstances have been resolved and that the member will be able to meet the applicable attendance requirements if they are re-appointed.

Upon receipt of the member's written petition, the mayor or the city council may re-appoint the member without waiting a full year if the mayor or the city council determine, in the exercise of their discretion, that the member's failure to meet the applicable attendance requirements was due to personal health reasons or other exceptional circumstances and that the member will likely be able to meet the applicable attendance requirements if they are re-appointed.

Neither the mayor nor the city council are under any obligation to re-appoint any member who is removed for failing to meet the applicable attendance requirements.

(4) Attendance requirements for boards and commissions that hold regular monthly meetings. Any member who misses one-half (1/2) of all regularly scheduled monthly meetings within any six (6) month period (January through June, or July through December) of a calendar year shall be removed and their term shall automatically expire.

(5) Attendance requirements for boards and commissions that hold regular meetings less than monthly (boards and commissions that hold regular meetings every other month, or quarterly, or semi-annually). Any member who misses two (2) consecutive regular meetings within one (1) calendar year (January through December) shall be removed and their term shall automatically expire.

(6) Boards and commissions that do not hold regular meetings but meet on an as needed basis. Any member who misses two (2) consecutive meetings within one (1) calendar year (January through December) shall be removed and their term shall automatically expire. (as added by Ord. of 11/25/96; and replaced by Ord. #2007-39, Nov. 2007, Ord. #2007-45, Nov. 2007, and Ord. #2009-06, Feb. 2009)

CHAPTER 7

LEONARD FLETCHER PARK ADVISORY BOARD

SECTION

2-701. Purpose.
2-702. Created.
2-703. Powers.

2-701. Purpose. The late Leonard and Agnes Fletcher gave land known as Leonard Fletcher Park to the City of Cleveland for public outdoor recreation, education and scenic enjoyment. The land is intended to be kept insofar as possible in its natural state with only minimal improvements necessary to enable the public to enjoy the use of the property. The city council wishes to establish a Leonard Fletcher Park Advisory Board to make recommendations to the city council and the city manager concerning the Leonard Fletcher Park consistent with and in accordance with the wishes of the late Leonard and Agnes Fletcher. (as added by Ord. #2006-3, Jan. 2006)

2-702. Created. The Leonard Fletcher Park Advisory Board is hereby established to be composed of seven (7) members. Six (6) members of this board shall be appointed by the city council. The chairperson of the city parks advisory board or his or her designee shall serve as the seventh member of this advisory board.

The terms of the initial six (6) members appointed shall be as follows:

(1) Two (2) of the original six (6) members shall be appointed and serve until December 31, 2009.

(2) Two (2) of the original six (6) members shall be appointed and serve until December 31, 2010.

(3) Two (2) of the original six (6) members shall be appointed and serve until December 31, 2011.

(4) The term of any member appointed after the original six (6) members shall be three (3) years from the date of appointment.

All members shall serve without compensation. The Leonard Fletcher Park Advisory Board shall elect annually from among its membership a chairperson to preside over meetings of the Leonard Fletcher Advisory Board. The board shall meet at least twice a year and on such other occasions as the board deems necessary. (as added by Ord. #2006-3, Jan. 2006)

2-703. Powers. The Leonard Fletcher Park Advisory Board is vested with the authority and responsibility to:

(1) Establish bylaws and procedural rules for the Leonard Fletcher Park Advisory Board;

(2) Prepare a master plan which includes recommendations to the city council for the development of Leonard Fletcher Park;

(3) Review and plans for development of Leonard fletcher Park and make recommendations to the city council pertaining to the development of Leonard Fletcher Park; and

(4) Make recommendations to the city manager and/or the parks and recreation director on any matter pertaining to the development or operation of Leonard Fletcher Park. (as added by Ord. #2006-3, Jan. 2006)

TITLE 3

MUNICIPAL COURT[1]

CHAPTER

1. CITY JUDGE.
2. COURT ADMINISTRATION.
3. WARRANTS, CITATIONS, SUBPOENAS, ETC.
4. COURT COSTS.

CHAPTER 1

CITY JUDGE

SECTION

3-101. City judge.
3-102. Jurisdiction.

3-101. City judge. (1) Appointment and term. The city judge designated by the charter to handle judicial matters within the city shall be appointed by the city council for a term of 2 years, commencing in September 1996 and shall be subject to reappointment every two years thereafter.

(2) Qualifications. The city judge shall be a minimum of (30) years of age, be licensed by the State of Tennessee to practice law, be a resident of the State of Tennessee for five (5) years, and be a resident of the City of Cleveland for one (1) year.

3-102. Jurisdiction. The city judge shall have the authority to try persons charged with the violation of municipal ordinances, and to punish persons convicted of such violations by levying a civil penalty not to exceed $500. (1981 Code, § 2-187, modified)

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[1]Charter reference
City court: art. XI.

CHAPTER 2

COURT ADMINISTRATION

SECTION

3-201. Offenders to be tried speedily.
3-202. Docket to be kept.
3-203. Entries on docket.
3-204. Prosecutor may be taxed with costs.

3-201. Offenders to be tried speedily. The city judge shall speedily try all offenders arraigned before him, and shall use his discretion in granting continuances. (1981 Code, § 2-189)

3-202. Docket to be kept. The city judge shall keep a docket in which he shall enter and preserve the names of every person brought before him charged with any offense; such docket shall also indicate the alleged offense. (1981 Code, § 2-190)

3-203. Entries on docket. The city judge shall enter on the docket required by § 3-202 his judgement in the case, to include, in case of conviction, the amount of the fine and costs assessed and/or length of community service.[1] (1981 Code, § 2-191, modified)

3-204. Prosecutor may be taxed with costs. In case of violation of city laws, when the person swearing out the warrant withdraws the same, or where the judge is of the opinion that the prosecution is malicious or frivolous, the judge, in his discretion, may tax the prosecutor with the costs. (1981 Code, § 2-194)

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[1]Charter reference
City court: art. XI, § 1.

CHAPTER 3

WARRANTS, CITATIONS, SUBPOENAS, ETC.

SECTION

3-301. Issuance of warrants.
3-302. Citations in lieu of arrest in non-traffic cases.
3-303. Summonses in lieu of arrest.
3-304. Issuance of subpoenas.
3-305. Issuance of executions, etc.
3-306. Witnesses may be attached if necessary.

3-301. Issuance of warrants.[1] The city judge shall have the power to issue warrants for persons charged with violating municipal ordinances. (1981 Code, § 2-193, modified)

3-302. Citations in lieu of arrest in non-traffic cases.[2] Pursuant to Tennessee Code Annotated, § 7-63-101, et seq., the city council appoints the fire inspectors in the fire department, animal control officer in the animal control department, and the code enforcement officers in the inspection department special police officers having the authority to issue citations in lieu of arrest. Code enforcement officers shall include the environmentalist, plumbing inspector, electrical inspector, and building inspector. The fire inspectors in the fire department shall have the authority to issue citations in lieu of arrest for violations of the fire code adopted in title 7, chapter 2 of this municipal code of ordinances. The animal control officer in the animal control department shall have the authority to issue citations in lieu of arrest for violations of the animal control laws adopted in title 10 of their municipal code of ordinances. The code enforcement officer in the inspection department shall have the authority to issue citations in lieu of arrest for violations of the building, utility, housing, and environmental codes adopted in title 12 of this municipal code of ordinances.

The citation in lieu of arrest shall contain the name and address of the person being cited and such other information necessary to identify and give the person cited notice of the charges against him, and state a specific date and place for the offender to appear and answer the charges against him. The citation shall also contain an agreement to appear, which shall be signed by the

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[1]State law reference
For authority to issue warrants, see Tennessee Code Annotated, title 40, chapter 6.

[2]Municipal code reference
Issuance of citations in lieu of arrest in traffic cases: title 15, chapter 7.

offender. If the offender refuses to sign the agreement to appear, the special officer in whose presence the offense was committed shall immediately arrest the offender and dispose of him in accordance with Tennessee Code Annotated, § 7-63-104.

It shall be unlawful for any person to violate his agreement to appear in court, regardless of the disposition of the charge for which the citation in lieu of arrest was issued. (1981 Code, § 2-202, modified)

3-303. Summonses in lieu of arrest. Pursuant to Tennessee Code Annotated, § 7-63-201, et seq., which authorizes the city council to designate certain city enforcement officers the authority to issue ordinance summonses in the areas of sanitation, litter control and animal control, the city council designates the animal control officers in the animal control department and the code enforcement officers in the inspection department to issue ordinance summonses. The animal control officers shall have the authority to issue ordinance summonses in the area of animal control. The code enforcement officers shall have the authority to issue ordinance summonses in the areas of building, plumbing, electrical or environmental codes, and in the areas of sanitation and litter control. The code enforcement officers shall also have the authority to issue ordinance summonses for violations of any of the property maintenance regulations contained within Title 13 of the Cleveland Municipal Code. These enforcement officers may not arrest violators, but upon witnessing violations of any ordinance, law or regulation in any of these areas, may issue an ordinance summons and give the summons to the offender. (1981 Code, § 2-202, modified, as amended by Ord. #2006-24, July 2006)

3-304. 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. (1981 Code, § 2-195, modified)

3-305. Issuance of executions, etc. The judge may issue executions, mittimuses, and all other processes necessary to carry into effect any and all judgments by him rendered. (1981 Code, § 2-199)

3-306. Witnesses may be attached if necessary. Any witness may be forced to attend the city court by attachment and arrest, in the same manner as in the circuit courts of the state. (1981 Code, § 2-197)

CHAPTER 4

COURT COSTS

SECTION

3-401. Court costs and litigation taxes.

3-401. Court costs and litigation taxes. (1) Court costs. (a) Court costs for all non-parking offenses shall be $91.00.

(b) Court costs of $91.00 shall also be collected in parking cases which involve a violation of Cleveland Municipal Code § 15-605(14) (Parking in a fire lane) or Cleveland Municipal Code § 15-605(13) (Parking in a handicap zone).

(c) Court costs shall not be collected in any other parking cases.

(d) In each case that the city collects court costs, $1.00 of the court costs shall be remitted to the State of Tennessee in accordance with the provisions of the Municipal Court Reform Act of 2004.

(2) Litigation taxes. (a) All parking offenses, including parking in a fire lane or parking in a handicap zone. For every parking violation where the city collects a fine or civil penalty, the offender shall also pay a litigation tax of $1.00. This tax is in addition to the applicable fine or civil penalty. This $1.00 litigation tax shall be collected even if the offender does not appear in court to contest the parking citation. This litigation tax is in addition to any applicable court costs assessed under § 3-401(1) of the Cleveland Municipal Code.

All funds derived from this $1.00 litigation tax shall be forwarded by the city to the State of Tennessee in accordance with the provisions of the Municipal Court Reform Act of 2004.

(b) All other municipal ordinance violations. The applicable state litigation tax for all other municipal ordinance violations shall be $13.75. This litigation tax shall be collected when a person charged with violating a municipal ordinance is found guilty. This litigation tax is in addition to any applicable court costs assessed under § 3-401(1) of the Cleveland Municipal Code.

All funds derived from this $13.75 litigation tax shall be forwarded by the city to the State of Tennessee in accordance with the provisions of state law. (1981 Code, § 2-176, amended by Ord. of June 1995; Ord. of 3/25/2002; Ord. of 5/12/03; Ord. of 5/27/03; and Ord. #2004-01, Jan. 2004; and replaced by Ord. #2005-10, March 2005, and Ord. #2005-18, May 2005)

TITLE 4

MUNICIPAL PERSONNEL

CHAPTER

1. SOCIAL SECURITY.
2. OCCUPATIONAL SAFETY AND HEALTH PROGRAM.

CHAPTER 1

SOCIAL SECURITY[1]

SECTION

4-101. Intended to extend to all employees and officials not excluded by law or this chapter.
4-102. Mayor authorized and directed to execute necessary agreements.
4-103. Withholdings from salaries or wages authorized.
4-104. Appropriations authorized for employer's contributions.
4-105. City to keep records and make reports.
4-106. All Cleveland Utility System employees, teachers and other employees and officials not otherwise covered are hereby covered.
4-107. Employees not covered.
4-108. Effective date of coverage.

4-101. Intended to extend to all employees and officials not excluded by law or this chapter. It is hereby declared to be the policy and purpose of the city to extend, at the earliest date, to the employees and officials thereof, not excluded by law or this chapter, and whether employed in connection with a governmental or proprietary function, the benefits of the system of federal old-age and survivors insurance as authorized by the Federal Social Security Act and amendments thereto, including Public Law 734, 81st Congress, and Public Law 761, 83rd Congress and any amendment thereto that may be enacted hereafter, and by Priv. Acts 1955, chapter 201, of the General Assembly of Tennessee. In pursuance of such policy, and for that purpose, the city shall take such action as may be required by applicable state or federal laws or regulations. (1981 Code, § 2-152)

4-102. Mayor authorized and directed to execute necessary agreements. The mayor of the city is hereby authorized and directed to execute all necessary agreements and amendments thereto with the state

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[1]State law reference
Tennessee Code Annotated, §§ 8-38-108--8-38-114.

executive director of old age insurance, as agent or agency, to secure coverage of employees and officials as provided in § 4-101 of this chapter. (1981 Code, § 2-153)

4-103. Withholdings from salaries or wages authorized. Contributions of withholdings from salaries or wages of employees and officials for the purpose provided in § 4-101, hereof, are hereby authorized to be made and required to be paid 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. Such contributions shall be collected by deducting the amount of such contributions from wages and salaries as and when paid but failure to make such deductions shall not relieve the officer or employee from liability for such contributions. Refunds or corrections may be made in such contributions or withholdings to correct errors of calculation. (1981 Code, § 2-154)

4-104. Appropriations authorized for employer's contributions. There shall be and hereby is appropriated from available funds such amounts as may from time to time be required by applicable state or federal laws or regulations for employer's contributions, which shall be paid over to the state or federal agency designated by said laws or regulations. (1981 Code, § 2-155)

4-105. City to keep records and make reports. The city shall keep such records and make such reports as may be required by applicable state and federal laws or regulations. (1981 Code, § 2-156)

4-106. All Cleveland Utility System employees, teachers and other employees and officials not otherwise covered are hereby covered. (1) This chapter shall apply to all employees and officials of the Cleveland utilities.

(2) It shall also apply to all teachers, principals, supervisors, attendance teachers, special education teachers, the city superintendent of schools and all other employees of the city. In executing contracts and agreements hereto with the state executive director of old age insurance, the mayor is hereby authorized and empowered to exclude part-time, temporary and emergency employees and officials. There is hereby excluded from this section any authority to make any agreement with respect to any position or any employee or official now covered or authorized to be covered by any other ordinance creating any retirement system for any employee or official of the city, except the retirement system or plan now in effect for employees and officials of the Cleveland utilities. Also, excepted is the teacher's plan. This chapter and any contracts or agreements executed pursuant thereto shall not operate to affect the rights of any teacher, officer or employee under the teachers retirement system of the state. (1981 Code, § 2-157, modified)

4-107. <u>Employees not covered</u>. There is hereby excluded from this chapter any authority to make any agreement with respect to any position or any employee or official, compensation for which is on fee basis, or any position, or any employee or official not authorized to be covered by applicable state or federal laws or regulations. (1981 Code, § 2-158)

4-108. <u>Effective date of coverage</u>. (1) The effective date for the coverage of teachers and other school system employees was January 1, 1956.

(2) The effective date for the coverage of the Cleveland Utility System employees was July 9, 1956.

(3) The effective date for the coverage of all other city employees was January 1, 1951. (1981 Code, § 2-159, modified)

CHAPTER 2

OCCUPATIONAL SAFETY AND HEALTH PROGRAM[1]

SECTION

4-201. Creation and title.
4-202. Coverage and purpose.
4-203. Provisions for all employees.
4-204. Standards adopted.
4-205. Variances from standards authorized.
4-206. Director appointed.
4-207. Funding.
4-208. [Deleted.]
4-209. [Deleted.]
4-210. [Deleted.]
4-211. [Deleted.]
4-212. [Deleted.]
4-213. [Deleted.]
4-214. [Deleted.]
4-215. [Deleted.]
4-216. [Deleted.]
4-217. [Deleted.]
4-218. [Deleted.]
4-219. [Deleted.]
4-220. [Deleted.]
4-221. [Deleted.]
4-222. [Deleted.]
4-223. [Deleted.]

4-201. Creation and title. There be and is hereby created an occupational safety and health program for the employees of the City of Cleveland, complying with the provisions of the Occupational Safety and Health Act of 1972 codified in Tennessee Code Annotated, § 50-3-101, et seq. (1981 Code, § 2-126, as replaced by Ord. #2004-34, Sept. 2004, and Ord. #2010-28, July 2010)

4-202. Coverage and purpose. The city, in electing to update its established program plan, will maintain an effective occupational safety and health program for its employees and shall:

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[1]State law reference
Tennessee Code Annotated, § 50-3-101 et seq.

(1) Provide a safe and healthful place and condition of employment that includes:

(a) 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 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, or 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, illnesses and personal injuries for proper evaluation and necessary corrective action as required.

(4) Consult with the State Commissioner of Labor and Workforce Development regarding 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 that 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. (1981 Code, § 2-127, as replaced by Ord. #2004-34, Sept. 2004, and Ord. #2010-28, July 2010)

4-203. <u>Provisions for all employees</u>. The provisions of the occupational safety and health program plan for the employees of the City of Cleveland shall apply to all employees of each department, board, or other agency of the city, whether full-time, part-time, seasonal or temporary. (1981 Code, § 2-128, as replaced by Ord. #2004-34, Sept. 2004, and Ord. #2010-28, July 2010)

4-204. <u>Standards adopted</u>. The occupational safety and health standards adopted by the City of Cleveland are the same as, but are not limited to, the State of Tennessee Occupational Safety and Health Standards

promulgated, or which may be promulgated, in accordance with section 610f of Tennessee Code Annotated, title 50, chapter 3, the Tennessee Occupational Safety and Health Act of 1972. (1981 Code, § 2-129, as replaced by Ord. #2004-34, Sept. 2004, and Ord. #2010-28, July 2010)

4-205. Variances from standards authorized. The City of Cleveland may, through the director appointed in § 4-206 hereof, 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 director shall notify or serve notice to employees and interested parties and present them with an opportunity for a hearing. The posting of notice on the main bulletin board as designated by the city manager shall be deemed sufficient notice to employees. (1981 Code, § 2-130, as replaced by Ord. #2004-34, Sept. 2004, and Ord. #2010-28, July 2010)

4-206. Director appointed. For the purpose of this chapter the risk manager 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 the plan. The director shall develop a plan of operation for the program and said plan shall become a part of this chapter when it satisfies all applicable sections of the Tennessee Occupational Safety and Health Act of 1972 and part IV of the Tennessee Occupational Safety and Health Plan. (1981 Code, § 2-131, as replaced by Ord. #2004-34, Sept, 2004, and Ord. #2010-28, July 2010)

4-207. Funding. Sufficient funds, as determined by the mayor and city council, for administering and staffing the program pursuant to this chapter shall be made available as authorized by the mayor and city council. (1981 Code, § 2-132, as replaced by Ord. #2004-34, Sept. 2004, and Ord. #2010-28, July 2010)

4-208. [Deleted]. (1981 Code, § 2-133, as replaced by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-209. [Deleted]. (1981 Code, § 2-134, as replaced by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-210. [Deleted]. (1981 Code, § 2-135, as replaced by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-211. [Deleted]. (1981 Code, § 2-136, as replaced by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-212. [Deleted]. (1981 Code, § 2-137, as replaced by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-213. [Deleted]. (1981 Code, § 2-138, as replaced by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-214. [Deleted]. (1981 Code, § 2-139, as replaced by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-215. [Deleted]. (1981 Code, § 2-140, as replaced by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-216. [Deleted]. (as added by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-217. **[Deleted]**. (as added by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-218. [Deleted]. (as added by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-219. **[Deleted]**. (as added by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-420. [Deleted]. (as added by Ord. #2004-34, Sept. 2004, amended by Ord. #2005-03, March 2005, and Ord. #2008-51, Aug. 2008, and deleted by Ord. #2010-28, July 2010)

4-221. [Deleted]. (as added by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-222. [Deleted]. (as added by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

4-223. [Deleted]. (as added by Ord. #2004-34, Sept. 2004, and deleted by Ord. #2010-28, July 2010)

TITLE 5

MUNICIPAL FINANCE AND TAXATION[1]

CHAPTER
1. PRIVILEGE TAXES.
2. REAL AND PERSONAL PROPERTY TAXES.
3. WHOLESALE BEER TAX.
4. PURCHASING DIVISION AND PROCEDURES.

CHAPTER 1

PRIVILEGE TAXES

SECTION
5-101. Tax levied.
5-102. License required.

5-101. 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 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 city at the rates and in the manner prescribed by the act. (1981 Code, § 12-1, modified)

5-102. License required. No person shall exercise any such privilege within the city without a currently effective privilege license, which shall be issued by the city clerk to each applicant therefor upon the applicant's payment of the appropriate privilege tax. Violations of this section shall be punished under the general penalty provisions of this code of ordinances.

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[1]Charter references
Delinquent taxes; collection of: art. X, § 3.
Due and delinquent dates: art. X, § 2.
Levy of taxes: art. X, § 1.

CHAPTER 2

REAL AND PERSONAL PROPERTY TAXES

SECTION
5-201. When due and payable.
5-202. When delinquent; penalty and interest.
5-203. List of delinquents to be given to city attorney.

5-201. When due and payable.[1] Taxes levied by the city against real and personal property shall become due and payable annually on the first day of October of the year for which levied. (1981 Code, § 22-4, modified)

5-202. When delinquent; penalty and interest.[2] All real property taxes shall become delinquent on and after the first day of March next after they become due and payable and shall be subject to a combined penalty and interest of one and one-half (1½) percent per month on the first day of the month from the first day of March that they become delinquent and each month thereafter until they are paid. (1981 Code, § 22-4, modified)

5-203. List of delinquents to be given to city attorney. The clerk shall collect all taxes which become delinquent on the first day of March by the thirty-first day of the succeeding March if collectible. If not collectible, he shall at that time make and certify a full and complete list of the delinquent real estate taxes and deliver the same to the city attorney on the following April 1st for violation of suit as provided in state law. (1981 Code, § 22-6, modified)

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

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

CHAPTER 3

WHOLESALE BEER TAX

SECTION
5-301. To be collected.

5-301. To be collected. The city clerk is hereby directed to take appropriate action to assure payment to the city of the wholesale beer tax levied by the "Wholesale Beer Tax Act," as set out in Tennessee Code Annotated, title 57, chapter 6.[1]

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

Municipal code reference
Alcohol and beer regulations: title 8.
Beer privilege tax: § 8-208.

CHAPTER 4

PURCHASING DIVISION AND PROCEDURES

SECTION

5-401. Powers and duties of purchasing agent.
5-402. Written requisitions required.
5-403. Council approval of purchase unnecessary, when.
5-404. Expenditures requiring approval of the city manager.
5-405. Competitive bidding; exemptions.
5-406. Submitting and awarding bids.
5-407. Rental or lease expenditures.
5-408. Contracts requiring bonds.
5-409. Emergency purchases.
5-410. Adherence to provisions; individual liability.
5-411. Petty cash fund.
5-412. Certification of unencumbered balance required.
5-413. Exemption of fuel, fuel products and perishable commodities from public advertisement and competitive bidding requirements.

5-401. Powers and duties of purchasing agent. The purchasing agent shall possess the following powers and perform the following duties under the general supervision of the city clerk:

(1) He shall contract for and purchase all supplies, materials, equipment and services necessary for the conduct and operation of departments and agencies of the city. Such purchases may include those for all jointly financed agencies (such as Cleveland-Bradley Communications Center, and any other joint operations with Bradley County, the State of Tennessee or the federal government) when payment for such supplies and the accounting function therefor is a responsibility of the City of Cleveland.

(2) At the direction of the city manager or his designee, he may transfer from one department or agency to any other departments or agencies such supplies, materials, and equipment or other personal property not needed by one but necessary to the conduct and operation of the other; or may sell any personal property belonging to the city which is declared surplus by the head of a department or agency, or by the city council.

(3) He shall have charge of and supervision over all storerooms and be responsible for distributing such supplies to the various departments.

(4) He may, subject to the approval of the city council, advertise for and enter into contracts for goods and services as needed.

(5) He may establish standard specifications as to quantity and quality for all supplies, materials and equipment generally needed by the departments.

(6) The purchasing agent may establish rules and regulations for the operation procedures and functions of the purchasing division. When approved

by the city council, such rules and regulations shall be spread upon the minutes of the city council and filed in the office of the city clerk. The purchasing agent shall then publish such rules and regulations in the form of a purchasing manual for the benefit of those concerned. (1981 Code, § 2-237, modified, as replaced by Ord. of 12/13/99 § 1)

5-402. Written requisitions required. All purchases made under the provisions of this chapter shall be made pursuant to a written requisition from the head of the department, except for those purchases authorized by using a procurement card, petty cash, or fixed price agreement. (1981 Code, § 2-238, as replaced by Ord. of 12/13/99 § 1)

5-403. Council approval of purchase unnecessary, when. Where the amount of the requisition or voucher does not exceed the exemption allowed by state law for exemption from competitive bidding, approval by the city council shall not be necessary for the issuance of a purchase order or payment of a voucher or the execution of a contract. In no event shall a requisition, voucher, or contract be split or divided into two (2) or more with the intent of evading the necessity of having competitive bids and/or the necessity of obtaining the approval of the city council. (1981 Code, § 2-239; as amended by Ord. of Aug. 1995, and as replaced by Ord. of 12/13/99 § 1)

5-404. Expenditures requiring approval of the city manager. Whenever any requisition or voucher or contract calls for the expenditure of less than the maximum exemption allowed by state law for exemption from competitive bidding and is more than $500, the issuance of a purchase order or the payment of a voucher or the award of a contract shall be subject to the approval of the city manager or his designee, and shall not be binding on or create any liability against the city until approved as such. Such designation shall be contained in the purchasing manual. (1981 Code, § 2-240; as amended by Ord. of Aug. 1995; modified; and as replaced by Ord. of 12/13/99 § 1)

5-405. Competitive bidding; exemptions. Whenever any requisition or voucher or contract calls for an expenditure exceeding the maximum amount allowed by state law, or contract for construction or remodeling of existing structures or sites calls for an expenditure exceeding the maximum amount allowed by state law for exemption from competitive bidding, there shall be competitive bids. At the direction of the purchasing agent and the city manager, notice for bids shall be advertised at least once in a general circulation newspaper at least fifteen (15) days prior to the time set for a public opening of bids. The purchasing agent may also issue written invitations to bid to dealers in the articles to be purchased in addition to, but not in lieu of, the advertisement required hereunder. However, secondhand equipment or equipment purchased from any federal, state or municipal agency, where it is

not practicable to take bids, may be purchased without taking bids, but such purchases shall be subject to the requirements of §§ 5-403 and 5-404. Also, items covered by federal or state government service contract prices may be exempted at the discretion of the purchasing agent and the city manager. (1981 Code, § 2-241; as amended by Ord. of Aug. 1995; and as replaced by Ord. of 12/13/99 § 1)

5-406. Submitting and awarding bids. All bids shall be sealed and submitted to the purchasing agent on or before the specified time when such bidding is to be closed. All bids will be awarded by the city council unless otherwise designated by the city council. Recommendation of bids other than the lowest bids must be justified in writing. (1981 Code, § 2-242, modified, as replaced by Ord. of 12/13/99 § 1)

5-407. Rental or lease expenditures. The rental or lease of any equipment, materials or vehicles, where the expenditure for the rental or lease period does not exceed ten thousand dollars ($10,000.00), or maximum allowed by state law, may be made by the head of any department. But where the expenditure is more than ten thousand dollars ($10,000.00), for rental or lease of equipment, materials or vehicles, there shall be competitive bids. (1981 Code, § 2-243, modified, as replaced by Ord. of 12/13/99 § 1)

5-408. Contracts requiring bonds. No contract shall be let for any public work until the contractor shall have first executed a good and solvent bond or letter of credit to the effect that he will perform according to the contract and pay for all the labor and materials used by said contractor, or any immediate or remote subcontractor under him, in said contract in lawful money of the United States. The bond or letter of credit to be so given shall be for one hundred (100) percent of the contract price. Where advertisement is made, the condition of the bond or letter of credit shall be stated in the advertisement; provided, that this section shall not apply to contracts under ten thousand dollars ($10,000.00). (1981 Code, § 2-244, modified, as replaced by Ord. of 12/13/99 § 1)

5-409. Emergency purchases. Notwithstanding the provisions of § 5-406, whenever any emergency situation arises requiring equipment or services for continued operations, the purchasing agent shall purchase said equipment or services not to exceed ten thousand dollars ($10,000.00), or maximum purchase price allowed by state law, where time does not permit the taking of informal bids. Any emergency purchases exceeding ten thousand dollars ($10,000.00), or maximum allowed by state law, shall require the prior approval of the city council. In the event that four (4) council members find that an emergency does exist, the purchasing agent will then schedule this item of business for the next scheduled meeting of the city council, and at said meeting the purchasing agent or city clerk shall read into the minutes a description of the emergency that has

occurred, the item purchased, where the item was purchased and the price paid for said item. Action shall then be taken by the entire city council for approval.

The word "emergency" for the purpose of this section is defined as: Any equipment or services shortage that would either severely impair or completely shut down the operations of any department of city government. (1981 Code, § 2-245, modified, as replaced by Ord. of 12/13/99 § 1)

5-410. Adherence to provisions; individual liability. All contracts, purchase orders, agreements and obligations issued or entered into contrary to the provisions of the foregoing sections shall be void and no person shall have any claim or demand whatever against the city thereunder, nor shall any official or employee of the city waive or qualify the limitation fixed by the preceding section or fasten upon the city any liability whatever contrary to such limitation. (1981 Code, § 2-246, modified, as replaced by Ord. of 12/13/99 § 1)

5-411. Petty cash fund. The city clerk, with the approval of the city manager shall authorize certain departments and/or officials to maintain a petty cash fund not to exceed four hundred fifty dollars ($450.00) from which purchases or payments may be made not to exceed fifty dollars ($50.00) each, and receipts shall be attached to the warrant voucher replenishing reimbursing said petty cash fund. (1981 Code, § 2-247, modified, as replaced by Ord. of 12/13/99 § 1)

5-412. Certification of unencumbered balance required. No contract, purchase order, agreement or other obligations involving the expenditure of any money shall be issued or entered into or be valid unless the city clerk or designee, first certifies thereon that there is in the city treasury to the credit of the appropriation or loan authorization from which it is to be paid an unencumbered balance in excess of all other unpaid obligations. If any official or employee of the city authorizes or incurs an obligation against the city without first securing the city clerk's certification as required by this section, such official or employee and his sureties shall be individually liable for the amount of such obligation. (1981 Code, § 2-247.1, modified, as replaced by Ord. of 12/13/99 § 1)

5-413. Exemption of fuel, fuel products and perishable commodities from public advertisement and competitive bidding requirements. Purchases of fuel and fuel products and perishable commodities are exempted from the requirements of public advertisement and competitive bidding when such items are purchased in the open market. A record of all such purchases shall be made by the purchasing agent and shall specify the amount paid, the items purchased and from whom the purchase was made. The purchasing agent shall make a monthly report of such purchases to the city manager and the city council and

shall include all items of information as required herein in his report. (1981 Code, § 2-248, modified, as replaced by Ord. of 12/13/99 § 1)

TITLE 6

LAW ENFORCEMENT[1]

CHAPTER

1. POLICE DEPARTMENT.
2. ARREST PROCEDURES.

CHAPTER 1

POLICE DEPARTMENT

SECTION

6-101. Policemen subject to chief's orders.
6-102. Policemen to preserve law and order, etc.
6-103. Police department records.

6-101. Policemen subject to chief's orders. All policemen shall obey and comply with such orders and administrative rules and regulations as the police chief may officially issue.

6-102. Policemen to preserve law and order, etc. Policemen shall preserve law and order within the city. They shall patrol the city and shall assist the city court during the trial of cases. Policemen shall also promptly serve any legal process issued by the city court.

6-103. Police department records. The police department shall keep a comprehensive and detailed daily record, in permanent form, showing at a minimum:

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

(2) All arrests made by policemen.

(3) All police investigations made, funerals convoyed, fire calls answered, and other miscellaneous activities of the police department.

(4) Any other records required to be kept by the city council or by law.

The police chief shall be responsible for insuring that the police department complies with the section.

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[1]Municipal code reference
Issuance of citations in lieu of arrest in traffic cases: title 15, chapter 7.

CHAPTER 2

ARREST PROCEDURES

SECTION

6-201. When policemen to make arrests.
6-202. Disposition of persons arrested.

6-201. When policemen to make arrests.[1] Unless otherwise authorized or directed in this code or other applicable law, an arrest of the person shall be made by a policeman in the following cases:

(1) Whenever he is in possession of a warrant for the arrest of the person.

(2) Whenever an offense is committed or a breach of the peace is threatened in the officer's presence by the person.

(3) Whenever a felony has in fact been committed and the officer has reasonable cause to believe the person has committed it.

6-202. Disposition of persons arrested. (1) For code or ordinance violations. Unless otherwise provided by law, a person arrested for a violation of this code or other city ordinance, shall be brought before the city court. However, if the city court is not in session, the arrested person shall be allowed to post bond with the city court clerk, or, if the city court clerk is not available, with her designee, or with the ranking police officer on duty. If the arrested person is under the influence of alcohol or drugs when arrested, even if he is arrested for an offense unrelated to the consumption of alcohol or drugs, the person shall be confined until he does not pose a danger to himself or to any other person.

(2) Felonies or misdemeanors. A person arrested for a felony or a misdemeanor shall be disposed of in accordance with applicable federal and state law and the rules of the court which has jurisdiction over the offender.

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[1]Municipal code reference
Issuance of citation in lieu of arrest in traffic cases: title 15, chapter 7.

TITLE 7

FIRE PROTECTION AND FIREWORKS[1]

CHAPTER

1. FIRE DISTRICT.
2. FIRE CODE.
3. FIRE DEPARTMENT.
4. FIREWORKS.

CHAPTER 1

FIRE DISTRICT

SECTION

7-101. Fire limits.

7-101. Fire limits. The fire limits of the city shall be as follows: Beginning in the center of Worth Street, one hundred (100) feet north of the intersection of the extension of the north line of Central Avenue with the center line of Worth Street, and extending southwardly along the center line of Worth Street, to a point located one hundred (100) feet south of the extension of the south line of Thirty-sixth Street; and extending eastwardly along a line located one hundred (100) feet south of the south line of said Thirty-sixth Street, to the center of the main line track of the Southern Railway Company; thence in a northeasterly direction along the center line of said main line or track, to a point located one hundred (100) feet north of the extension of the north line of Central Avenue; thence westwardly along a line located one hundred (100) feet north of the north line of said Central Avenue, to the point of beginning in the center of Worth Street.[2] (1981 Code, § 6-1)

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[1]Municipal code reference
Building, utility and housing codes: title 12.

[2]All fire limits referred to in titles 7 and 12 shall be these fire limits as set out in this section (§ 7-101).

CHAPTER 2

FIRE CODE[1]

SECTION

7-201. Fire code adopted.
7-202. Definitions.
7-203. Amendments.
7-204. Variances.
7-205. Appeals.
7-206. New materials, processes or occupancies which may require permits.
7-207. Establishment of limits of districts in which storage of explosives and blasting agents is to be prohibited.
7-208. Establishment of limits of districts in which storage of flammable liquids in outside above ground tanks is to be prohibited.
7-209. Establishment of limits in which bulk storage of liquified petroleum gases is to be restricted.
7-210. NFPA fire code adopted.

7-201. Fire code adopted. Pursuant to authority granted by Tennessee Code Annotated, § 6-54-502 the International Fire Code,[2] 2006 edition, as prepared by the International Code Council is hereby adopted and incorporated by reference as fully as if set out verbatim herein, and the provisions thereof shall be controlling within the corporate limits of the city. 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 clerk and is 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.

Any matters in said fire code which are contrary to existing ordinances of the City of Cleveland, Tennessee shall prevail and to that extent any existing ordinances to the contrary are hereby repealed in that respect only. (1981 Code § 8-56, as amended by Ord. of Oct. 1995, Ord. of July 1998, Ord. of 8/27/2001, and Ord. #2009-71, Oct. 2009)

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[1]Municipal code reference
Building, utility and housing codes: title 12.

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

7-202. Definitions. The following terms, when used in the Fire Prevention Code adopted by § 7-201 shall have the meaning indicated in this section:

(1) "Corporation counsel" shall be held to mean the attorney for the city.

(2) "Municipality" shall be held to mean the city. (1981 Code, § 8-57)

7-203. Amendments. Within said fire code, when reference is made to the duties of a certain official named therein, that designated official of the City of Cleveland, Tennessee who has duties corresponding to those of the named official in said fire code shall be deemed to be the responsible official insofar as enforcing the provisions of said fire code are concerned. (1981 Code, § 8-58, as amended by Ord. of 7/27/98, and Ord. of 8/27/2001)

7-204. Variances. The chief of the fire department may recommend to the city council variances from the provisions of the fire prevention code upon application in writing by any property owner or lessee, or the duly authorized agent of either, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such variances when granted or allowed shall be contained in a resolution of the city council. (1981 Code, § 8-59, modified)

7-205. Appeals. Whenever the fire inspector shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the Fire Prevention Code adopted by this chapter do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire inspector to the city manager within thirty (30) days from the date of the decision appealed. (1981 Code, § 8-60, modified)

7-206. New materials, processes or occupancies which may require permits. The city manager, the chief of the fire department and the fire inspector shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies, which shall require permits, in addition to those now enumerated in the Fire Prevention Code adopted by this chapter. The fire inspector shall post such list in a conspicuous place in his office, and distribute copies thereof to interested persons. (1981 Code, § 8-61, modified)

7-207. Establishment of limits of districts in which storage of explosives and blasting agents is to be prohibited. The limits referred to in § 1901.4.2 of the Fire Prevention Code adopted by this chapter, in which storage of explosives and blasting agents is prohibited, are hereby established as follows:

Storage and locations shall be subject to approval by the chief of the fire department, or the fire inspector, with respect to the nearest residential occupancy, place of public assembly, schools, church and hospitals, railroad and public highways, commercial or industrial and business districts. (1981 Code, § 8-63, modified)

7-208. Establishment of limits of districts in which storage of flammable liquids in outside above ground tanks is to be prohibited.

(1) The limits referred to in § 902.1.1 of the Fire Prevention Code adopted by this chapter in which storage of flammable liquids in outside above ground tanks is prohibited, are hereby established as follows:

Storage and location shall be subject to approval by the chief of the fire department or the fire inspector with respect to the nearest places of public assembly, schools, churches, hospital and business districts. The chief of the fire department or the fire inspector may continue use of the existing outside, above ground tanks, or flammable liquids, if it will not constitute a distant hazard to life or adjoining property.

(2) The limits referred to in § 906.1 of the Fire Prevention Code adopted by this chapter, in which new bulk plants for flammable or combustible liquids are prohibited, are hereby established as follows:

The storage shall be subject to approval by the chief of the fire department, or the fire inspector with respect to the nearest residential occupancy, place of public assembly, schools, churches and hospitals, commercial, industrial or business districts. (1981 Code, § 8-64, modified)

7-209. Establishment of limits in which bulk storage of liquefied petroleum gases is to be restricted. The limits referred to in § 1701.4.2 of the Fire Prevention Code adopted by this chapter, in which bulk storage of liquefied petroleum gas is restricted, are hereby established as follows:

Storage and location shall be subject to approval of the chief of the fire department or the fire inspector, with respect to residents or occupants, places of public assembly, schools, churches and hospitals, commercial, industrial or business districts. (1981 Code, § 8-65, modified)

7-210. NFPA fire code adopted.[1] The NFPA Life Safety Code 101, 2006 Edition excluding Chapter 24 published by the National Fire Protection Association, Inc., is hereby adopted by reference. The building official and other properly certified persons designated by the building official shall have the authority to review and approve plans under the aforementioned fire codes in conjunction with appropriately designated fire department personnel.

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[1]Municipal code reference
Amendments: § 7-203.

Any matters in said fire code which are contrary to existing ordinances of the City of Cleveland, Tennessee shall prevail and to that extent any existing ordinances to the contrary are hereby repealed in that respect only. (Ord. of 7/27/98, as amended by Ord. of 8/27/2001, Ord. #2004-17, May 2004, and Ord. #2009-71, Oct. 2009)

CHAPTER 3

FIRE DEPARTMENT[1]

SECTION

7-301. Establishment, equipment, and membership.
7-302. Objectives.
7-303. Organization, rules, and regulations.
7-304. Records and reports.
7-305. Chief responsible for training and maintenance.
7-306. Chief to be assistant to state officer.
7-307. Unlawful to interfere or tamper with fire plug or hydrant, or hose reel, etc.

7-301. Establishment, equipment, and membership. There is hereby established a fire department to be supported and equipped from appropriations by the city council. All apparatus, equipment, and supplies shall be purchased by or through the city and shall be and remain the property of the city. The fire department shall be composed of a chief and such number of subordinate officers and firemen as the city council shall authorize. (1981 Code, § 8-16, modified)

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

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

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, under the direction of the city manager. (1981 Code, §§ 8-19 and 8-22, modified)

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 such written reports on those

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[1]Municipal code reference
Special privileges with respect to traffic: title 15, chapter 2.

matters to the city manager as the city manager requires. The city manager shall submit a report on those matters to the city council as they may require.

7-305. Chief responsible for training and maintenance. The chief of the fire department, shall be fully responsible for the training of the firemen and for maintenance of all property and equipment of the fire department, under the direction and subject to the requirements of the city manager.

7-306. Chief to be assistant to state officer. Pursuant to requirements of Tennessee Code Annotated, § 68-102-108, the fire chief is designated as an assistant to the state commissioner of 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 commissioner in the execution of the provisions thereof. (1981 Code, § 8-1, modified)

7-307. Unlawful to interfere or tamper with fire plug or hydrant, or hose reel, etc. It shall be unlawful to interfere with any fire plug or hydrant, or hose reel, or to ride or drive against a plug or hydrant, or over a hose, or to turn on the water of a public hydrant or to throw stones or any other missile against the same. (1981 Code, § 8-27)

CHAPTER 4

FIREWORKS

SECTION

7-401. Discharge of firecrackers, rockets, etc.; public displays regulated.
7-402. Fireworks: sales prohibited.

7-401. Discharge of firecrackers, rockets, etc.; public displays regulated. It shall be unlawful for any person to discharge firecrackers or rockets of any description within the corporate limits of the city. However, pyrotechnic displays may be allowed if they are in compliance with the rules and regulations adopted by the city council. (1981 Code, § 15-65, modified)

7-402. Fireworks: sales prohibited. It shall be unlawful for any merchant or any one else to sell or keep for sale any firecrackers, sky rockets, or other articles used for pyrotechnic display. However, the foregoing prohibition against the sale of fireworks and the keeping of fireworks for sale shall not be construed to apply to fireworks stores deemed to be lawful pre-existing non-conforming uses under the zoning ordinance. (1981 Code, § 15-66, modified, as amended by Ord. #2003-37, Dec. 2003)

TITLE 8

ALCOHOLIC BEVERAGES[1]

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

8-101. Prohibited generally.
8-102. Consumption of alcoholic beverages on premises.
8-103. Privilege tax on retail sale of alcoholic beverages for consumption on the premises.
8-104. Annual privilege tax to be paid to the city clerk.
8-105. Sign restriction.
8-106. Responsibilities of licensees.

8-101. Prohibited generally. Except as authorized by applicable laws[2] and/or ordinances, it shall be unlawful for any person or legal entity, regardless of its form of existence, i.e., sole proprietorship, corporation, limited liability company, partnership, etc. to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for any intoxicating liquor within this city. "Intoxicating liquor" shall be defined to include whiskey, wine, "home brew," "moonshine," and all other intoxicating, spirituous, vinous, or malt liquors and beers which contain more than five percent (5%) of alcohol by weight. (1981 Code, § 4-1, as amended by Ord. of 12/9/02)

8-102. Consumption of alcoholic beverages on premises. Tennessee Code Annotated, Title 57, Chapter 4, inclusive, entitled "Consumption of Alcoholic Beverages on Premises," and including any amendments thereto, is hereby adopted so as to be applicable to all sales of

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[1]Municipal code references
Minors in beer places, etc.: title 11, chapter 1.
State law reference
Tennessee Code Annotated, title 57.

[2]State law reference
Tennessee Code Annotated, title 39, chapter 17.

alcoholic beverages for on-premises consumption which are regulated by the said code when such sales are conducted within the corporate limits of Cleveland, Tennessee. It is the intent of the city council that the said Title 57, Chapter 4, inclusive, of the Tennessee Code Annotated and any amendments thereto, shall be effective in Cleveland, Tennessee, the same as if said code sections were adopted herein verbatim. (as added by Ord. of 12/9/02)

8-103. Privilege tax on retail sale of alcoholic beverages for consumption on the premises. Pursuant to the authority contained in Tennessee Code Annotated, § 57-4-301, and any amendments thereto, there is hereby levied a privilege tax (in the same amounts as levied by Tennessee Code Annotated, § 57-4-301 for the City of Cleveland General Fund to be paid annually as provided in this chapter) upon any person or legal entity regardless of its form of existence, i.e., sole proprietorship, corporation, limited liability company, partnership, etc. engaging in the business of selling at retail in the City of Cleveland alcoholic beverages for consumption on the premises where sold. It is the intent of the city council that the said Tennessee Code Annotated, § 57-4-301, and any amendments thereto, shall be effective in Cleveland, Tennessee, the same as if said Code section was adopted herein verbatim. (as added by Ord. of 12/9/02)

8-104. Annual privilege tax to be paid to the city clerk. Any person or legal entity regardless of its form of existence, i.e., sole proprietorship, corporation, limited liability company, partnership, etc. exercising the privilege of selling alcoholic beverages for consumption on the premises in the City of Cleveland shall remit annually to the city clerk the appropriate tax described in § 8-103. Such payment shall be remitted not less than thirty (30) days following the end of each twelve (12) month period from the original date of the license. Upon the transfer of ownership of such business or the discontinuance of such business, said tax shall be filed within thirty (30) days following such event. Any person or legal entity regardless of its form of existence, i.e., sole proprietorship, corporation, limited liability company, partnership, etc, failing to make payment of the appropriate tax when due shall be subject to any penalty provided by law, including revocation of the privilege of selling alcoholic beverages for consumption on the premises in the City of Cleveland. (as added by Ord. of 12/9/02)

8-105. Sign restriction. Notwithstanding any provision in Tennessee Code Annotated, Title 57, Chapter 4 of the Tennessee Code Annotated, no outdoor sign, advertisement or display that advertises alcoholic beverages may be erected or maintained on or about the property from which alcoholic beverages for consumption on the premises is made other than one sign, advertisement or display which makes reference to the fact that the establishment sells alcoholic beverages for consumption on the premises but

does not use brand names, pictures, numbers, prices or diagrams relating to any particular type or brand of alcoholic beverage. (as added by Ord. of 12/9/02)

8-106. Responsibilities of licensees. Licensees who obtain a state-issued "liquor by the drink" permit shall be deemed responsible for the actions of all employees or agents and insuring their compliance with all state and local legislation or regulation related to alcoholic beverages. A violation by an employee or agent of any state or local legislation or regulation related to alcoholic beverages shall subject the licensee to the appropriate sanction, including revocation or suspension of any license or state-issued "liquor by the drink" permit. (as added by Ord. of 12/9/02)

CHAPTER 2

BEER[1]

SECTION

8-201. Beer board.
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. Definitions.
8-207. Permit required for engaging in beer business.
8-208. Privilege tax.
8-209. Beer permits shall be restrictive.
8-210. Classes of consumption permits.
8-211. Transfer of permits.
8-212. Proximity to schools, churches restricted.
8-213. Issuance of permits to persons convicted of certain crimes prohibited.
8-214. Prohibited conduct or activities by beer permit holders.
8-215. Revocation and suspension of beer permits, investigation of permit holders charged with violations; beer board action; loss of clerk's certification for sale to minor.
8-216. Civil penalty in lieu of revocation or suspension; civil penalty for responsible vendors..
8-217. Outdoor advertisement at retail beer establishments.
8-218. Oath of office.
8-219. Consumer identification requirements; required signs.
8-220. Violations.

8-201. Beer board. (1) The city council shall appoint a five (5) member beer board.

(2) They shall serve two (2) year staggered terms with two (2) members terms beginning on July 1, of odd numbered years and the terms of the other three (3) members beginning on July 1, of even numbered years. Thereafter the members will be appointed for a two-year term.

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[1]Municipal code references
Minors in beer places, etc.: title 11, chapter 1.
Tax provisions: title 5.
State law reference
For a leading case on a municipality's authority to regulate beer, see Watkins v. Naifeh, 635 S.W.2d 104 (Tenn. 1982).

(3) Two alternate members shall be appointed to the beer board. The term of the first alternate will expire on July 1, 1996, and the term of the second alternate will expire on July 1, 1997. Thereafter the alternate members shall be appointed for a two-year period.

(4) The city council shall decide when any alternate member is appointed or reappointed which alternate shall be the first and which shall be the second. In any meeting where both are present, but only one is necessary to constitute a five member board, the alternate designated as the first alternate shall exercise a vote, while the second alternate will not. (1981 Code, § 4-27, as amended by Ord. of March 1995, modified)

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 such places and 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 at least a twelve (12) hour written notice thereof to each member and the press. The board may adjourn a meeting at any time to another time and place.

8-203. Record of beer board proceedings to be kept. The city clerk 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.

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.

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 this municipality in accordance with the provisions of this chapter.

8-206. Definitions. (1) "Beer." The term "beer" as used in this chapter shall mean beer, ale, or other malt beverages, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, except wine as defined in Tennessee Code Annotated, § 57-3101(20); provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such

beverage may be derived from the addition of flavors and other non-beverage ingredients containing alcohol.

(2) "Certified clerk" means a clerk who has successfully satisfied the training requirements contained within the Tennessee Responsible Vendor Act of 2006 (Tennessee Code Annotated, § 57-5-601, et seq.) and who has received certification from a responsible vendor training program that meets all of the statutory and regulatory requirements set forth in Tennessee Responsible Vendor Act of 2006 (Tennessee Code Annotated, § 57-5-601, et seq.) and the rules and regulations of the Tennessee Alcoholic Beverage Commission.

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

(4) "Responsible vendor." The term "responsible vendor" as used in this chapter shall mean a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006" codified at Tennessee Code Annotated, § 57-5-601, et seq.

(5) "Vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption. (1981 Code, § 4-26, as replaced by Ord. #2006-10, April 2006, and Ord. #2007-19, July 2007)

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, § 57-5-104(a), the application shall be accompanied by a nonrefundable application fee of two hundred fifty dollars ($250.00). Each application for a beer permit must be received by the business tax inspector not later than seven (7) calendar days prior to the scheduled meeting of the beer board. Each applicant must be a person of good moral character and the applicant must certify that the applicant has read and is familiar with the provisions of this chapter. No permit shall be issued until such time as the permit applicant shall personally appear before the beer board to obtain their initial permit. This section requires the owner (in the case of a sole proprietorship) or a managing agent (in the case of a partnership, corporation or limited liability company) to personally appear before the beer board before a beer permit may be issued. (1981 Code, §§ 4-50, 4-51, and 4-52, as replaced by Ord. of 2/14/2000, Ord. #2004-40, Nov. 2004, and Ord. #2007-19, July 2007)

8-208. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a 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 each successive January 1 to the City of Cleveland, 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. (as replaced by Ord. #2007-19, July 2007)

8-209. 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 retail sale of beer may be further restricted by the beer board so as to authorize sales only for off premises consumption. Beer permits for Class 2 on-premises consumption shall be limited to ten (10) permits. As Class 2 permits are revoked or expire, the limit on the number of Class 2 permits may fall below ten (10). If the number of Class 2 permits falls below ten (10), applications shall then be accepted for new Class 2 permits. Any new applications for Class 2 permits shall be processed in the order by which the permit applications are received by the City of Cleveland. Unless a new Class 2 permit is issued to a purchaser of a business holding an existing Class 2 beer permit under the provisions of § 8-209(2), a new Class 2 permit may not be issued by the City of Cleveland so long as the total number of Class 2 permits is ten (10) or more. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by their permit. It shall likewise be unlawful for a beer permit holder to fail to comply with any and all express restrictions or conditions which may be written into a permit by the beer board.

(2) Sale of existing Class 2 establishments. Notwithstanding the provisions of § 8-209(1) and the specific limitation on the number of Class 2 permits, a purchaser of an existing business holding an active Class 2 beer permit may be issued a Class 2 permit if the purchaser acquires a business with an existing Class 2 establishment, provided that the purchaser can satisfy the following requirements:

(a) The Class 2 permit of the seller must still be active and not have not been revoked or suspended at the time the purchaser acquires the business.

(b) The new owner otherwise qualifies for a Class 2 beer permit under 8-201 through 8-217 and complies with all of the terms and conditions of §§ 8-201 through 8-217.

(c) The purchaser must apply for a new Class 2 permit within 30 days of the date of the purchase of the business holding an existing Class 2 beer permit.

In the event a purchaser buys an existing Class 2 establishment and is granted a Class 2 beer permit pursuant to the provisions of this section, the permit of the previous holder shall be canceled at the same time the purchaser receives the new Class 2 permit. (as amended by Ord.

of 11/11/96, and Ord. of 6/9/03, and replaced by Ord. #2004-45, Jan. 2005, and amended by Ord. #2007-19, July 2007)

8-210. Classes of consumption permits. Permits issued by the beer board shall consist of three classes:

(1) Class 1 On Premises Permit. A Class 1 On Premises Permit shall be issued for the consumption of beer only on the premises. To qualify for a Class 1 On Premises permit, an establishment must, in addition to meeting the other regulations and restrictions in this chapter:

(a) Be primarily a restaurant or an eating place; and

(b) Be able to seat a minimum of thirty people, including children, in booths and at tables, in addition to any other seating it may have; and

(c) All seating must be part of the premises. In case of any outdoor seating, the outdoor seating area must be accessible from the inside of the restaurant or eating place and the outdoor seating area must have some type of enclosure around it, such as a wall or fencing; and

(d) In addition to the requirements of subsections 8-210(1)(a) through (c), the monthly beer sales of any establishment which holds a Class 1 On Premises Permit shall not exceed fifty percent (50%) of the monthly gross sales of the establishment. As used herein, the term "gross sales" means all retail sales of the permit holder plus any applicable taxes. As used herein, the term "beer sales" includes all retail beer sales plus any taxes applicable to beer sales.

All Class 1 beer permit holders shall submit quarterly sales reports to the City of Cleveland on forms provided by the city to assure that the Class 1 permit holder is in compliance with the provisions of this section. The city will keep these forms in the permit holder's individual business tax file so that the confidentiality required by Tennessee Code Annotated, § 67-4-722 may be maintained. The reports shall comply with the following schedule:

PERIOD	REPORT DUE DATE
January-March	April 20
April-June	July 20
July-September	October 20
October-December	January 20

If the monthly beer sales for any Class 1 beer permit holder exceed 50% of the monthly gross sales of the permit holder for either three consecutive months during one calendar year or for any four months in any one calendar year, the

Class 1 permit of such permit holder may be suspended or revoked by the beer board. In the alternative, and in lieu of suspension or revocation of the permit, the beer board has the discretion to impose a civil penalty in lieu of suspension in accordance with the terms of Cleveland Municipal Code § 8-216.

(2) Class 2 On Premises Permit. Other establishments making application for a permit to sell beer for consumption on the premises, which do not qualify, or do not wish to apply for, a Class 1 On Premises Permit, but which otherwise meet all other regulations and restrictions in this chapter, shall apply for a Class 2 On Premises Permit.

(3) Class 3 Off Premises Permit. An off premises permit shall be issued for the consumption of beer only off the premises. To qualify for an off premises permit, an establishment must, in addition to meeting the other regulations in this chapter:

(a) be a grocery store or a convenience type market; and

(b) in either case, be primarily engaged in the sale of grocery and personal and home care and cleaning articles, but may also sell gasoline. (as amended by Ord. of 6/9/03, and Ord. #2005-36, Sept. 2005)

8-211. Transfer of permits. There shall be no transfer of a beer permit from one licensee to another.

8-212. Proximity to schools, churches restricted. (1) It shall be unlawful to store or sell at wholesale or retail, beer in the corporate limits of the city, within one hundred eighty-five (185) feet from the front door of any school or churchhouse building.

(2) This section shall not apply to locations holding a valid license from the city on August 1, 1995, nor to any annual renewal of any such license or licenses.

(3) No official of the city or board appointed by the city council shall issue a permit or license for such storage or sale of beer except as provided herein.

(4) The distances provided for herein shall be measured in a straight line by beginning at the front door of the business location and going from that point to the front door of any churchhouse or school building.

(5) The measurements herein provided for shall be made by an engineer or registered surveyor at the expense of the applicant. A drawing prepared by the engineer or registered surveyor shall be furnished the beer board prior to the consideration of the application for a license by the beer board. (1981 Code, § 4-58, modified, and amended by Ord. #2005-36, Sept. 2005)

8-213. Issuance of permits to persons convicted of certain crimes prohibited. No beer permit shall be issued to any person who has been convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.

No person, firm, corporation, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant shall have been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving illegal drug sales, drug manufacture, drug possession, drug transportation or moral turpitude within the past ten (10) years. (1981 Code, § 4-54, modified, as amended by Ord. of 5/14/2001)

8-214. <u>Prohibited conduct or activities by beer permit holders</u>. 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 illegal drug sales, drug manufacture, drug possession, drug transportation or moral turpitude within the past ten (10) years.

(2) Employ any minor under 18 years of age in the sale, storage, distribution or manufacture of beer.

(3) Make or allow any sale of beer between the hours of 3:00 A.M. and 5:30 A.M. Monday through Saturday and between the hours of 3:00 A.M. and 10:00 A.M. on Sunday. No beer shall be consumed, or opened for consumption, on or about any premises licensed pursuant to these ordinances in either bottle, glass, or other container, between 3:00 A.M. and 5:30 A.M. Monday through Saturday, and between 3:00 A.M. and 10:00 A.M. on Sunday.

(4) Make or allow any sale of beer to a person under twenty-one (21) years of age.

(5) Allow any person under twenty-one (21) years of age to loiter in or about his place of business.

(6) Make or allow any sale of beer to any intoxicated person.

(7) Allow drunk 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 5% by weight, unless a permit holder also has a state-issued "liquor by the drink" license or permit.

(9) Fail to provide and maintain separate sanitary toilet facilities for men and women.

(10) Sale of beer at places where dancing allowed.

(a) No beer shall be sold on premises upon any part of which dancing is allowed, unless the cleared area provided for dancing shall contain at least one hundred forty-four (144) square feet of floor space. In computing the cleared area of floor space, only the compact floor area used primarily for dancing shall be counted. No area upon which counters, tables, chairs or obstructions are located, and no aisles used primarily for providing access to tables, shall be included for computing such cleared floor space.

(b) No beer shall be sold or consumed on premises upon any part of which dancing is allowed unless the part of such premises where

such beverage is sold and consumed is separated from the other part of the building or premises where dancing is allowed by a partition or wall, railing, rope or other definite means of separation approved by the beer board, and such beverage shall not be sold or consumed upon the space set apart for dancing.

(11) Not operate beer sales for ninety (90) consecutive days.

(12) Fail to commence beer sales within one year from the date a beer permit is issued. If a permit holder fails to commence beer sales within one year from the date a permit is issued, the beer permit shall be revoked.

(13) Serve, sell, or allow the consumption on his premises of any alcoholic beverage of any kind, whether designated as beer, liquor, wine, or otherwise, to or by any person under the age of twenty-one (21).

(14) In the case of a Class 1 on-premises permit holder, it is a violation of this section for a permit holder to fail to provide complete and accurate quarterly reports to the City of Cleveland in accordance with and by the due date(s) shown in § 8-210. (1981 Code, §§ 4-28, 4-31, 4-32, 4-38, and 4-39, modified, as amended by Ord. of March 1999; Ord. of 5/14/2001; Ord. of 5/13/02; Ord. of 12/9/02; Ord. of 6/9/03; Ord. #2004-47, Jan. 2005; and Ord. #2005-36, Sept. 2005)

8-215. Revocation and suspension of beer permits, investigation of permit holders charged with violations; beer board action; loss of clerk's certification for sale to minor.

(1) (a) In general. The beer board shall have the power to revoke or suspend any beer permit issued under the provisions of title 8, chapter 2, when the holder of the permit is guilty of making a false statement or misrepresentation in the permit application or if the permit holder violates any provisions of this chapter. However, no beer permit shall be revoked until a public hearing is held by the board after reasonable notice to the permit holder. Revocation proceedings may be initiated, in writing, by the police chief or by the chairperson of the beer board or his or her designee.

(b) Responsible vendors. Pursuant to Tennessee Code Annotated, § 57-5-608(a), the beer board shall not revoke or suspend the permit of a "responsible vendor" qualified under the requirements of Tennessee Code Annotated, § 57-5-606 for a clerk's illegal sale of beer to a minor if the clerk is properly certified and has attended annual meetings since the clerk's original certification, or is within sixty-one (61) days of the date of hire at the time of the violation.

Notwithstanding the foregoing paragraph, the Alcoholic Beverage Commission shall revoke the certification of a vendor certified as a responsible vendor, if the vendor had actual knowledge of the violation or should have known about the violation, or participated in or committed the violation. If the Alcoholic Beverage Commission revokes a vendor's

certification under these circumstances, then the vendor shall be penalized for the violation by the beer board as if the vendor were not certified as a responsible vendor.

If, at the time of the violation, the vendor's status as a certified responsible vendor has been revoked by the Alcoholic Beverage Commission, the vendor shall be punished by the beer board as if the vendor were not certified as a responsible vendor.

Under Tennessee Code Annotated, § 57-5-608(c), the Alcoholic Beverage Commission shall revoke a vendor's status as a responsible vendor upon notification by the beer board that the board has made a final determination that the vendor has sold beer to a minor for a second time within a twelve-month period. The revocation shall be for three (3) years.

(2) Investigation, subpoenas, oaths. When any beer permit holder is charged with a violation of any state law, the Cleveland Municipal Code, any ordinance of the city, or if a beer permit holder is alleged to have violated § 8-214 of this chapter, it shall be the duty of the beer board to make an investigation. In order that the beer board may make the necessary investigation, the beer board is hereby given authority to issue subpoenas for witnesses to appear before it for the purpose of giving testimony. The chairman of the beer board is authorized to administer an oath to witnesses. The beer board, after its investigation, due notice and a public hearing, may either revoke or suspend the beer permit of any beer permit holder.

(3) Proposed revocation or suspension of beer permit holders who also hold a license to sell alcoholic beverages. (a) If the beer board determines that a beer permit holder who also holds a license for the sale of alcoholic beverages under the provisions of Tennessee Code Annotated, section 57, chapter 4, part 2, has violated any provision contained in Tennessee Code Annotated, section 57, chapter 4, then the beer board may, in its discretion, suspend not only the holder's beer permit for a specified period of time, but the beer board may also include a proposed suspension of the permit holder's authority to sell alcoholic beverages for the same period of time, provided that the Alcoholic Beverage Commission shall review the beer board's action with regard to the proposed suspension or revocation relating to the sale of alcoholic beverages other than beer and approve such suspension.

(b) Pursuant to Tennessee Code Annotated, § 57-4-202(b), the beer board shall direct the city clerk to serve written notice upon the Alcoholic Beverage Commission of its proposed action and provide the Alcoholic Beverage Commission with a tape recording and/or a transcript of the beer board's proceedings. A copy of this notice shall also be sent to the beer permit holder.

(c) Pursuant to Tennessee Code Annotated, § 57-4-202(b), the proposed action by the beer board shall become final upon a review and

affirmance of that decision by Alcoholic Beverage Commission. If the Alcoholic Beverage Commission shall fail to act within thirty (30) days after receiving the written notice from the beer board, the failure to act shall be construed as an affirmation of the proposed action.

(d) The suspension or revocation of the beer permit shall be effective at the same time as the receipt of the notice of the affirmation of the suspension from the Alcoholic Beverage Commission or the thirty-first (31st) day following notice to the Alcoholic Beverage Commission if the Alcoholic Beverage Commission fails to render a decision. If the Alcoholic Beverage Commission reverses the proposed decision of the beer board, then the decision of the beer board with regard to alcoholic beverages shall be vacated subject to any administrative appeal by the city of the Alcoholic Beverage Commission's decision. Even if the beer board's decision is reversed by the Alcoholic Beverage Commission, the beer board's proposed action as to the suspension or revocation of the holder's beer permit shall remain in full force and effect.

(4) If the beer board determines that a clerk of an off-premises beer permit holder certified under Tennessee Code Annotated, § 57-5-606, sold beer to a minor, the beer board shall report the name of the clerk to the Alcoholic Beverage Commission within fifteen (15) days of determination of the sale. The certification of the clerk shall be invalid, and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination. (1981 Code, § 4-56, as replaced by Ord. #2004-44, Jan. 2005, and amended by Ord. #2007-19, July 2007)

8-216. Civil penalty in lieu of revocation or suspension; civil penalty for responsible vendors. (1) Permit holders that are not responsible vendors. The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that is not a responsible vendor the alternative of paying a civil penalty not to exceed two thousand five hundred dollars ($2,500.00) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars ($1,000.00) for any other offense.

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

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

(2) Responsible vendors. Notwithstanding the language of § 8-215(b), the beer board may impose on a responsible vendor a civil penalty not to exceed one thousand dollars ($1,000.00) for each offense of making or permitting to be made any sales to minors or for any other offense. (as repealed by Ord. of

12/10/2001, and replaced by Ord. #2005-01, Feb. 2005, and Ord. #2007-19, July 2007)

8-217. Outdoor advertisement at retail beer establishments. No outdoor sign, advertisement or display that advertises beer may be erected or maintained on the property on which a retail beer establishment is located other than one (1) sign, advertisement or display which makes reference to the fact that the establishment sells beer but does not use brand names, pictures, numbers, prices or diagrams relating to beer. (1981 Code, § 4-59, as amended by Ord. of 10/28/96, and replaced by Ord. of 6/9/03)

8-218. Oath of office. Before beginning a term of service on the beer board, a member shall take the following oath of office:

> "I do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution of the State of Tennessee, and that I will perform with fidelity the duties of the office to which I have been appointed and which I am about to assume."

(as added by Ord. #2004-21, June 2004)

8-219. Consumer identification requirements; required signs.

(1) Consumer identification requirements. Prior to making a sale of beer for off-premises consumption, the adult consumer must present to the permit holder or any employee of the permit holder a valid, government issued document, such as a driver's license, or other form of identification deemed acceptable to the permit holder, that includes the photograph and birth date of the adult consumer attempting to make a beer purchase. Persons exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the permit holder. The permit holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of beer for off-premises consumption shall be made to a person who does not present such a document or other form of identification to the permit holder or any employee of the permit holder.

(2) Required signs. Responsible vendors shall post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. The signs shall be not less than eight and one-half inches by eleven inches (8-1/2" x 11 "), and contain the following language:

STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER.

(as added by Ord. #2007-19, July 2007)

8-220. Violations. Violation of any of the provisions of this chapter shall constitute a civil offense. Each day a violation shall be allowed to continue shall constitute a separate offense. (as added by Ord. #2007-19, July 2007)

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.

CHAPTER

1. PEDDLERS, SOLICITORS, ETC.
2. ENTERTAINMENT AND RECREATIONAL BUSINESS.
3. JEWELRY SALES.
4. GARAGE SALES.
5. ADULT-ORIENTED ESTABLISHMENTS.
6. CABLE TELEVISION.
7. TAXICABS.

CHAPTER 1

PEDDLERS, SOLICITORS, ETC.[1]

SECTION

9-101. Definitions.
9-102. Exemptions.
9-103. Permit required.
9-104. Permit procedure.
9-105. Restrictions on peddlers, street barkers and solicitors.
9-106. Restrictions on transient vendors.
9-107. Display of permit.
9-108. Suspension or revocation of permit.
9-109. Expiration and renewal of permit.

9-101. Definitions. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:

(1) "Peddler" means any person, firm or corporation, either a resident or a nonresident of the city, who has no permanent regular place of business and who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

(2) "Solicitor" means any person, firm or corporation who goes from dwelling to dwelling, business to business, place to place, or from street to

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[1]Municipal code references
Privilege taxes: title 5.
Trespass by peddlers, etc.: § 11-501(5).

street, taking or attempting to take orders for any goods, wares or merchandise, or personal property of any nature whatever for future delivery,
except that the term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.

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

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

(b) Is a member of United Way, Community Chest or similar "umbrella" organizations for charitable or religious organizations.

(c) Has been in continued existence as a charitable or religious organization in Bradley County for a period of two (2) years prior to the date of its application for registration under this chapter.

(4) "Solicitor for subscriptions" means any person who solicits subscriptions from the public, either on the streets of the city, or from door to door, business to business, place to place, or from street to street, and who offers for sale subscriptions to magazines or other materials protected by provisions of the Constitution of the United States.

(5) "Transient vendor[1]" means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "merchandise"

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[1]State law reference

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

The definition of "transient vendors" is taken from Tennessee Code Annotated, § 62-30-101(3). Note also that Tennessee Code Annotated, § 67-4-709(a) prescribes that transient vendors shall pay a tax of $50.00 for each 14 day period in each county and/or municipality in which such vendors sell or offer to sell merchandise for which they are issued a business license, but that they are not liable for the gross receipts portion of the tax provided for in Tennessee Code Annotated, § 67-4-709(b).

means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-public place including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months.

(6) "Street barker" means any peddler who does business during recognized festival or parade days in the city and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade.

9-102. Exemptions. The terms of this chapter shall neither apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to persons selling agricultural products, who, in fact, themselves produced the products being sold.

9-103. Permit required. No person, firm, association, community or school group or corporation shall operate a business as a peddler, transient vendor, solicitor or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the city unless the same has obtained a permit from the city in accordance with the provisions of this chapter. Community groups and school groups may obtain a single permit for the group. (1981 Code, § 12-21, modified)

9-104. Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the city clerk by each applicant for a permit as a peddler, transient vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:

(a) The complete name and permanent address of the business or organization the applicant represents.

(b) A brief description of the type of business and the goods to be sold.

(c) The dates for which the applicant intends to do business or make solicitations.

(d) The names and permanent addresses of each person who will make sales or solicitations within the city.

(e) The make, model, complete description, and license tag number and state of issue, of each vehicle to be used to make sales or solicitations, whether or not such vehicle is owned individually by the

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

(f) Tennessee State sales tax number, if applicable.

(2) Permit fee. Each applicant for a permit as a peddler, transient vendor, solicitor or street barker shall submit with his application a nonrefundable fee of twenty dollars ($20.00). There shall be no fee for an application for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions.

(3) Permit issued. Upon the completion of the application form and the payment of the permit fee, where required, the clerk shall issue a permit and provide a copy of the same to the applicant.

(4) Submission of application form to chief of police. Immediately after the applicant obtains a permit from the city clerk, the city clerk shall submit to the chief of police a copy of the application form and the permit. (1981 Code, § 12-23, modified)

9-105. Restrictions on peddlers, street barkers and solicitors. No peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions shall:

(1) Be permitted to set up and operate a booth or stand on any street or sidewalk, or in any other public area within the city.

(2) Stand or sit in or near the entrance to any dwelling or place of business, or in any other place which may disrupt or impede pedestrian or vehicular traffic.

(3) Offer to sell goods or services or solicit in vehicular traffic lanes, or operate a "road block" of any kind.

(4) Unless approved by the adjacent business owner, call attention to his business or merchandise or to his solicitation efforts by crying out, by blowing a horn, by ringing a bell, or creating other noise, except that the street barker shall be allowed to cry out to call attention to his business or merchandise during recognized parade or festival days of the city.

(5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located. (1981 Code, § 12-21, modified)

9-106. Restrictions on transient vendors. A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, cancelled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth.

9-107. Display of permit. Each peddler, street barker, solicitor, solicitor for charitable purposes or solicitor for subscriptions is required to have in his possession a valid permit or copy if he/she represents a community group, school group soliciting for charitable or religious purpose while making sales or solicitations, and shall be required to display the same upon demand. (1981 Code, § 12-29, modified)

9-108. Suspension or revocation of permit. (1) Suspension by the clerk. The permit issued to any person or organization under this chapter may be suspended by the city clerk for any of the following causes:

(a) Any false statement, material omission, or untrue or misleading information which is contained in or left out of the application; or

(b) Any violation of this chapter.

(2) Suspension or revocation by the city manager. The permit issued to any person or organization under this chapter may be immediately suspended by the city manager and may be revoked by the city manager, after notice and hearing, for the same causes set out in paragraph (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the city clerk in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1981 Code, § 12-33, modified)

9-109. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The permit of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days. (1981 Code, § 12-35, modified)

CHAPTER 2

ENTERTAINMENT AND RECREATIONAL BUSINESS

SECTION

9-201. Circuses, carnivals, etc., not to exhibit within city; exceptions, requirements.
9-202. [Deleted.]
9-203. [Deleted.]

9-201. Circuses, carnivals, etc., not to exhibit within city; exceptions, requirements. It shall be unlawful for any person to exhibit or offer to exhibit in the city limits any aggregation of entertainment known as shows, carnivals, or circuses except that a circus or carnival sponsored by local civic or charitable organization may be permitted provided that:

(1) The site for the circus or carnival shall first be approved by a committee composed of the city attorney, building inspector, city clerk, fire inspector, traffic engineer and chief of police.

(2) A corporate bond in the amount of five thousand dollars ($5,000.00) shall be posted with the city clerk to insure a cleanup of the public premises and for any damages to public property.

(3) The location shall not be in an area zoned for residential area.

(4) A proper business license must be obtained.

(5) Proof of liability insurance be provided to the city clerk in the amount of one million dollars ($1,000,000.00).

(6) The length of stay shall be limited to ten (10) days.

(7) Any approved site must have adequate off-street parking.

(8) The sponsor or the organization conducting the carnival or circus must employ a sufficient number of qualified people to handle traffic before, during and after the show. (1981 Code, § 12-41, modified)

9-202. [Deleted.] (1981 Code, § 12-42, as deleted by Ord. of 12/9/02)

9-203. [Deleted.] (1981 Code, § 12-43, as deleted by Ord of 12/9/02)

CHAPTER 3

JEWELRY SALES

SECTION

9-301. Register required.
9-302. Holding period for articles.
9-303. Daily reports required; notification of location.

9-301. Register required. It shall be the duty of all persons dealing in the purchase, sale or exchange of secondhand or antique jewelry, watches, diamonds or other precious stones, cutlery, old gold, silver, platinum or other precious metals, or any other secondhand manufactured articles, composed wholly or in part of gold, silver, platinum or other precious metals, to keep a book in which every article received by them in the course of their business shall be registered, and in which shall be given as minute a description of every article as is possible, including the maker's name and number of every article so received by them. The name, age, sex, color, residence, driver's license number, and general description of each and every individual selling or exchanging such articles, shall be taken and entered in the register. The register shall at all times be kept at the place of business of every person engaging in the business aforesaid. Members of the police department shall be allowed free access to the register and the person shall give to such officers all information in his possession concerning such articles and all persons selling or exchanging the same. (1981 Code, § 12-141)

9-302. Holding period for articles. All persons engaging in business as described herein shall retain any article received in the same state or condition in which it was received, and shall not co-mingle it with other articles separately received, and shall make it available for examination by members of the police department, for a period of three (3) days before a resale or exchange, unless written permission is obtained from the chief of police. (1981 Code, § 12-142)

9-303. Daily reports required; notification of location. All persons engaging in business as described herein shall furnish to the chief of police daily reports at his office, showing fully the name, age, sex, color, residence, driver's license number, and general description of each person who shall have sold or exchanged any article during the preceding day, together with a full description of the articles sold or exchanged by such person, including the number of each article bearing a number, and the day and hour of the transaction. Every person engaging in such business shall keep duplicates of such reports in a well-bound book or register, which book or register shall at all times be subject to the inspection of members of the police department. Any person intending to engage

in business as described herein who will not operate that business at an established and permanent location shall give the chief of police at least seventy-two (72) hours' prior notice of the location and date and hours of the operation of such business. (1981 Code, § 12-143)

CHAPTER 4

GARAGE SALES

SECTION

9-401. Definitions.
9-402. Dates of sales.
9-403. Hours of operation.
9-404. Display of sale property.
9-405. Advertising.
9-406. Enforcement; violations.
9-407. Persons exempted from chapter.
9-408. [Deleted.]
9-409. [Deleted.]
9-410. [Deleted.]
9-411. [Deleted.]

9-401. Definitions. For the purpose of this chapter, the following terms, are defined and shall be construed as follows:

(1) "Garage sales" shall be the offering for sale or exchange, or the sale or exchange, to the public of any personal property of any kind or description at a sale held on privately-owned residential property. For the purposes of this chapter, garage sales include all sales of personal property, whether entitled "garage sales," "lawn sales," "yard sales," "attic sales," "porch sales," "room sales," "backyard sales," "patio sales," "flea market" or "rummage sales." This definition does not include the operation of business carried on in a non-residential zone where the person conducting the sale does so on a regular day-to-day business and has a business license to do so.

(2) "Residential property" is any real estate, lot or tract in the City of Cleveland which is used primarily for residential purposes.

(3) "Personal property" shall mean property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in a normal course of living or in maintaining a residence. (as replaced by Ord. #2005-16, April 2005)

9-402. Date of sales. Garage sales are only allowed on Fridays, Saturdays, Sundays and city holidays. As used in this section, city holidays include the following holidays:

New Year's Day; Martin Luther King, Jr's birthday; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving Day; and Christmas Day. (as replaced by Ord. #2005-16, April 2005)

9-403. Hours of operation. Garage sales shall be conducted between the hours of 8:00 A.M. and 6:00 P.M. (as replaced by Ord. #2005-16, April 2005)

9-404. Display of sale property. Personal property offered for sale may be displayed outdoors after 5:00 P.M. on the day before any garage sale will be lawfully held. All personal property shall be removed from outdoor display by no later than 8:00 P.M. on the date that a garage sale is held. Personal property offered for sale may only be displayed within a residence, in a garage, a carport, a driveway, or in a front, side or rear yard. No personal property offered for sale at a garage sale shall be displayed in or on any public right-of-way. A vehicle offered for sale may be displayed on a permanently constructed driveway within such front or side yard. However, an unlicensed and inoperable vehicle as defined in title 13 of this Cleveland Municipal Code may not be displayed for more than 30 calendar days in a twelve-month period. (as replaced by Ord. #2005-16, April 2005)

9-405. Advertising. (1) Signs permitted. Only the following specified signs may be displayed in relation to a garage sale:

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

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

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

(3) Removal of signs. Signs must be removed each day at the close of the garage sale activities. (as replaced by Ord. #2005-16, April 2005)

9-406. Enforcement; violations. It shall be unlawful for any person, firm, partnership, corporation or association to advertise, promote, conduct or hold any garage sale within the corporate limits of the City of Cleveland except as provided in this chapter. If any person, firm, partnership, corporation or association violates any of the provisions of this chapter, they will be subject to having the garage sale terminated immediately by any officer of the Cleveland Police Department or any Code Enforcement Officer of the City of Cleveland. In addition, a person, firm, partnership, corporation or association who violates any provision of this chapter is subject to a citation punishable by civil penalty of up to $50 per day for each day that a violation occurs, plus applicable court costs and litigation taxes. In addition, the Cleveland Police Department is hereby given the power to immediately terminate any garage sale if the garage

sale is impeding traffic flow or causing a traffic hazard on any road or street within the City of Cleveland. (as replaced by Ord. #2005-16, April 2005)

9-407. Persons exempted from chapter. The provisions of this chapter shall not apply to or affect the following:

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

(2) Court-ordered sales by executors or administrators in the settlement of estates.

(3) Sales of personal property which are:

(a) Advertized by newspaper or radio for private appointment only; and

(b) Not advertized by a sign or signs either on or off the premises; and

(c) Such that the property is not exhibited on the premises in such a manner as to indicate a public sale.

(4) All businesses and all business establishments which are properly licensed to conduct retail or wholesale sales.

(5) Any sale conducted by any merchant or any other business establishment on a regular, day-to-day basis from or at a place of business wherein such sale is permitted by zoning regulations of the City of Cleveland, or under the protection of any non-conforming use section thereof.

(6) Any other sale conducted by a manufacturer, dealer or vendor when such sale is conducted from a properly zoned premises, and when such sale is not otherwise prohibited by other ordinances of the city or any other provision of the Cleveland Municipal Code. (as replaced by Ord. #2005-16, April 2005)

CHAPTER 5

ADULT-ORIENTED ESTABLISHMENTS

SECTION

9-501. Findings and purpose.
9-502. Definitions.
9-503. License required.
9-504. Application for license.
9-505. Standards for issuance of license.
9-506. Permit required.
9-507. Application for permit.
9-508. Standards for issuance of permit.
9-509. Fees.
9-510. Display of license or permit.
9-511. Renewal of license or permit.
9-512. Revocation of license or permit.
9-513. Hours of operation.
9-514. Responsibilities of the operator.
9-515. Prohibitions and unlawful sexual acts.
9-516. Penalties and prosecution.
9-517. Invalidity of part.
9-518. Denial of applications or renewals.
9-519. Compliance with zoning laws.

9-501. Findings and purpose. (1) The City Council of the City of Cleveland, Tennessee finds:

(a) That homogeneous and heterogeneous masturbatory acts and other sexual acts, including oral sex acts, may be occurring in Cleveland in adult-oriented establishments in the City of Cleveland.

(b) That offering and providing such space, areas, and rooms where such activities may take place creates conditions that generate prostitution and other crimes.

(c) That the continued unregulated operation of adult-oriented establishments would be detrimental to the general welfare, health, and safety of the citizens of the City of Cleveland.

(2) It is the purpose if this chapter to promote and secure the general welfare, health, and safety of the citizens of the City of Cleveland. (Ord. of Feb. 1996)

9-502. 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 bookstores," "adult motion picture theaters," "adult mini motion picture establishments," or "adult cabaret" and further means any premises to which the public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainments are 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 or significant portion of its stock and trade in books, films, video cassettes, magazines, or other periodicals, or any print or electronic media which are distinguished or characterized by the 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 material having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified anatomical areas," as defined below for observation 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 emphases on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below, for observation 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 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, strippers, male or female impersonators, or similar entertainers.

(6) "City council" means the City Council of the City of Cleveland, Tennessee.

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

(8) "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.

(9) "Adult entertainment" means any exhibition of any adult oriented motion pictures, live performance, display or dance of any type, which has a significant or substantial portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical area removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

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

(11) "Specified sexual activities" means:

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

(b) 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 a discernibly turgid state, even if completely opaquely covered. (Ord. of Feb. 1996, as amended by Ord. #2003-28, Oct. 2003)

9-503. <u>License required</u>. (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 City of Cleveland without first obtaining a license to operate issued by the City of Cleveland.

(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 each.

(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 third and final reading. If a license is not issued within said one-hundred-twenty-day period then such existing adult oriented establishment shall cease operations. (Ord. of Feb. 1996)

9-504. Application for license. (1) Any person, partnership or corporation desiring to secure a license shall make application to the city clerk. The application shall be filed in triplicate with and dated by the city clerk. A copy of the application shall be distributed promptly by the city clerk to the Cleveland Police Department and to the applicant.

(2) The application for a license shall be upon a form provided by the city clerk. An applicant for a license 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 previously operated in this or any other county, city or state under an adult oriented establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, 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 city ordinance violation convictions, forfeiture of bond and pleadings no nolo contendere on all charges, except minor traffic violations.

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

(i) The address of the adult-oriented establishment to be operated by the applicant.

(j) The names and addresses of all persons, partnerships, 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 the applicant has been a resident of the City of Cleveland, or its environs, immediately preceding the date of the application.

(m) If the applicant is a corporation, the application shall specify the name, address and telephone number of the corporation, the date and state of incorporation, the name and address of the registered agent for service of process of the corporation, the names and addresses of the officers and directors of the corporation, and the names and addresses of any persons holding fifty percent (50%) or more of the stock of the corporation; if the applicant is a partnership, the application shall specify the name and address of the partnership, the name and address of all general partners of the partnership; if the partnership is a limited partnership, the application shall specify the name and address of all general partners who have a controlling interest in the partnership.

(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.

(3) Within ten (10) days of receiving the results of the investigation conducted by the Cleveland Police Department, the city clerk 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 conclusion of such additional investigation, the city clerk shall advise the applicant in writing whether the application is granted or denied.

(4) 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 city clerk. (Ord. of Feb. 1996, as replaced by Ord. #2003-28, Oct. 2003)

9-505. <u>Standards for issuance of license</u>. (1) To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:

(a) If the applicant is an individual:

(i) The applicant shall be at least eighteen (18) years of age.

(ii) 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.

(iii) The applicant shall not have been found to have previously violated this chapter withing five (5) years immediately preceding the date of the application.

(b) If the applicant is a corporation:

(i) All officers, directors and stockholders required to be named under § 9-504(2) shall be at least eighteen (18) years of age.

(ii) No officer, director or stockholder required to be named under § 9-504(2) 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 with five (5) years immediately preceding the date of the application.

(iii) No officer, director or stockholder required to be named under § 9-504(2) shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.

(c) If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:

(i) 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.

(ii) 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 of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

(iii) 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.

(2) No license shall be issued unless the Cleveland Police Department has investigated the applicant's qualification to be licensed. The results of that investigation shall be filed in writing with the city clerk no later that twenty (20) days after the date of the application. (Ord. of Feb. 1996)

9-506. <u>Permit required</u>. In addition to the license requirement 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 city clerk. (Ord. of Feb. 1996)

9-507. <u>Application for permit</u>. (1) Any person desiring to secure a permit shall make application to the city clerk. The application shall be filed in triplicate with and dated by the city clerk. A copy of the application shall be distributed promptly by the city clerk to the Cleveland Police Department and to the applicant.

(2) The application for a permit shall be upon a form provided by the city clerk. 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 city 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 therefore, and the business entity or trade name or where the applicant was employed or associated at the time of such suspension or revocation.

(g) All criminal statutes, whether federal, state or city 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 (2) inches by two (2) inches of the applicant.

(i) The length of time the applicant has been a resident of the City of Cleveland, 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 Cleveland Police Department, the city clerk 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 conclusion of such additional investigations, the city clerk shall advise the applicant in writing within ten (10) days whether the application is granted or denied.

(4) [Deleted.]

(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 city clerk. (Ord. of Feb. 1996, as amended by Ord. #2003-28, Oct. 2003)

9-508. Standards for issuance of permit. (1) To receive a permit as an employee, 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 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 Cleveland Police Department has investigated the applicant's qualifications to receive a permit. The result of that investigation shall be filed in writing with the city clerk not later than twenty (20) days after the date of the application.

(3) Whenever an application for a permit as an employee is denied, the applicant may within ten (10) days of receipt of notification of denial request a hearing before the city council, at which the applicant may present evidence bearing upon the question. This hearing shall be held by the city council at the next regularly scheduled meeting of the city council which occurs more than five (5) days after the request for a hearing has been filed. If the city council denies the applicant a permit as an employee, the city attorney shall within ten (10) days after the denial institute suit for declaratory judgment in state court for review of the denial. (Ord. of Feb. 1996)

9-509. 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 (1/2) 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. (Ord. of Feb. 1996)

9-510. 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 upon his or her person and shall be displayed upon request of a customer, any member of the Cleveland Police Department, or any person designated by the city council. (Ord. of Feb. 1996)

9-511. Renewal of license or permit. (7) 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 city clerk. 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 city clerk. A copy of the application for renewal shall be distributed promptly by the city clerk to the Cleveland Police Department and to the operator. The application for renewal shall be upon a form provided by the city clerk and shall contain such information and data, given under oath or affirmation, as may be required by the city council.

(8) 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 applicant is denied, one-half (1/2) of the total fees collected shall be returned.

(9) If the Cleveland Police Department is aware of any information bearing on the operator's qualifications, the information shall be filed in writing with the city clerk.

(10) 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 is allowed to continue employment in an adult-oriented establishment in the following calendar year. Any employee desiring to renew a permit shall make application to the city clerk. 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 city clerk. A copy of the application for renewal shall be distributed promptly by the city clerk to the Cleveland Police Department and to the

employee. The application for renewal shall be upon a form provided by the city clerk and shall contain such information and data, given under oath or affirmation, as may be required by the city clerk.

(11) 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.

(12) If the Cleveland Police Department is aware of any information bearing on the employee's qualification, that information shall be filed in writing with the city clerk.

(13) Notwithstanding anything herein to the contrary, any application for renewal of a license or for renewal for a permit shall be handled, investigated and approved or denied within the same time periods as those established in this chapter for original license applications and permit applications. In the event a license renewal application or permit renewal application is denied, the applicant shall have all rights of appeal to the city council as set forth in § 9-518. (Ord. of Feb. 1996, as amended by Ord. #2003-28, Oct. 2003)

9-512. <u>Revocation of license or permit</u>. (1) The city manager 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 city 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 city 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 provides space on the premises, whether by lease or otherwise, to an independent contract 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 Bradley County Health Department.

(j) Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition.

(2) Notwithstanding anything herein to the contrary, before revoking or suspending any license or permit, the city manager shall give the license holder or permit holder not less than ten (10) nor more than twenty (20) days' written notice of the charges against such license holder or permit holder and of the revocation of such license or permit, or of the period of time such license or permit is to be suspended; such notice shall also advise the license holder or permit holder of the license holder's or permit holder's right to request a hearing before the city council. In the event the license holder or permit holder does not request in writing a hearing before the city council within the time set forth in such notice, the suspension or revocation shall be effective beginning the date set forth in such notice.

If the license holder or permit holder desires to request a hearing before the city council to contest the suspension or revocation, such request shall be made in writing to the city manager within ten (10) days of the license holder's or permit holder's receipt of the notification from the city manager. If the license holder or permit holder timely requests such a hearing, the effective date of a suspension or hearing shall be stayed pending the final outcome of judicial proceedings to determine whether such license or permit has been properly revoked or suspended under the law.

If the license holder or permit holder timely requests such a hearing, a public hearing shall be held within fifteen (15) days of the city manager's receipt of such request before the city council, at which time the license holder or permit holder may present evidence as to why the suspension or revocation is improper or contrary to the provisions of this chapter. The city council shall hear evidence concerning the basis for such suspension or revocation and shall affirm or reverse the suspension or revocation at the conclusion of said hearing; any such hearing shall be concluded no later than twenty-two (22) days after the license holder's or permit holder's receipt of notification of the suspension or revocation, unless an extension beyond such time period is requested by the license holder or permit holder and granted by the city council.

If the city council affirms the suspension or revocation, the office of the city attorney shall institute suit for declaratory judgment in a court of record in Bradley County, Tennessee, within five (5) days of the date of any such

affirmation seeking an immediate judicial determination of whether such license or permit has been properly revoked or suspended under the law.

(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.

(4) Any operator or employee who's 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. (Ord. of Feb. 1996, as amended by Ord. #2003-28, Oct. 2003)

9-513. Hours of operation. (1) No adult-oriented establishment shall be open between the hours of 1:00 A.M. and 8:00 A.M. on weekdays or between the hours of 1:00 A.M. and 12:00 midnight on Sundays.

(2) All adult-oriented establishments shall be open to inspection at all reasonable times by the Cleveland Police Department or such other persons as the city council may designate. (Ord. of Feb. 1996)

9-514. Responsibilities of the operator. (1) The operator shall maintain a register of all employees, 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 city council. The above information of 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 employees available immediately for inspection by police upon demand of a member of the Cleveland 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 while on the licensed premises and any act or omission of any employee 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 Cleveland 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 Cleveland City Code, Title 9, Chapter 5, Sections 9-501 through 9-516. Entertainers Are:

1. Not permitted to engage in any type of sexual conduct;
2. Not permitted to expose their sex organs;
3. Not permitted to demand or collect all or any portion of a fee for entertainment before its completion.

(Ord. of Feb. 1996)

9-515. 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 of 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, 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.

(4) No entertainer, employee or customer shall be permitted to have any physical contact with any other on the premises during any performance and all performances shall only occur upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest entertainer, employee and/or customer. (Ord. of Feb. 1996)

9-516. Penalties and prosecution. (1) Any person, partnership, or corporation who is found to have violated this chapter shall be fined a definite sum not exceeding fifty dollars ($50.00) 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. (Ord. of Feb. 1996)

9-517. Invalidity of part. Should any court of competent jurisdiction declare any section, clause, or provision of this chapter to be unconstitutional, such decision shall affect only such section, clause or provision so declared unconstitutional, and shall not affect any other section, clause, or provision of this chapter. (as added by Ord. #2003-28, Oct. 2003)

9-518. Denial of applications or renewals. (1) As used in this section, "application" shall mean:

(a) An application for a license;
(b) An application for a permit;
(c) An application for a license renewal; and
(d) An application for a permit renewal.

(2) Whenever an application is denied, the city clerk shall notify the applicant in writing of the reasons for such action; such notice shall also advise the applicant of the applicant's right to request a hearing before the city council. If the applicant desires to request a hearing before the city council to contest the denial of an application, such request shall be made in writing to the city manager within ten (10) days of the applicant's receipt of the notification of the denial of the application. If the applicant timely requests such a hearing, a public hearing shall be held within fifteen (15) days of the city manager's receipt of such request before the city council at which time the applicant may present evidence as to why the application should not be denied. The city council shall hear evidence concerning the basis for denial of the application and shall affirm or reverse the denial of an application at the conclusion of said hearing; any such hearing shall be concluded no later than twenty-two (22) days after the applicant's receipt of notification of denial of an application, unless an extension beyond such time period is requested by the applicant and granted by the city council.

(3) If the city council affirms the denial of an application, the office of the city attorney shall institute suit for declaratory judgment in a court of record in Bradley County, Tennessee, within five (5) days of the date of any such denial seeking an immediate judicial determination of whether such application has been properly denied under the law. (as added by Ord. #2003-28, Oct. 2003)

9-519. <u>Compliance with zoning laws</u>. (1) As used in this section, "applicant" or "applicants" shall mean:

(a) An applicant for a license;
(b) An applicant for a permit;
(c) An applicant for a license renewal;
(d) An applicant for a permit renewal.

(2) All applicants must comply with all zoning laws and regulations of the City of Cleveland. (as added by Ord. #2003-28, Oct. 2003)

CHAPTER 6

CABLE TELEVISION

SECTION

9-601. To be furnished under franchise.

9-601. To be furnished under franchise. Cable television shall be furnished to the City of Cleveland and its inhabitants under franchise granted to Telecable of Cleveland, Inc., by the city council of the City of Cleveland, Tennessee. The rights, powers, duties and obligations of the City of Cleveland and its inhabitants are clearly stated in the franchise agreement executed by, and which shall be binding upon the parties concerned.[1]

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[1]For complete details relating to the cable television franchise agreement see the Ordinance dated January 19, 1990 in Appendix A at the end of this municipal code.

CHAPTER 7

TAXICABS

SECTION

9-701. Scope of chapter.
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9-731. Aiding or engaging in unlawful or immoral acts prohibited.
9-732. Places for accepting and discharging passengers.
9-733. Group rides regulated.
9-734. Use of streets for parking regulated; private facilities required.

9-701. Scope of chapter. The provisions of this chapter relate to the operation and control of taxicabs in the city and to the drivers of taxicabs. (Ord. of Jan. 1999)

9-702. <u>Definitions</u>. The following words and phrases when used in this chapter shall have the meaning as set out herein:

(1) "Certificate" means a certificate of public convenience and necessity issued by the city council authorizing the holder thereof to conduct a taxicab business in the city.

(2) "Cruising" means the driving of a taxicab on the streets, alleys, or public places of the city in search of or soliciting prospective passengers for hire.

(3) "Holder" means a person to whom a certificate of public convenience and necessity has been issued.

(4) "Manifest" means a daily record prepared by a taxicab driver of all trips made by the driver showing time and place of origin, destination, number of passengers, and the amount of fare of each trip.

(5) "Person" includes an individual, a corporation or other legal entity, a partnership, and any unincorporated association.

(6) "Rate card" means a card issued by the city for display in each taxicab which contains the rates of fare then in force.

(7) "Senior citizen" means any passenger who is sixty-two (62) years old or older.

(8) "Taxicab" means a motor vehicle regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than eight (8) persons, and not operated on a fixed route.

(9) "Taximeter" means a meter instrument or device attached to a taxicab which measures mechanically the distance driven and the waiting time upon which the fare is based.

(10) "Waiting time" means the time when a taxicab is not in motion from the time of acceptance of a passenger or passengers to the time of discharge, but does not include any time that the taxicab is not in motion if due to any cause other than the request, act, or fault of a passenger or passengers. (Ord. of Jan. 1999)

9-703. <u>Character of service to be furnished</u>. All persons engaged in the taxicab business in the city operating under the provisions of this chapter shall render an overall service to the public desiring to use taxicabs. Holders of certificates of public convenience and necessity shall maintain a central place of business and keep it open twenty four (24) hours a day for the purpose of receiving calls and dispatching cabs, unless a lesser time is agreed to by the city council. They shall answer all calls received by them for services inside the city as soon as they can do so and if the services cannot be rendered within a reasonable time they shall then notify the prospective passengers how long it will be before the call can be answered and give the reason therefor.

Any holder who refuses to accept a call anywhere in the city at any time when the holder has available cabs, or who fails or refuses to give overall service shall be deemed a violator of this chapter and the certificate granted to the holder shall be revoked at the discretion of the city council. (Ord. of Jan. 1999)

9-704. Certificate of public convenience and necessity. It shall be unlawful for any person to operate or permit a taxicab owned or controlled by him to be operated as a vehicle for hire upon the streets of the city without having first obtained a certificate of public convenience and necessity from the city council. (Ord. of Jan. 1999)

9-705. Application for certificate. An application for a certificate of public convenience and necessity shall be filed with the city council upon forms provided by the city clerk's office, shall be verified under oath, and shall furnish the following information:

(1) Name, address. The name and address of the applicant.

(2) Financial status. The financial status of the applicant, including the amounts of all unpaid judgments against the applicant and the nature of the transaction or acts giving rise to the judgments.

(3) Experience. The experience of the applicant in the transportation of passengers.

(4) Necessity. Any facts which the applicant believes tend to prove that public convenience and necessity require the granting of a certificate.

(5) Vehicles, facilities. The number of vehicles to be operated or controlled by the applicant and the location of proposed depots and terminals.

(6) Color scheme insignia. The color scheme or insignia to be used to designate the vehicle or vehicles of the applicant.

(7) Additional information. Such further information as the city council may require. (Ord. of Jan. 1999)

9-706. Hearing on certificate. Upon the filing of an application for a certificate of public convenience and necessity, the city clerk shall fix a time and place for a public hearing thereon. Notice of the hearing shall be given to the applicant and to all persons to whom certificates of public convenience and necessity have been heretofore issued. Due notice shall also be given the general public by posting a notice of the hearing in the official city newspaper. Any interested person may file with the city council a memorandum in support of or in opposition to the issuance of a certificate. (Ord. of Jan. 1999)

9-707. Issuance of certificate. (1) Findings. If the city council finds that further taxicab service in the city is required by the public convenience and necessity and that the applicant is fit, willing, and able to perform such public transportation and to conform to the provisions of this chapter and other rules promulgated by the city council, then the city council shall issue a certificate stating the name and address of the applicant, the number of vehicles authorized under the certificate, and the date of issuance; otherwise, the application shall be denied.

(2) Matters to be considered. In making the above findings, the city council shall take into consideration the number of taxicabs already in

operation; whether existing transportation is adequate to meet the public need; the probable effect of increased service on local traffic conditions; and the character, experience, and responsibility of the applicant. (Ord. of Jan. 1999)

9-708. Transfer of certificate. No certificate of public convenience and necessity may be sold, assigned, mortgaged, or otherwise transferred without the consent of the city council. (Ord. of Jan. 1999)

9-709. Suspension or revocation of certificate. (1) Grounds. A certificate issued under the provisions of this chapter may be revoked or suspended by the city council if the holder thereof has violated any of the provisions of this chapter, has discontinued operations for more than sixty (60) days, or has violated any ordinances of the city, law of the United States, or of the State of Tennessee, the violation of which unfavorably reflects on the fitness of the holder to offer public transportation.

(2) Notice, hearing. Prior to suspension or revocation, the holder shall be given notice of the proposed action to be taken and shall have an opportunity to be heard at the next regularly scheduled meeting of the city council. (Ord. of Jan. 1999)

9-710. Indemnity bond or liability insurance required. (1) Bond. No certificate of public convenience and necessity shall be issued or continued in operation unless there is in full force and effect an indemnity bond for each vehicle authorized in an amount established by resolution of the city council. The bond or bonds shall inure to the benefit of any person who is injured or who sustains damage to property proximately caused by the negligence of a holder, his servants, or agents. Said bond or bonds shall be filed in the office of the city clerk and shall have as surety thereon a surety company authorized to do business in the State of Tennessee.

(2) Liability insurance. The city council may in its discretion allow the holder to file, in lieu of a bond or bonds, a liability insurance policy issued by an insurance company authorized to do business in the State of Tennessee. The policy shall conform to the provisions of this section relating to bonds. (Ord. of Jan. 1999)

9-711. Privilege taxes to be paid. No certificate of public convenience and necessity shall be issued or continued in operation unless the holder thereof has paid the applicable privilege taxes levied by the city council. (Ord. of Jan. 1999)

9-712. Records and reports required. (1) Operating information. Every holder shall keep accurate records of receipts from operations, operating and other expenses, capital expenditures, and such other operating information as may be required by the city council. Every holder shall maintain the records

containing such information and other data required by this chapter at a place readily accessible for examination by the city clerk's office.

(2) Annual reports to city business tax office. Every holder shall submit reports of receipts, expenses, and statistics of operation to the city business tax office for each calendar year, in accordance with a uniform system prescribed by the city clerk. The reports shall reach the business tax office on or before the last day of August of the year following the calendar year for which the reports are prepared.

(3) Accident reports. All accidents arising from or in connection with the operation of taxicabs shall be reported within twenty four (24) hours from the time of occurrence to the police department in a form of report to be furnished by that department.

(4) Other records. It shall be mandatory for all holders to file with the city clerk's office copies of all contracts, agreements, arrangements, memoranda, or other writing relating to the furnishing of taxicab service to any hotel, theater, hall, public resort, railway station, or other place of public gathering, whether such arrangements are made with the holder or any corporation, firm, or association with which the holder may be interested or connected. (Ord. of Jan. 1999)

9-713. Permit requirements for taxicab drivers. No person shall act as a driver of a taxicab unless he has obtained a taxicab driver's permit from the police department. (Ord. of Jan. 1999)

9-714. Form and content of application for permit; accompanying documents. (1) Application. Taxicab drivers' permits shall be applied for in writing on such form as the chief of police may prescribe. The application shall show proof of the applicant's state class D license with an F endorsement; what experience he has had in driving motor vehicles; whether the applicant has been convicted of violating any motor vehicle, traffic, or criminal law of the city or state or of any other city or state, together with the particulars of all such convictions; and such other information as the chief of police may require.

(2) Accompanying documents. Each applicant shall be accompanied by at least two (2) recent photographs of the applicant of such size and design as designated by the chief of police; a certificate from a reputable physician of the city showing that the applicant is not disabled by reason of defects in his sight, hearing, body, or limbs from safely operating a motor vehicle; and certificates from at least three (3) reputable persons personally acquainted with the applicant showing him to be a person of good moral character. (Ord. of Jan. 1999)

9-715. Fee for permit. No permit or renewal of a permit to drive a taxicab shall be issued until the applicant therefor has first paid to the police department a fee of fifteen dollars ($15.00). (Ord. of Jan. 1999)

9-716. Investigation of application for permit. Except on an application for renewal, before a taxicab driver's permit is issued, the chief of police shall investigate the statements made in the application and shall determine whether the applicant complies with this chapter and is entitled to a permit. (Ord. of Jan. 1999)

9-717. Persons ineligible for permits. No taxicab driver's permit shall be issued to anyone who has been convicted of any offense or crime involving moral turpitude or who, in the opinion of the chief of police, is otherwise not physically or morally fit to drive a taxicab in the city. No permit shall be issued to anyone less than eighteen (18) years old. (Ord. of Jan. 1999)

9-718. Issuance of permit. The chief of police shall issue a taxicab driver permit to any applicant therefor who complies with this chapter and who under its provisions is entitled to the permit. Any applicant refused a permit or permit renewal may request an appeal to the city manager, who upon review of the matter shall decide whether said permit should be issued. (Ord. of Jan. 1999)

9-719. Term of permit; design. (1) A taxicab driver's permit shall be issued for a period of not more than one (1) year and shall continue in effect only through December 31st of the year within which it is issued, except that during December of any year, permits may be issued to be effective through December 31st of the next year. No pro-ration of the fee is allowed.

(2) Taxicab drivers' permits shall be of such size and design as the chief of police may prescribe. However, each permit shall bear on its face a photograph of the applicant, the number of his permit, its expiration date, and such other information as the chief of police may direct. (Ord. of Jan. 1999)

9-720. Display and illumination of permit. The permit of each taxicab driver shall be kept prominently displayed and visible to the passengers of the taxicab operated by him. After sundown, it shall be illuminated by a suitable light so as to remain plainly visible to the passengers at all times. (Ord. of Jan. 1999)

9-721. Suspension or revocation of permit. (1) Grounds. Any permit granted to any taxicab driver under the terms of this chapter may be suspended or revoked by the chief of police for the driver's failure or refusal to comply with any of the provisions of this chapter. The permit may also be revoked if the taxicab driver's state class D license with an F endorsement is revoked or expires; if he willfully or persistently violates any city ordinance or state or federal law; or if he becomes physically or morally unfit to operate a taxicab.

(2) Conditions precedent to revocation. A permit may not be revoked unless the taxicab driver has received notice of the proposed revocation and reasons therefor at least forty-eight (48) hours prior to the hearing, and has had an opportunity to show cause why his permit should not be revoked.

(3) Appeal of revocation. Any taxicab driver whose license is revoked under this section may request an appeal to the city manager, who upon review of the matter shall decide whether said permit should be revoked or reinstated. (Ord. of Jan. 1999)

9-722. Photograph of applicant for permit to be filed. One photograph of each applicant for a taxicab driver's permit shall be retained in the files of the police department with the application. The files shall be kept in a readily accessible place at the police department. (Ord. of Jan. 1999)

9-723. Inspections, fees, certificates. (1) Time, place, fee. To insure compliance with the provisions of this chapter all taxicabs shall be inspected before they can be placed in service as a taxicab. Thereafter, they shall be regularly inspected semiannually in January and July by the city's fleet manager. An inspection fee of twenty dollars ($20.00) per vehicle shall be charged for each inspection. The times and places for such inspections shall be prescribed by the fleet manager who shall also see that notice thereof is either published in the official city newspaper or given individually to each holder of a certificate of public convenience and necessity.

(2) Certification of inspection. A certificate of inspection shall be issued and prominently displayed on the windshield of each taxicab found to comply with the provisions of this chapter. No holder of a certificate of public convenience and necessity shall allow a taxicab to be operated without a certificate of inspection.

(3) Additional inspections. In addition to the initial inspection and regular semiannual inspections for which the fees are to be charged, taxicabs shall be inspected without cost to the holders at such other times and places as the chief of police or fleet manager may reasonably direct.

(4) Noncompliance with inspection requirements. When any taxicab is found not to conform to the requirements of this chapter its certificate of inspection shall be revoked. Such taxicab shall not thereafter be operated in the city until it has been put in proper condition, an extra ten dollar ($10.00) inspection fee paid, and a new certificate of inspection obtained following re-inspection by the fleet manager. (Ord. of Jan. 1999)

9-724. Condition of taxicabs. All taxicabs operated in the city shall be kept in a clean and sanitary condition inside and out. They shall also be kept in such mechanical condition as is reasonably necessary to provide for their satisfactory operation and the safety of the public. They shall be equipped with

such lights, brakes and other mechanical equipment and devices as are required by state law and this code for motor vehicles generally. (Ord. of Jan. 1999)

9-725. Signs, insignia, color scheme for taxicabs. (1) Each taxicab shall bear on the outside of each rear door, in painted letters not less than two inches (2") in height, the name of the owner, and in addition may bear an identifying design approved by the city council.

(2) No vehicle covered by the terms of this chapter shall be licensed whose color scheme, identifying design, monogram, or insignia to be used thereon in the opinion of the city council conflicts with or imitates any color scheme, identifying design, monogram, or insignia used on a vehicle or vehicles already operating under this chapter in such a manner as to be misleading or tend to deceive or defraud the public. If after a license has been issued for a taxicab hereunder, the color scheme, identifying design, monogram, or insignia thereof is changed so as to be in the opinion of the city council in conflict with or in imitation of any color scheme, identifying design, monogram, or insignia used by any other person, owner or operator, in such a manner as to be misleading or tend to deceive the public, the license of or certificate covering the taxicab or taxicabs shall be suspended or revoked. (Ord. of Jan. 1999)

9-726. Rates prescribed; rate card to be posted. (1) No owner or driver of a taxicab shall charge a greater sum for the use of a taxicab than is prescribed by resolution of the city council. Taxicabs must use the most direct route possible from the point of passenger entry to the passenger's destination point. When more than one passenger employs the same taxicab, no charge shall be made for the additional passengers except when they ride beyond the previous passenger's destination and then only for the additional distance traveled. In establishing the rates, the city council may authorize a discount of up to twenty percent (20%) from the regular rates, fees, and charges for senior citizens.

(2) Every taxicab operated under this chapter shall have a rate card issued by the business tax office setting forth the authorized maximum rates of fare which can be charged. Said card shall be displayed in such manner as to be in full view of all passengers and shall clearly denote if any senior citizen discount rates are in effect. (Ord. of Jan. 1999)

9-727. Receipt for fare to be given if requested. The driver of any taxicab shall upon demand by any passenger tender to the passenger a receipt for the amount charged. (Ord. of Jan. 1999)

9-728. Refusal to pay legal fare. It shall be unlawful for any person to refuse to pay the legal fare for any taxicab after having hired it, and it shall be unlawful for any person to hire any taxicab with intent to defraud the person from whom it is hired of the value of such service. (Ord. of Jan. 1999)

9-729. Manifests to be maintained. (1) Form contents. Every driver shall maintain a daily manifest upon which are recorded all trips made each day, showing time and place of origin and destination of each trip and amount of fare. All completed manifests shall be returned to the owner by the driver at the conclusion of his tour of duty. The forms for each manifest shall be furnished to the driver by the owner and shall be of a character approved by the city clerk's office.

(2) Preservation. Every holder of a certificate of public convenience and necessity shall retain and preserve all drivers' manifests in a safe place for at least the calendar year next preceding the current calendar year, and the manifests shall be available to the police department and the city clerk's office. (Ord. of Jan. 1999)

9-730. Drivers prohibited from soliciting patronage. No driver shall solicit passengers for a taxicab nor cruise in search of passengers. Neither shall any driver annoy any person, obstruct the movement of any person, or follow any person for the purpose of soliciting his patronage. (Ord. of Jan. 1999)

9-731. Aiding or engaging in unlawful or immoral acts prohibited. No driver shall help, aid, assist, use, otherwise engage, or knowingly allow his taxicab to be used in the commission of or in furtherance of any unlawful or immoral act, purpose, or design. (Ord. of Jan. 1999)

9-732. Places for accepting and discharging passengers. Drivers of taxicabs shall not receive or discharge passengers in the roadway but shall pull up to the right-hand sidewalk as nearly as possible, or in the absence of a sidewalk, to the extreme right-hand side of the road and there receive or discharge passengers. Upon one-way streets, passengers may be discharged on either side of the road. (Ord. of Jan. 1999)

9-733. Group riding regulated. Whenever one passenger has lawfully and properly entered or engaged a taxicab, no additional passenger shall be accepted without the consent of the first passenger. The first passenger has the right to require the additional passengers to pay one-half the cost for the shared mileage on this trip. In any event sufficient room must be left for the driver at all times to have free, comfortable, and easy control of the operation of the taxicab. Not more than two (2) passengers shall be permitted to sit upon the same seat occupied by the driver of any taxicab. (Ord. of Jan. 1999)

9-734. Use of streets for parking regulated; private facilities required. All holders of a certificate of public convenience and necessity are required to provide private facilities for the parking of their taxicabs when the taxicabs are not engaged or lawfully parked. (Ord. of Jan. 1999)

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.

CHAPTER

1. PEDDLERS, SOLICITORS, ETC.
2. ENTERTAINMENT AND RECREATIONAL BUSINESS.
3. JEWELRY SALES.
4. GARAGE SALES.
5. ADULT-ORIENTED ESTABLISHMENTS.
6. CABLE TELEVISION.
7. TAXICABS.

CHAPTER 1

PEDDLERS, SOLICITORS, ETC.[1]

SECTION

9-101. Definitions.
9-102. Exemptions.
9-103. Permit required.
9-104. Permit procedure.
9-105. Restrictions on peddlers, street barkers and solicitors.
9-106. Restrictions on transient vendors.
9-107. Display of permit.
9-108. Suspension or revocation of permit.
9-109. Expiration and renewal of permit.

9-101. Definitions. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:

(1) "Peddler" means any person, firm or corporation, either a resident or a nonresident of the city, who has no permanent regular place of business and who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

(2) "Solicitor" means any person, firm or corporation who goes from dwelling to dwelling, business to business, place to place, or from street to

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[1]Municipal code references
Privilege taxes: title 5.
Trespass by peddlers, etc.: § 11-501(5).

street, taking or attempting to take orders for any goods, wares or merchandise, or personal property of any nature whatever for future delivery,
except that the term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.

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

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

(b) Is a member of United Way, Community Chest or similar "umbrella" organizations for charitable or religious organizations.

(c) Has been in continued existence as a charitable or religious organization in Bradley County for a period of two (2) years prior to the date of its application for registration under this chapter.

(4) "Solicitor for subscriptions" means any person who solicits subscriptions from the public, either on the streets of the city, or from door to door, business to business, place to place, or from street to street, and who offers for sale subscriptions to magazines or other materials protected by provisions of the Constitution of the United States.

(5) "Transient vendor[1]" means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "merchandise"

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[1]State law reference

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

The definition of "transient vendors" is taken from Tennessee Code Annotated, § 62-30-101(3). Note also that Tennessee Code Annotated, § 67-4-709(a) prescribes that transient vendors shall pay a tax of $50.00 for each 14 day period in each county and/or municipality in which such vendors sell or offer to sell merchandise for which they are issued a business license, but that they are not liable for the gross receipts portion of the tax provided for in Tennessee Code Annotated, § 67-4-709(b).

means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-public place including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months.

(6) "Street barker" means any peddler who does business during recognized festival or parade days in the city and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade.

9-102. Exemptions. The terms of this chapter shall neither apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to persons selling agricultural products, who, in fact, themselves produced the products being sold.

9-103. Permit required. No person, firm, association, community or school group or corporation shall operate a business as a peddler, transient vendor, solicitor or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the city unless the same has obtained a permit from the city in accordance with the provisions of this chapter. Community groups and school groups may obtain a single permit for the group. (1981 Code, § 12-21, modified)

9-104. Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the city clerk by each applicant for a permit as a peddler, transient vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:

(a) The complete name and permanent address of the business or organization the applicant represents.

(b) A brief description of the type of business and the goods to be sold.

(c) The dates for which the applicant intends to do business or make solicitations.

(d) The names and permanent addresses of each person who will make sales or solicitations within the city.

(e) The make, model, complete description, and license tag number and state of issue, of each vehicle to be used to make sales or solicitations, whether or not such vehicle is owned individually by the

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

(f) Tennessee State sales tax number, if applicable.

(2) Permit fee. Each applicant for a permit as a peddler, transient vendor, solicitor or street barker shall submit with his application a nonrefundable fee of twenty dollars ($20.00). There shall be no fee for an application for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions.

(3) Permit issued. Upon the completion of the application form and the payment of the permit fee, where required, the clerk shall issue a permit and provide a copy of the same to the applicant.

(4) Submission of application form to chief of police. Immediately after the applicant obtains a permit from the city clerk, the city clerk shall submit to the chief of police a copy of the application form and the permit. (1981 Code, § 12-23, modified)

9-105. Restrictions on peddlers, street barkers and solicitors. No peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions shall:

(1) Be permitted to set up and operate a booth or stand on any street or sidewalk, or in any other public area within the city.

(2) Stand or sit in or near the entrance to any dwelling or place of business, or in any other place which may disrupt or impede pedestrian or vehicular traffic.

(3) Offer to sell goods or services or solicit in vehicular traffic lanes, or operate a "road block" of any kind.

(4) Unless approved by the adjacent business owner, call attention to his business or merchandise or to his solicitation efforts by crying out, by blowing a horn, by ringing a bell, or creating other noise, except that the street barker shall be allowed to cry out to call attention to his business or merchandise during recognized parade or festival days of the city.

(5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located. (1981 Code, § 12-21, modified)

9-106. Restrictions on transient vendors. A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, cancelled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth.

9-107. Display of permit. Each peddler, street barker, solicitor, solicitor for charitable purposes or solicitor for subscriptions is required to have in his possession a valid permit or copy if he/she represents a community group, school group soliciting for charitable or religious purpose while making sales or solicitations, and shall be required to display the same upon demand. (1981 Code, § 12-29, modified)

9-108. Suspension or revocation of permit. (1) Suspension by the clerk. The permit issued to any person or organization under this chapter may be suspended by the city clerk for any of the following causes:

(a) Any false statement, material omission, or untrue or misleading information which is contained in or left out of the application; or

(b) Any violation of this chapter.

(2) Suspension or revocation by the city manager. The permit issued to any person or organization under this chapter may be immediately suspended by the city manager and may be revoked by the city manager, after notice and hearing, for the same causes set out in paragraph (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the city clerk in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1981 Code, § 12-33, modified)

9-109. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The permit of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days. (1981 Code, § 12-35, modified)

CHAPTER 2

ENTERTAINMENT AND RECREATIONAL BUSINESS

SECTION

9-201. Circuses, carnivals, etc., not to exhibit within city; exceptions, requirements.
9-202. [Deleted.]
9-203. [Deleted.]

9-201. Circuses, carnivals, etc., not to exhibit within city; exceptions, requirements. It shall be unlawful for any person to exhibit or offer to exhibit in the city limits any aggregation of entertainment known as shows, carnivals, or circuses except that a circus or carnival sponsored by local civic or charitable organization may be permitted provided that:

(1) The site for the circus or carnival shall first be approved by a committee composed of the city attorney, building inspector, city clerk, fire inspector, traffic engineer and chief of police.

(2) A corporate bond in the amount of five thousand dollars ($5,000.00) shall be posted with the city clerk to insure a cleanup of the public premises and for any damages to public property.

(3) The location shall not be in an area zoned for residential area.

(4) A proper business license must be obtained.

(5) Proof of liability insurance be provided to the city clerk in the amount of one million dollars ($1,000,000.00).

(6) The length of stay shall be limited to ten (10) days.

(7) Any approved site must have adequate off-street parking.

(8) The sponsor or the organization conducting the carnival or circus must employ a sufficient number of qualified people to handle traffic before, during and after the show. (1981 Code, § 12-41, modified)

9-202. [Deleted.] (1981 Code, § 12-42, as deleted by Ord. of 12/9/02)

9-203. [Deleted.] (1981 Code, § 12-43, as deleted by Ord of 12/9/02)

CHAPTER 3

JEWELRY SALES

SECTION

9-301. Register required.
9-302. Holding period for articles.
9-303. Daily reports required; notification of location.

9-301. Register required. It shall be the duty of all persons dealing in the purchase, sale or exchange of secondhand or antique jewelry, watches, diamonds or other precious stones, cutlery, old gold, silver, platinum or other precious metals, or any other secondhand manufactured articles, composed wholly or in part of gold, silver, platinum or other precious metals, to keep a book in which every article received by them in the course of their business shall be registered, and in which shall be given as minute a description of every article as is possible, including the maker's name and number of every article so received by them. The name, age, sex, color, residence, driver's license number, and general description of each and every individual selling or exchanging such articles, shall be taken and entered in the register. The register shall at all times be kept at the place of business of every person engaging in the business aforesaid. Members of the police department shall be allowed free access to the register and the person shall give to such officers all information in his possession concerning such articles and all persons selling or exchanging the same. (1981 Code, § 12-141)

9-302. Holding period for articles. All persons engaging in business as described herein shall retain any article received in the same state or condition in which it was received, and shall not co-mingle it with other articles separately received, and shall make it available for examination by members of the police department, for a period of three (3) days before a resale or exchange, unless written permission is obtained from the chief of police. (1981 Code, § 12-142)

9-303. Daily reports required; notification of location. All persons engaging in business as described herein shall furnish to the chief of police daily reports at his office, showing fully the name, age, sex, color, residence, driver's license number, and general description of each person who shall have sold or exchanged any article during the preceding day, together with a full description of the articles sold or exchanged by such person, including the number of each article bearing a number, and the day and hour of the transaction. Every person engaging in such business shall keep duplicates of such reports in a well-bound book or register, which book or register shall at all times be subject to the inspection of members of the police department. Any person intending to engage

in business as described herein who will not operate that business at an established and permanent location shall give the chief of police at least seventy-two (72) hours' prior notice of the location and date and hours of the operation of such business. (1981 Code, § 12-143)

CHAPTER 4

GARAGE SALES

SECTION

9-401. Definitions.
9-402. Dates of sales.
9-403. Hours of operation.
9-404. Display of sale property.
9-405. Advertising.
9-406. Enforcement; violations.
9-407. Persons exempted from chapter.
9-408. [Deleted.]
9-409. [Deleted.]
9-410. [Deleted.]
9-411. [Deleted.]

9-401. Definitions. For the purpose of this chapter, the following terms, are defined and shall be construed as follows:

(1) "Garage sales" shall be the offering for sale or exchange, or the sale or exchange, to the public of any personal property of any kind or description at a sale held on privately-owned residential property. For the purposes of this chapter, garage sales include all sales of personal property, whether entitled "garage sales," "lawn sales," "yard sales," "attic sales," "porch sales," "room sales," "backyard sales," "patio sales," "flea market" or "rummage sales." This definition does not include the operation of business carried on in a non-residential zone where the person conducting the sale does so on a regular day-to-day business and has a business license to do so.

(2) "Residential property" is any real estate, lot or tract in the City of Cleveland which is used primarily for residential purposes.

(3) "Personal property" shall mean property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in a normal course of living or in maintaining a residence. (as replaced by Ord. #2005-16, April 2005)

9-402. Date of sales. Garage sales are only allowed on Fridays, Saturdays, Sundays and city holidays. As used in this section, city holidays include the following holidays:

New Year's Day; Martin Luther King, Jr's birthday; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving Day; and Christmas Day. (as replaced by Ord. #2005-16, April 2005)

9-403. Hours of operation. Garage sales shall be conducted between the hours of 8:00 A.M. and 6:00 P.M. (as replaced by Ord. #2005-16, April 2005)

9-404. Display of sale property. Personal property offered for sale may be displayed outdoors after 5:00 P.M. on the day before any garage sale will be lawfully held. All personal property shall be removed from outdoor display by no later than 8:00 P.M. on the date that a garage sale is held. Personal property offered for sale may only be displayed within a residence, in a garage, a carport, a driveway, or in a front, side or rear yard. No personal property offered for sale at a garage sale shall be displayed in or on any public right-of-way. A vehicle offered for sale may be displayed on a permanently constructed driveway within such front or side yard. However, an unlicensed and inoperable vehicle as defined in title 13 of this Cleveland Municipal Code may not be displayed for more than 30 calendar days in a twelve-month period. (as replaced by Ord. #2005-16, April 2005)

9-405. Advertising. (1) Signs permitted. Only the following specified signs may be displayed in relation to a garage sale:

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

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

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

(3) Removal of signs. Signs must be removed each day at the close of the garage sale activities. (as replaced by Ord. #2005-16, April 2005)

9-406. Enforcement; violations. It shall be unlawful for any person, firm, partnership, corporation or association to advertise, promote, conduct or hold any garage sale within the corporate limits of the City of Cleveland except as provided in this chapter. If any person, firm, partnership, corporation or association violates any of the provisions of this chapter, they will be subject to having the garage sale terminated immediately by any officer of the Cleveland Police Department or any Code Enforcement Officer of the City of Cleveland. In addition, a person, firm, partnership, corporation or association who violates any provision of this chapter is subject to a citation punishable by civil penalty of up to $50 per day for each day that a violation occurs, plus applicable court costs and litigation taxes. In addition, the Cleveland Police Department is hereby given the power to immediately terminate any garage sale if the garage

sale is impeding traffic flow or causing a traffic hazard on any road or street within the City of Cleveland. (as replaced by Ord. #2005-16, April 2005)

9-407. Persons exempted from chapter. The provisions of this chapter shall not apply to or affect the following:

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

(2) Court-ordered sales by executors or administrators in the settlement of estates.

(3) Sales of personal property which are:

(a) Advertized by newspaper or radio for private appointment only; and

(b) Not advertized by a sign or signs either on or off the premises; and

(c) Such that the property is not exhibited on the premises in such a manner as to indicate a public sale.

(4) All businesses and all business establishments which are properly licensed to conduct retail or wholesale sales.

(5) Any sale conducted by any merchant or any other business establishment on a regular, day-to-day basis from or at a place of business wherein such sale is permitted by zoning regulations of the City of Cleveland, or under the protection of any non-conforming use section thereof.

(6) Any other sale conducted by a manufacturer, dealer or vendor when such sale is conducted from a properly zoned premises, and when such sale is not otherwise prohibited by other ordinances of the city or any other provision of the Cleveland Municipal Code. (as replaced by Ord. #2005-16, April 2005)

CHAPTER 5

ADULT-ORIENTED ESTABLISHMENTS

SECTION

9-501. Findings and purpose.
9-502. Definitions.
9-503. License required.
9-504. Application for license.
9-505. Standards for issuance of license.
9-506. Permit required.
9-507. Application for permit.
9-508. Standards for issuance of permit.
9-509. Fees.
9-510. Display of license or permit.
9-511. Renewal of license or permit.
9-512. Revocation of license or permit.
9-513. Hours of operation.
9-514. Responsibilities of the operator.
9-515. Prohibitions and unlawful sexual acts.
9-516. Penalties and prosecution.
9-517. Invalidity of part.
9-518. Denial of applications or renewals.
9-519. Compliance with zoning laws.

9-501. Findings and purpose. (1) The City Council of the City of Cleveland, Tennessee finds:

(a) That homogeneous and heterogeneous masturbatory acts and other sexual acts, including oral sex acts, may be occurring in Cleveland in adult-oriented establishments in the City of Cleveland.

(b) That offering and providing such space, areas, and rooms where such activities may take place creates conditions that generate prostitution and other crimes.

(c) That the continued unregulated operation of adult-oriented establishments would be detrimental to the general welfare, health, and safety of the citizens of the City of Cleveland.

(2) It is the purpose if this chapter to promote and secure the general welfare, health, and safety of the citizens of the City of Cleveland. (Ord. of Feb. 1996)

9-502. 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 bookstores," "adult motion picture theaters," "adult mini motion picture establishments," or "adult cabaret" and further means any premises to which the public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainments are 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 or significant portion of its stock and trade in books, films, video cassettes, magazines, or other periodicals, or any print or electronic media which are distinguished or characterized by the 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 material having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified anatomical areas," as defined below for observation 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 emphases on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below, for observation 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 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, strippers, male or female impersonators, or similar entertainers.

(6) "City council" means the City Council of the City of Cleveland, Tennessee.

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

(8) "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.

(9) "Adult entertainment" means any exhibition of any adult oriented motion pictures, live performance, display or dance of any type, which has a significant or substantial portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical area removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

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

(11) "Specified sexual activities" means:

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

(b) 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 a discernibly turgid state, even if completely opaquely covered. (Ord. of Feb. 1996, as amended by Ord. #2003-28, Oct. 2003)

9-503. <u>License required</u>. (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 City of Cleveland without first obtaining a license to operate issued by the City of Cleveland.

(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 each.

(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 third and final reading. If a license is not issued within said one-hundred-twenty-day period then such existing adult oriented establishment shall cease operations. (Ord. of Feb. 1996)

9-504. Application for license. (1) Any person, partnership or corporation desiring to secure a license shall make application to the city clerk. The application shall be filed in triplicate with and dated by the city clerk. A copy of the application shall be distributed promptly by the city clerk to the Cleveland Police Department and to the applicant.

(2) The application for a license shall be upon a form provided by the city clerk. An applicant for a license 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 previously operated in this or any other county, city or state under an adult oriented establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, 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 city ordinance violation convictions, forfeiture of bond and pleadings no nolo contendere on all charges, except minor traffic violations.

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

(i) The address of the adult-oriented establishment to be operated by the applicant.

(j) The names and addresses of all persons, partnerships, 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 the applicant has been a resident of the City of Cleveland, or its environs, immediately preceding the date of the application.

(m) If the applicant is a corporation, the application shall specify the name, address and telephone number of the corporation, the date and state of incorporation, the name and address of the registered agent for service of process of the corporation, the names and addresses of the officers and directors of the corporation, and the names and addresses of any persons holding fifty percent (50%) or more of the stock of the corporation; if the applicant is a partnership, the application shall specify the name and address of the partnership, the name and address of all general partners of the partnership; if the partnership is a limited partnership, the application shall specify the name and address of all general partners who have a controlling interest in the partnership.

(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.

(3) Within ten (10) days of receiving the results of the investigation conducted by the Cleveland Police Department, the city clerk 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 conclusion of such additional investigation, the city clerk shall advise the applicant in writing whether the application is granted or denied.

(4) 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 city clerk. (Ord. of Feb. 1996, as replaced by Ord. #2003-28, Oct. 2003)

9-505. <u>Standards for issuance of license</u>. (1) To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:

(a) If the applicant is an individual:

(i) The applicant shall be at least eighteen (18) years of age.

(ii) 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.

(iii) The applicant shall not have been found to have previously violated this chapter withing five (5) years immediately preceding the date of the application.

(b) If the applicant is a corporation:

(i) All officers, directors and stockholders required to be named under § 9-504(2) shall be at least eighteen (18) years of age.

(ii) No officer, director or stockholder required to be named under § 9-504(2) 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 with five (5) years immediately preceding the date of the application.

(iii) No officer, director or stockholder required to be named under § 9-504(2) shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.

(c) If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:

(i) 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.

(ii) 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 of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

(iii) 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.

(2) No license shall be issued unless the Cleveland Police Department has investigated the applicant's qualification to be licensed. The results of that investigation shall be filed in writing with the city clerk no later that twenty (20) days after the date of the application. (Ord. of Feb. 1996)

9-506. <u>Permit required</u>. In addition to the license requirement 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 city clerk. (Ord. of Feb. 1996)

9-507. <u>Application for permit</u>. (1) Any person desiring to secure a permit shall make application to the city clerk. The application shall be filed in triplicate with and dated by the city clerk. A copy of the application shall be distributed promptly by the city clerk to the Cleveland Police Department and to the applicant.

(2) The application for a permit shall be upon a form provided by the city clerk. 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 city 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 therefore, and the business entity or trade name or where the applicant was employed or associated at the time of such suspension or revocation.

(g) All criminal statutes, whether federal, state or city 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 (2) inches by two (2) inches of the applicant.

(i) The length of time the applicant has been a resident of the City of Cleveland, 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 Cleveland Police Department, the city clerk 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 conclusion of such additional investigations, the city clerk shall advise the applicant in writing within ten (10) days whether the application is granted or denied.

(4) [Deleted.]

(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 city clerk. (Ord. of Feb. 1996, as amended by Ord. #2003-28, Oct. 2003)

9-508. Standards for issuance of permit. (1) To receive a permit as an employee, 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 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 Cleveland Police Department has investigated the applicant's qualifications to receive a permit. The result of that investigation shall be filed in writing with the city clerk not later than twenty (20) days after the date of the application.

(3) Whenever an application for a permit as an employee is denied, the applicant may within ten (10) days of receipt of notification of denial request a hearing before the city council, at which the applicant may present evidence bearing upon the question. This hearing shall be held by the city council at the next regularly scheduled meeting of the city council which occurs more than five (5) days after the request for a hearing has been filed. If the city council denies the applicant a permit as an employee, the city attorney shall within ten (10) days after the denial institute suit for declaratory judgment in state court for review of the denial. (Ord. of Feb. 1996)

9-509. 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 (1/2) 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. (Ord. of Feb. 1996)

9-510. 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 upon his or her person and shall be displayed upon request of a customer, any member of the Cleveland Police Department, or any person designated by the city council. (Ord. of Feb. 1996)

9-511. Renewal of license or permit. (7) 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 city clerk. 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 city clerk. A copy of the application for renewal shall be distributed promptly by the city clerk to the Cleveland Police Department and to the operator. The application for renewal shall be upon a form provided by the city clerk and shall contain such information and data, given under oath or affirmation, as may be required by the city council.

(8) 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 applicant is denied, one-half (1/2) of the total fees collected shall be returned.

(9) If the Cleveland Police Department is aware of any information bearing on the operator's qualifications, the information shall be filed in writing with the city clerk.

(10) 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 is allowed to continue employment in an adult-oriented establishment in the following calendar year. Any employee desiring to renew a permit shall make application to the city clerk. 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 city clerk. A copy of the application for renewal shall be distributed promptly by the city clerk to the Cleveland Police Department and to the

employee. The application for renewal shall be upon a form provided by the city clerk and shall contain such information and data, given under oath or affirmation, as may be required by the city clerk.

(11) 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.

(12) If the Cleveland Police Department is aware of any information bearing on the employee's qualification, that information shall be filed in writing with the city clerk.

(13) Notwithstanding anything herein to the contrary, any application for renewal of a license or for renewal for a permit shall be handled, investigated and approved or denied within the same time periods as those established in this chapter for original license applications and permit applications. In the event a license renewal application or permit renewal application is denied, the applicant shall have all rights of appeal to the city council as set forth in § 9-518. (Ord. of Feb. 1996, as amended by Ord. #2003-28, Oct. 2003)

9-512. <u>Revocation of license or permit</u>. (1) The city manager 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 city 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 city 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 provides space on the premises, whether by lease or otherwise, to an independent contract 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 Bradley County Health Department.

(j) Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition.

(2) Notwithstanding anything herein to the contrary, before revoking or suspending any license or permit, the city manager shall give the license holder or permit holder not less than ten (10) nor more than twenty (20) days' written notice of the charges against such license holder or permit holder and of the revocation of such license or permit, or of the period of time such license or permit is to be suspended; such notice shall also advise the license holder or permit holder of the license holder's or permit holder's right to request a hearing before the city council. In the event the license holder or permit holder does not request in writing a hearing before the city council within the time set forth in such notice, the suspension or revocation shall be effective beginning the date set forth in such notice.

If the license holder or permit holder desires to request a hearing before the city council to contest the suspension or revocation, such request shall be made in writing to the city manager within ten (10) days of the license holder's or permit holder's receipt of the notification from the city manager. If the license holder or permit holder timely requests such a hearing, the effective date of a suspension or hearing shall be stayed pending the final outcome of judicial proceedings to determine whether such license or permit has been properly revoked or suspended under the law.

If the license holder or permit holder timely requests such a hearing, a public hearing shall be held within fifteen (15) days of the city manager's receipt of such request before the city council, at which time the license holder or permit holder may present evidence as to why the suspension or revocation is improper or contrary to the provisions of this chapter. The city council shall hear evidence concerning the basis for such suspension or revocation and shall affirm or reverse the suspension or revocation at the conclusion of said hearing; any such hearing shall be concluded no later than twenty-two (22) days after the license holder's or permit holder's receipt of notification of the suspension or revocation, unless an extension beyond such time period is requested by the license holder or permit holder and granted by the city council.

If the city council affirms the suspension or revocation, the office of the city attorney shall institute suit for declaratory judgment in a court of record in Bradley County, Tennessee, within five (5) days of the date of any such

affirmation seeking an immediate judicial determination of whether such license or permit has been properly revoked or suspended under the law.

(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.

(4) Any operator or employee who's 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. (Ord. of Feb. 1996, as amended by Ord. #2003-28, Oct. 2003)

9-513. Hours of operation. (1) No adult-oriented establishment shall be open between the hours of 1:00 A.M. and 8:00 A.M. on weekdays or between the hours of 1:00 A.M. and 12:00 midnight on Sundays.

(2) All adult-oriented establishments shall be open to inspection at all reasonable times by the Cleveland Police Department or such other persons as the city council may designate. (Ord. of Feb. 1996)

9-514. Responsibilities of the operator. (1) The operator shall maintain a register of all employees, 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 city council. The above information of 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 employees available immediately for inspection by police upon demand of a member of the Cleveland 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 while on the licensed premises and any act or omission of any employee 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 Cleveland 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 Cleveland City Code, Title 9, Chapter 5, Sections 9-501 through 9-516. Entertainers Are:

1. Not permitted to engage in any type of sexual conduct;
2. Not permitted to expose their sex organs;
3. Not permitted to demand or collect all or any portion of a fee for entertainment before its completion.

(Ord. of Feb. 1996)

9-515. 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 of 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, 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.

(4) No entertainer, employee or customer shall be permitted to have any physical contact with any other on the premises during any performance and all performances shall only occur upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest entertainer, employee and/or customer. (Ord. of Feb. 1996)

9-516. Penalties and prosecution. (1) Any person, partnership, or corporation who is found to have violated this chapter shall be fined a definite sum not exceeding fifty dollars ($50.00) 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. (Ord. of Feb. 1996)

9-517. Invalidity of part. Should any court of competent jurisdiction declare any section, clause, or provision of this chapter to be unconstitutional, such decision shall affect only such section, clause or provision so declared unconstitutional, and shall not affect any other section, clause, or provision of this chapter. (as added by Ord. #2003-28, Oct. 2003)

9-518. Denial of applications or renewals. (1) As used in this section, "application" shall mean:

(a) An application for a license;
(b) An application for a permit;
(c) An application for a license renewal; and
(d) An application for a permit renewal.

(2) Whenever an application is denied, the city clerk shall notify the applicant in writing of the reasons for such action; such notice shall also advise the applicant of the applicant's right to request a hearing before the city council. If the applicant desires to request a hearing before the city council to contest the denial of an application, such request shall be made in writing to the city manager within ten (10) days of the applicant's receipt of the notification of the denial of the application. If the applicant timely requests such a hearing, a public hearing shall be held within fifteen (15) days of the city manager's receipt of such request before the city council at which time the applicant may present evidence as to why the application should not be denied. The city council shall hear evidence concerning the basis for denial of the application and shall affirm or reverse the denial of an application at the conclusion of said hearing; any such hearing shall be concluded no later than twenty-two (22) days after the applicant's receipt of notification of denial of an application, unless an extension beyond such time period is requested by the applicant and granted by the city council.

(3) If the city council affirms the denial of an application, the office of the city attorney shall institute suit for declaratory judgment in a court of record in Bradley County, Tennessee, within five (5) days of the date of any such denial seeking an immediate judicial determination of whether such application has been properly denied under the law. (as added by Ord. #2003-28, Oct. 2003)

9-519. <u>Compliance with zoning laws</u>. (1) As used in this section, "applicant" or "applicants" shall mean:

(a) An applicant for a license;
(b) An applicant for a permit;
(c) An applicant for a license renewal;
(d) An applicant for a permit renewal.

(2) All applicants must comply with all zoning laws and regulations of the City of Cleveland. (as added by Ord. #2003-28, Oct. 2003)

CHAPTER 6

CABLE TELEVISION

SECTION

9-601. To be furnished under franchise.

9-601. To be furnished under franchise. Cable television shall be furnished to the City of Cleveland and its inhabitants under franchise granted to Telecable of Cleveland, Inc., by the city council of the City of Cleveland, Tennessee. The rights, powers, duties and obligations of the City of Cleveland and its inhabitants are clearly stated in the franchise agreement executed by, and which shall be binding upon the parties concerned.[1]

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[1]For complete details relating to the cable television franchise agreement see the Ordinance dated January 19, 1990 in Appendix A at the end of this municipal code.

CHAPTER 7

TAXICABS

SECTION

9-701. Scope of chapter.
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9-726. Rates prescribed; rate card to be posted.
9-727. Receipt for fare to be given if requested.
9-728. Refusal to pay legal fare.
9-729. Manifests to be maintained.
9-730. Drivers prohibited from soliciting patronage.
9-731. Aiding or engaging in unlawful or immoral acts prohibited.
9-732. Places for accepting and discharging passengers.
9-733. Group rides regulated.
9-734. Use of streets for parking regulated; private facilities required.

9-701. Scope of chapter. The provisions of this chapter relate to the operation and control of taxicabs in the city and to the drivers of taxicabs. (Ord. of Jan. 1999)

9-702. <u>Definitions</u>. The following words and phrases when used in this chapter shall have the meaning as set out herein:

(1) "Certificate" means a certificate of public convenience and necessity issued by the city council authorizing the holder thereof to conduct a taxicab business in the city.

(2) "Cruising" means the driving of a taxicab on the streets, alleys, or public places of the city in search of or soliciting prospective passengers for hire.

(3) "Holder" means a person to whom a certificate of public convenience and necessity has been issued.

(4) "Manifest" means a daily record prepared by a taxicab driver of all trips made by the driver showing time and place of origin, destination, number of passengers, and the amount of fare of each trip.

(5) "Person" includes an individual, a corporation or other legal entity, a partnership, and any unincorporated association.

(6) "Rate card" means a card issued by the city for display in each taxicab which contains the rates of fare then in force.

(7) "Senior citizen" means any passenger who is sixty-two (62) years old or older.

(8) "Taxicab" means a motor vehicle regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than eight (8) persons, and not operated on a fixed route.

(9) "Taximeter" means a meter instrument or device attached to a taxicab which measures mechanically the distance driven and the waiting time upon which the fare is based.

(10) "Waiting time" means the time when a taxicab is not in motion from the time of acceptance of a passenger or passengers to the time of discharge, but does not include any time that the taxicab is not in motion if due to any cause other than the request, act, or fault of a passenger or passengers. (Ord. of Jan. 1999)

9-703. <u>Character of service to be furnished</u>. All persons engaged in the taxicab business in the city operating under the provisions of this chapter shall render an overall service to the public desiring to use taxicabs. Holders of certificates of public convenience and necessity shall maintain a central place of business and keep it open twenty four (24) hours a day for the purpose of receiving calls and dispatching cabs, unless a lesser time is agreed to by the city council. They shall answer all calls received by them for services inside the city as soon as they can do so and if the services cannot be rendered within a reasonable time they shall then notify the prospective passengers how long it will be before the call can be answered and give the reason therefor.

Any holder who refuses to accept a call anywhere in the city at any time when the holder has available cabs, or who fails or refuses to give overall service shall be deemed a violator of this chapter and the certificate granted to the holder shall be revoked at the discretion of the city council. (Ord. of Jan. 1999)

9-704. Certificate of public convenience and necessity. It shall be unlawful for any person to operate or permit a taxicab owned or controlled by him to be operated as a vehicle for hire upon the streets of the city without having first obtained a certificate of public convenience and necessity from the city council. (Ord. of Jan. 1999)

9-705. Application for certificate. An application for a certificate of public convenience and necessity shall be filed with the city council upon forms provided by the city clerk's office, shall be verified under oath, and shall furnish the following information:

(1) Name, address. The name and address of the applicant.

(2) Financial status. The financial status of the applicant, including the amounts of all unpaid judgments against the applicant and the nature of the transaction or acts giving rise to the judgments.

(3) Experience. The experience of the applicant in the transportation of passengers.

(4) Necessity. Any facts which the applicant believes tend to prove that public convenience and necessity require the granting of a certificate.

(5) Vehicles, facilities. The number of vehicles to be operated or controlled by the applicant and the location of proposed depots and terminals.

(6) Color scheme insignia. The color scheme or insignia to be used to designate the vehicle or vehicles of the applicant.

(7) Additional information. Such further information as the city council may require. (Ord. of Jan. 1999)

9-706. Hearing on certificate. Upon the filing of an application for a certificate of public convenience and necessity, the city clerk shall fix a time and place for a public hearing thereon. Notice of the hearing shall be given to the applicant and to all persons to whom certificates of public convenience and necessity have been heretofore issued. Due notice shall also be given the general public by posting a notice of the hearing in the official city newspaper. Any interested person may file with the city council a memorandum in support of or in opposition to the issuance of a certificate. (Ord. of Jan. 1999)

9-707. Issuance of certificate. (1) Findings. If the city council finds that further taxicab service in the city is required by the public convenience and necessity and that the applicant is fit, willing, and able to perform such public transportation and to conform to the provisions of this chapter and other rules promulgated by the city council, then the city council shall issue a certificate stating the name and address of the applicant, the number of vehicles authorized under the certificate, and the date of issuance; otherwise, the application shall be denied.

(2) Matters to be considered. In making the above findings, the city council shall take into consideration the number of taxicabs already in

operation; whether existing transportation is adequate to meet the public need; the probable effect of increased service on local traffic conditions; and the character, experience, and responsibility of the applicant. (Ord. of Jan. 1999)

9-708. Transfer of certificate. No certificate of public convenience and necessity may be sold, assigned, mortgaged, or otherwise transferred without the consent of the city council. (Ord. of Jan. 1999)

9-709. Suspension or revocation of certificate. (1) Grounds. A certificate issued under the provisions of this chapter may be revoked or suspended by the city council if the holder thereof has violated any of the provisions of this chapter, has discontinued operations for more than sixty (60) days, or has violated any ordinances of the city, law of the United States, or of the State of Tennessee, the violation of which unfavorably reflects on the fitness of the holder to offer public transportation.

(2) Notice, hearing. Prior to suspension or revocation, the holder shall be given notice of the proposed action to be taken and shall have an opportunity to be heard at the next regularly scheduled meeting of the city council. (Ord. of Jan. 1999)

9-710. Indemnity bond or liability insurance required. (1) Bond. No certificate of public convenience and necessity shall be issued or continued in operation unless there is in full force and effect an indemnity bond for each vehicle authorized in an amount established by resolution of the city council. The bond or bonds shall inure to the benefit of any person who is injured or who sustains damage to property proximately caused by the negligence of a holder, his servants, or agents. Said bond or bonds shall be filed in the office of the city clerk and shall have as surety thereon a surety company authorized to do business in the State of Tennessee.

(2) Liability insurance. The city council may in its discretion allow the holder to file, in lieu of a bond or bonds, a liability insurance policy issued by an insurance company authorized to do business in the State of Tennessee. The policy shall conform to the provisions of this section relating to bonds. (Ord. of Jan. 1999)

9-711. Privilege taxes to be paid. No certificate of public convenience and necessity shall be issued or continued in operation unless the holder thereof has paid the applicable privilege taxes levied by the city council. (Ord. of Jan. 1999)

9-712. Records and reports required. (1) Operating information. Every holder shall keep accurate records of receipts from operations, operating and other expenses, capital expenditures, and such other operating information as may be required by the city council. Every holder shall maintain the records

containing such information and other data required by this chapter at a place readily accessible for examination by the city clerk's office.

(2) Annual reports to city business tax office. Every holder shall submit reports of receipts, expenses, and statistics of operation to the city business tax office for each calendar year, in accordance with a uniform system prescribed by the city clerk. The reports shall reach the business tax office on or before the last day of August of the year following the calendar year for which the reports are prepared.

(3) Accident reports. All accidents arising from or in connection with the operation of taxicabs shall be reported within twenty four (24) hours from the time of occurrence to the police department in a form of report to be furnished by that department.

(4) Other records. It shall be mandatory for all holders to file with the city clerk's office copies of all contracts, agreements, arrangements, memoranda, or other writing relating to the furnishing of taxicab service to any hotel, theater, hall, public resort, railway station, or other place of public gathering, whether such arrangements are made with the holder or any corporation, firm, or association with which the holder may be interested or connected. (Ord. of Jan. 1999)

9-713. Permit requirements for taxicab drivers. No person shall act as a driver of a taxicab unless he has obtained a taxicab driver's permit from the police department. (Ord. of Jan. 1999)

9-714. Form and content of application for permit; accompanying documents. (1) Application. Taxicab drivers' permits shall be applied for in writing on such form as the chief of police may prescribe. The application shall show proof of the applicant's state class D license with an F endorsement; what experience he has had in driving motor vehicles; whether the applicant has been convicted of violating any motor vehicle, traffic, or criminal law of the city or state or of any other city or state, together with the particulars of all such convictions; and such other information as the chief of police may require.

(2) Accompanying documents. Each applicant shall be accompanied by at least two (2) recent photographs of the applicant of such size and design as designated by the chief of police; a certificate from a reputable physician of the city showing that the applicant is not disabled by reason of defects in his sight, hearing, body, or limbs from safely operating a motor vehicle; and certificates from at least three (3) reputable persons personally acquainted with the applicant showing him to be a person of good moral character. (Ord. of Jan. 1999)

9-715. Fee for permit. No permit or renewal of a permit to drive a taxicab shall be issued until the applicant therefor has first paid to the police department a fee of fifteen dollars ($15.00). (Ord. of Jan. 1999)

9-716. Investigation of application for permit. Except on an application for renewal, before a taxicab driver's permit is issued, the chief of police shall investigate the statements made in the application and shall determine whether the applicant complies with this chapter and is entitled to a permit. (Ord. of Jan. 1999)

9-717. Persons ineligible for permits. No taxicab driver's permit shall be issued to anyone who has been convicted of any offense or crime involving moral turpitude or who, in the opinion of the chief of police, is otherwise not physically or morally fit to drive a taxicab in the city. No permit shall be issued to anyone less than eighteen (18) years old. (Ord. of Jan. 1999)

9-718. Issuance of permit. The chief of police shall issue a taxicab driver permit to any applicant therefor who complies with this chapter and who under its provisions is entitled to the permit. Any applicant refused a permit or permit renewal may request an appeal to the city manager, who upon review of the matter shall decide whether said permit should be issued. (Ord. of Jan. 1999)

9-719. Term of permit; design. (1) A taxicab driver's permit shall be issued for a period of not more than one (1) year and shall continue in effect only through December 31st of the year within which it is issued, except that during December of any year, permits may be issued to be effective through December 31st of the next year. No pro-ration of the fee is allowed.

(2) Taxicab drivers' permits shall be of such size and design as the chief of police may prescribe. However, each permit shall bear on its face a photograph of the applicant, the number of his permit, its expiration date, and such other information as the chief of police may direct. (Ord. of Jan. 1999)

9-720. Display and illumination of permit. The permit of each taxicab driver shall be kept prominently displayed and visible to the passengers of the taxicab operated by him. After sundown, it shall be illuminated by a suitable light so as to remain plainly visible to the passengers at all times. (Ord. of Jan. 1999)

9-721. Suspension or revocation of permit. (1) Grounds. Any permit granted to any taxicab driver under the terms of this chapter may be suspended or revoked by the chief of police for the driver's failure or refusal to comply with any of the provisions of this chapter. The permit may also be revoked if the taxicab driver's state class D license with an F endorsement is revoked or expires; if he willfully or persistently violates any city ordinance or state or federal law; or if he becomes physically or morally unfit to operate a taxicab.

(2) Conditions precedent to revocation. A permit may not be revoked unless the taxicab driver has received notice of the proposed revocation and reasons therefor at least forty-eight (48) hours prior to the hearing, and has had an opportunity to show cause why his permit should not be revoked.

(3) Appeal of revocation. Any taxicab driver whose license is revoked under this section may request an appeal to the city manager, who upon review of the matter shall decide whether said permit should be revoked or reinstated. (Ord. of Jan. 1999)

9-722. Photograph of applicant for permit to be filed. One photograph of each applicant for a taxicab driver's permit shall be retained in the files of the police department with the application. The files shall be kept in a readily accessible place at the police department. (Ord. of Jan. 1999)

9-723. Inspections, fees, certificates. (1) Time, place, fee. To insure compliance with the provisions of this chapter all taxicabs shall be inspected before they can be placed in service as a taxicab. Thereafter, they shall be regularly inspected semiannually in January and July by the city's fleet manager. An inspection fee of twenty dollars ($20.00) per vehicle shall be charged for each inspection. The times and places for such inspections shall be prescribed by the fleet manager who shall also see that notice thereof is either published in the official city newspaper or given individually to each holder of a certificate of public convenience and necessity.

(2) Certification of inspection. A certificate of inspection shall be issued and prominently displayed on the windshield of each taxicab found to comply with the provisions of this chapter. No holder of a certificate of public convenience and necessity shall allow a taxicab to be operated without a certificate of inspection.

(3) Additional inspections. In addition to the initial inspection and regular semiannual inspections for which the fees are to be charged, taxicabs shall be inspected without cost to the holders at such other times and places as the chief of police or fleet manager may reasonably direct.

(4) Noncompliance with inspection requirements. When any taxicab is found not to conform to the requirements of this chapter its certificate of inspection shall be revoked. Such taxicab shall not thereafter be operated in the city until it has been put in proper condition, an extra ten dollar ($10.00) inspection fee paid, and a new certificate of inspection obtained following re-inspection by the fleet manager. (Ord. of Jan. 1999)

9-724. Condition of taxicabs. All taxicabs operated in the city shall be kept in a clean and sanitary condition inside and out. They shall also be kept in such mechanical condition as is reasonably necessary to provide for their satisfactory operation and the safety of the public. They shall be equipped with

such lights, brakes and other mechanical equipment and devices as are required by state law and this code for motor vehicles generally. (Ord. of Jan. 1999)

9-725. Signs, insignia, color scheme for taxicabs. (1) Each taxicab shall bear on the outside of each rear door, in painted letters not less than two inches (2") in height, the name of the owner, and in addition may bear an identifying design approved by the city council.

(2) No vehicle covered by the terms of this chapter shall be licensed whose color scheme, identifying design, monogram, or insignia to be used thereon in the opinion of the city council conflicts with or imitates any color scheme, identifying design, monogram, or insignia used on a vehicle or vehicles already operating under this chapter in such a manner as to be misleading or tend to deceive or defraud the public. If after a license has been issued for a taxicab hereunder, the color scheme, identifying design, monogram, or insignia thereof is changed so as to be in the opinion of the city council in conflict with or in imitation of any color scheme, identifying design, monogram, or insignia used by any other person, owner or operator, in such a manner as to be misleading or tend to deceive the public, the license of or certificate covering the taxicab or taxicabs shall be suspended or revoked. (Ord. of Jan. 1999)

9-726. Rates prescribed; rate card to be posted. (1) No owner or driver of a taxicab shall charge a greater sum for the use of a taxicab than is prescribed by resolution of the city council. Taxicabs must use the most direct route possible from the point of passenger entry to the passenger's destination point. When more than one passenger employs the same taxicab, no charge shall be made for the additional passengers except when they ride beyond the previous passenger's destination and then only for the additional distance traveled. In establishing the rates, the city council may authorize a discount of up to twenty percent (20%) from the regular rates, fees, and charges for senior citizens.

(2) Every taxicab operated under this chapter shall have a rate card issued by the business tax office setting forth the authorized maximum rates of fare which can be charged. Said card shall be displayed in such manner as to be in full view of all passengers and shall clearly denote if any senior citizen discount rates are in effect. (Ord. of Jan. 1999)

9-727. Receipt for fare to be given if requested. The driver of any taxicab shall upon demand by any passenger tender to the passenger a receipt for the amount charged. (Ord. of Jan. 1999)

9-728. Refusal to pay legal fare. It shall be unlawful for any person to refuse to pay the legal fare for any taxicab after having hired it, and it shall be unlawful for any person to hire any taxicab with intent to defraud the person from whom it is hired of the value of such service. (Ord. of Jan. 1999)

9-729. Manifests to be maintained. (1) Form contents. Every driver shall maintain a daily manifest upon which are recorded all trips made each day, showing time and place of origin and destination of each trip and amount of fare. All completed manifests shall be returned to the owner by the driver at the conclusion of his tour of duty. The forms for each manifest shall be furnished to the driver by the owner and shall be of a character approved by the city clerk's office.

(2) Preservation. Every holder of a certificate of public convenience and necessity shall retain and preserve all drivers' manifests in a safe place for at least the calendar year next preceding the current calendar year, and the manifests shall be available to the police department and the city clerk's office. (Ord. of Jan. 1999)

9-730. Drivers prohibited from soliciting patronage. No driver shall solicit passengers for a taxicab nor cruise in search of passengers. Neither shall any driver annoy any person, obstruct the movement of any person, or follow any person for the purpose of soliciting his patronage. (Ord. of Jan. 1999)

9-731. Aiding or engaging in unlawful or immoral acts prohibited. No driver shall help, aid, assist, use, otherwise engage, or knowingly allow his taxicab to be used in the commission of or in furtherance of any unlawful or immoral act, purpose, or design. (Ord. of Jan. 1999)

9-732. Places for accepting and discharging passengers. Drivers of taxicabs shall not receive or discharge passengers in the roadway but shall pull up to the right-hand sidewalk as nearly as possible, or in the absence of a sidewalk, to the extreme right-hand side of the road and there receive or discharge passengers. Upon one-way streets, passengers may be discharged on either side of the road. (Ord. of Jan. 1999)

9-733. Group riding regulated. Whenever one passenger has lawfully and properly entered or engaged a taxicab, no additional passenger shall be accepted without the consent of the first passenger. The first passenger has the right to require the additional passengers to pay one-half the cost for the shared mileage on this trip. In any event sufficient room must be left for the driver at all times to have free, comfortable, and easy control of the operation of the taxicab. Not more than two (2) passengers shall be permitted to sit upon the same seat occupied by the driver of any taxicab. (Ord. of Jan. 1999)

9-734. Use of streets for parking regulated; private facilities required. All holders of a certificate of public convenience and necessity are required to provide private facilities for the parking of their taxicabs when the taxicabs are not engaged or lawfully parked. (Ord. of Jan. 1999)

TITLE 10

ANIMAL CONTROL

CHAPTER
1. IN GENERAL.
2. DOGS AND CATS--ADDITIONAL SECTIONS.
3. WILD BIRDS.

CHAPTER 1

IN GENERAL

SECTION
10-101. Running at large prohibited.
10-102. Swine prohibited.
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. Seizure and disposition of animals.

10-101. Running at large prohibited. It shall be unlawful for any person owning or being in charge of any cows, sheep, horses, mules, goats, dogs, cats, chickens, ducks, geese, turkeys, or other domestic fowl, cattle, or livestock, knowingly or negligently to permit any of them to run at large in any street, alley, or unenclosed lot within the corporate limits.

Any person, including its owner, knowingly or negligently permitting an animal to run at large may be prosecuted under this section even if the animal is picked up and disposed of under other provisions of this chapter, whether or not the disposition includes returning the animal to its owner. (1981 Code, § 5-51, modified, as amended by Ord. of 7/23/2001)

10-102. Swine prohibited. Swine are prohibited within the corporate limits.

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. (1981 Code, § 5-92, modified)

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 safety.

All feed shall be stored and kept in a rat-proof and fly-tight building, box, or receptacle.

It shall be unlawful for any person to beat or otherwise abuse or injure any dumb animal or fowl. (1981 Code, §§ 5-91 and 5-93, modified)

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.

10-106. Seizure and disposition of animals. Any animal or fowl found running at large or otherwise being kept in violation of this chapter may be seized by any police officer or other properly designated officer or official and confined in a shelter provided or designated by the city council. If the owner is known, the owner shall be given notice of the seizure in person, by telephone, or by a postcard addressed to the owner's last known mailing address. If the owner is not known or cannot be located, then no notice is required to be sent to the owner. If the owner is known, an impounded animal or fowl will be held for a period of five (5) days from its seizure before it is disposed of in accordance with this section. If the owner is not known, an impounded animal or fowl will be held for a period of three (3) days from its seizure before it is disposed of in accordance with this section. If the animal or fowl is not claimed within the applicable time period after its seizure, then the animal will be sold, adopted or humanely destroyed, or it may otherwise be disposed of as authorized by the city council. If an animal is claimed by its owner, then the owner must pay the shelter its costs. The shelter shall collect from each person claiming an impounded animal or fowl reasonable fees, in accordance with a schedule approved by the city council, to cover the costs of impoundment and maintenance. (1981 Code, § 5-52, as replaced by Ord. #2005-05, March 2005)

CHAPTER 2

DOGS AND CATS--ADDITIONAL SECTIONS[1]

SECTION

10-201. Rabies vaccination and registration required.
10-202. Dogs to wear tags.
10-203. Restraint of dogs.
10-204. Vicious dogs to be securely restrained.
10-205. Noisy dogs prohibited.
10-206. Confinement of dogs suspected of being rabid.
10-207. Seizure, impoundment and redemption of dogs running at large.
10-208. Destruction of vicious or infected dogs running at large.

10-201. Rabies vaccination and registration required. It shall be unlawful for any person to own, keep, or harbor any dog without having the same duly vaccinated against rabies and registered in accordance with the provisions of the "Tennessee Anti-Rabies Law" (Tennessee Code Annotated, §§ 68-8-101 through 68-8-114) or other applicable law. Any references to dogs within this chapter shall also be presumed to include cats. (1981 Code, § 5-27, modified)

10-202. Dogs to wear tags. It shall be unlawful for any person to own, keep, or harbor any dog which does not wear a tag evidencing the vaccination and registration required by the preceding section.

10-203. Restraint of dogs. Every person owning or having possession, charge, care, custody or control of any dog shall keep such dog exclusively upon his own premises; provided, however, that such dog may be off such premises if it is under the control of a competent person and restrained by a chain, leash or other means of visible control.

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 provide reasonably for the protection of other animals and persons. (1981 Code, § 5-31, modified)

10-205. Noisy dogs prohibited. No person shall own, keep, or harbor any dog which, by loud and frequent barking, whining, or howling, disturbs the peace and quiet of any neighborhood. (1981 Code, § 5-32, modified)

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[1]The title of this chapter was changed by Ord. of 7/23/2001.

10-206. Confinement of dogs suspected of being rabid. If any dog has bitten any person or is suspected of having bitten any person or is for any reason suspected of being infected with rabies, the chief of police or any other properly designated officer or official may cause such dog to be confined or isolated for such time as he deems reasonably necessary to determine if such dog is rabid. (1981 Code, § 5-35, modified)

10-207. Seizure, impoundment and redemption of dogs running at large. (1) Seizure. Any dog found running at large may be seized by the animal control officer or any police officer and placed in the animal shelter.

(2) Impoundment. It shall be the duty of the Animal Control Officer of the City of Cleveland to immediately impound any and all dogs running at large in violation of the provisions of this chapter. All costs of said impoundment and all costs of any subsequent boarding of any dog shall be borne by the owner and shall be paid by the owner prior to the time any dog shall be released to the owner.

(3) Redemption. (a) Dogs wearing rabies vaccination tag or other identification. If said dog is wearing a rabies vaccination tag, or other identification, all reasonable effort shall be made to notify the owner of the animal. Reasonable effort is defined to include a postcard addressed to the owner's last known mailing address or a telephone call to the owner if the owner's telephone number is known. The notice shall advise the owner that they are required to appear within five (5) days and redeem the animal by paying the animal shelter a fee for each day the animal has been impounded, plus an impoundment or pickup fee in accordance with the fee schedule adopted by the city council. If, after five (5) days, the dog has not been claimed, the animal control officer may destroy the same in a human manner and dispose of the remains in a sanitary manner. Alternatively, the animal shelter may offer the dog for adoption, consistent with the city's animal adoption program.

(b) Dogs not wearing a rabies vaccination tag or other identification. If a dog is not wearing a rabies vaccination tag or other identification, the animal may be adopted or destroyed, unless legally claimed by the owner within three (3) days. No dog shall be released from the shelter without having proof of current vaccination or until it has been vaccinated and, where applicable, a tag issued. The owner must also pay the animal shelter a fee for each day the animal has been impounded, plus an impoundment or pickup fee in accordance with the fee schedule adopted by the city council. (1981 Code, § 5-34, modified, as amended by Ord. #2005-06, March 2005)

10-208. Destruction of vicious or infected dogs running at large. When, because of its viciousness or apparent infection with rabies, a dog found running

at large cannot be safely impounded it may be summarily destroyed by any policeman or other properly designated officer.[1]

[1]State law reference

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

CHAPTER 3

WILD BIRDS

SECTION
10-301. City to supervise abatement of any nuisance created by wild birds.

10-301. City to supervise abatement of any nuisance created by wild birds. When any flock or group of wild birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or a menace to health or property, and if such are found and declared by the city manager to be creating a public nuisance, appropriate action may be authorized by the city manager after a thorough investigation. However, trapping or killing of such birds shall not be resorted to unless the city manager is unable to find a satisfactory alternative. Remedial measures shall be taken only by authority of, and under supervision of the city. (1981 Code, § 5-96, modified)

TITLE 11

MUNICIPAL OFFENSES[1]

CHAPTER

1. ALCOHOL.
2. OFFENSES AGAINST THE PEACE AND QUIET.
3. FIREARMS, WEAPONS AND MISSILES.
4. TRESPASSING AND INTERFERENCE WITH TRAFFIC.
5. MISCELLANEOUS.
6. HANDBILLS.
7. LITTERING.

CHAPTER 1

ALCOHOL[2]

SECTION

11-101. Drinking alcoholic beverages in public, etc.
11-102. Minors in beer places.

11-101. Drinking alcoholic beverages in public, etc. It shall be unlawful for any person to drink, consume or have open any container of beer or intoxicating liquor in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground or other public place, while riding in or operating a vehicle in or on any of the aforementioned public places, or while on private property without the consent of the owner or person in control.

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[1]Municipal code references
Animal control: title 10.
Housing and utilities: title 12.
Fireworks and explosives: title 7.
Traffic offenses: title 15.
Streets and sidewalks (non-traffic): title 16.

[2]Municipal code reference
Sale of alcoholic beverages, including beer: title 8.
State law reference
See Tennessee Code Annotated § 33-8-203 (Arrest for Public Intoxication, cities may not pass separate legislation).

11-102. **Minors in beer places**. No person under the age of twenty-one (21) shall loiter in or around or otherwise frequent any place where beer is sold at retail for Class 2 on premises consumption.

CHAPTER 2

OFFENSES AGAINST THE PEACE AND QUIET

SECTION

11-201. Disturbing the peace.
11-202. Anti-noise regulations.
11-203. Excessive noise from motor vehicles.

11-201. 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. (1981 Code, §§ 11-16, 15-21 and 15-23, modified)

11-202. 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 other device on any automobile, motorcycle, bus, truck, or vehicle while not in motion except as a danger signal if another vehicle is approaching, apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.

(b) Radios, phonographs, etc. The playing of any radio, phonograph, or any musical instrument or sound device, including but not limited to loudspeakers or other devices for reproduction or amplification of sound, either independently of or in connection with motion pictures, radio, or television, in such a manner or with such volume, particularly during the hours between 9:00 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, etc. Yelling, shouting, whistling, or singing on the public streets, particularly between the hours of 9:00 P.M. and 7:00 A.M., or at any time or place so as to annoy or disturb the quiet,

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

(d) Pets. The keeping of any animal, bird, or fowl which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.

(e) Use of vehicle. The use of any automobile, motorcycle, truck, or vehicle so out of repair, so loaded, or in such manner as to cause loud and unnecessary grating, grinding, rattling, or other noise.

(f) Blowing whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper city authorities.

(g) Exhaust discharge. To discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, or boat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(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 9:00 P.M. on week days, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building inspector granted for a period while the emergency continues not to exceed thirty (30) days. If the building inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration, or repair of any building or the excavation of streets and highways between the hours of 9:00 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 9:00 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) City vehicles. Any vehicle of the city while engaged upon necessary public business.

(b) Repair of streets, etc. Excavations or repairs of bridges, streets, or highways at night, by or on behalf of the city, the county, or the state, when the public welfare and convenience renders it impracticable to perform such work during the day.

(c) Noncommercial and nonprofit use of loudspeakers or amplifiers. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character and in the course of advertising functions sponsored by nonprofit organizations. However, no such use shall be made until a permit therefor is secured from the police department. Hours for the use of an amplified 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. (1981 Code, § 11-17, 15-21, and 15-23, modified)

11-203. Excessive noise from motor vehicles. 1. No person operating or occupying a motor vehicle on any public street, highway, alley, parking lot, or driveway within the corporate limits of the City of Cleveland, Tennessee, shall operate or permit the operation of any sound amplification system, including, but not limited to, any radio, tape player, compact disc player, loudspeaker, or any other electrical device used for the amplification of sound from within the motor vehicle so that the sound is plainly audible at a distance of fifty (50) or more feet from the vehicle. For the purpose of this section "plainly audible" means any sound which clearly can be heard, by unimpaired auditory senses based on a direct line of sight of fifty (50) or more feet, however, words or phrases need not be discernible and such sound shall include base reverberation.

2. This section shall not be applicable to emergency or public safety vehicles, vehicles owned or operated by a municipal or county government or any utility company, for sound emitted unavoidably during a job-related operation, school or community sponsored activities, auctioneers or auctioning activities, boats or other water crafts operated on waters or any motor vehicle used in an authorized public activity for which a permit has been granted by the appropriate agency of a municipal or county government.

3. A violation of this section will subject the offender to a fine in an amount not to exceed $50.00. (as added by Ord. #2004-30, Aug. 2004)

CHAPTER 3

FIREARMS, WEAPONS AND MISSILES

SECTION

11-301. Unlawful to discharge firearms, etc.
11-302. Throwing missiles.
11-303. Carrying weapons.

11-301. Unlawful to discharge firearms, etc. It shall be unlawful to shoot or discharge any firearm, gun, pistol, toy pistol, torpedo, dynamite cartridge or flipper within the corporate limits of the City of Cleveland. It shall also be unlawful to discharge any explosive, except when done in excavating or for other proper and lawful purposes.

It shall also be unlawful to discharge within the corporate limits of the City of Cleveland any air gun, air pistol, air rifle, BB gun, or slingshot capable of discharging or propelling a bullet or pellet, whether made of metal, plastic, or any other kind of material, and whether propelled by spring, compressed air, expanding gas, explosive, or any other force producing means or method. (1981 Code, § 15-63, modified, as replaced by Ord. of 4/14/97, 31)

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.

11-303. Carrying weapons. (1) It shall be unlawful for any person to carry in any manner whatever, with intent to go armed, any razor, dirk, bowie knife or other knife or like form, shape or size, or a pocket knife with blade exceeding four (4) inches in length, or a switchblade knife of any size, sword cane, ice pick, slingshot, black jack, knucks, Spanish stiletto, or a fountain pen pistol or gun, or like instrument containing a firing pin capable of shooting tear gas, or pistol cartridges; or any pistol or revolver of any kind whatsoever.

(2) It shall be unlawful for any person to carry concealed on or about his person, any razor, dirk, bowie knife, or other knife of like form, shape, or size, or pocket knife with blade exceeding four (4) inches in length, or a switchblade knife of any size, sword cane, ice pick, slingshot, black jack, brass knucks, Spanish stiletto, or a fountain pen pistol or gun, or like instrument containing a firing pin capable of shooting tear gas or pistol cartridges; or any pistol or revolver of any kind whatsoever, or any other dangerous weapon.

(3) The provisions of this section shall not apply to any person authorized by state law to carry weapons, any person employed in the army, air force, navy or marine service of the United States, or to any officer or policeman while bona fide engaged in his official duties, in the execution of process, or

while searching for or engaged in arresting criminals, or to persons who may have been summoned by such officer or policeman in the discharge of his said duties, and in arresting criminal and transporting and turning them over to the proper authorities; nor shall said provisions apply to any conductor of any passenger or freight train of any railroad while he is on duty. Persons who may be employed in the army, air force, navy or marine service, as aforesaid, shall only carry such pistols as are prescribed by the army, air force and navy regulations. (1981 Code, § 15-61, modified)

CHAPTER 4

TRESPASSING AND INTERFERENCE WITH TRAFFIC

SECTION

11-401. Trespassing.
11-402. Interference with traffic.

11-401. Trespassing.[1] (1) On premises open to the public.

(a) It shall be unlawful for any person to defy a lawful order, personally communicated to him by the owner or other authorized person, not to enter or remain upon the premises of another, including premises which are at the time open to the public.

(b) The owner of the premises, or his authorized agent, may lawfully order another not to enter or remain upon the premises if such person is committing, or commits, any act which interferes with, or tends to interfere with, the normal, orderly, peaceful or efficient conduct of the activities of such premises.

(2) On premises closed or partially closed to public. It shall be unlawful for any person to knowingly enter or remain upon the premises of another which is not open to the public, notwithstanding that another part of the premises is at the time open to the public.

(3) Vacant buildings. It shall be unlawful for any person to enter or remain upon the premises of a vacated building after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.

(4) Lots and buildings in general. It shall be unlawful for any person to enter or remain on or in any lot or parcel of land or any building or other structure after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.

(5) Peddlers, etc. It shall also be unlawful and deemed to be a trespass for any peddler, canvasser, solicitor, transient merchant, or other person to fail to promptly leave the private premises of any person who requests or directs him to leave.[2] (1981 Code, §§ 15-128, 15-129, and 15-130, modified)

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[1]State law reference
Subsections (1) through (4) of this section were taken substantially from Tennessee Code Annotated, § 39-14-405.

[2]Municipal code reference
Provisions governing peddlers: title 9, chapter 1.

11-402. **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 with the free passage of pedestrian or vehicular traffic thereon.

CHAPTER 5

MISCELLANEOUS

SECTION

11-501. Abandoned refrigerators, etc.
11-502. Caves, wells, cisterns, etc.
11-503. Posting notices, etc.
11-504. Curfew authorized.
11-505. Indecent exposure prohibited.
11-506. Commercial sexual activity prohibited.
11-507. Prohibited sexual activity in establishments offering food or beer.

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 or otherwise sealing the door in such a manner that it cannot be opened by any child.

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.

11-503. Posting notices, etc. No person shall paint, make, or fasten, in any way, any show-card, poster, or other advertising device or sign upon any public or private property unless legally authorized to do so.

11-504. Curfew authorized. After proclamation of a civil emergency by the mayor, he may order a general curfew applicable to such geographical areas of the municipality or to the municipality as a whole, as he deems advisable, and applicable during which hours of the day or night as he deems necessary in the interest of the public safety and welfare. The proclamation and general curfew shall have the force and effect of law and shall continue in effect until rescinded in writing by the mayor but not to exceed 15 days. (1981 Code, § 15-107, modified)

11-505. Indecent exposure prohibited. (1) Definitions. The following definitions apply to this section unless the context otherwise requires:

(a) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock or breast of a human being below the top of the areola of any person;

(b) "Sexual contact" includes the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's, the defendants, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification; and

(c) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required.

(2) Indecent exposure. A person commits an offense who, in a public place or on the private premises of another, or so near thereto as to be seen from such private premises:

(a) Intentionally:

(i) Exposes such person's intimate parts as defined in subsection (1)(a) to one (1) or more persons; or

(ii) Engages in sexual contact or sexual penetration as defined in subsection (1)(b) and (1)(c).

(b) Reasonably expects the acts will be viewed by another and such acts:

(i) Will offend an ordinary viewing person; or

(ii) Are for the purpose of sexual arousal and gratification of the defendant. (1981 Code, § 15-38)

11-506. Commercial sexual activity prohibited. (1) Prohibited acts. It shall be unlawful for any person to procure, to offer or to engage in any act of adamitism, anilingus, bestiality, cunnilingus, coprophilia, fellation, flagellation, frottage, masturbation, sexual intercourse, sodomy or urolagnia for any financial consider or reward.

(2) Definitions. As used in this section, the following words shall have the meanings ascribed in this subsection:

(a) "Adamitism" means the practice of going naked or the state of being unclothed.

(b) "Anilingus" means erotic stimulation achieved by contact between mouth or tongue and the anus.

(c) "Bestiality" means sexual relations between a human being and a lower animal.

(d) "Coprophilia" means use of feces for sexual excitement.

(e) "Cunnilingus" means stimulation of the vulva or clitoris with the lips or tongue.

(f) "Fellation" means the practice of obtaining sexual gratification by oral stimulation of the penis.

(g) "Flagellation" means an act or instance of obtaining sexual gratification by beating, flogging or scourging another, or being the recipient of such action.

(h) "Frottage" means masturbation by rubbing another person.

(i) "Masturbation" means erotic stimulation involving the genital organs, commonly resulting in orgasm and achieved by manual or other bodily manipulation.

(j) "Sexual intercourse" means carnal copulation of male and female implying actual intercourse of the organs of the latter.

(k) "Sodomy" means penetration of the male organ into the anus of another person.

(l) "Urolagnia" means sexual excitement associated with the urine or urination. (1981 Code, § 15-43)

11-507. Prohibited sexual activity in establishments offering food or beer. (1) It shall be unlawful for any person to appear in any place or establishment or the premises thereof wherein food or beer are offered for sale, and to:

(a) Publicly perform acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other sexual acts prohibited by law.

(b) Publicly engage in actual or simulated acts involving the anus or genitals.

(c) Publicly engage in the actual or simulated displaying of the pubic hair, anus, buttocks, vulva, genitals or breasts below the top of the areola of any person.

(d) Publicly wear or use any device or covering exposed to public view which simulates the human breasts, genitals, anus, buttocks, pubic hair or any portion thereof.

(2) It shall be unlawful for any person to permit or allow another to commit any of the acts specified or defined in this section on or about the premises which are owned, managed or operated by such person, or in which such person is employed. (1981 Code, § 15-44)

CHAPTER 6

HANDBILLS

SECTION

11-601. Throwing, distributing handbills in public places.
11-602. [Deleted.]
11-603. Depositing handbills on uninhabited or vacant premises.
11-604. Distribution of handbills prohibited where property posted.
11-605. Distributing handbills at inhabited private premises.
11-606. Dropping litter from aircraft.
11-607. Posting notices prohibited.

11-601. Throwing, distributing handbills in public places. No person shall throw or deposit any handbill in or upon any sidewalk, street or other public place within the city, nor shall any person hand out or distribute or sell any handbill in any public place; provided, however, that it shall not be unlawful on any sidewalk, street or other public place with the city for any person to hand out or distribute, without charge to the receiver thereof, any handbill to any person willing to accept it. (1981 Code, § 10-55, modified)

11-602. [Deleted.] (1981 Code, § 10-56, as amended by Ord. of 12/10/2001, and deleted by Ord. of 1/27/03)

11-603. Depositing handbills on uninhabited or vacant premises. No person shall throw or deposit any handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant. (1981 Code, § 10-57, modified)

11-604. Distribution of handbills prohibited where property posted. No person shall throw, deposit or distribute any handbill upon any private premises, if requested by anyone thereon not to do so, or if there is placed on such premises in a conspicuous position near the entrance thereof a sign bearing the words: "NO TRESPASSING," "NO PEDDLERS OR AGENTS," "NO ADVERTISEMENT" or any similar notice, indicating in any manner that the occupants of such premises do not desire to be molested or have their right

of privacy disturbed or to have any such handbills left upon such premises. (1981 Code, § 10-58, modified)

11-605. <u>Distributing handbills at inhabited private premises</u>.

(1) No person shall throw, deposit or distribute any handbill in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant or other person in or upon such private premises; provided, however, that, in case of inhabited private premises which are not posted, as provided in this chapter, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets or other public places and except that mailboxes may not be so used when so prohibited by federal postal law or regulations.

(2) The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers, periodicals and magazines of a general circulation, except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property. (1981 Code, § 10-59, modified)

11-606. <u>Dropping litter from aircraft</u>. No person in an aircraft shall throw out, drop or deposit within the city any litter, handbill or any other object. (1981 Code, § 10-60)

11-607. <u>Posting notices prohibited</u>. No person shall post or affix any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamppost, public utility pole or shade tree or upon any public structure or building, except as may be authorized or required by law. (1981 Code, § 10-61)

CHAPTER 7

LITTERING

SECTION

11-701. Definitions.
11-702. Littering.
11-703. Littering unlawful, violations.

11-701. Definitions. As used in this chapter, unless the context otherwise requires, the following words shall have the following definitions:

1. "Commercial purpose" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of the entity;
2. "Garbage" includes putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food;
3. "Litter" includes garbage, refuse, rubbish and all other waste material, including a tobacco product as defined in Tennessee Code Annotated, § 39-17-1503 and any other item primarily designed to hold or filter a tobacco product while the tobacco is being smoked;
4. "Refuse" includes all putrescible and non-putrescible solid waste; and
5. "Rubbish" includes non-putrescible solid waste consisting of both combustible and noncombustible waste. (as replaced by Ord. #2008-24, June 2008)

11-702. Littering. 1. A person commits littering who:

a. Knowingly places, drops or throws litter on any public property within the City of Cleveland and does not immediately remove it.

b. Knowingly places, drops or throws litter on any private property without permission and does not immediately remove it.

c. Negligently places or throws glass or other dangerous substances on or adjacent to water to which the public has access for swimming or wading, or on or within fifty (50) feet of a public street or highway.

d. Negligently discharges sewage, minerals, oil products or litter into any public waters or lakes within the city.

2. Whenever litter is placed, dropped, or thrown from any motor vehicle, boat, airplane, or other conveyance in violation of this section, the trier of fact may, in its discretion and in consideration of the totality of the circumstances, infer that the operator of the conveyance has committed littering.

3. Whenever litter discovered on public or private property is found to contain any article or articles, including, but not limited to, letters, bills,

publications, or other writings that display the name of a person in such a manner as to indicate that the article belongs or belonged to that person, the trier of fact may, in its discretion and in consideration of the totality of the circumstances, infer that the person has committed littering. (as added by Ord. #2008-24, June 2008)

11-703. Littering unlawful, violations. 1. It shall be unlawful and is a civil offense for anyone to discard any type of litter within the corporate limits of the City of Cleveland except in appropriate containers.

2. It shall be unlawful and is a civil offense for any person or entity to violate the provisions of Cleveland Municipal Code, § 11-702.

3. Violations of this chapter shall subject the offender to a civil penalty not to exceed fifty dollars ($50.00) for each offense. In addition to a civil penalty, the offender shall be responsible for the payment of court costs and any applicable litigation tax. (as added by Ord. #2008-24, June 2008)

TITLE 12

BUILDING, UTILITY, ETC. CODES[1]

CHAPTER

1. BUILDING CODE.
2. ELECTRICAL CODE.
3. PHYSICALLY HANDICAPPED CODE.
4. [DELETED.]
5. [DELETED.]
6. PLUMBING CODE.
7. [DELETED].
8. GAS CODE.
9. BUILDING MAINTENANCE CODE.
10. MECHANICAL CODE.
11. [DELETED.]

CHAPTER 1

BUILDING CODE[2]

SECTION

12-101. Adopted.
12-102. [Repealed.]
12-103. Available in clerk's office.
12-104. Permit fee schedule.
12-105. Sprinkling of certain building required.
12-106. Temporary, mobile, factory-built or factory-assembled structures.
12-107. 2006 International Building Code as alternative code.

12-101. Adopted. Pursuant to authority granted by Tennessee Code Annotated, § 6-54-502, and for the purpose of regulating the construction, alteration, repair, use and occupancy, location, maintenance, removal, and demolition, of every building or structure or any appurtenance connected or

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[1]Any fire limits adopted by reference in this title shall mean those fire limits as described in § 7-101.

[2]Municipal 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.

attached to any building or structure, the International Building Code,[1] 2006 edition, including Appendices A, B, D, F, G and H, and the International Residential Code, 2006 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code.

The International Residential Code, 2006 edition, Section R317 is amended to add: "Townhouses with five (5) or more units connected together shall have a fire sprinkler system installed in accordance with Section 903.2.7 of the International Building Code, 2006 edition."

Any matters in said building code which are contrary to existing ordinances of the City of Cleveland, Tennessee shall prevail and to that extent any existing ordinances to the contrary are hereby repealed in that respect only. (1981 Code, § 6-38, as amended by Ord. of Oct. 1995, Ord. of July 1998, Ord. of 8/27/2001, and Ord. #2009-71, Oct. 2009)

12-102. [Repealed.] (1981 Code, § 6-39, as amended by Ord. of Jan. 1994, and Ord. of Feb. 1995, modified, as amended by Ord. of July 1998, Dec. 1998, and Ord. of 8/27/2001, as repealed by Ord. #2009-71, Oct. 2009)

12-103. Available in clerk's office. Pursuant to the requirements of the Tennessee Code Annotated, § 6-54-502 one (1) copy of the building code has been placed on file in the clerk's office and shall be kept there for the use and inspection of the public. (1981 Code, § 6-4, modified)

12-104. Permit fee schedule. The building permit fee schedule as set forth in the 1994 Edition of the Standard Building Code be, and the same is hereby adopted by the city council of the city as the building permit fee schedule for the city. (1981 Code, § 6-40, modified)

12-105. Sprinkling of certain building required. In addition to the requirements of the building code adopted by § 12-101, this additional requirement shall be in effect. Any building forty (40) feet from ground level or over four (4) stories in height shall have an approved sprinkler system exclusive of chimneys, elevators, poles, spires, tanks, towers and other projections not used for human habitation. In measuring the height of a building a habitated basement or attic shall be counted as one story. (1981 Code, § 6-41)

12-106. Temporary, mobile, factory-built or factory-assembled structures. (1) It shall be unlawful to place any temporary structure, trailer, mobile structure (including, but not limited to, cars, vans, trucks, or buses),

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[1]Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

tents, factory-built structures or factory-assembled structures designed for conveyance after fabrication, either on its own wheels, flatbed truck, or other trailers; on any lot either residential, commercial, or industrial, within the corporate limits of the city; used for assembly, business, educational, hazardous, factory, industrial, institutional, mercantile, residential or storage occupancies, except as noted herein.

(2) Exceptions. Structures exempted from provisions of this section shall include:

(a) Mobile homes located in approved mobile home parks.

(b) Prefabricated dwelling kits or structures specifically approved in the International Building Code[1] compliance listing.

(c) Temporary office and storage buildings located on approved construction sites provided they are removed upon completion of construction.

(d) Customary accessory storage buildings in approved residential locations.

(e) A tent used by a person, firm, corporation, or group as an assembly occupance for the purpose of a meeting, festival, fair, circus, or carnival, or a tent used by a transient vendor for a limited time not to exceed ten (10) days with a permit and in conformity with adopted codes and further provided that the tent is located on commercial, office, or industrial property not otherwise occupied by the same person, firm, corporation, group, ortransient vendor on a more-or-less continuous basis. The ten (10) day limit on this type of tent permit may be extended to a longer period if the temporary use of the tent for such longer period is determined to be a lawful pre-existing non-conforming use under the zoning ordinance. Tents installed under this section require a permit and that permit is valid for up to ten (10) days. A ten (10) day tent permit issued under this section shall not be issued for the same property until six (6) months have elapsed after the expiration of the previous such permit.

(f) Replacement of existing mobile homes on single family residential lots, with another mobile home, in accordance with the city's zoning laws.

(g) A tent or temporary building used by a properly licensed person or business solely for the otherwise lawful selling of edible fresh produce such as fruits or vegetables, inedible or ornamental plants, agricultural and lawn care products and accessories, Christmas trees or other holiday plants in season either as an accessory activity to an existing business or as a licensed transient vendor.

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[1]The"Southern Building Code" was replaced with "International Building Code" to comply with the adopted building code.

(h) A person who sells his own property which was not acquired specifically for resale, barter, or exchange and who does not conduct such sales or act as a participant by furnishing goods in such a sale on a regular basis.

(i) "Vendor facilities" are defined for the purposes of this section as carts, trucks, booths, stands, and the like from which goods, services, or information are delivered over a counter or through a window to customers or recipients where no such customers or recipients enter the vendor facility. Vendor facilities shall not be located indoors or outdoors except on a site containing a commercial development or shopping center or office development or industrial development with at least twenty thousand (20,000) square feet of finished floor area under roof, or on the campus of a school, college, church, or other institution. Vendor facilities must comply with all other applicable laws, policies, and procedures for the protection of public health, safety, and welfare, including any orders of the building official or fire inspector. Vendor facilities that are located outdoors shall not be located in any public right-of-way, or within twenty feet (20') of any roadway pavement edge. Vendor facilities shall not be located within one hundred feet (100') of any roadway edge of pavement on any urban interstate, freeway, expressway, urban principal arterial, or within fifty feet (50') of the roadway edge of pavement on any urban minor arterial, as classified in the subdivision regulations. Vendor facilities must have all applicable permits and licenses. Vendor facilities shall not be located except on an improved site that includes other principal structures and uses including paved parking and driveways. The number of vendor facilities operating outdoors on a given site at the same time shall not exceed two (2) unless part of an otherwise lawful outdoor festival, fair, athletic event, or the like with a duration of not more than ten (10) days. For purposes of this section, "site" shall mean one (1) or more lots or parcels that are developed in a connected fashion with common features such as buildings, parking, driveways, sidewalks, open spaces, etc.

(j) A tent used by a person, firm, corporation, or group for the otherwise lawful purpose of display, storage, sales, or provision of goods or services on property where the same person, firm, corporation, or group also occupies a permanent structure used for these same purposes, provided that the size of the tent does not exceed thirty percent (30%) of the size of the permanent structure; and further provided that the tent shall not be located within one hundred feet (100') of any roadway edge of pavement on any urban interstate, freeway, or expressway, or within fifty feet (50') of the roadway edge of pavement of any other public roadway; and further provided that the use, location, and installation of the tent must comply with all other applicable laws, policies, and procedures for the protection of public health, safety, and welfare,

including any orders of the building official or fire inspector. Tents installed under this section require a permit and that permit is valid for up to ninety (90) days and the permit is renewable.

(k) By special permission of the city council, a tent or a temporary structure used by a person, firm, corporation, or group for the otherwise lawful purpose of display, storage, sales, or provision of goods or services on or adjacent to a city greenway or city park where the city council determines the public use and enjoyment of the greenway or park is supported or enhanced by the proposed use(s) of the tent or temporary structure, provided further that the size of the tent or temporary structure does not exceed one thousand (1,000) square feet; and further provided that the tent or temporary structure shall not be located within one hundred feet (100') of any roadway edge of pavement on any urban interstate, freeway, or expressway, or within fifty feet (50') of the roadway edge of pavement of any other public roadway; and further provided that the use, location, and installation of the tent or temporary structure must comply with all other applicable laws, policies, and procedures for the protection of public health, safety, and welfare, including any orders of the building official or fire inspector. Tents or temporary structures installed subject to this section require a permit and that permit is valid for up to ninety (90) days and the permit is renewable with city council permission.

(l) A tent or temporary structure used by a person, firm, corporation, or group that is located on the campus of a college, school, church, or other institution (not including storefront, office park, house locations, or other locations where the institutional campus is not the primary use) with property owner permission, and not within fifty feet (50') of a public roadway or within one hundred feet (100') of any roadway edge of pavement on any urban interstate, freeway, or expressway. The tent or temporary structure shall not exceed thirty percent (30%) of the size of the primary permanent structure. The use, location, and installation of the tent or temporary structure must comply with all other applicable laws, policies, and procedures for the protection of public health, safety, and welfare, including any orders of the building official or fire inspector. Tents or temporary structures installed subject to this paragraph require a permit and that permit is valid for up to ninety (90) days and the permit is renewable. (1981 Code, § 6-42, modified, as amended by Ord. of 7/14/97; Ord. of 5/12/03; and Ord. #2004-08, April 2004, and replaced by Ord. #2010-40, Dec. 2010)

12-107. <u>2006 International Building Code as alternative code</u>. The City of Cleveland's adoption of the 1999 <u>Standard Building Code</u> notwithstanding, if it is the policy of the State of Tennessee Department of Commerce and Insurance to allow building plans to be reviewed under the 2008

International Building Code, it is likewise the policy of the City of Cleveland to allow building plans to be reviewed under this code as an alternative standard to that found in the 1999 Standard Building Code. This policy shall in no way abrogate the powers and duties of the building official or affect fee otherwise due through the application of the normal fee schedule had the alternative standard not been applied. (as added by Ord. #2008-13, April 2008)

CHAPTER 2

ELECTRICAL CODE[1]

SECTION

12-201. Code adopted.
12-202. Electrical permit fees.
12-203. Available in clerk's office.
12-204. License required; exceptions.
12-205. Application for license.
12-206. Classes of licenses.
12-207. License fees.
12-208. License form and content; requirements as to supervisor.
12-209. Expiration and renewal of license.
12-210. License not transferable; may be suspended or revoked.
12-211. State license required.

12-201. Code adopted. Pursuant to authority granted by Tennessee Code Annotated, § 6-54-502, and for the purpose of providing a practical minimum standard for the safeguarding of persons and of buildings and their contents from hazards arising from the use of electricity for light, heat, power, radio, signalling, and for other purposes, the National Electrical Code,[2] 2002 Edition, as prepared by the National Fire Protection Association, is hereby adopted and incorporated by reference as a part of this code. (1981 Code, § 6-61, as amended by Ord. of Oct. 1995, and replaced by Ord. #2003-39, Jan. 2004)

12-202. Electrical permit fees. Electrical permit fees are hereby established as follows:

Size of Service	State Inspection	Permit Fee	Total
0 through 30 amperes	$27.00	$5.00	$32.00
31 through 60 amperes	27.00	5.00	32.00
61 through 200 amperes	27.00	5.00	32.00
201 through 400 amperes	40.00	5.00	45.00

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[1]Municipal code reference
Fire protection, fireworks and explosives: title 7.

[2]Copies of this code may be purchased from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101.

Size of Service	State Inspection	Permit Fee	Total
401 through 600 amperes	50.00	5.00	55.00
601 through 1,000 amperes	90.00	5.00	95.00
1001 and above are nonstandard permits with state inspections fees to be determined by state electrical inspector. City fees are $5.00 per permit on nonstandard permits.			
Rough-in Inspection	27.00	5.00	32.00
Dwelling Unit's HVAC Inspection	27.00	5.00	32.00
Re-Inspection 0 through 1,000 ampere capacity	27.00	5.00	32.00
Temporary (Pole) . . . . . Based on Service Size		5.00	
Service Release . . . . . .Based on Service Size		5.00	

(1981 Code, § 6-63, as amended by Ord. of 11/13/2000, and Ord. #2004-38, Oct. 2004, and Ord. #2005-22, June 2005)

12-203. Available in clerk'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 clerk's office and shall be kept there for the use and inspection of the public. (1981 Code, § 6-4, modified)

12-204. License required; exceptions. No person shall engage in the business of installing, maintaining, altering or repairing any electrical devices, appliances or equipment served or to be served by the Cleveland Utilities System unless such person has received an electrical license and a certificate therefor, nor shall any person except a person employed by and working under the direction of a holder of an electrical license in any manner undertake to execute any work of installing, maintaining, altering or repairing any electrical devices, appliances or equipment; provided, however, that, no license shall be required in order to execute any of the following classes of work:

(1) Any work involved in the manufacture, test or repair of electrical materials, devices, appliances or apparatus.

(2) The assembly, erection and connection of electrical apparatus and equipment by the manufacturer of such apparatus and equipment, but not including any electrical apparatus and equipment other than that involved in making electrical connections on the apparatus or equipment itself or between two (2) or more parts of such apparatus or equipment.

(3) The maintenance and repair of its own electrical equipment by concerns through regular employees.

(4) After an electrician has reached sixty-two (62) years of age he may be issued a license at no cost upon proper application and approval by the electrical inspector. This license is to be limited to light repair work.

12-205. Application for license. Before any license or certificate is granted and before any expiring license is renewed the applicant shall fill out an application for such license, certificate or renewal of license. The fee required for the class of license to be granted or renewed shall accompany the application. Such application shall state the class of license applied for, the name and place of business of the applicant and the name of the representative of the applicant who will act as supervisor of the work to be done under the license. Additional information regarding training, apprenticeship and experience will be required with the initial application.

12-206. Classes of licenses. Two (2) classes of licenses and certificates therefor shall be issued, respectively "master electrician's license," and "limited license electrician license."

(1) A master electrician's license shall entitle the holder thereof to engage in the business of and to secure permits for the installation, alteration and repair of any electrical devices, appliances or equipment. Such a license must be prominently displayed at the holder's place of business.

(2) A limited license electrician's license shall entitle the holder to engage in the business of and to secure permits for the installation and repair of any electrical devices, appliances or equipment; provided that, the work to be performed can lawfully be performed by a limited licensed electrician under the Tennessee Contractors Licensing Act of 1994, as amended, Title 62, Chapter 6, Tennessee Code Annotated. Such a license must be prominently displayed at the holder's place of business. (as amended by Ord. of 1/8/2001)

12-207. License fees. Fees for licenses granted or renewed under this division shall be one hundred one dollars and no cents ($101.00) for a master electrician and fifty dollars and no cents ($50.00) for a limited licensed electrician. Such fees shall be collected by the city clerk. (as amended by Ord. of 1/8/2001, and Ord. #2005-26, June 2005)

12-208. License form and content; requirements as to supervisor. Each certificate for an electrical license issued in accordance with the provisions of this chapter shall specify the name of the person or firm licensed, who shall be known as the holder of the license, and shall specify the name of the person who has passed the examination, who shall be designated in the certificate as the supervisor of all work to be done under the license. The person designated in the certificate as the supervisor may be a person in the employ of the holder

of the license; or, if the holder is an individual, may be the holder himself; or, if the holder is a firm, may be a member of the firm, or if the holder is a corporation, may be an official of the corporation. The same shall not be designated as the supervisor in two (2) or more such licenses issued to different persons or firms. If the business associates with, or employment of the supervisor by, the holder of a license terminates, such license shall become null and void sixty (60) days after such termination.

12-209. Expiration and renewal of license. Each license required by this chapter shall expire on the thirty-first day of December following the date of its issuance, and shall be renewed upon application of the holder and payment of the required fee at any time within thirty (30) days after the expiration date. If not renewed within this time, the city will require the applicant to show good and sufficient cause for his failure to make such application within thirty (30) days after the expiration date; provided that, if any licensee enters active service in the armed forces of the United States, he shall be granted a renewal license upon his application after discharge from such service if such application is presented within six (6) months following the date of his discharge and provided further, that, if any licensee discontinues business and allows his license to expire, but works continuously thereafter for a licensed electrical contractor or is continuously engaged thereafter in the installation of electrical equipment and appliances, such licensee shall be issued a renewal license or certificate upon his application therefor and payment of the required fee if such application is filed and such fee is paid within six (6) months from the date the licensee discontinued business.

12-210. License not transferable; may be suspended or revoked. No license and certificate issued in accordance with the provisions of this chapter shall be assignable or transferable. Any such license shall, after a hearing, be suspended or revoked by the city if the person holding such license willfully, or by reason of incompetence, repeatedly violates any provision of the National Electrical Code, state laws applying to electricity, this chapter or any ordinance relating to the installation, maintenance, alteration or repair of electrical devices, appliances and equipment.

12-211. State license required. All persons now or hereafter desiring to engage in the business of installing, maintaining, altering or repairing any electrical devices, appliances or equipment served or to be served by the Cleveland Utilities System, except for those specifically excluded in § 12-204 of this chapter, shall provide evidence of their State of Tennessee Electrical License to the city clerk along with payment of the license fee. Persons receiving a master electrician's license from the City of Cleveland must have a Class E or CE electrical contractor's license from the State of Tennessee. Persons receiving a limited license electrician's license from the City of

Cleveland must have a Limited License Electrician's (LLE) license from the State of Tennessee. Before issuing a city license to a person who has no previous city license and whose previous experience in electrical work is unknown by the building official, the city will require proof of having passed a competency exam or proof of two years experience in electrical work. (as amended by Ord. of 1/8/2001)

CHAPTER 3

PHYSICALLY HANDICAPPED CODE[1]

SECTION

12-301. Code adopted.
12-302. Available in clerk's office.
12-303. Modifications.

12-301. Code adopted. Pursuant to the authority granted by Tennessee Code Annotated, § 6-54-502, the North Carolina State Building Code,Volume 1-C, Accessibility Code, 2010 Edition with 2004 Amendments, and the North Carolina State Building Code, Accessibility Code, Volume 1-C, 1999 Edition with 2002 and 2004 amendments including Appendix A, are hereby adopted and incorporated by reference as a part of this code.

Any matters in said physically handicapped code which are contrary to existing ordinances of the City of Cleveland, Tennessee shall prevail and to that extent any existing ordinances to the contrary are hereby repealed in that respect only. (1981 Code, § 11.5-11, as amended by Ord. of July 1998, Ord. of 8/27/2001, and Ord. #2009-71, Oct. 2009)

12-302. Available in clerk's office. Pursuant to the requirements of the Tennessee Code Annotated, § 6-54-502, one (1) copy of the physically handicapped code has been placed on file in the clerk's office and shall be kept there for the use and inspection of the public. (1981 Code, § 6-4, modified)

12-303. Modifications. Within said physically handicapped code, when reference is made to the duties of a certain official named therein, that designated official of the City of Cleveland, Tennessee who has duties corresponding to those of the named official in said physically handicapped code shall be deemed to be the responsible official insofar as enforcing the provisions of said physically handicapped code are concerned. (as added by Ord. of 7/28/98, and amended by Ord. of 8/27/2001)

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[1]Municipal code reference
Designated areas for handicapped parking: § 15-604(13).

CHAPTER 4

[DELETED.]

(as deleted by Ord. #2009-71, Oct. 2009)

CHAPTER 5

[DELETED.]

(as deleted by Ord. #2009-71, Oct. 2009)

CHAPTER 6

PLUMBING CODE[1]

SECTION

12-601. Plumbing code adopted.
12-602. Modifications.
12-603. Available in clerk's office.
12-604. Owner, installer, etc., not relieved of any liability.
12-605. License required; exceptions.
12-606. Application for license.
12-607. Classes of licenses.
12-608. Fees for licenses, examinations, permits, and inspections.
12-609. License form and content; requirements as to supervisor.
12-610. Expiration and renewal of license.
12-611. License not transferable; may be suspended or revoked.
12-612. [Deleted.]
12-613. [Deleted.]
12-614. [Deleted.]
12-615. Passing grade; issuance of license.
12-616. Deleted.

12-601. Plumbing code adopted. Pursuant to authority granted by Tennessee Code Annotated, §§ 6-54-501 through 6-54-506 and for the purpose of regulating plumbing installations, including alterations, repairs, equipment, appliances, fixtures, fittings, and the appurtenances thereto, within or without the city, when such plumbing is or is to be connected with the city water or sewerage system, the International Plumbing Code,[2] 2006 edition, as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code and is hereinafter referred to as the plumbing code.

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[1]Municipal code references
Cross connections: title 18.
Street excavations: title 16.
Wastewater treatment: title 18.
Water and sewer system administration: title 18.

[2]Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

Any matters in said plumbing code which are contrary to existing ordinances of the City of Cleveland, Tennessee shall prevail and to that extent any existing ordinances to the contrary are hereby repealed in that respect only. (1981 Code, § 6-171, as amended by Ord. of Oct. 1995, Ord. of July 1998, Ord. of 8/27/2001, and Ord. #2009-71, Oct. 2009)

12-602. Modifications. (1) Definitions. Wherever the plumbing code refers to the "Chief Appointing Authority," and "Administrative Authority," it shall mean the city manager. Whenever the plumbing code refers to the "Governing Authority," it shall be deemed to be a reference to the city council.

Wherever "City Engineer," "Engineering Department," "Plumbing Official," or "Inspector" is named or referred to, it shall mean the person appointed or designated by the city manager to administer and enforce the provisions of the plumbing code.

(2) Permit fees. The schedule of permit fees shall be established by city council.

(3) Within said plumbing code, when reference is made to the duties of a certain official named therein, that designated official of the City of Cleveland, Tennessee who has duties corresponding to those of the named official in said plumbing code shall be deemed to be the responsible official insofar as enforcing the provisions of said plumbing code are concerned. (1981 Code, § 6-171, modified, as amended by Ord. of 7/27/98, and Ord. of 8/27/2001)

12-603. Available in clerk's office. Pursuant to the requirements of Tennessee Code Annotated, § 6-54-502, one (1) copy of the plumbing code has been placed on file in the clerk's office and shall be kept there for the use and inspection of the public. (1981 Code, § 6-4, modified)

12-604. Owner, installer, etc., not relieved of any liability. This chapter shall not be construed to relieve or lessen the responsibility or liability of any party owning, operating, controlling or installing any plumbing devices, appliances or equipment for damage to persons or property caused by any defect therein, nor shall the city be held as assuming any liability for reason of the examination authorized herein or the license and certificate issued as herein provided. (1981 Code, § 6-172)

12-605. License required; exceptions. No person shall engage in the business of installing, maintaining, altering or repairing any plumbing devices, appliances or equipment served or to be served by the Cleveland Utility System unless such person has received a plumbing contractor's license and a certificate therefor, nor shall any person except a person employed by and working under the direction of a holder of a plumbing contractor's license in any manner undertake to execute any work of installing, maintaining, altering or repairing

any plumbing devices, appliances or equipment; provided, however, that, no license shall be required in order to execute any of the following classes of work:

(1) Any work involved in the manufacture, test or repair of plumbing materials, devices, appliances or apparatus.

(2) The assembly, erection and connection of plumbing apparatus and equipment by the manufacturer of such apparatus and equipment, but not including any plumbing other than that involved in making plumbing connections on the apparatus or equipment itself or between two (2) or more parts of such apparatus or equipment.

(3) The maintenance and repair of its own plumbing equipment by concerns through regular employees. (1981 Code, § 6-201, modified, as amended by Ord. #2009-72, Oct. 2009)

12-606. <u>Application for license</u>. Before any license or certificate is granted and before any expiring license is renewed the applicant shall fill out an application for such license, certificate or renewal of license. The fee required for the class of license to be granted or renewed shall accompany the application. Such application shall state the class of license applied for, the name and place of business of the applicant and the name of the representative of the applicant who will act as supervisor of the work to be done under the license. Additional information regarding training, apprenticeship and experience will be required with the initial application. The applicant for any category of plumbing license described in this chapter shall demonstrate that he or she has any qualifications required by the State of Tennessee for carrying out such plumbing work as demonstrated by the appropriate and valid Tennessee license and any other such documentation as the State of Tennessee may require. (1981 Code, § 6-202, modified, as amended by Ord. #2009-72, Oct. 2009)

12-607. <u>Classes of licenses</u>. Three (3) classes of licenses and certificates therefor shall be issued, respectively: master plumbing contractor's license; limited liability plumbing contractor's license (LLP); and water and sewer line contractor's license.

(1) A master plumbing contractor's license shall entitle the holder thereof to engage in the business of and to secure permits for the installations, alteration, and repair of any plumbing devices, appliances, or equipment. Such license must be prominently displayed at the holder's place of business.

(2) A limited liability plumbing contractor's (LLP) license shall entitle the holder thereof to engage in the business of and to secure permits for the installations, alteration, and repair of any plumbing devices, appliances, or equipment where the value of the plumbing work to be performed does not exceed twenty-five thousand dollars ($25,000.00). Such license must be prominently displayed at the holder's place of business.

(3) A water and sewer line contractor's license shall entitle the holder thereof to engage in the business of and to secure permits for the installation of

water and sewer lines within five feet (5') of the exterior of a building or structure. This license shall not entitle the holder thereof to engage in any plumbing except the water and sewer line installation as described herein. (1981 Code, § 6-203, modified, as amended by Ord. #2009-72, Oct. 2009)

12-608. Fees for licenses, permits, and inspections. The city council, in order to cover costs incurred by the city, hereby establishes fees for the granting and renewal of licenses under this chapter. Such fees shall be collected by the city clerk and shall be due upon application for such license. The licenses fees shall be as follows: master plumber's license fee seventy-five dollars ($75.00); limited liability plumber's license (LLP), fifty dollars ($50.00); and water and sewer contractor's license, fifty dollars ($50.00). The city council, in order to cover costs incurred by the city, hereby establishes fees for plumbing permits and inspections as follows: permits are four dollars ($4.00) plus four dollars ($4.00) per fixture; five dollars ($5.00) for each sewer connection; seven dollars ($7.00) for each manufactured home; and seven dollars ($7.00) for each re-inspection required due to failing the previous inspection. For purposes of this section, a fixture shall mean any plumbing fixture as defined by the adopted plumbing code. (1981 Code, § 6-204, replaced by Ord. of 10/9/2000, amended by Ord. #2005-27, June 2005, and Ord. #2009-72, Oct. 2009)

12-609. License form and content; requirements as to supervisor. Each certificate for a plumbing contractor's license issued in accordance with the provisions of this chapter shall specify the name of the person or firm licensed, who shall be known as the holder of the license, and shall specify the name of the person who has passed the examination, who shall be designated in the certificate as the supervisor of all work to be done under the license. The person designated in the certificate as the supervisor may be a person in the employ of the holder of the license; or, if the holder is an individual, may be the holder himself; or, if the holder is a firm, may be a member of the firm, or if the holder is a corporation, may be an official of the corporation. The same shall not be designated as the supervisor in two (2) or more such licenses issued to different persons or firms. If the business associates with, or employment of the supervisor by, the holder of a license terminates, such license shall become null and void sixty (60) days after such termination. (1981 Code, § 6-205, modified)

12-610. Expiration and renewal of license. Each license required by this chapter shall expire on the thirty-first day of December following the date of its issuance, and shall be renewed upon application of the holder and payment of the required fee at any time within thirty (30) days after the expiration date. If not renewed within two years of the expiration date, the city may require the applicant to take another examination unless such applicant shows good and sufficient cause for his failure to make such application within thirty (30) days after the expiration date. Such good and sufficient cause for a failure to renew within thirty (30) days after the expiration date would include, but not

necessarily be limited to, active duty in the armed forces of the United States or discontinuance of business by the licensee after which time the license works continuously as an employee in the plumbing trade. In the case of military service, application for renewal must be made within six (6) months of the date of discharge from active duty; and in the case of a discontinuance of business, application must be made within six (6) months of the discontinuance of business. License renewal at a time beyond thirty (30) days from the expiration date, where there is no good and sufficient cause, shall require the normal license fee, plus an additional license fee for each year since the expiration not to exceed two years (partial years to be pro-rated to the nearest month), plus a fifty (50) dollar penalty. Nothing herein is intended to prohibit the renewal of a license near but preceding its expiration date. (1981 Code, § 6-206, as amended by Ord. of 10/9/2000)

12-611. License not transferable; may be suspended or revoked. No license and certificate issued in accordance with the provisions of this chapter shall be assignable or transferable. Any such license shall, after a hearing, be suspended or revoked by the city if the person holding such license willfully, or by reason of incompetence, repeatedly violates any provision of the adopted plumbing code, state laws applying to plumbing, this chapter or any ordinance relating to the installation, maintenance, alteration or repair of plumbing devices, appliances and equipment. (1981 Code, § 6-207, modified, as amended by Ord. #2009-72, Oct. 2009)

12-612. [Deleted.] (1981 Code, § 6-208, modified, as deleted by Ord. #2009-72, Oct. 2009)

12-613. [Deleted.] (1981 Code, § 6-209, modified, as deleted by Ord. #2009-72, Oct. 2009)

12-614. [Deleted.] (1981 Code, 6-210, modified, as deleted by Ord. #2009-72, Oct. 2009)

12-615. Passing grade; issuance of license. Any applicant for a license required by this chapter making a grade of seventy (70) per cent or more on the written examination shall be considered qualified for and the city shall issue to the applicant the particular license which was applied for upon payment of the required fees and the furnishing of any information required in the regulations. All licenses shall be signed by the plumbing inspector and city clerk. (1981 Code, § 6-212, modified)

12-616. Fee. Deleted. (1981 Code, § 6-213, as deleted by Ord. of 10/9/2000)

CHAPTER 7

DELETED

(This chapter was deleted by Ord. #2004-41, Nov. 2004)

CHAPTER 8

GAS CODE[1]

SECTION

12-801. Title and definitions.
12-802. Purpose and scope.
12-803. Use of existing piping and appliances.
12-804. Bond and license.
12-805. Gas inspector and assistants.
12-806. Powers and duties of inspector.
12-807. Permits.
12-808. Inspections.
12-809. Certificates.
12-810. Fees.
12-811. Violations and penalties.
12-812. Nonliability.
12-813. Modifications.

12-801. Title and definitions. This chapter and the code herein adopted by reference shall be known as the gas code of the city. The following definitions are provided for the purpose of interpretation and administration of the gas code.

(1) "Inspector" means the person appointed as inspector, and shall include each assistant inspector, if any, from time to time acting as such under this chapter by appointment of the city council.

(2) "Person" means any individual, partnership, firm, corporation, or any other organized group of individuals.

(3) "Gas company" means any person distributing gas within the corporate limits or authorized and proposing to so engage.

(4) "Certificate of approval" means a document or tag issued and/or attached by the inspector to the inspected material, piping, or appliance installation, filled out, together with date, address of the premises, and signed by the inspector.

(5) "Certain appliances" means conversion burners, floor furnaces, central heating plants, vented wall furnaces, water heaters, and boilers.

12-802. Purpose and scope. The purpose of the gas code is to provide minimum standards, provisions, and requirements for safe installation of consumer's gas piping and gas appliances. All gas piping and gas appliances

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[1]Municipal code reference
Gas system administration: title 19, chapter 2.

installed, replaced, maintained, or repaired within the corporate limits shall conform to the requirements of this chapter and to the International Fuel Gas Code,[1] 2006 edition, including Appendix B, which is hereby incorporated by reference and made a part of this chapter as if fully set forth herein. One (1) copy of the gas code shall be kept on file in the office of the city clerk for the use and inspection of the public.

Any matters in said gas code which are contrary to existing ordinances of the City of Cleveland, Tennessee shall prevail and to that extent any existing ordinances to the contrary are hereby repealed in that respect only. (Ord. of Oct. 1995, as amended by Ord. of July 1998, Ord. of 8/27/2001, and Ord. #2009-71, Oct. 2009)

12-803. Use of existing piping and appliances. Notwithstanding any provision in the gas code to the contrary, consumer's piping installed prior to the adoption of the gas code or piping installed to supply other than natural gas may be converted to natural gas if the inspector finds, upon inspection and proper tests, that such piping will render reasonably satisfactory gas service to the consumer and will not in any way endanger life or property; otherwise, such piping shall be altered or replaced, in whole or in part, to conform with the requirements of the gas code.

12-804. Bond and license. (1) No person shall engage in or work at the installation, extension, or alteration of consumer's gas piping or certain gas appliances, until such person shall have secured a license as hereinafter provided, and shall have executed and delivered to the mayor a good and sufficient bond in the penal sum of $10,000, with corporate surety, conditioned for the faithful performance of all such work, entered upon or contracted for, in strict accordance and compliance with the provisions of the gas code. The bond herein required shall expire on the first day of January next following its approval by the city clerk, and thereafter on the first day of January of each year a new bond, in form and substance as herein required, shall be given by such person to cover all such work as shall be done during such year.

(2) Upon approval of said bond, the person desiring to do such work shall secure from the city clerk a nontransferable license which shall run until the first day of January next succeeding its issuance, unless sooner revoked. The person obtaining a license shall pay any applicable license fees to the city clerk.

(3) Nothing herein contained shall be construed as prohibiting an individual from installing or repairing his own appliances or installing, extending, replacing, altering, or repairing consumer's piping on his own

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[1]Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

premises, or as requiring a license or a bond from an individual doing such work on his own premises; provided, however, all such work must be done in conformity with all other provisions of the gas code, including those relating to permits, inspections, and fees.

12-805. Gas inspector and assistants. To provide for the administration and enforcement of the gas code, the office of gas inspector is hereby created. The inspector, and such assistants as may be necessary in the proper performance of the duties of the office, shall be appointed or designated by the city council.

12-806. Powers and duties of inspector. (1) The inspector is authorized and directed to enforce all of the provisions of the gas code. Upon presentation of proper credentials, he may enter any building or premises at reasonable times for the purpose of making inspections or preventing violations of the gas code.

(2) The inspector is authorized to disconnect any gas piping or fixture or appliance for which a certificate of approval is required but has not been issued with respect to same, or which, upon inspection, shall be found defective or in such condition as to endanger life or property. In all cases where such a disconnection is made, a notice shall be attached to the piping, fixture, or appliance disconnected by the inspector, which notice shall state that the same has been disconnected by the inspector, together with the reason or reasons therefor, and it shall be unlawful for any person to remove said notice or reconnect said gas piping or fixture or appliance without authorization by the inspector and such gas piping or fixture or appliance shall not be put in service or used until the inspector has attached his certificate of approval in lieu of his prior disconnection notice.

(3) It shall be the duty of the inspector to confer from time to time with representatives of the local health department, the local fire department, and the gas company, and otherwise obtain from proper sources all helpful information and advice, presenting same to the appropriate officials from time to time for their consideration.

12-807. Permits. (1) No person shall install a gas conversion burner, floor furnace, central heating plant, vented wall furnace, water heater, boiler, consumer's gas piping, or convert existing piping to utilize natural gas without first obtaining a permit to do such work from the mayor; however, permits will not be required for setting or connecting other gas appliances, or for the repair of leaks in house piping.

(2) When only temporary use of gas is desired, the clerk may issue a permit for such use, for a period of not to exceed sixty (60) days, provided the consumer's gas piping to be used is given a test equal to that required for a final piping inspection.

(3) Except when work in a public street or other public way is involved the gas company shall not be required to obtain permits to set meters, or to extend, relocate, remove, or repair its service lines, mains, or other facilities, or for work having to do with its own gas system.

12-808. Inspections. (1) A rough piping inspection shall be made after all new piping authorized by the permit has been installed, and before any such piping has been covered or concealed or any fixtures or gas appliances have been attached thereto.

(2) A final piping inspection shall be made after all piping authorized by the permit has been installed and after all portions thereof which are to be concealed by plastering or otherwise have been so concealed, and before any fixtures or gas appliances have been attached thereto. This inspection shall include a pressure test, at which time the piping shall stand an air pressure equal to not less than the pressure of a column of mercury six (6) inches in height, and the piping shall hold this air pressure for a period of at least ten (10) minutes without any perceptible drop. A mercury column gauge shall be used for the test. All tools, apparatus, labor, and assistance necessary for the test shall be furnished by the installer of such piping.

12-809. Certificates. The inspector shall issue a certificate of approval at the completion of the work for which a permit for consumer piping has been issued if after inspection it is found that such work complies with the provisions of the gas code. A duplicate of each certificate issued covering consumer's gas piping shall be delivered to the gas company and used as its authority to render gas service.

12-810. Fees. The permit fee schedule as recommended in Appendix "B" of the gas code is hereby adopted.

12-811. Violations and penalties. Any person who shall violate or fail to comply with any of the provisions of the gas code shall be guilty of a misdemeanor, and upon conviction thereof shall be fined under the general penalty clause for this code of ordinances, or the license of such person may be revoked, or both fine and revocation of license may be imposed.

12-812. Nonliability. This chapter shall not be construed as imposing upon the municipality any liability or responsibility for damages to any person injured by any defect in any gas piping or appliance mentioned herein, or by installation thereof, nor shall the municipality, or any official or employee thereof, be held as assuming any such liability or responsibility by reason of the inspection authorized hereunder or the certificate of approval issued by the inspector.

12-813. <u>Modifications</u>. Within said gas code, when reference is made to the duties of a certain official named therein, that designated official of the City of Cleveland, Tennessee who has duties corresponding to those of the named official in said gas code shall be deemed to be the responsible official insofar as enforcing the provisions of said gas code are concerned. (as added by Ord. of 7/27/98, and amended by Ord. of 8/27/2001)

CHAPTER 9

BUILDING MAINTENANCE CODE

SECTION

12-901. Unsafe building abatement code adopted.
12-902. Modifications.
12-903. Available in clerk's office.
12-904. Violations.

12-901. Unsafe building abatement code adopted. Pursuant to authority granted by Tennessee Code Annotated §§ 6-54-501 through 6-54-506 and for the purpose of regulating buildings and structures to insure structural strength, stability, sanitation, adequate light and ventilation, and safety to life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of buildings, structures or premises, within or without the city, the International Property Maintenance Code[1], 2006 edition as prepared and adopted by the International Code Council, is hereby adopted and incorporated by reference as a part of this code and is hereinafter referred to as the unsafe building abatement code.

Any matters in said unsafe building abatement code which are contrary to existing ordinances of the City of Cleveland, Tennessee shall prevail and to that extent any existing ordinances to the contrary are hereby repealed in that respect only. (Ord. of Oct. 1995, as amended by Ord. of 7/27/98, Ord. of 8/27/2001, and Ord. #2009-71, Oct. 2009)

12-902. Modifications. Definitions. Whenever the unsafe building abatement code refers to the "Chief Appointing Authority," or the "Chief Administrator" it shall be deemed to be a reference to the city council. When the "Building Official" is named it shall, for the purposes of the unsafe building abatement code, mean such person as the city council has appointed or designated to administer and enforce the provisions of the unsafe building abatement code.

Within said unsafe building abatement code when reference is made to the duties of a certain official named therein, that designated official of the City of Cleveland, Tennessee who has duties corresponding to those of the named official in said unsafe building abatement code shall be deemed to be the responsible official insofar as enforcing the provisions of said unsafe building abatement code are concerned. (as amended by Ord. of 7/27/98, and Ord. of 8/27/2001)

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[1]Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

12-903. **Available in clerk's office**. Pursuant to the requirements of Tennessee Code Annotated § 6-54-502 one (1) copy of the unsafe building abatement code has been placed on file in the clerk's office and shall be kept there for the use and inspection of the public.

12-904. **Violations**. It shall be unlawful for any person to violate or fail to comply with any provision of the unsafe building abatement code as herein adopted by reference and modified.

CHAPTER 10

MECHANICAL CODE[1]

SECTION

12-1001. Mechanical code adopted.
12-1002. Modifications.
12-1003. Available in clerk's office.
12-1004. Violations.
12-1005. Board established.
12-1006. Qualification of members.
12-1007. Chairman and vice chairman.
12-1008. Removal of members; compensation; quorum.
12-1009. Regular meetings.
12-1010. Appeals from decisions.
12-1011. Special meetings.
12-1012. Records to be open to inspection.
12-1013. Regulations authorized; printing.
12-1014. Licenses and certificates--required.
12-1015. Classes of licenses; limitations.
12-1016. City of Cleveland electrical license required.
12-1017. Appropriate license and certificate prerequisite to doing work; exceptions.
12-1018. Not transferable.
12-1019. Suspension; revocation; denial of renewal.
12-1020. Review of renewal applications; statement required.
12-1021. To be written; records required.
12-1022. [Deleted.]
12-1023. [Deleted.]
12-1024. [Deleted.]
12-1025. Temporary license.
12-1026. [Deleted.]
12-1027. License fees.
12-1028. Disposition of fees.
12-1029. Notices.
12-1030. Licensee to supervise work under license; duties specified.
12-1031. Violations; penalty.
12-1032. Permit fees.

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[1]Municipal code references
Street excavations: title 16.
Wastewater treatment: title 18.
Water and sewer system administration: title 18.

12-1001. Mechanical code adopted. Pursuant to authority granted by Tennessee Code Annotated §§ 6-54-501 through 6-54-516 and for the purpose of regulating the installation and replacement of mechanical systems, including ventilating, heating, cooling, air conditioning, and refrigeration systems, incinerators, and other energy-related systems, the International Mechanical Code[1], 2006 edition, including Appendix A, to include these appendices: Appendix A, and section B101.1 through B101.2.3 of Appendix B, as prepared and adopted by the Southern Building Code Congress International, Inc., is hereby adopted and incorporated by reference as a part of this code and is hereinafter referred to as the mechanical code.

Any matters in said mechanical code which are contrary to existing ordinances of the City of Cleveland, Tennessee shall prevail and to that extent any existing ordinances to the contrary are hereby repealed in that respect only. (Ord. of Oct. 1995, as amended by Ord. of July 1998, Ord. of 8/14/2000, Ord. of 8/27/2001, and Ord. #2009-71, Oct. 2009)

12-1002. Modifications. Definitions. Wherever the mechanical code refers to the "Building Department," "Mechanical Official," or "Building Official," or "Inspector" it shall mean the person appointed or designated by the city council to administer and enforce the provisions of the mechanical code.

Within said mechanical code, when reference is made to the duties of a certain official named therein, that designated official of the City of Cleveland, Tennessee who has duties corresponding to those of the named official in said mechanical code shall be deemed to the responsible official insofar as enforcing the provisions of said mechanical code are concerned. (as amended by Ord. of July 1998, and Ord. of 8/27/2001)

12-1003. Available in clerk's office. Pursuant to the requirements of Tennessee Code Annotated § 6-54-502 one (1) copy of the mechanical code has been placed on file in the city clerk's office and shall be kept there for the use and inspection of the public.

12-1004. Violations. It shall be unlawful for any person to violate or fail to comply with any provision of the mechanical code as herein adopted by reference and modified.

12-1005. Board established. (1) There is hereby created and established a mechanical board.

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[1]Copies of this code (and any amendments) may be purchased from the International Code Council, 900 Montclair Road, Birmingham, Alabama 35213.

(2) The mechanical board shall consist of seven (7) members, to be appointed by the city council. One member shall be a state licensed mechanical contractor, CMC-C.

(3) Members of the mechanical board shall hold office for a term of two (2) years until a successor is appointed or until the member is removed by the city council. Beginning January 1, 2012, appointments to the mechanical board shall be staggered as follows:

(a) Two (2) seats for a term of one (1) year;

(b) Two (2) seats for a term of two (2) years;

(c) Three (3) seats for a term of three (3) years. (Ord. of Sept. 1998, as amended by Ord. #2010-29, Aug. 2010)

12-1006. Qualification of members. (1) The members of the mechanical board should consist of at least:

(a) One representative of the Chattanooga Gas Cleveland Service Center.

(b) One representative of the Cleveland Utilities electrical division.

(c) One member from the general public.

(d) One member who holds state mechanical contractor's license.

(e) One member who holds state general contractor's license classification BC;AB or BC-A.

(f) One member from TVA Cleveland Service Center.

(g) One member who is a licensed architect or license engineer, by the Sate of Tennessee. (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000)

12-1007. Chairman and vice chairman. (1) The mechanical board shall select from its membership one member to serve as chairman and one member to serve as vice chairman for at least one year and until their successors are elected by the board. (Ord. of Sept. 1998)

12-1008. Removal of members; compensation; quorum. Any member of the mechanical board may be removed for cause at any time by the city council after ten (10) days written notice. Such board shall serve without compensation. A minimum of four (4) members shall constitute a quorum for the transaction of business. (Ord. of Sept. 1998)

12-1009. Regular meetings. The mechanical board shall hold meetings in January, May, and September for the purpose of conducting business. Disciplinary hearings may be held at these meetings or at a special called meeting, at the discretion of the chairman or vice chairman. Three (3) days

public notice shall be given prior to any meeting or special called meeting. (Ord. of Sept. 1998)

12-1010. Appeals from decisions. Any person aggrieved by any action or decision of the mechanical board shall have the right of appeal to the city council by requesting an appeal in writing and by lodging such requests with the city clerk within ten (10) days after such action or decision. Failure to appeal within this time shall, without exceptions, constitute a waiver of the right to a hearing. (Ord. of Sept. 1998)

12-1011. Special meetings. Special meetings of the mechanical board may be called by the chairman or vice chairman of the board with three (3) days public notice. (Ord. of Sept. 1998)

12-1012. Records to be open to inspection. Records of the meetings of the mechanical board including the names of all licensees, shall be open for inspection by the public at all reasonable times. (Ord. of Sept. 1998)

12-1013. Regulations authorized; printing. The mechanical board may promulgate rules and regulations not inconsistent with this division and in such event shall have such rules and regulations printed for distribution. These regulations may include the requirement that the mechanical contractor furnish proof of financial responsibility. (Ord. of Sept. 1998)

12-1014. Licenses and certificates--required. No person shall engage in or hold himself out as being in the business of installing, or replacing any mechanical equipment in the city or on premises to be served by the Cleveland Utilities, Electrical Division or Chattanooga Gas, Cleveland Service Center, unless such person has received a mechanical contractor's license of the appropriate class and a certificate therefor, or in the case of a firm or corporation, unless it is owned or operated by, or has in its regular employment, a person who has received a mechanical contractor's license of the appropriate class and a certificate thereof. (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000)

12-1015. Classes of licenses; limitations. (1) A license shall be issued by the planning and inspections department when the proper exam has been taken and applicant has received a grade of 70% or above.

(a) A mechanical contractor's license shall entitle the holder thereof to engage in the business of and to secure permits for the installation and placement of mechanical equipment and to employ and supervise mechanical installers. A mechanical license allows for commercial and or residential work to be performed. A state license is

required for projects that exceed $25,000.00. (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000)

12-1016. City of Cleveland electrical license required. In order to obtain an electrical permit for HVAC, the mechanical contractor shall have a City of Cleveland Electrical License. To obtain a City of Cleveland Electrical License the applicant shall be a State of Tennessee licensed electrical contractor with a classification of "E" or "EC" or the applicant shall be a State of Tennessee license electrician (LLE) and show required proof thereof. (Ord. of Sept. 1998, as amended by Ord. of 1/8/2001)

12-1017. Appropriate license and certificate prerequisite to doing work; exceptions. (1) Any mechanical work done for compensation shall be done under the supervision of a licensed contractor, and no person shall in any manner engage in the business of installing or replacing mechanical equipment unless such person has received or is working under the supervision of someone who has received a mechanical contractor's license and certificate thereof, provided that no license shall be required in order to execute any of the following classes or work:

(a) Minor repair work such as replacement of fuses, or sockets, replacement of lamps, and the connection of portable devices to suitable receptacles which have been permanently installed.

(b) Any work involved in the manufacture, test or repair of mechanical materials, devices, appliances or apparatus.

(c) The maintenance and repair of mechanical equipment by manufacturing concerns through regular employees. (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000)

12-1018. Not transferable. No license and certificate issued in accordance with the provisions of this division shall be assignable or transferable. (Ord. of Sept. 1998)

12-1019. Suspension; revocation; denial of renewal. (1) The mechanical board shall revoke or suspend a license issued to any mechanical contractor upon positive proof that such person:

(a) Knowingly violated the provisions of this article or the rules and regulations of the board;

(b) Practices fraud or deception in making application for or obtaining a mechanical license.

(c) Is incompetent to perform a service to the public as certified;

(d) Permitted his license of registration to be used, directly or indirectly, by another to obtain or perform mechanical work or services;

(e) Is guilty of such other unprofessional or dishonorable conduct of such nature as to deceive or defraud the public;

(f) Has done mechanical work in excess of that permitted by the license held;

(g) Failed to comply with this code, the requirements of the Standard Mechanical Code, repeatedly failed to obtain permits required before commencing work; or fails to obtain required permits at all;

(h) Obtained a permit directly or indirectly for another, unless the license holder shall have been the supervisor of all work covered by the permit:

(i) Received from another any compensation wherein the sole consideration thereof was the obtaining of a permit.

(i) The board may disapprove any renewal of a license when the applicant has misused their license, has made any intentional misstatement on such application, or has been guilty of any act or conduct which would constitute grounds for revocation or suspension of a license as herein provided; provided however, the board shall not disapprove any renewal until after the applicant has been afforded an opportunity to be heard after (5) day's notice by registered mail or personal service of such a notice.

(ii) No action of the board to suspend or revoke a mechanical license shall become final until the alleged offender has been given an opportunity to appear before the board to show cause as to why such action should not be taken.

(iii) Notice, in writing, of the proposed action of the board to revoke or suspend a license shall be given to the holder of such license, stating the specific charges upon which such action is based. The notice shall stipulate that a hearing will be scheduled at a time and place set by the board for the party to show cause why such action should not be made final. Such hearing shall not be held less than five (5) days following notice to the party. Failure to appear before the board to answer the specific charges set forth in the notice shall be deemed just cause for final revocation or suspension of a license.

(j) Expiration; renewal.

(i) Mechanical contractor license under this division shall expire on the 31st day of March, following the date of its issuance. All licenses shall be renewable upon application of the holder within (30) days prior to the expiration date of the license upon the payment of the annual fee set out in this division and compliance with the statements required by the mechanical board.

(ii) Should a licensee allow their license to expire they shall be required to pay fifty ($50.00) dollar fine plus their renewal license fee for each year or portion there of that the license has expired. No license shall be renewed that has expired longer than

two years. Any licensee who's license has expired longer than two years shall appeal to the board for reinstatement; provided that, if any licensee enters active service in the armed forces of the United States, he shall be granted a renewal license upon his application after discharge from such service if such application is presented to the board within six (6) months following the date of his discharge. (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000)

12-1020. Review of renewal applications; statement required.

(1) Each applicant for renewal shall file a statement signed by the applicant that he has not misused his license and that he has abided by this code and the ordinances of the city pertaining to mechanical contractors and the installing of any mechanical equipment.

(2) Each applicant shall show proof of having a current City of Cleveland Business License.

(3) Examination--Application required, contents, qualifications.

(a) Generally. All persons now or hereafter desiring to engage in mechanical contracting in the City of Cleveland, Tennessee, as a mechanical contractor shall have a City of Cleveland mechanical license.

(b) Qualifications for a mechanical contractors license. Any person shall be eligible for a mechanical contractor's license who:

(i) Has a professional license to practice mechanical contracting in the State of Tennessee; or

(ii) Has proof of taking and passing the State of Tennessee Mechanical Contractor's License Test as required by the State of Tennessee.

(c) Proof of qualifications. The board may require written proof of any of the above qualificaitons and it shall be the responsibility of the applicant to provide such definite proof with their applications. (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000, and Ord. of 3/24/03)

12-1021. To be written; records required. Results of examinations for mechanical contractor license shall be kept on file for a period of three (3) years after the date of the examination. (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000)

12-1022. [Deleted.] (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000, and deleted by Ord. of 3/24/03)

12-1023. [Deleted.] (Ord. of Sept. 1998, as deleted by Ord. of 3/24/03)

12-1024. [Deleted.] (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000, and deleted by Ord. of 3/24/03)

12-1025. Temporary license. Deleted. (Ord. of Sept. 1998, as deleted by Ord. of 8/14/2000)

12-1026. [Deleted.] (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000, and deleted by Ord. of 3/24/03)

12-1027. License fees. (1) Fees for licenses granted or renewed under this division for each year, or part thereof shall be seventy-five dollars and no cents ($75.00) for a mechanical contractor. Such fees shall be collected by the city clerk. (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000, and Ord. #2005-25, June 2005)

12-1028. Disposition of fees. Fees required by this division shall be collected by the planning and inspections department and paid over to the city clerk. (Ord. of Sept. 1998)

12-1029. Notices. Notice shall be considered sufficient when either delivered personally to the person to whom said notice is directed or when mailed to the last known address of the applicant as shown in the records of the board. (Ord. of Sept. 1998)

12-1030. Licensee to supervise work under license; duties specified. (1) Mechanical contractor license issued in accordance with the provisions of this division shall specify the name of the holder of the license, who shall be the supervisor of all work done under the license.

(2) The board of mechanical examiners and the mechanical inspector shall be notified in writing of the name of the firm with whom the holder of the license is associated.

(3) In case of a license holder who is the qualifying agent of a corporation, firm or association, when the license holder ceases to be a representative of such corporation, firm or association, the board shall contact the corporation, firm or association to ascertain the status of the bids, contracts, permits covering work being or to be performed in the city. In such cases the board may at its discretion relieve any hardship and permit such work on a temporary basis as it deems advisable. (Ord. of Sept. 1998, as amended by Ord. of 8/14/2000)

12-1031. Violations; penalty. Any person who violates any of the provisions of this division shall upon conviction be guilty of a misdemeanor for each offense. (Ord. of Sept. 1998)

12-1032. Permit fees. Fees for issuance of mechanical permits shall be set by the city council. (Ord. of Sept. 1998)

CHAPTER 11

[DELETED.]

(as deleted by Ord. #2009-71, Oct. 2009)

TITLE 13

PROPERTY MAINTENANCE REGULATIONS[1]

CHAPTER

1. MISCELLANEOUS.
2. ABANDONED AND DISCARDED VEHICLES.
3. SLUM CLEARANCE.
4. BLIGHTED AREAS.

CHAPTER 1

MISCELLANEOUS

SECTION

13-101. Smoke, soot, cinders, etc.
13-102. Stagnant water.
13-103. Weeds and grass.
13-104. Overgrown and dirty lots.
13-105. Dead animals.
13-106. Health and sanitation nuisances.
13-107. Removal from property of unsafe and unhealthy man-made and natural material at property owner's expense.

13-101. Smoke, soot, cinders, etc. It shall be unlawful for any person to permit or cause the escape of such quantities of dense smoke, soot, cinders, noxious acids, fumes, dust, or gases as to be detrimental to or to endanger the health, comfort, and safety of the public or so as to cause or have a tendency to cause injury or damage to property or business.

13-102. Stagnant water. It shall be unlawful for any person knowingly to allow any pool of stagnant water to accumulate and stand on his property without treating it so as effectively to prevent the breeding of mosquitoes. (1981 Code, § 10-76, modified)

13-103. Weeds and grass. Every owner or tenant of property shall periodically cut the grass and other vegetation commonly recognized as weeds on his property, and it shall be unlawful for any person to fail to comply with an

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[1]Municipal code references
Animal control: title 10.
Toilet facilities in beer places: § 8-213(10).
Wastewater treatment: title 18, chapter 1.

order by the code enforcement officer to cut such vegetation when it has reached a height of over one (1) foot. (1981 Code, § 10-76, modified)

13-104. Overgrown and dirty lots.[1] (1) Prohibition. Pursuant to the authority granted to municipalities under Tennessee Code Annotated, § 6-54-113, it shall be unlawful for any owner of record of real property to create, maintain, or permit to be maintained on such property the growth of trees, vines, grass, underbrush and/or the accumulations of debris, trash, litter, waste tires, or garbage, or any other combination of the preceding elements so as to endanger the health, safety or welfare of other citizens or to encourage the infestation of rats and other harmful animals.

(2) Deleted. This subsection was deleted by Ord. of 6/18/2001.

(3) Designation of public officer or department. The city manager shall designate an appropriate department or person to enforce the provisions of this section.

(4) Notice to property owner. It shall be the duty of the department or person designated by the city council to enforce this section to serve notice upon the owner of record in violation of subsection (1) above, a notice in plain language to remedy the condition within ten (10) days (or twenty (20) days if the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), excluding Saturdays, Sundays, and legal holidays. The notice shall be sent by registered or certified United States Mail, addressed to the last known address of the owner of record. The notice shall state that the owner of the property is entitled to a hearing, and shall, at the minimum, contain the following additional information:

(a) A brief statement that the owner is in violation of § 13-104 of the Cleveland Municipal Code, which has been enacted under the authority of Tennessee Code Annotated, § 6-54-113, and that the property of such owner may be cleaned-up at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;

(b) The person, office, address, and telephone number of the department or person giving the notice;

(c) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the city; and

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[1]Municipal code reference

Section 13-103 applies to cases where the city wishes to prosecute the offender in city court. Section 13-104 can be used when the city seeks to clean up the lot at the owner's expense and place a lien against the property for the cost of the clean-up but not to prosecute the owner in city court.

This title, chapter 2.

(d) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing.

(5) Clean-up at property owner's expense. If the property owner of record fails or refuses to remedy the condition within ten (10) days after receiving the notice (twenty (20) days if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), the department or person designated by the city manager to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards, and the cost thereof shall be assessed against the owner of the property. Upon the filing of the notice with the office of the register of deeds in Bradley County, the costs shall be a lien on the property in favor of the municipality, second only to liens of the state, county, and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right, or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. These cost shall be placed on the tax rolls of the municipality as a lien and shall be added to property tax bills to be collected at the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes.

(6) Appeal. The owner of record who is aggrieved by the determination and order of the public officer may appeal the determination and order to the city manager. The appeal shall be filed with the city clerk within ten (10) days following the receipt of the notice issued pursuant to subsection (3) above. The failure to appeal within this time shall, without exception, constitute a waiver of the right to a hearing.

(7) Judicial review. Any person aggrieved by an order or act of the city manager under subsection (5) above may seek judicial review of the order or act. The time period established in subsection (4) above shall be stayed during the pendency of judicial review.

(8) Supplemental nature of this section. The provisions of this section are in addition and supplemental to, and not in substitution for, any other provision in the municipal charter, this municipal code of ordinances or other applicable law which permits the city to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property the growth of trees, vines, grass, weeds, underbrush and/or the accumulation of the debris, trash, litter, or garbage or any combination of the preceding elements, under its charter, any other provisions of this municipal code of ordinances or any other applicable law. (as amended by Ord. of 6/18/2001, and Ord. #2005-45, Nov. 2005)

13-105. Dead animals. Any person owning or having possession of any dead animal not intended for use as food shall promptly bury the same or notify

the animal control officer and dispose of such animal in such manner as the animal control officer shall direct. (1981 Code, § 10-18, modified)

13-106. Health and sanitation nuisances. It shall be unlawful for any person to permit any premises owned, occupied, or controlled by him to become or remain in a filthy condition, or permit the use or occupation of same in such a manner as to create noxious or offensive smells and odors in connection therewith, or to allow the accumulation or creation of unwholesome and offensive matter or the breeding of flies, rodents, or other vermin on the premises to the menace of the public health or the annoyance of people residing within the vicinity.

13-107. Removal from property of unsafe and unhealthy man-made and natural material at property owner's expense. 1. Prohibition. It shall be unlawful for any owner of any real property in the city to create, maintain or permit to be maintained on such property any unsafe and unhealthy man-made and natural materials, including junk motorized and non-motorized vehicles and carriage of every kind and description, debris, trash, litter and garbage, and growth of vegetation, including weeds, trees, vines, grass and underbrush.

2. Application. The provisions of this section shall apply to every piece of real property in the city, including, but not limited to, residential commercial, industrial and business property, whether is occupied or unoccupied.

3. Designation of enforcement officer. The city manager shall designate an appropriate department or person to enforce the provisions of this section.

4. Notice to property owners. It shall be the duty of the enforcement department or officer to service notice upon the owner of record of the property in violation of subsection (1) above, a notice in plain language to remedy the condition within ten (10) days, excluding Saturdays, Sundays, and legal holidays. The notice shall be sent by registered or certified U.S. Mail, addressed to the last known address of the owner of record. The notice shall state that the owner of the property is entitled to a hearing, and shall, at a minimum contain the following information:

a. A brief statement that the owner is in violation of § 13-107 of the Cleveland Municipal Code, and that the property in violation of that section may be cleaned-up at the expense of the owner, and a lien placed against the property to secure the cost of the clean-up,

b. The person, office, address, and telephone number of the enforcement department or officer giving the notice;

c. A cost estimate for remedying the noted condition, which shall be in conformity with the standards of costs in the city; and

d. A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing.

5. Clean-up at property owner's expense. If the property owner of record fails or refuses to remedy the condition within ten (10) days after receiving the notice, the enforcement department or officer shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards, and the cost thereof shall be assessed against the owner of the property. Upon the filing of the notice with the office of the register of deeds in Bradley County, the costs shall be a lien on the property in favor of the city, second only to liens of the state, county and city for property taxes, and lien of the city for special assessments, and any valid lien, right or interest in such property duly recorded or perfected, prior to the filing of such notice, and the expenses shall be collected by the city's tax collector at the same time and in the same manner as property taxes are collected.

6. Appeal. The owner of record who is aggrieved by the determination of the enforcement department or officer may appeal the determination and order to the city manager. The appeal shall be filed with the city clerk within ten (10) days following the receipt of the notice issued pursuant to subsection (3) above. The failure to appeal within this time shall, without exception constitute a waiver of the right to a hearing.

7. Judicial review. Any person aggrieved by an order or act of the enforcement department or officer or city manager under subsection (5) above, shall be stayed during the pendency of judicial review.

8. Supplemental nature of this section. The provisions of this section shall be supplemental to, and not in substitution for, any other provision in the municipal charter, this municipal code of ordinances, or other applicable law which permits the city to proceed against a property owner, tenant or occupant of property who has created maintained or permitted to be maintained on such property unsafe and unhealthy man-made and natural materials. (as added by Ord. of 6/18/2001)

CHAPTER 2

ABANDONED AND DISCARDED VEHICLES--AND IMPROPERLY STORED PORTABLE BUILDINGS

SECTION

13-201. Definitions.
13-202. Abandoning prohibited.
13-203. Leaving nonoperating junked vehicle on street prohibited.
13-204. Location or presence of discarded, or abandoned, or inoperable, or unlicensed vehicles or improperly stored portable buildings within city deemed a public nuisance; exceptions.
13-205. Screening of otherwise lawfully located inoperable and unlicensed vehicles.
13-206. Penalties.

13-201. Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter:

1. "Abandoned vehicle" shall mean any vehicle or part thereof which is left unattended on public or private property for more than thirty (30) days, or a vehicle that has remained illegally on public property for a period of more than forty-eight (48) hours, or a vehicle that has remained on private property without the consent of the owner or person in control of the property for more than forty-eight (48) hours.

2. "Discarded vehicle" shall mean any vehicle or part thereof which:

a. is inoperative and which does not have lawfully affixed thereto an unexpired license plate or plates and which is wrecked, dismantled, partially dismantled or discarded; or

b. remains inoperable and without unexpired license plate or plates affixed thereto for a continuous period of more than thirty (30) days.

3. "Property" shall mean any property within the city which is not a street, highway or public right-of-way.

4. "Vehicle" shall mean a machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides and transport person or property or pull machinery, and shall include, without limitation, automobiles, trucks, trailers, motorcycles, tractors, and wagons. For purposes of this title 13 of the Cleveland Municipal Code, "vehicle" shall also include watercraft and aircraft.

5. For purposes of this title 13 of the Cleveland Municipal Code, "portable buildings" shall include structures such as mobile homes, office trailers, portable kitchens, tents, or other structures for human occupancy or storage that are to designed to be transported intact or in sections.

6. For purposes of this title 13 of the Cleveland Municipal Code, "improperly stored portable buildings" shall be deemed to include any portable building located or maintained on a property so as to exhibit one or more of the health hazard conditions applicable to vehicles as described in § 13-204. However, the use of a portable building for its designed purpose would not constitute a health hazard (e.g. sheltering a dog in a doghouse) apart from other conditions. Portable buildings, except when held for sale or lease on a person-attended sales or rental lot that is properly zoned and developed in compliance title 14, chapter 2 of the Cleveland Municipal Code, will be considered improperly stored if they are stored or abandoned on any property for more than 30 days such that the portable building is not connected to public water and sewer if so designed, or such that the portable building installation was without a required permit or in violation of a condition of the required permit, or such that the portable building is open or otherwise not secure from entry, or such that the portable building is not properly secured with an approved foundation or anchoring system. Relocation of a portable building prior to the end of the aforementioned 30-day period shall not change the effective date of the violation or otherwise cure the violation unless such relocation is in a place and manner that would not constitute the improper placement of a portable building at the end of the 30-day period. Portable buildings, when permitted in accordance with temporary use provisions in title 14, chapter 2, section 2.16 and maintained and removed in accordance with said permit, shall not be considered as improperly stored.

7. "Inoperative" and "inoperable," as applied to vehicles, shall mean any vehicle that is not roadworthy if designed to be driven on public streets; or any vehicle that cannot be moved under its own power if designed to be moved under its own power, or a vehicle designed to be towed or hauled that is not safe and roadworthy for towing or hauling, or vehicle parts that are not assembled so as to comprise a complete vehicle. Conditions that would render a vehicle not roadworthy would include damage or disrepair of the vehicle such that it cannot be moved, steered, and stopped as designed, or a condition of the vehicle such that it cannot be operated in compliance with applicable traffic laws. Vehicle damage that is of a purely aesthetic nature would not, apart from other conditions, constitute an inoperable vehicle condition. When applied in particular to watercraft or aircraft, the terms "inoperative" and "inoperable" shall also include being wrecked or otherwise incapable of being safely operated in the water or air as designed.

8. "Unlicensed," as applied to vehicles, shall mean a vehicle without unexpired license plates or a vehicle without other lawfully required registration that is currently valid.

9. "Health hazard," for the purposes of this ordinance pertaining to inoperable vehicles shall include, but are not necessarily be limited to, the following conditions: a vehicle passenger compartment, trunk, or other normally enclosed area that is open to the elements; vegetation growing on, within, or

under the vehicle other than grass maintained at an otherwise lawful height; storage of junk, garbage, or debris on or within the vehicle; infestation of the vehicle by rats, snakes or other vermin; standing water on or within the vehicle so as to create a potential breeding ground for mosquitos; use of the vehicle for the unsafe storage of hazardous materials; use of a vehicle for human habitation where it is not designed for human habitation; use of a vehicle designed for human habitation for such habitation where the vehicle is not properly connected with utilities and otherwise in compliance with zoning, building, housing, and property maintenance regulations; occupancy of the vehicle for the conduct of activities that are criminal or otherwise unlawful; or use of the vehicle to shelter or confine animals. (1981 Code, § 15-131, modified, as amended by Ord. of 12/10/2001)

13-202. Abandoning prohibited. No person shall abandon any vehicle within the city, and no person shall leave any vehicle at any place within the city, for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned. (1981 Code, § 15-132)

13-203. Leaving nonoperating junked vehicle on street prohibited. No person shall leave any partially dismantled, nonoperating, wrecked, or junked vehicle on any street, alley or highway within the city, or on any public right-of-way. (1981 Code, § 15-133)

13-204. Location or presence of discarded, or abandoned, or inoperable, or unlicensed vehicles or improperly stored portable buildings within city deemed a public nuisance; exceptions. The location or presence of any discarded, or abandoned, or inoperable, or unlicensed vehicle or improperly stored portable building on any lot, tract, or parcel of land, or portion thereof, occupied or unoccupied, improved or unimproved, within the City of Cleveland shall be deemed a public nuisance. It shall be unlawful for any person or persons to cause or maintain such a public nuisance by improperly storing a portable building, as described in subsection 13-201(6) above, on his or her property or on the property of another, or to suffer, allow, or permit such improper storage of a portable building on his or her property. It shall be unlawful for any person or persons to cause or maintain such public nuisance by wrecking, dismantling, rendering inoperable, storing in an inoperable condition, abandoning, or discarding his or their vehicle or vehicles on the property of another or to suffer, permit, or allow the same to be placed, located, maintained or exist upon his or their own real property; provided that his section shall not apply to:

1. A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;

2. Abandoned, discarded, unlicensed, or inoperable vehicles or parts thereof stored in the location of a lawfully existing junkyard, salvage yard, or automobile disassembler that is operated and maintained in a lawful manner;

3. A vehicle stored in a lawful place and manner by the city or other governmental authority in an appropriate storage place or depository;

4. One or more inoperable vehicles stored in ordinary public view for less than 30 days for the purposes of repair when such storage is otherwise lawful. This exception is subject to the condition that the relocation of such vehicles prior to the end of the aforementioned 30-day period would not change the effective date of the violation or otherwise cure the violation unless the relocation was in such a place and manner so as not to be in violation of this ordinance at the end of the 30-day period;

5. Inoperable vehicles held for repair by a properly zoned and licensed vehicle dealer or vehicle repair establishment provided that such vehicles are screened in accordance with § 13-205 and provided that such vehicles are stored in a manner that does not produce health hazard conditions described in § 13-201(9). Such vehicles held in this manner shall not exceed the greater of four vehicles or one vehicle per 7500 square feet or fraction thereof of land area in the site occupied by the vehicle dealer or vehicle repair establishment;

6. Unlicensed but operable vehicles held for sale or lease by a licensed vehicle dealer in an otherwise lawful place and manner; or

7. Less than three unlicensed or inoperable vehicles when stored on private property in a manner screened from ordinary public view as provided in § 13-205 and maintained so as not to create a health hazard as described in § 13-201(9). (1981 Code, § 15-134, as amended by Ord. of 12/10/2001)

13-205. <u>Screening of otherwise lawfully located inoperable and unlicensed vehicles</u>. Where unlicensed or inoperable vehicles are stored in a manner otherwise in compliance with this ordinance, such storage shall be behind the front building line of the principal structure on the site and shall be screened from the view of neighboring properties. Screening may be by means of a building, structure, wall, fence, landscaped earthen berm, evergreen trees or shrubs, or natural topographic feature, or a combination thereof. Screening must be otherwise lawful and maintained in good condition. Vegetation normally considered weeds, fences or walls made with scrap or junk material, or piles of rock, earth, logs, or debris would not constitute proper screening. Screening must be accomplished in a manner that does not create a traffic hazard or otherwise violate the site development standards in title 14, chapter 2, section 3.0 of the Cleveland Municipal Code. Screening must be of proper height, position, and opacity to hide the vehicle from ordinary public view and from the view of neighboring properties. (as added by Ord. of 12/10/2001)

13-206. <u>Penalties</u>. Any person or persons violating this ordinance shall, upon conviction, be fined not less than two (2) or more than fifty (50) dollars for

each offense and such person or persons shall be liable for court costs. Each day that such violation continues shall constitute a separate offense. It is further provided that the foregoing penal provisions are not intended to be the exclusive means of enforcing this ordinance, and violation of the provisions hereof is expressly declared to be a public nuisance, and, in addition to the fines herein provided above, the nuisance shall be abatable in law or in equity as in the case of other nuisances. (as added by Ord. of 12/10/2001)

CHAPTER 3

SLUM CLEARANCE[1]

SECTION

13-301. Findings of council.
13-302. Definitions.
13-303. "Public officer" designated; powers.
13-304. Initiation of proceedings; hearings.
13-305. Orders to owners of unfit structures.
13-306. When public officer may repair, etc.
13-307. When public officer may remove or demolish.
13-308. Lien for expenses; sale of salvage materials; other powers not limited.
13-309. Basis for a finding of unfitness.
13-310. Service of complaints or orders.
13-311. Enjoining enforcement of orders.
13-312. Additional powers of public officer.
13-313. Powers conferred are supplemental.
13-314. Structures unfit for human habitation deemed unlawful.

13-301. Findings of council. Pursuant to Tennessee Code Annotated, § 13-21-101, et seq., the city council finds that there exists in the city structures which are unfit for human occupation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the city.

13-302. Definitions. (1) "Municipality" shall mean the City of Cleveland, Tennessee, and the areas encompassed within existing city limits or as hereafter annexed.

(2) "Governing body" shall mean the city council charged with governing the city.

(3) "Public officer" shall mean the officer or officers who are authorized by this chapter to exercise the powers prescribed herein and pursuant to Tennessee Code Annotated, § 13-21-101, et seq.

(4) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the city or

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[1]State law reference
Tennessee Code Annotated, title 13, chapter 21.

state relating to health, fire, building regulations, or other activities concerning structures in the city.

(5) "Owner" shall mean the holder of title in fee simple and every mortgagee of record.

(6) "Parties in interest" shall mean all individuals, associations, corporations and others who have interests of record in a dwelling and any who are in possession thereof.

(7) "Structures" shall mean any building or structure, or part thereof, used for human occupation and intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

13-303. "Public officer" designated; powers. There is hereby designated and appointed a "public officer," to be the codes enforcement officer of the city, to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by the codes enforcement officer.

13-304. Initiation of proceedings; hearings. Whenever a petition is filed with the public officer by a public authority or by at least five (5) residents of the city charging that any structure is unfit for human occupancy or use, or whenever it appears to the public officer (on his own motion) that any structure is unfit for human occupation or use, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and parties in interest of, such structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the service of the complaint; and the owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint; and the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

13-305. Orders to owners of unfit structures. If, after such notice and hearing as provided for in the preceding section, the public officer determines that the structure under consideration is unfit for human occupancy or use, he shall state in writing his finding of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

(1) If the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure (not exceeding fifty percent [50%] of the reasonable value), requiring the owner, during the time specified in the order, to repair, alter, or improve such structure to render it fit for human occupancy or use or to vacate and close the structure for human occupancy or use; or

(2) If the repair, alteration or improvement of said structure cannot be made at a reasonable cost in relation to the value of the structure (not to exceed fifty percent [50%] of the value of the premises), requiring the owner within the time specified in the order, to remove or demolish such structure.

13-306. <u>When public officer may repair, etc</u>. If the owner fails to comply with the order to repair, alter, or improve or to vacate and close the structure as specified in the preceding section hereof, the public officer may cause such structure to be repaired, altered, or improved, or to be vacated and closed; and the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human occupancy or use; the use or occupation of this building for human occupancy or use is prohibited and unlawful."

13-307. <u>When public officer may remove or demolish</u>. If the owner fails to comply with an order, as specified above, to remove or demolish the structure, the public officer may cause such structure to be removed and demolished.

13-308. <u>Lien for expenses; sale of salvaged materials; other powers not limited</u>. The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be assessed against the owner of the property, and shall upon the filing of the notice with the office of the register of deeds of Bradley County, be a lien on the property in favor of the municipality, second only to liens of the state, county and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right, or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. These costs shall be collected by the municipal tax collector or county trustee at the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes. In addition, the municipality may collect the costs assessed against the owner through an action for debt filed in any court of competent jurisdiction. The municipality may bring one action for debt against more than one or all of the owners of properties against whom said costs have been assessed and the fact that multiple owners have been joined in one action shall not be considered by the court as a misjoinder of parties. If the structure is removed or demolished by the public officer, he shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the chancery court of Bradley County by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court provided, however, that nothing in this section shall be construed to

impair or limit in any way the power of the City of Cleveland to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

13-309. Basis for a finding of unfitness. The public officer defined herein shall have the power and may determine that a structure is unfit for human occupation and use if he finds that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants or users of such structure, the occupants or users of neighboring structures or other residents of the City of Cleveland; such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanliness.

13-310. Service of complaints or orders. Complaints or orders issued by the public officer pursuant to this chapter shall be served upon persons, either personally or by registered mail, but if the whereabouts of such person is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) consecutive weeks in a newspaper printed and published in the city. In addition, a copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall also be filed for record in the Register's Office of Bradley County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law.

13-311. Enjoining enforcement of orders. Any person affected by an order issued by the public officer served pursuant to this chapter may file a suit in chancery court for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon the filing of such suit, issue a temporary injunction restraining the public officer pending the final disposition of the cause; provided, however, that within sixty (60) days after the posting and service of the order of the public officer, such person shall file such suit in the court.

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

13-312. <u>Additional powers of public officer</u>. The public officer, in order to carry out and effectuate the purposes and provisions of this chapter, shall have the following powers in addition to those otherwise granted herein:

(1) To investigate conditions of the structures in the city in order to determine which structures therein are unfit for human occupation or use;

(2) To administer oaths, affirmations, examine witnesses and receive evidence;

(3) To enter upon premises for the purpose of making examination, provided that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter; and

(5) To delegate any of his functions and powers under this chapter to such officers and agents as he may designate.

13-313. <u>Powers conferred are supplemental</u>. This chapter shall not be construed to abrogate or impair the powers of the city with regard to the enforcement of the provisions of its charter or any other ordinances or regulations, nor to prevent or punish violations thereof, and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by the charter and other laws.

13-314. <u>Structures unfit for human habitation deemed unlawful</u>. It shall be unlawful for any owner of record to create, maintain or permit to be maintained in the city structures which are unfit for human occupation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the city.

CHAPTER 4

BLIGHTED AREAS

SECTION

13-401. Findings of council.
13-402. Definitions.
13-403. Vacant property review commission created.
13-404. Eminent domain--authority of city to acquire blighted, deteriorated properties.
13-405. Same--Determination by vacant property review commission prior to initiation of proceedings by city.
13-406. Same--Institution by city pursuant to certain conditions and certification.
13-407. When disclosure of interest required by city officers, employees.

13-401. Findings of council. 1. The city council hereby finds:

It is hereby found:

a. That there exists in the City of Cleveland blighted and deteriorated properties in neighborhoods which cause the deterioration of those and contiguous neighborhoods and constitute a serious and growing menace which is injurious to the public health, safety, morals and general welfare of the residents of the city and are beyond remedy and control solely by regulatory process in the exercise of the police power.

b. That the existence of blighted and deteriorated properties within neighborhoods, and the growth and spread of blight and deterioration or the threatened deterioration of other neighborhoods and properties:

i. Contribute substantially and increasingly to the spread of disease and crime, and to losses by fire and accident;

ii. Necessitate expensive and disproportionate expenditure of public funds for the preservation of public health and safety, for crime prevention, correction, prosecution, and punishment, for the treatment of juvenile delinquency, for the maintenance of adequate police, fire and accident protection, and for other public services and facilities;

iii. Constitute an economic and social liability;

iv. Substantially impair or arrest the sound growth of the community;

v. Retard the provision of decent, safe, and sanitary housing accommodations;

vi. Depreciate assessable values;

vii. Cause an abnormal exodus of families from these neighborhoods; and

viii. Are detrimental to the health, the well being and the dignity of many residents of these neighborhoods;

c. That this menace cannot be effectively dealt with by private enterprise without the aid provided herein;

d. That the benefits, which would result from eliminating the blighted properties, that cause the blight and deterioration of neighborhoods will accrue to the inhabitants of the neighborhoods in which these conditions exist and to the inhabitants of this state generally.

2. It is hereby declared:

a. That it is the policy of the City of Cleveland to protect and promote the health, safety, and welfare of the people of the city by eliminating the blight and deterioration of neighborhoods through the elimination of blighted and deteriorated properties within these neighborhoods;

b. That the elimination of such blight and deterioration and the preparation of the properties for sale or lease, for development or redevelopment, constitute a public use and purpose for which public money may be expended and private property acquired and are governmental functions in the interest of the health, safety, and welfare of the people of Cleveland, and

c. That the necessity in the public interest for the provision enacted herein is hereby declared to be legislative determination. (as added by Ord. of 7/9/2001)

13-402. <u>Definitions</u>. Unless the context otherwise requires:

1. "Blighted" or "deteriorated" property means any vacant structure or vacant or unimproved lot or parcel of ground in a predominantly built-up neighborhood; provided, however, "blighted" or "deteriorated" shall not be construed to apply to any property used for agricultural purposes:

a. Which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with local housing, building, plumbing, fire or related codes;

b. Which because of physical condition, use or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures;

c. Which because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, has been designated by the appropriate agency or department responsible for enforcement of the code as unfit for human habitation;

d. Which is a fire hazard, or is otherwise dangerous to the safety of persons or property;

e. From which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use;

f. Which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin;

g. Which has been tax delinquent for a period of at least three (3) years; or

h. Which has not been rehabilitated within the time constraints placed upon the owner by the appropriate code enforcement agency.

2. "City" means City of Cleveland, Tennessee.

3. "Redevelopment" means the planning or replanning, design or redesign, acquisition, clearance, development and disposal or any combination of these, of a property in the preparation of such property for residential and related uses, as may be appropriate or necessary.

4. "Residential and related use" shall mean residential property for sale or rental and related uses; including, but not limited to, park and recreation area, neighborhood community service, and neighborhood parking lots;

5. "Vacant property review commission" means commission established by ordinance to review vacant properties to make a written determination of blight and deterioration. (as added by Ord. of 7/9/2001)

13-403. <u>Vacant property review commission created</u>. 1. The city council of the city finds and declares that there exists in the city blighted or deteriorated properties and that there is in the city for the exercise of powers, functions and duties conferred by Public Chapter No. 1034 of the Public Acts of 1990.

2. There is hereby established a vacant property review commission which shall certify properties as blighted or deteriorated to the legislative body. The number of members that will serve on the commission shall be five (5), all of whom must be residents of the city. Members shall be appointed by the chief executive officer and approved by the legislative body. The first five (5) members shall hold office as follows: Two (2) members, until June 2002; two (2) members, until June 2003; and one (1) member, until June 2004. Thereafter, such members shall be appointed for terms of three (3) years, or until their successors are appointed; however, any member may be removed for cause at any time by the city council. The vacant property review commission shall serve without compensation. No officer or employee of the city whose duties include enforcement of local housing, building, plumbing, fire or related codes shall be appointed to the commission. (as added by Ord. of 7/9/2001)

13-304. Eminent domain--authority of city to acquire blighted, deteriorated properties. The city may acquire, by eminent domain pursuant to Tennessee Code Annotated, title 29, chapters 16 and 17, any property determined to be blighted or deteriorated pursuant to this act, and shall have the power to hold, clear, manage or dispose of property so acquired for residential and related use, pursuant to the provisions of this division. (as added by Ord. of 7/9/2001)

13-305. Same--determination of vacant property review commission prior to initiation of proceedings by city. 1. The city shall not institute eminent domain proceedings pursuant to Public Chapter No. 1034 of the Public Acts of 1990 unless the vacant property review commission has certified that the property is blighted or deteriorated. A property which has been referred to the vacant property review commission by an agency of the city as blighted or deteriorated may only be certified to the legislative body as blighted or deteriorated may only be certified to the legislative body as blighted and deteriorated after the vacant property review commission has determined:

a. That the owner of the property or designated agent has been sent an order by the appropriate agency of the city to eliminate the conditions which are in violation of local codes or law;

b. That the property is vacant;

c. That the property is blighted and deteriorated;

d. That the vacant property review commission has notified the property owner or designated agent that the property has been determined to be blighted or deteriorated and the time period for correction of such condition has expired and the property owner or agent has failed to comply with notice; and

e. That the planning commission of the city has determined that the reuse of the property for residential and related use is in keeping with the comprehensive plan.

2. The findings required by subsection (a) of this section shall be in writing and included in the report to the legislative body.

3. The vacant property review commission shall notify the owner of the property or a designated agent that a determination of blight or deterioration has been made and that failure to eliminate the conditions causing the blight shall render the provision subject to condemnation by the city under the provisions of Public Chapter 1034 of the Public Acts of 1990. Notice shall be mailed to the owner or designated agent by certified mail, return receipt requested. However, if the address of the owner or a designated agent is unknown and cannot be ascertained by the vacant property review commission in the exercise of reasonable diligence, copies of the notice shall be posted in a conspicuous place on the property affected. The written notice sent to the owner or his agent shall describe the conditions that render the property blighted and

deteriorated, and shall demand abatement of the conditions within ninety (90) days of the receipt of such notice.

4. An extension of the ninety-day time period may be granted by the vacant property review commission if the owner or designated agent demonstrates that such period is insufficient to correct the conditions cited in the notice. (as added by Ord. of 7/9/2001)

13-406. Same--institution by city pursuant to certain conditions and certifications. The city may institute eminent domain proceedings pursuant to Tennessee Code Annotated, title 29, chapters 16 and 17, against any property, which has been certified as blighted or deteriorated by the vacant property review commission if it finds:

1. That such property has deteriorated to such an extent as to constitute a serious and growing menace to the public health, safety and welfare;
2. That such property is likely to continue to deteriorate unless corrected;
3. That the continued deterioration of such property may contribute to the blighting or deterioration of the area immediately surrounding the property; and
4. That the owner of such property has failed to correct the deterioration of the property. (as added by Ord. of 7/9/2001)

13-407. When disclosure of interest required by city officers, employees. No officer or employee of the city, or of the vacant property review commission, who in the course of his duties is required to participate in the determination of property blight or deterioration or the issuance of notices on code violations which may lead to a determination of blight or deterioration, shall acquire any interest in any property declared to be blighted or deteriorated. If any such officer or employee owns or has financial interest, direct or indirect, in any property certified to be blighted or deteriorated, he shall immediately disclose, in writing, such interest to the vacant property review commission and to the legislative body and such disclosure shall be entered in the minutes of the vacant property review commission and of the legislative body. Failure to so disclose such interest shall constitute misconduct in office. No payment shall be made to any officer or employee for any property or interest therein acquired by the municipality from such officer or employee unless the amount of such payment is fixed by court order in eminent domain proceedings, or unless payment is unanimously approved by the legislative body. (as added by Ord. of 7/9/2001)

TITLE 14

ZONING AND LAND USE CONTROL

CHAPTER

1. PLANNING COMMISSION.
2. ZONING ORDINANCE.
3. [DELETED.]
4. AIRPORT ZONING REGULATIONS.
5. SIGN CONTROL REGULATIONS.
6. FENCING REGULATIONS ON LIMITED ACCESS HIGHWAYS.
7. MOBILE HOMES AND MOBILE HOME PARKS.
8. TRAVEL TRAILERS AND TRAVEL TRAILER PARKS.
9. SUBDIVISION REGULATIONS.
10. FLOOD HAZARD REDUCTION ORDINANCE.
11. MINIMUM STANDARDS FOR SITING CELLULAR COMMUNICATION TOWERS.
12. HISTORIC PRESERVATION.

CHAPTER 1

PLANNING COMMISSION[1]

SECTION

14-101. Created.
14-102. Membership.
14-103. Organization, rules, and staff.
14-104. Powers and duties.
14-105. Oath of office.

14-101. Created. In order to guide and accomplish a coordinated and harmonious development of the municipality which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity and the general welfare as well as efficiency and economy in the process of development, the municipal planning commission is hereby created and established as authorized by the Tennessee Code Annotated, § 13-4-101 et seq., and such planning commission shall be organized and empowered as hereinafter set out. (1981 Code, § 17-16)

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[1]Municipal code references
Airport commission: title 2, chapter 1.
Airport zoning regulations: title 14, chapter 4.

14-102. Membership. The municipal planning commission shall consist of nine (9) members. One of the members shall be the mayor, or his designee, excluding city employees, one shall be a council member selected by the city council, and the seven (7) remaining members shall be citizens, appointed by the mayor. The terms of the appointive members shall be for three (3) years. Any vacancy on an appointive membership shall be filled for the unexpired term by the mayor, who shall have the authority to remove any appointive member for sufficient and just reason. The term of the member selected from the city council shall run concurrently with his membership on the city council. All members shall serve without compensation. (1981 Code, § 17-17, modified)

14-103. Organization, rules, and staff. The municipal planning commission shall elect its chairman from its appointive members. The term of the chairman shall be for one year with eligibility for reelection. The commission shall adopt rules for the transaction of its business and for recording its findings, and determinations, which record shall be a public record. (1981 Code, § 17-18, modified)

14-104. Powers and duties. The municipal planning commission shall have all the powers, duties and responsibilities as set forth in Tennessee Code Annotated, title 13, chapters 4 and 7, as amended. (1981 Code, § 17-19)

14-105. Oath of office. Before beginning a term of service on the municipal planning commission, a member shall take the following oath of office:

> "I do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution of the State of Tennessee, and that I will perform with fidelity the duties of the office to which I have been appointed and which I am about to assume." (as added by Ord. #2004-23, June 2004)

CHAPTER 2

ZONING ORDINANCE

SECTION

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

14-201. Land use to be governed by zoning ordinance. Land use within the City of Cleveland shall be governed by the, zoning ordinance and any amendments thereto.[1]

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[1]The Cleveland Zoning Ordinance, and any amendments, is included in this municipal code as Appendix C.

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

CHAPTER 3

[DELETED]

This chapter was deleted by Ord. #2006-3, Jan. 2006.

CHAPTER 4

AIRPORT ZONING REGULATIONS[1]

SECTION

14-401. Definitions.
14-402. Airport zoning map.
14-403. Zones.
14-404. Height limits.
14-405. Use restrictions.
14-406. Nonconforming uses.
14-407. Variances.
14-408. Permits.
14-409. Hazard marking and lighting.
14-410. Appeals.
14-411. Administrative agency.
14-412. Board of zoning appeals; powers.
14-413. Judicial review.

14-401. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Airport" means the Municipal Airport, Cleveland, Tennessee.

(2) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at the airport or is otherwise hazardous to such landing or taking-off of aircraft.

(3) "Landing area" means the area of the airport used for the landing, take-off or taxiing of aircraft.

(4) "Nonconforming use" means any structure, tree or use of land which does not conform to a regulation prescribed in this chapter or an amendment thereto, as of the effective date of such regulations.

(5) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines.

(7) "Tree" means any object of natural growth. (1981 Code, § 3-36)

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[1]Municipal code reference
Airport commission: title 2, chapter 1.
State law reference
Tennessee Code Annotated, § 42-6-101 et seq.

14-402. Airport zoning map. In order to outline definitely the horizontal and vertical limits beyond which the projection of any structure or tree will constitute an airport hazard, the Airport Zoning Map, dated October 7, 1959, of the Cleveland Municipal Airport, Cleveland, Tennessee, which is on file with the city is hereby incorporated into this chapter and made a part thereof.

(1) The established elevation of the airport is eight hundred seventy-three (873) feet MSL.

(2) The airport reference point is established at a location described as follows: A point on the center line of the paved runway, said point being located one thousand six hundred fifty (1,650) feet from the southwest end of the runway pavement, as evidenced by the map of the elevation of restricted zone which is on file with the city and made a part hereof dated July 13, 1961. (1981 Code, § 3-37, modified)

14-403. Zones. In order to carry out the provisions of this chapter, there are hereby created and established certain zones which include the airport approach surface zones, horizontal surface zones, conical surface zones and transitional surface zones, as shown on the airport zoning map, which is on file with the city. The surface for each of these zones constitutes a ceiling above which no structures or objects of natural growth are to be constructed or allowed to grow. The geographical areas to which the requirements and limits are to apply are the areas lying directly beneath the approach surface zone, horizontal surface zone, conical surface zone, and transitional surface zone. The limits of these zones are shown with controlling contours on the zoning maps, which are on file with the city.

(1) Approach surface zones. The approach surface zone is an inclined plane located directly above the approach area. The approach areas for each particular runway are symmetrically located with respect to the extended runway center line and have lengths and widths as shown on the airport zoning map, which is on file with the city, which also shows the slopes of the respective approach surface zones.

(2) Horizontal surface zone. The horizontal surface zone is a plane, circular in shape, with its height one hundred fifty (150) feet above the established airport elevation and having a radius from the airport reference point as indicated on the airport zoning map, which is on file with the city.

(3) Conical surface zone. The conical surface zone extends upward and outward from the periphery of the horizontal surface zone with a slope of 20:1 measured in a vertical plane passing through the airport reference point. Measuring radially outward from the periphery of the horizontal surface zone, the conical surface extends for a horizontal distance as shown on the airport zoning map, which is on file with the city.

(4) Transitional surface zone. The transitional surface zones are inclined planes with a slope of 7:0 measured upward and outward in a vertical

plane at right angles to the center line of the runway. The transitional surface zones, symmetrically located on either side of the runway, extend upward and outward from a line on either side of the runway which is parallel to and level with the runway center line. These parallel lines are at a horizontal distance from the runway center line equal to one-half of the minimum width of each approach area as shown on the airport zoning map, which is on file with the city. (1981 Code, § 3-38, modified)

14-404. Height limits. Except as otherwise provided in this chapter no structure or tree shall be erected, altered, allowed to grow, or maintained in any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone to a height in excess of the height limit herein established for such zone. For purposes of this regulation, height limits shown on the airport zoning map, which is on file with the city, are hereby established for each of the zones in question. (1981 Code, § 3-39, modified)

14-405. Use restrictions. Notwithstanding any other provisions of chapter, no use may be made of land within any airport approach surface zone, horizontal surface zone, conical surface or transitional surface zone, in such manner as to create electrical interference with radio communication between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, taking-off, or maneuvering of aircraft. (1981 Code, § 3-40)

14-406. Nonconforming uses. The regulations prescribed in §§ 14-404 and 14-405 shall not be construed to require the removal, lowering or other change or alterations of any structure or tree not conforming to the regulations as of the effective date hereof, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration or intended use of any structure the construction or alteration of which was begun prior to the effective date of the ordinance from which this chapter was derived, and which was diligently prosecuted and completed within two (2) years thereof. (1981 Code, § 3-41)

14-407. Variances. Any person desiring to erect any structure or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the regulations prescribed in this chapter, may apply for a variance therefrom. Such variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this chapter. (1981 Code, § 3-42)

14-408. Permits. (1) Future uses. No material change shall be made in the use of land, and no structure or tree shall be erected, altered, planted or otherwise established in any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone, unless a permit shall have been applied for and granted. Each such application shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations therein prescribed. If such determination is in the affirmative, the permit applied for shall be granted.

(2) Existing uses. Before any existing use, structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, within any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone, a permit must be secured authorizing such replacement, change or repair. No such permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure or tree to be made or become higher, or become a greater hazard to air navigation, than it was on the effective date of the ordinance from which this chapter is derived or than it is when the application for a permit is made. Except as indicated, all applications for a permit for replacement, change or repair of existing use, structure or tree shall be granted. (1981 Code, § 3-43)

14-409. Hazard marking and lighting. Any permit or variance granted under §§ 14-407 or 14-408 may, if such action is deemed advisable to effectuate the purposes of this chapter and reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the city, at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard. (1981 Code, § 3-44)

14-410. Appeals. (1) Any person aggrieved, or taxpayer affected, by any decision of the city building inspector made in its administration of this chapter, may appeal to the board of zoning appeals for which provision is made in § 14-412.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the city building inspector and with the board, a notice of appeal specifying the grounds thereof. The city building inspector shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the city building inspector certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.

In such case, proceedings shall not be stayed otherwise than by order of the board on notice to the city building inspector and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify, the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought be made.

(6) The board shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, or affirming, or modifying any order, requirement, decision or determination which comes before it under the provisions of this chapter.

(7) The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision or determination of the city building inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in this chapter. (1981 Code, § 3-45)

14-411. **Administrative agency**. The city building inspector is hereby designated the administrative agency charged with the duty of administering and enforcing the regulations prescribed in this chapter. The duties of the city building inspector shall include that of hearing and deciding all permits under § 14-408, but the city building inspector shall not have or exercise any of the powers or duties herein delegated to the board of zoning appeals. (1981 Code, § 3-46)

14-412. **Board of zoning appeals; powers**. The board of zoning appeals of the city, in addition to the powers and duties heretofore conferred upon such board shall have and exercise the following powers:

(1) To hear and decide appeals from any order, requirement, decision or determination made by the city building inspector in the enforcement of this chapter;

(2) To hear and decide special exceptions to the terms of this chapter upon which such board may be required to pass by subsequent ordinances;

(3) To hear and decide specific variances under § 14-407. (1981 Code, § 3-47)

14-413. **Judicial review**. Any person aggrieved or taxpayer affected by any order or decision of the board of zoning appeals may have said order or decision reviewed by either the Circuit or Chancery Court as provided by Tennessee Code Annotated, title 27, chapter 9. (1981 Code, § 3-48)

CHAPTER 5

SIGN CONTROL REGULATIONS[1]

SECTION

14-501. Along Paul Huff Parkway.

14-501. Along Paul Huff Parkway. (1) Boundary. The rules [set out in this section] apply only to the following described property along the Paul Huff Parkway from six hundred (600) feet west of the intersection of North Lee Highway (U.S. 11):

Situated in the Third Civil District of Bradley County and in the First Ward of the City of Cleveland, more particularly described as follows:

Beginning at a point in the west line of U.S. Highway No. 11 at the southeast corner of the Donald Ledford Property; thence South 38 degrees 11 minutes West with the west line of U.S. Highway No. 11, 613.1 feet to a point; thence North 49 degrees 43 minutes West 9.5 feet to a point; thence continuing with the west line of said Highway South 38 degrees 11 minutes West, 309.2 feet to a point and corner with McLain property; thence North 72 degrees 02 minutes West with McLain's property line, 865.3 feet to a point; thence continuing with McLain's property line North 37 degrees 27 minutes West, 194.3 feet to a point; thence South 82 degrees 34 minutes West with McLain's property line, 76.4 feet to a point and corner with Duff property; thence with the Duff property line the following courses and distances: North 12 degrees 52 minutes East, 22.5 feet; North 58 degrees 50 minutes West, 270 feet; North 45 degrees 44 minutes West, 224.7 feet; North 39 degrees 54 minutes West, 141.8 feet; North 33 degrees 54 minutes West, 105.7 feet; North 31 degrees 13 minutes West, 632.4 feet; North 34 degrees 13 minutes West, 291.9 feet; North 45 degrees 43 minutes West, 55.5 feet; North 53 degrees 47 minutes West, 98.8 feet; and North 48 degrees 22 minutes West, 105 feet, more or less, to the center line of Mouse Creek; thence in a northeasterly direction with the center line of Mouse Creek, 1620 feet, more or less, to a point 200 feet southwest of the southwest corner of Lot 21 of Sequoia Grove Subdivision; thence South 54 degrees 59 minutes East, 560 feet, more or less, to a point; thence South 64 degrees 27 minutes East, 1,003 feet, more or less, to a point; thence South 68 degrees 26 minutes East,

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[1]Municipal code references
Building, utility, etc. codes: title 12.
Fire protection and fireworks: title 7.
Traffic control: title 15.

565 feet, more or less, to a point in the west line of Cawood property; thence with Cawood's line South 35 degrees 30 minutes West, 329.9 feet to a point; thence continuing with Cawood's line, South 61 degrees 21 minutes East, 964.8 feet to a point and corner with Preston property; thence South 36 degrees 57 minutes West, 176.9 feet to a point; thence South 37 degrees 35 minutes West, 78.6 feet to a point; thence South 37 degrees 16 minutes West, 292.6 feet to a point; thence South 52 degrees 59 minutes East, 81.8 feet to a point; thence South 36 degrees 58 minutes West, 19.8 feet to a point; thence South 60 degrees 10 minutes East, 133.8 feet to a point; thence South 39 degrees 45 minutes East, 75 feet to a point; thence North 82 degrees 56 minutes West, 63.1 feet to a point; thence North 60 degrees 11 minutes West, 165.8 feet to a point; thence South 38 degrees 00 minutes West, 33.25 feet to a point; thence South 52 degrees 00 minutes East, 468.56 feet to a point, the place of beginning.

There is specifically EXCLUDED from the foregoing described tract of land any portion of the same that lies within the floodway district.

(2) Prohibited signs: [Within the above described area, the following signs are prohibited:]

(a) Any sign or device that advertises a business, product, service, event, etc., that is not located on nor connected with the site upon which the sign or device is located.

(b) Any sign or device that is movable or is designed to be moved from place to place.

(c) Any sign or device that is illuminated in a manner to resemble or imitate traffic signals, emergency vehicles or the like.

(d) Any sign or device that uses bulbs that are reflective, pulsating lights or generally are flashing lights.

(e) Any sign or device that requires guywires or excessive, unsightly bracing for support.

(3) Permitted signs: [Within the area described in subsection (1), the following signs are permitted:]

(a) Signs designed to advertise the location of businesses and services located on the same site as the sign or device (on-premises), as permitted by appropriate zoning law.

(b) Each project or development shall be restricted to one (1) ground-mounted sign per street front. This sign is intended to identify businesses and services in the project by name and address. The sign can also have features that provide for changeable copy to notify of events, sales, etc.

(c) Service stations or businesses dealing in the sale of petroleum products to the public are allowed one (1) sign per street front in addition to those allowed in subsection (3)(b) above that identify the brand and name and/or address of the business.

(d) Traffic directional signs.

(4) Exemptions: A sign existing on a property within the corporate limits of the City of Cleveland prior to the enactment or subsequent amendment of this chapter shall be eligible to be replaced on the same property, however, the sign face shall be no larger, measured by square footage, than the existing size of the sign and the relocation is caused generally by circumstances beyond the control of the owner of the property or the sign. (1981 Code, § 20.5-26, as amended by Ord. of Jan. 1999)

CHAPTER 6

FENCING REGULATIONS ON LIMITED ACCESS HIGHWAYS

SECTION

14-601. City council to establish limited access highways.
14-602. Fencing.
14-603. Request to remove fencing.

14-601. City council to establish limited access highways. The city council may designate some locally-owned streets as limited access highways, and negotiate with affected property owners for the right to limit said access. (Ord. of Nov. 1994)

14-602. Fencing. When such limited access highways are established, the city engineer shall be responsible for erecting chainlink fencing designating the limited access. It shall be a violation of this chapter for any individual, corporation, or partnership to remove, or have removed, any portion of said fencing without written permission from the city council. (Ord. of Nov. 1994)

14-603. Request to remove fencing. The city council will not remove any fencing on state or federally owned limited access highways. The city council may remove some fencing on city-owned limited access highways, provided the following conditions are met:

(1) The fencing only is removed, but not the limited access provisions;

(2) An appropriate number of signs stating "Limited Access Highway - Entrance Permits Required" must be erected where the fencing is removed; and

(3) The property fronting the fencing must be developed, or a detailed site plan approved prior to any approval to remove the fencing.

(4) If the property becomes vacant for more than 180 days, the city council may, at its discretion, require the fencing to be re-installed. (Ord. of Nov. 1994)

CHAPTER 7

MOBILE HOMES AND MOBILE HOME PARKS

SECTION

14-701. Definitions.
14-702. Plan, R-4 zoning, permits required.
14-703. Location of mobile homes restricted.
14-704. Upgrade of substandard or single lot mobile home.
14-705. Non-conforming use-remedy.
14-706. Administration and enforcement.
14-707. Compliance.
14-708. Authorization.
14-709. Minimum size.
14-710. Minimum number of spaces.
14-711. Mobile home park design standards.
14-712. Street construction standards.
14-713. Appeals.
14-714. Mobile homes or parks in annexed areas.
14-715. Charges.

14-701. Definitions. Except as specifically defined herein, all words used have their customary dictionary definitions where not inconsistent with the context. For this purpose certain words or terms are defined as follows:

(1) "Buffer strip" shall mean an evergreen buffer which shall consist of a greenbelt planted strip not less than ten (10) feet in width. Such a greenbelt shall be composed of one row of evergreen trees, spaced not more than forty (40) feet apart and not less than two (2) rows of shrubs or hedge, spaced not more than five (5) feet apart and which grow to a height of five (5) feet or more after one full growing season and which shrubs will eventually grow to not less than ten (10) feet.

(2) "Lot of record" is a lot the boundaries of which are filed as a legal record in the Bradley County Register of Deeds office prior to the effective date of this ordinance.

(3) "Mobile home (trailer)" shall mean a detached single-family dwelling unit with any or all of the following characteristics:

(a) Is not self-propelled, but is transportable on its own or detachable wheels, or on a flat bedded or other trailer, in one or more sections which in the traveling mode is eight (8) body feet or more in width, or thirty-five (35) feet or more in length, or when erected on site is three hundred twenty (320) feet or more square feet;

(b) A single, self-contained unit that is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities;

(c) Includes the plumbing, heating, air conditioning, and electrical systems contained therein; and

(d) Includes any units which meet the definition of a mobile home as defined by national codes, federal legislation, or Tennessee Code Annotated.

Except that such terms shall also include any structure which meets all of the requirements of this section, except the size requirements, provided the manufacturer complies with the standards established under Tennessee state law.

(4) "Mobile home park" is an area of land used by the landowner for the accommodation of three (3) or more mobile homes to be used for dwelling or sleeping purposes.

(5) "Mobile home space" is an area of land used or intended for the use of one mobile home.

(6) "Mobile home subdivision" is a subdivision of land specifically created to accommodate mobile homes on individual lots which are sold in fee simple.

(7) "Non-conforming use" is a mobile home that is not located either on a single lot of record as the principal structure or in an approved mobile home park prior to the effective date of this ordinance.

(8) "Principal structure" is the mobile home used as the main residential structure on the lot.

(9) "Skirting" is the permanent enclosure of the space between the ground and the floor of the mobile home unit with weather resistant, compatible materials. (1981 Code, § 13-1, as amended by Ord. of Jan. 1994)

14-702. <u>Plan, R-4 zoning, permits required</u>. A process is required for mobile home parks and travel parks. Fees charged under the permit requirement are for inspection and administration. Property must be zoned R-4 and a mobile home park plan approved by the Cleveland Municipal Planning Commission prior to the issuance of a permit. (1981 Code, § 13-2, as amended by Ord. of Jan. 1994)

14-703. <u>Location of mobile homes restricted</u>. The location of a mobile home is allowed inside the Cleveland corporate limits only in either of the following situations:

(1) An existing mobile home, located on a single lot as the principal structure and serviced by public utilities on the effective date of this ordinance; or

(2) An approved mobile home park. (1981 Code, § 13-3, as amended by Ord. of Jan. 1994)

14-704. <u>Upgrade of substandard or single lot mobile home</u>. A single mobile home, located on a lot of record as the principal structure on the

effective date of this ordinance, may be upgraded by replacement under the following conditions:

(1) The replacement mobile home unit is five (5) years old or less on the date the unit is placed on the lots ;

(2) Complete skirting of the replacement unit, using weather resistant materials that are similar to the new mobile home. (Ord. of Jan. 1994)

14-705. Non-conforming use-remedy. The owner or occupant of any non-conforming mobile home already placed on a lot, on or before 1-24-94 will be permitted to reside at the present location. However, if at any time the ownership or occupancy of either the lot or mobile home shall change or if such mobile home owner shall change, the owner shall be given a period not to exceed thirty (30) days in which to remove such mobile home and to comply with all provisions of this chapter. (Ord. of Jan. 1994)

14-706. Administration and enforcement. It shall be the duty of the city building inspector to administer and enforce the provisions of this chapter. The city building inspector is hereby authorized and directed to make inspections to determine the condition of mobile home parks. The city building inspector shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter. (1981 Code, § 13-5, as amended by Ord. of Jan. 1994)

14-707. Compliance. To insure compliance with the provisions of this mobile home chapter, utility services will be connected only when the mobile home has been found by the chief building inspector to meet applicable code requirements and the chief building inspector has issued the appropriate permit(s).

Cleveland Utilities, Electric and Water Division, shall be presented with a copy of the mobile home permit, signed by the chief building inspector, as part of the owner(s) application for utility services. Should the owner or applicant fail to provide a signed copy of the permit, Cleveland Utilities shall deny service until the proper procedure to acquire permit(s) is completed. (Ord. of Jan. 1994)

14-708. Authorization. The chief building inspector is authorized to suspend or revoke a mobile home or mobile home park permit in cases where the owner(s) failure to comply with the provisions of this ordinance or other applicable city code has resulted in a threat to the public health, safety or welfare. (Ord. of Jan. 1994)

14-709. Minimum size. The tract of land for the mobile home park shall comprise an area of not less than one and one-half (1½) acres. The tract

of land shall consist of a single plot so dimensioned and related as to facilitate efficient design and management. (Ord. of Jan. 1994)

14-710. Minimum number of spaces. Minimum number of spaces completed and ready for occupancy before first occupancy is three (3). (Ord. of Jan. 1994)

14-711. Mobile home park design standards. (1) Site requirements. Each mobile home park shall be located outside of flood hazard areas on a well-drained site.

(2) Minimum mobile home park size. One and one-half (1½) acres.

(3) Size of mobile home spaces. Each mobile home space shall be at least four thousand (4,000) square feet, including parking area, with a minimum width of forty (40) feet. Each mobile home located in a mobile home park shall be situated such that there is at least:

(a) Ten (10) feet from the mobile home to any adjacent property line;

(b) Twenty-five (25) feet from the mobile home to any public street right-of-way;

(c) Ten (10) feet from the mobile home to any private roads or access drives within the mobile home park;

(d) Ten (10) feet of clear and open space between the mobile home and any adjacent mobile home and its attachments, and between the mobile home and any other buildings;

(e) Applications for a mobile home park shall be filed with and issued by the city building inspector subject to the planning commission's approval of the mobile home park plan. Applications shall be in writing and signed by the applicant and shall be accompanied with an approved plan of the proposed mobile home park. The plan shall contain the following information and conform to the following requirements:

(i) The plan shall be clearly and legibly drawn at a scale not smaller than one hundred (100) feet to one inch;

(ii) Name and address of owner of record;

(iii) Proposed name of park;

(iv) North point and graphic scale and date;

(v) Vicinity map showing location and acreage of the mobile home park;

(vi) Exact boundary lines of the tract by bearing and distance;

(vii) Names of owners of record of adjoining land;

(viii) Existing streets, utilities, easements, and watercourses on and adjacent to the tract;

(ix) Proposed design including streets, proposed street names, lot lines with approximate dimensions, easements, land to

be reserved or dedicated for public uses, and any land to be used for purposes other than mobile home spaces;

(x) Provisions for water supply, sewerage and drainage;

(xi) Such information as may be required by the city to determine if the proposed park will comply with legal requirements;

(xii) The applications and all accompanying plans and specifications shall be filed in triplicate.

(f) Certificates that shall be required are:

(i) Owners certification;

(ii) Planning commission's approval signed by the chairman; and

(iii) Any other certification deemed necessary by the planning commission. (Ord. of Jan. 1994, modified)

14-712. Street construction standards. Same as city "Minimum Construction Standards for Acceptance of Streets Dedicated to the City for Use and Maintenance of Public Ways". (Ord. of Jan. 1994)

14-713. Appeals. Any party aggrieved because of an alleged error in any order, requirement, decision or determination made by the building inspector in the enforcement of this ordinance may appeal for and receive a hearing by the Cleveland Board on Zoning Appeals (BZA), (advised by the city attorney) for an interpretation of pertinent chapter provisions. In exercising this power of interpretation of the chapter, the Cleveland Board on Zoning Appeals, with advice from the city attorney, may, in conformity with the provisions of this ordinance, reverse or affirm any order, requirement, decision or determination made by the building inspector.

Any person aggrieved by any decision of the BZA may seek review by a court of records of such decision in the manner provided by the laws of the state. (1981 Code, § 13-6, as amended by Ord. of Jan. 1994)

14-714. Mobile homes or parks in annexed areas. A mobile home or mobile home park that is annexed into the Cleveland corporate limits and is found to be of substandard condition or not in conformity with the provisions of this chapter and/or the Standard Housing Code, Southern Building Code Congress International, as amended shall be provided a period of not to exceed two (2) years from the effective date of annexation to comply with applicable law. Should the owner(s) fail to comply within the time provided, the unit(s) shall be declared as a non-conforming use by the chief building inspector or housing official, as appropriate, and the provisions of the Cleveland Municipal Zoning Ordinance, shall apply to remedy the non-conforming use. (Ord. of Jan. 1994)

14-715. Charges. Fees shall be charged as follows for mobile home park permits:

(1) Permit fee. A fee of $25.00 per mobile home unit space in addition to the basic permits as provided by city law as amended.

(2) Annual operating fee. An annual fee of $10.00 per mobile home unit space, payable by June 30 of each year is required to operate a mobile home park inside the city limits.

(3) Effective date. Enforcement of these charges shall begin June 30, 1995. (Ord. of Jan. 1994, modified)

CHAPTER 8

TRAVEL TRAILERS AND TRAVEL TRAILER PARKS

SECTION

14-801. Permit required.
14-802. Fee.
14-803. Application for permit.
14-804. Location restricted.
14-805. Inspections by city building inspector or city environmentalist.
14-806. Length of occupancy.
14-807. Minimum size of travel trailers space.
14-808. Site planning improvement standards.

14-801. Permit required. No place or site within the city shall be established or maintained by any person as a travel trailer park unless he holds a valid permit issued by the city building inspector in the name of such person for the specific travel trailer park. The city building inspector is authorized to issue, suspend or revoke permits in accordance with the provisions of this chapter. (1981 Code, § 13-56)

14-802. Fee. An annual permit fee for each travel trailer park in the amount of twenty-five dollars ($25.00) shall be required. (1981 Code, § 13-57)

14-803. Application for permit. Applications for travel trailer park permits shall meet the same requirements as contained in § 14-711. (1981 Code, § 13-58)

14-804. Location restricted. It shall be unlawful for any travel trailer to be occupied or serviced outside of any properly designated travel trailer park. This provision shall not apply to the storage of travel trailers, provided such trailer unit is neither temporarily or permanently occupied as a dwelling unit while within the city limits. (1981 Code, § 13-59)

14-805. Inspections by city building inspector or city environmentalist. The city building inspector or city environmentalist is hereby authorized and directed to make inspections to determine the condition of travel trailer parks, in order that he may perform his duty of safeguarding the health and safety of the occupants of travel trailer parks and of the general public. The building inspector or city environmentalist shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter. (1981 Code, § 13-60, modified)

14-806. Length of occupancy. Travel trailer spaces shall be rented by the day or week only, and the occupant of such space shall remain in the same travel trailer park not more than fourteen (14) days. (1981 Code, § 13-61)

14-807. Minimum size of travel trailers space. Each travel trailer space shall have a minimum width of thirty (30) feet and a minimum length of fifty (50) feet. (1981 Code, § 13-62)

14-808. Site planning improvement standards. Site planning improvements shall conform to the standards established in Regulations VI-XX of the "State Regulations Governing the Construction Operation and Maintenance of Organized Camps in Tennessee," as provided in Tennessee Code Annotated §§ 68-110-101 through 68-110-106. (1981 Code, § 13-63)

CHAPTER 9

SUBDIVISION REGULATIONS

SECTION

14-901. Subdivision regulations to be governed by ordinance.

14-901. Subdivision regulations to be governed by ordinance. Subdivision regulations of the City of Cleveland shall be governed by Ordinance titled "Subdivision Regulations" adopted July 13, 1998, a copy of which is attached hereto and made a part hereof by reference.[1]

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[1]Ordinance dated July 13, 1998, and any amendments thereto, are of record in the office of the city clerk.

CHAPTER 10

FLOOD HAZARD REDUCTION ORDINANCE

SECTION

14-1001. Findings of fact, purpose and objectives.
14-1002. Definitions.
14-1003. General provisions.
14-1004. Administration.
14-1005. Provisions for flood hazard reduction.
14-1006. Variance procedures.
14-1007. Conflicts with other ordinances.
14-1008. [Deleted.]
14-1009. [Deleted.]
14-1010. [Deleted.]
14-1011. [Deleted.]
14-1012. [Deleted.]
14-1013. [Deleted.]
14-1014. [Deleted.]
14-1015. [Deleted.]
14-1016. [Deleted.]
14-1017. [Deleted.]
14-1018. [Deleted.]

14-1001. Findings of fact, purpose and objectives. (1) Findings of fact.

(a) The City of Cleveland, Tennessee, Mayor and its Legislative Body wishes to maintain eligibility in the National Flood Insurance Program (NFIP) and in order to do so must meet the NFIP regulations found in Title 44 of the Code of Federal Regulations (C.F.R.), ch. 1, section 60.3.

(b) Areas of the City of Cleveland, Tennessee are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(c) Flood losses are caused by the cumulative effect of obstructions in floodplains, causing increases in flood heights and velocities; by uses in flood hazard areas which are vulnerable to floods; or construction which is inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

(2) Statement of purpose. It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas. This ordinance is designed to:

(a) Restrict or prohibit uses which are vulnerable to flooding or erosion hazards, or which result in damaging increases in erosion, flood heights, or velocities;

(b) Require that uses vulnerable to floods, including community facilities, be protected against flood damage at the time of initial construction;

(c) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;

(d) Control filling, grading, dredging and other development which may increase flood damage or erosion;

(e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(3) Objectives. The objectives of this ordinance are:

(a) To protect human life, health, safety and property;

(b) To minimize expenditure of public funds for costly flood control projects;

(c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(d) To minimize prolonged business interruptions;

(e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodprone areas;

(f) To help maintain a stable tax base by providing for the sound use and development of floodprone areas to minimize blight in flood areas;

(g) To ensure that potential homebuyers are notified that property is in a floodprone area;

(h) To maintain eligibility for participation in the NFIP. (Ord. of July 1998, as replaced by Ord. #2006-47, Jan. 2007, and Ord. #2011-08, June 2011)

14-1002. Definitions. To give them the meaning they have in common usage and to give this ordinance its most reasonable application given its stated purpose and objectives.

(1) "Accessory structure" means a subordinate structure to the principal structure on the same lot and, for the purpose of this ordinance, shall conform to the following:

(a) Accessory structures shall only be used for parking of vehicles and storage.

(b) Accessory structures shall be designed to have low flood damage potential.

(c) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

(d) Accessory structures shall be firmly anchored to prevent flotation, collapse, and lateral movement, which otherwise may result in damage to other structures.

(e) Utilities and service facilities such as electrical and heating equipment shall be elevated or otherwise protected from intrusion of floodwaters.

(2) "Addition (to an existing building)" means any walled and roofed expansion to the perimeter or height of a building.

(3) "Appeal" means a request for a review of the local enforcement officer's interpretation of any provision of this ordinance or a request for a variance.

(4) "Area of shallow flooding" means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with one percent (1%) or greater annual chance of flooding to an average depth of one to three feet (1'--3') where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate; and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(5) "Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

(6) "Area of special flood hazard" see "special flood hazard area."

(7) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. This term is also referred to as the 100-year flood or the one percent (1%) annual chance flood.

(8) "Basement" means any portion of a building having its floor subgrade (below ground level) on all sides.

(9) "Building" see "structure."

(10) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of equipment or materials.

(11) "Elevated building" means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of solid foundation perimeter walls with openings sufficient to facilitate

the unimpeded movement of floodwater, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.

(12) "Emergency flood insurance program" or "emergency program" means the program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

(13) "Erosion" means the process of the gradual wearing away of land masses. This peril is not "per se" covered under the program.

(14) "Exception" means a waiver from the provisions of this ordinance which relieves the applicant from the requirements of a rule, regulation, order or other determination made or issued pursuant to this ordinance.

(15) "Existing construction" means any structure for which the "start of construction" commenced before the effective date of the initial floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.

(16) "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.

(17) "Existing structures" see "existing construction."

(18) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(19) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(20) "Flood elevation determination" means a determination by the Federal Emergency Management Agency (FEMA) of the water surface elevations of the base flood, that is, the flood level that has a one percent (1%) or greater chance of occurrence in any given year.

(21) "Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) or flood-related erosion hazards.

(22) "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by FEMA, where the boundaries of areas of special flood hazard have been designated as Zone A.

(23) "Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by FEMA, delineating the areas of special flood hazard or the risk premium zones applicable to the community.

(24) "Flood insurance study" is the official report provided by FEMA, evaluating flood hazards and containing flood profiles and water surface elevation of the base flood.

(25) "Floodplain" or "flood prone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").

(26) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

(27) "Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

(28) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities and structures and their contents.

(29) "Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

(30) "Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

(31) "Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works and floodplain management regulations.

(32) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(33) "Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization of the watershed.

(34) "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

(35) "Highest adjacent grade" means the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.

(36) "Historic structure" means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on the Tennessee inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on the City of Cleveland, Tennessee inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

(i) By the approved Tennessee program as determined by the Secretary of the Interior; or

(ii) Directly by the Secretary of the Interior.

(37) "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

(38) "Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage

devices, which are constructed and operated in accordance with sound engineering practices.

(39) "Lowest floor" means the lowest floor of the lowest enclosed area, including a basement. An unfinished or flood resistant enclosure used solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

(40) "Manufactured home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

(41) "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

(42) "Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by FEMA.

(43) "Mean sea level" means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For the purposes of this ordinance, the term is synonymous with the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

(44) "National Geodetic Vertical Datum (NGVD)" means, as corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

(45) "New construction" means any structure for which the "start of construction" commenced on or after the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.

(46) "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the ordinance comprising this chapter or the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.

(47) "North American Vertical Datum (NAVD)" means, as corrected in 1988, a vertical control used as a reference for establishing varying elevations within the floodplain.

(48) "100-year flood" see "base flood."

(49) "Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

(50) "Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed structures.

(51) "Recreational vehicle" means a vehicle which is:

(a) Built on a single chassis;

(b) Four hundred (400) square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck;

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(52) "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(53) "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

(54) "Special flood hazard area" is the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE or A99.

(55) "Special hazard area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, or AH.

(56) "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; and includes the placement of a manufactured home on a foundation. Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main

structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(57) "State coordinating agency." The Tennessee Department of Economic and Community Development's Local Planning Assistance Office, as designated by the Governor of the State of Tennessee at the request of FEMA to assist in the implementation of the NFIP for the state.

(58) "Structure" for purposes of this ordinance, means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

(59) "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

(60) "Substantial improvement" means any reconstruction, rehabilitation, addition, alteration or other improvement of a structure in which the cost equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the initial improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed.

(a) The market value of the structure should be:

(i) The appraised value of the structure prior to the start of the initial improvement; or

(ii) In the case of substantial damage, the value of the structure prior to the damage occurring.

(b) The term does not, however, include either:

(i) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been pre-identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions and not solely triggered by an improvement or repair project; or

(ii) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(61) "Substantially improved existing manufactured home parks or subdivisions" is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds fifty percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

(62) "Variance" is a grant of relief from the requirements of this ordinance.

(63) "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

(64) "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of riverine areas. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1003. General provisions. (1) Application. This ordinance shall apply to all areas within the incorporated area of the City of Cleveland, Tennessee.

(2) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified in the City of Cleveland, Tennessee, as identified by FEMA, and in its Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), Community Panel Numbers 47011C109E, 47011C110E, 47011C117E, 47011C119E, 47011C120E, 47011C125E, 47011C126E, 47011C127E, 47011C128E, 47011C129E, 47011C136E, 47011C137E, 47011C138E, 47011C139E, 47011C150E, 47011C207E, 47011C210E, 47011C230E, dated February 7, 2007, along with all supporting technical data, and letters of map revision affecting the aforementioned FIRM Community Panel Numbers approved by FEMA, are adopted by reference and declared to be a part of this ordinance.

(3) Requirement for development permit. A development permit shall be required in conformity with this ordinance prior to the commencement of any development activities. This development permit requirement applies to all properties lying partially or completely within a SFHA or which are within sixty feet (60') of any stream or watercourse.

(4) Compliance. No land, structure or use shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

(5) Abrogation and greater restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restrictions. However, where this ordinance conflicts or overlaps with another regulatory instrument, whichever imposes the more stringent restrictions shall prevail.

(6) Interpretation. In the interpretation and application of this ordinance, all provisions shall be:

(a) Considered as minimum requirements;

(b) Liberally construed in favor of the governing body; and

(c) Deemed neither to limit nor repeal any other powers granted under Tennessee statutes.

(7) Warning and disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Cleveland, Tennessee or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(8) Penalties for violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance shall constitute a misdemeanor punishable as other misdemeanors as provided by law. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined as prescribed by Tennessee statutes, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Cleveland, Tennessee from taking such other lawful actions to prevent or remedy any violation. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1004. Administration. (1) Designation of ordinance administrator. The stormwater manager is hereby appointed as the administrator to implement the provisions of this ordinance.

(2) Permit procedures. Application for a development permit shall be made to the administrator on forms furnished by the community prior to any development activities. The development permit may include, but is not limited to the following: plans in duplicate drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities. Specifically, the following information is required:

(a) Application stage. (i) Elevation in relation to mean sea level of the proposed lowest floor, including basement, of all buildings where base flood elevations are available, or to certain height above the highest adjacent grade when applicable under this ordinance.

(ii) Elevation in relation to mean sea level to which any non-residential building will be floodproofed where base flood elevations are available, or to certain height above the highest adjacent grade when applicable under this ordinance.

(iii) A FEMA Floodproofing Certificate from a Tennessee registered professional engineer or architect that the proposed

non-residential floodproofed building will meet the floodproofing criteria in § 14-1005(1) and (2).

(iv) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(b) Construction stage. Within AE Zones, where base flood elevation data is available, any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of, a Tennessee registered land surveyor and certified by same. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

Within approximate A Zones, where base flood elevation data is not available, the elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

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

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

(3) Duties and responsibilities of the administrator. Duties of the administrator shall include, but not be limited to, the following:

(a) Review all development permits to assure that the permit requirements of this ordinance have been satisfied, and that proposed building sites will be reasonably safe from flooding.

(b) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(c) Notify adjacent communities and the Tennessee Department of Economic and Community Development, Local Planning Assistance

Office, prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA.

(d) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to FEMA to ensure accuracy of community FIRMs through the letter of map revision process.

(e) Assure that the flood carrying capacity within an altered or relocated portion of any watercourse is maintained.

(f) Record the elevation, in relation to mean sea level or the highest adjacent grade, where applicable, of the lowest floor (including basement) of all new and substantially improved buildings, in accordance with § 14-1004(2).

(g) Record the actual elevation, in relation to mean sea level or the highest adjacent grade, where applicable, to which the new and substantially improved buildings have been floodproofed, in accordance with § 14-1004(2).

(h) When floodproofing is utilized for a non-residential structure, obtain certification of design criteria from a Tennessee registered professional engineer or architect, in accordance with § 14-1004(2).

(i) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance.

(j) When base flood elevation data and floodway data have not been provided by FEMA, obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other sources, including data developed as a result of these regulations, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the City of Cleveland, Tennessee FIRM meet the requirements of this ordinance.

(k) Maintain all records pertaining to the provisions of this ordinance in the office of the administrator and shall be open for public inspection. Permits issued under the provisions of this ordinance shall be maintained in a separate file or marked for expedited retrieval within combined files. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1005. <u>Provisions for flood hazard reduction</u>. (1) <u>General standards</u>. In all areas of special flood hazard, the following provisions are required:

(a) New construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure;

(b) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Tennessee and local anchoring requirements for resisting wind forces;

(c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(d) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;

(e) All electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;

(h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;

(i) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance;

(j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provision of this ordinance, shall be undertaken only if said non-conformity is not further extended or replaced;

(k) All new construction and substantial improvement proposals shall provide copies of all necessary federal and state permits, including section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334;

(l) All subdivision proposals and other proposed new development proposals shall meet the standards of § 14-1005(2);

(m) When proposed new construction and substantial improvements are partially located in an area of special flood hazard, the entire structure shall meet the standards for new construction;

(n) When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure

shall meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.

(2) Specific standards. In all areas of special flood hazard, the following provisions, in addition to those set forth in § 14-1005(1), are required:

(a) Residential structures. In AE Zones where base flood elevation data is available, new construction and substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than two feet (2') above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Within approximate A Zones where base flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-1002). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

(b) Non-residential structures. In AE Zones, where base flood elevation data is available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than two feet (2') above the level of the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

In approximate A Zones, where base flood elevations have not been established and where alternative data is not available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than three feet (3') above the highest adjacent grade (as defined in § 14-1002). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Non-residential buildings located in all A Zones may be floodproofed, in lieu of being elevated, provided that all areas of the building below the required elevation are watertight, with walls substantially impermeable to the passage of water, and are built with structural components having the capability of resisting hydrostatic and

hydrodynamic loads and the effects of buoyancy. A Tennessee registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the administrator as set forth in § 14-1004(2).

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

(i) Designs for complying with this requirement must either be certified by a Tennessee professional engineer or architect or meet or exceed the following minimum criteria.

(A) Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;

(B) The bottom of all openings shall be no higher than one foot (1') above the finished grade;

(C) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(ii) The enclosed area shall be the minimum necessary to allow for parking of vehicles, storage or building access.

(iii) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms in such a way as to impede the movement of floodwaters and all such partitions shall comply with the provisions of § 14-1005(2).

(d) Standards for manufactured homes and recreational vehicles. (i) All manufactured homes placed, or substantially improved, on:

(A) Individual lots or parcels;

(B) In expansions to existing manufactured home parks or subdivisions; or

(C) In new or substantially improved manufactured home parks or subdivisions;

Must meet all the requirements of new construction.

(ii) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that either:

(A) In AE Zones, with base flood elevations, the lowest floor of the manufactured home is elevated on a permanent foundation to no lower than two feet (2') above the level of the base flood elevation; or

(B) In approximate A Zones, without base flood elevations, the manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least equivalent strength) that are at least three feet (3') in height above the highest adjacent grade (as defined in § 14-1002).

(iii) Any manufactured home, which has incurred "substantial damage" as the result of a flood, must meet the standards of § 14-1005(1) and (2).

(iv) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(v) All recreational vehicles placed in an identified special flood hazard area must either:

(A) Be on the site for fewer than one hundred eighty (180) consecutive days;

(B) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions); or

(C) The recreational vehicle must meet all the requirements for new construction.

(e) Standards for subdivisions and other proposed new development proposals. Subdivisions and other proposed new developments, including manufactured home parks, shall be reviewed to determine whether such proposals will be reasonably safe from flooding.

(i) All subdivision and other proposed new development proposals shall be consistent with the need to minimize flood damage.

(ii) All subdivision and other proposed new development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(iii) All subdivision and other proposed new development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(iv) In all approximate A Zones require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser, include within such proposals base flood elevation data (see § 14-1005(5)).

(3) <u>Standards for special flood hazard areas with established base flood elevations and with floodways designated</u>. Located within the special flood hazard areas established in § 14-1003(2), are areas designated as floodways. A

floodway may be an extremely hazardous area due to the velocity of floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights and velocities. Therefore, the following provisions shall apply:

(a) Encroachments are prohibited, including earthen fill material, new construction, substantial improvements or other development within the regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the cumulative effect of the proposed encroachments or new development shall not result in any increase in the water surface elevation of the base flood elevation, velocities, or floodway widths during the occurrence of a base flood discharge at any point within the community. A Tennessee registered professional engineer must provide supporting technical data, using the same methodologies as in the effective flood insurance study for the City of Cleveland, Tennessee and certification, thereof.

(b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-1005(1) and (2).

(4) Standards for areas of special flood hazard Zones AE with established base flood elevations but without floodways designated. Located within the special flood hazard areas established in § 14-1003(2), where streams exist with base flood data provided but where no floodways have been designated (Zones AE), the following provisions apply:

(a) No encroachments, including fill material, new construction and substantial improvements shall be located within areas of special flood hazard, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-1005(1) and (2).

(5) Standards for streams without established base flood elevations and floodways (A Zones). Located within the special flood hazard areas established in § 14-1003(2), where streams exist, but no base flood data has been provided and where a floodway has not been delineated, the following provisions shall apply:

(a) The administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any

federal, state, or other sources, including data developed as a result of these regulations (see (b) below), as criteria for requiring that new construction, substantial improvements, or other development in approximate A Zones meet the requirements of § 14-1005(1) and (2).

(b) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser, include within such proposals base flood elevation data.

(c) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-1002). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in § 14-1004(2). Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with the standards of § 14-1005(2).

(d) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, no encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty feet (20'), whichever is greater, measured from the top of the stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the City of Cleveland, Tennessee. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(e) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-1005(1) and (2). Within approximate A Zones, require that those subsections of § 14-1005(2) dealing with the alteration or relocation of a watercourse, assuring watercourse carrying capacities are maintained and manufactured homes provisions are complied with as required.

(6) Standards for areas of shallow flooding (AO and AH Zones). Located within the special flood hazard areas established in § 14-1003(2), are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet (1' to 3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions, in addition to those set forth in § 14-1005(1) and (2), apply:

(a) All new construction and substantial improvements of residential and non-residential buildings shall have the lowest floor, including basement, elevated to at least two feet (2') above as many feet as the depth number specified on the FIRMs, in feet, above the highest adjacent grade. If no flood depth number is specified on the FIRM, the lowest floor, including basement, shall be elevated to at least three feet (3') above the highest adjacent grade. Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with standards of § 14-1005(2).

(b) All new construction and substantial improvements of non-residential buildings may be floodproofed in lieu of elevation. The structure together with attendant utility and sanitary facilities must be floodproofed and designed watertight to be completely floodproofed to at least two feet (2') above the flood depth number specified on the FIRM, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If no depth number is specified on the FIRM, the structure shall be floodproofed to at least three feet (3') above the highest adjacent grade. A Tennessee registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this ordinance and shall provide such certification to the administrator as set forth above and as required in accordance with § 14-1004(2).

(c) Adequate drainage paths shall be provided around slopes to guide floodwaters around and away from proposed structures.

(7) Standards for areas protected by flood protection system (A99 Zones). Located within the areas of special flood hazard established in § 14-1003(2), are areas of the 100-year floodplain protected by a flood protection system but where base flood elevations have not been determined. Within these areas (A99 Zones) all provisions of §§ 14-1004 and 14-1005 shall apply.

(8) Standards for unmapped streams. Located within the City of Cleveland, Tennessee, are unmapped streams where areas of special flood hazard are neither indicated nor identified. Adjacent to such streams, the following provisions shall apply:

(a) No encroachments including fill material or other development including structures shall be located within an area of at least equal to twice the width of the stream, measured from the top of each stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the locality.

(b) When a new flood hazard risk zone, and base flood elevation and floodway data is available, new construction and substantial improvements shall meet the standards established in accordance with §§ 14-1004 and 14-1005. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1006. Variance procedures. (1) Board of floodplain review.

(a) Creation and appointment. A board of floodplain review is hereby established which shall consist of the five (5) members of the Cleveland Board of Zoning Appeals appointed by the city council.

(b) Procedure. Meetings of the board of floodplain review shall be held at such times, as the board shall determine. Meetings may be held in conjunction with meetings of the Cleveland Board of Zoning Appeals or separately. All meetings of the board of floodplain review shall be open to the public. A quorum for the board of floodplain review shall be three (3) members. The chair and vice-chair of the board of floodplain review shall be as for the Cleveland Board of Zoning Appeals. The conduct of the board of floodplain review's business will be generally in accordance with Robert's Rules of Order. The board of floodplain review may adopt additional rules of procedure and shall keep records of applications and actions thereof, which shall be a public record. Compensation of the members of the board of floodplain review, if any, shall be set by the City Council of Cleveland, Tennessee.

(c) Appeals: how taken. An appeal to the board of floodplain review may be taken by any person, firm or corporation aggrieved or by any governmental officer, department, or bureau affected by any decision of the administrator based in whole or in part upon the provisions of this ordinance. Such appeal shall be taken by filing with the board of floodplain review a notice of appeal, specifying the grounds thereof. In all cases where an appeal is made by a property owner or other interested party, a fee of three hundred dollars ($300.00) shall be paid by the appellant. The administrator shall transmit to the board of floodplain review all papers constituting the record upon which the appeal action was taken. The board of floodplain review shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to parties in interest and decide the same within a reasonable time which shall not be more than ninety (90) days from the date of the hearing. At the hearing, any person or party may appear and be heard in person or by agent or by attorney.

(d) Powers. The board of floodplain review shall have the following powers:

(i) Administrative review. To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, permit, decision, determination, or refusal made by

the administrator or other administrative official in carrying out or enforcement of any provisions of this ordinance.

(ii) Variance procedures. In the case of a request for a variance the following shall apply:

(A) The City of Cleveland, Tennessee Board of Floodplain Review shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(B) Variances may be issued for the repair or rehabilitation of historic structures as defined, herein, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary deviation from the requirements of this ordinance to preserve the historic character and design of the structure.

(C) In passing upon such applications, the board of floodplain review shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

(1) The danger that materials may be swept onto other property to the injury of others;

(2) The danger to life and property due to flooding or erosion;

(3) The susceptibility of the proposed facility and its contents to flood damage;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity of the facility to a waterfront location, in the case of a functionally dependent use;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(8) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(9) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

(10) The costs of providing governmental services during and after flood conditions including

maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, and streets and bridges.

(D) Upon consideration of the factors listed above, and the purposes of this ordinance, the board of floodplain review may attach such conditions to the granting of variances, as it deems necessary to effectuate the purposes of this ordinance.

(E) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(2) Conditions for variances. (a) Variances shall be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard and the factors listed in § 14-1006(1).

(b) Variances shall only be issued upon: a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship; or a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.

(c) Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance (as high as twenty-five dollars ($25.00) for one hundred dollars ($100.00)) coverage, and that such construction below the base flood elevation increases risks to life and property. The administrator shall maintain the records of all appeal actions and report any variances to FEMA upon request. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1007. Conflicts with other ordinances. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent necessary to implement this ordinance. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1008. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1009. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1010. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1011. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1012. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1013. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1014. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1015. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1016. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1017. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1018. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

CHAPTER 11

MINIMUM STANDARDS FOR SITING CELLULAR COMMUNICATION TOWERS

SECTION

14-1101. Purpose.
14-1102. Definition.
14-1103. Permit application requirements.
14-1104. Co-location.
14-1105. Permitted locations, by zoning district.
14-1106. Separation of tower to off-site uses.
14-1107. Security fencing.
14-1108. Landscaping and aesthetics.
14-1109. Tower prohibited in airport approach zone.
14-1110. Abandoned tower policy.

14-1101. Purpose. Establish minimum standards and location requirements for siting wireless communication (cellular) towers and antennas within the corporate limits of the City of Cleveland, Tennessee in order to protect the public health and safety. (Ord. of Aug. 1998)

14-1102. Definition. For the purpose of this chapter, the word tower shall be defined as "any outdoor structure designed and constructed to support one (1) or more transmitting or receiving devises for telephone, radio or any similar wireless communication facilities, with the following exceptions":

(1) Any citizens band or amateur radio station antenna;

(2) A ground or building mounted citizens band radio antenna less than forty (40') feet in height or an amateur radio antenna not more than seventy-five feet (75') in height, provided there is adequate clearance with adjacent structures; an antenna in this category that exceeds seventy-five (75') in height must be reviewed and approved by the Cleveland Municipal Planning Commission;

(3) Satellite dish type antenna or a conventional type television antenna for the exclusive use of a residential occupancy;

(4) Mobile news or public information service antennas;

(5) Hand-held communication devices such as walkie-talkies, cell phones and similar type devices;

(6) Antennas owned by public agency or its members and used for emergency services, public utilities, operation or maintenance services. (Ord. of Aug. 1998)

11-1103. Permit application requirements. (1) The applicant for a permit to locate a tower is responsible for providing the following information to the chief building official:

(a) A site plan drawn to scale that shows the property lines of the site, the location of the tower in relation to the property lines, adjoining property within 300' feet of the site by owner and use, distances from the base of the tower to adjoining property lines and the nearest habitable structure, proposed easement(s) by location and type and, the location of any accessory buildings proposed to be located on the site including building setbacks from the property lines.

(b) A grading and drainage plan that indicates the existing and proposed elevation of the site and methods proposed to manage and control erosion during construction as well as permanent drainage methods and/or facilities.

(c) Proof of ownership or legal interest in the property.

(d) Engineering drawings that describe the design and structural integrity of the tower, its supports and attachments.

(e) A statement describing the general capability of the tower to serve more than one (1) user and whether space will be available for lease to additional users.

(2) Permit application review shall be co-ordinated by the planning director or a designee and conducted in the same procedure as subdivision plat review. (Ord. of Aug. 1998)

14-1104. Co-location. Towers shall be required to accommodate the maximum number of transmitting facilities subject to the design capacity of the tower for the purpose of reducing the number of potential tower locations within the corporate limits. Applicants for a tower permit are required to provide a statement that documents their efforts to secure a co-location on an existing tower. (Ord. of Aug. 1998)

14-1105. Permitted locations, by zoning district. Tower shall be permitted in a local highway business, professional or manufacturing zoning district within the corporate limits. A tower, without exception, is not permitted in a residential (R-1,2,3,4,5 or A) zoning district, the floodway district or in the central business district (CBD). (Ord. of Aug. 1998)

14-1106. Separation of tower to off-site uses. Tower separation shall be measured in straight line distance from the base of the tower structure to nearest zoning district boundary line. The tower location shall, without exception, maintain a minimum distance of 200 feet or 300% of the height of the tower; whichever is greater, from any adjoining district where a tower is not a permitted use. Accessory uses shall maintain building setbacks as prescribed by the applicable zoning district.

(1) If the adjoining district is a district where a tower is permitted, the building setbacks applicable to the zoning district wherein the tower is located shall apply. (Ord. of Aug. 1998)

14-1107. Security fencing. The area surrounding the tower location, but not necessarily the entire lot, shall be enclosed with fencing adequate to secure the tower under normal circumstances. (Ord. of Aug. 1998)

14-1108. Landscaping and aesthetics. Plant materials suitable to screen the tower location shall be incorporated into the design of the facility. As a general criteria, plant species that are native or commonly utilized in the area shall be considered in order to maintain compatibility with adjoining property. A general landscape plan shall be submitted concurrent with the site plan and is subject to the review of the Cleveland Urban Forester. (Ord. of Aug. 1998)

14-1109. Tower prohibited in airport approach zone. No tower shall be located within the Cleveland Municipal Airport approach surface zone, the horizontal surface zone, conical surface zone or transitional zone as shown on the airport zoning map, dated October 7, 1959, as amended. (Ord. of Aug. 1998)

14-1110. Abandoned tower policy. In the event a tower becomes obsolete or is our to service for any reason for six (6) consecutive months, the owner or record shall cause the tower to be dismantled and removed from site and disposed of in the manner appropriate for disposal or re-use of the tower materials. A time period one (1) year shall be provided from the time the tower is deemed to be out of service for the owner to either activates the tower or remove it from the site.

(1) Failure to comply with the terms of this section concerning removal of abandoned tower shall be subject to penalties as provided by the Cleveland Municipal Code. (Ord. of Aug. 1998)

CHAPTER 12

HISTORIC PRESERVATION

SECTION

14-1201. Statement of purpose.
14-1202. Historic preservation commission: composition and terms.
14-1203. Powers of the commission.
14-1204. Rules of order (by-laws).
14-1205. Designation of landmarks, landmark sites, and historic district.
14-1206. Certificates of appropriateness.
14-1207. Criteria for issuance of certificates of appropriateness.
14-1208. Procedures for issuance of certificates of appropriateness, review process, and fees.
14-1209. Economic hardship.
14-1210. Appeals.
14-1211. Minimum maintenance requirements.
14-1212. Public safety exchange.
14-1213. Enforcement and penalties.
14-1214. Appropriations.
14-1215. Disqualification of members by conflict of interest.

14-1201. Statement of purpose. Historic preservation activities will promote and protect the health, safety, prosperity, education, and general welfare of the people living in and visiting the City of Cleveland, Tennessee, hereinafter referred to as "the city".

More specifically, this historic preservation chapter is designed to achieve the following goals:

(1) Protect, enhance and perpetuate resources which represent distinctive and significant elements of the city's historical, cultural, social, economic, political archaeological, and architectural identity;

(2) Insure the harmonious, orderly, and efficient growth and development of the city;

(3) Strengthen civic pride and cultural stability through neighborhood conservation;

(4) Stabilize the economy of the city through the continued use, preservation, and revitalization of its resources;

(5) Promote the use of resources for the education, pleasure, and welfare of the people of the city;

(6) Provide a review process for the preservation and development of the city's resources. (as added by Ord. #2004-07, April 2004)

14-1202. Historic preservation commission: composition and terms. The city hereby establishes a historic zoning commission, the Cleveland Historic Preservation Commission, hereinafter referred to as "the commission,"

pursuant to the authority granted in Tennessee Code Annotated, § 13-7-403. The commission is to work to preserve, promote, and develop the city's historical resources and to advise the city on the designation of preservation districts, landmarks, and landmark sites and to perform such other functions as may be provided by law.

The commission shall consist of seven (7) members. The commission's membership shall include a representative of a local patriotic or historical organization; an architect or engineer, if available; and a person who is a member of the Cleveland Municipal Planning Commission at the time of his/her appointment. The commission's membership shall include members from the community in general but, if possible, it shall include professionals in primary or secondary historic preservation-related disciplines regardless of their place of residence. Efforts to include commission members from primary historic preservation-related disciplines (architecture, history, architectural history, archaeology) and secondary historic preservation-related disciplines (urban planning, American studies, American civilization, cultural geography, cultural anthropology, interior design, law, and related fields) shall be documented. Concerning the composition of the commission, diversity in terms of gender and ethnicity is desirable. All commission members shall have demonstrated knowledge of or interest, competence, or expertise in historic preservation.

All members of the commission are appointed by the city council and shall serve for designated terms and may be re-appointed. Initial appointments to the commission shall be made so as to provide staggered terms for membership. Three of the initial appointments shall be for four years; two initial appointments shall be for three years; and two initial appointments shall be for two years. Subsequent appointments shall be for terms of four years. Appointments are to be confirmed by the majority vote of the city council. Commission members may be removed at any time by the majority vote of city council. Reasons for removal of a commission member could include a pattern of poor attendance at meetings, refusal to follow applicable laws and ordinances in carrying out commission business, failure to comply with conflict of interest provisions, unprofessional conduct at commission meetings, etc. In the event of commission vacancies due to death, resignation, involuntary removal, etc., the city council shall appoint replacement members to serve the remainder of the unexpired term. (as added by Ord. #2004-07, April 2004)

14-1203. Powers of the commission. (1) The commission shall conduct or cause to be conducted a continuing study and survey of resources within the city; however, the commission is not authorized to incur any financial obligation without the express authorization of the city council.

(2) The commission shall recommend to the city the adoption of ordinances designating preservation districts, landmarks, and landmark sites where appropriate.

(3) The commission may recommend that the city recognize sub-districts within any preservation district, in order that the commission may

adopt specific guidelines for the regulation of properties within such a sub-district.

(4) The commission shall review applications proposing construction, alteration, demolition, or relocation of any resource within the preservation districts, landmarks, and landmarks sites.

(5) The commission shall grant or deny certificates of appropriateness, and may grant certificates of appropriateness contingent upon the acceptance by the applicant of specified conditions.

(6) The commission does not have jurisdiction over interior arrangements of buildings and structures, except where such change will affect the exterior of the building and structures.

(7) Subject to the express approval of the city council and subject to the requirements of the city, the commission may apply for, receive, hold, and spend funds from private and public sources, in addition to any appropriations made by the city for the purpose of carrying out the provisions of this chapter.

(8) Within the limits of any appropriations or grant in a budget approved by the city council and subject to the approval of the city manager, the commission is authorized to utilize such staff, technical experts or other persons as may be required for the performance of its duties and to request the equipment, supplies, and other materials necessary for its effective operation.

(9) The commission is authorized, solely in the performance of its official duties and only at reasonable times, to enter upon private land or water for the examination or survey thereof. No member or agent of the commission shall enter any private dwelling or structure without the express consent of the owner of record or occupant thereof. (as added by Ord. #2004-07, April 2004)

14-1204. <u>Rules of order (by-laws)</u>. To fulfill the purposes of this chapter and carry out the provisions contained therein:

(1) The commission annually shall elect from its membership a chairman and vice-chairman. It shall select a secretary from its membership or its staff. If neither the chairman nor the vice-chairman attends a particular meeting, the remaining members shall select an acting chairman from the members in attendance at such meeting.

(2) This § 14-1204 of this chapter shall constitute the rules of order (by-laws) of the commission which shall govern the conduct of its business, subject to the approval of the city council. Such rules of order (by-laws) shall be a matter of public record. The commission may from time to time adopt such other rules of order (by-laws) as are necessary to its operation, subject to the approval of the city council. A quorum for voting on any item of business shall be any four members who are not disqualified from voting due to a conflict of interest. Except as provided in this chapter or in any subsequent amendment, questions arising concerning rules of order (by-laws) shall be settled by reference to Robert's Rules of Order.

(3) The commission shall develop design review guidelines for determining appropriateness as generally set forth in § 14-1207 of this chapter.

Such criteria shall insofar as possible be consistent with local, state, and federal guidelines and regulations including, but not limited to, building safety and fire codes and the Secretary of the Interior's Standards For Rehabilitation.

(4) The commission shall keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations, and decisions. All such material shall be a matter of public record. City staff designated by the city manager shall keep the aforementioned minutes and records, shall provide descriptions of the issues before the commission, shall provide notice of meetings, and other support services reasonably necessary to the operation of the commission.

(5) The commission shall establish its own regular meeting time; however, the first meeting shall be held after the adoption of this chapter and within thirty (30) days after the initial appointment of commission members. Regular meetings shall be scheduled at least once every three (3) months. The chairman, vicechairman, or any two (2) members may call a special meeting to consider an urgent matter. (as added by Ord. #2004-07, April 2004)

14-1205. <u>Designation of landmarks, landmark sites, and historic districts</u>. By ordinance, the city may establish landmarks, landmark sites, and preservation districts within the area of its jurisdiction. Such landmarks, landmark sites, or preservation districts shall be designated following the criteria contained in this chapter. (1) The commission shall initiate a continuing and thorough investigation of the archaeological, architectural, cultural, and historic significance of the city's resources. The findings shall be collected in a cohesive format, made a matter of public record, and made available for public inspection. The commission shall work toward providing complete documentation for previously designated preservation districts which would include:

(a) A survey of all property within the boundary of the district, with photographs of each building.

(b) A survey which would be in a format consistent with the statewide inventory format of the Historic Preservation Division of the (SHPO).

(2) The commission shall advise the city on the designation of preservation districts, landmarks, or landmark sites and submit or cause to be prepared ordinances to make such designation.

(3) A resource or resources may be nominated for designation upon motion of three members of the commission or by an organization interested in historic preservation or by an owner of the property being nominated. A nomination shall contain information as specified by the commission. The commission must reach a decision on whether to recommend a proposed nomination to the city council within six months in the case of a preservation district and two months in the case of either a landmark or landmark site. After six months for a district and two months for a landmark or landmark site if no action has been taken by the commission the nomination proceeds to the

Cleveland Municipal Planning Commission for their recommendation to the city council.

(4) The commission shall hold a public hearing on the proposed preservation district, landmark, or landmark site. If the commission votes to recommend to the city the designation of a proposed resource, it shall promptly forward to the Cleveland Municipal Planning Commission its recommendation, in writing, together with an accompanying file.

(5) The commission's recommendations to the city council for designation of a preservation district shall be accompanied by:

(a) A map of the preservation district that clearly delineates the boundaries

(b) A verbal boundary description and justification

(c) A written statement of significance for the proposed preservation district

(6) The city council shall conduct a public hearing, after notice, to discuss the proposed designation and boundaries thereof. A notice of the hearing shall be published in the newspaper generally used by the city for such notices.

(7) Within sixty (60) calendar days after the public hearing held in connection herewith, the city shall consider the adoption of the ordinance with such modifications as may be necessary.

(8) Furthermore, the commission shall notify, as soon as is reasonably possible, the appropriate state, county, and municipal agencies of the official designation of all landmarks, landmark sites and preservation districts. An updated list and map shall be maintained by such agencies and made available to the public. (as added by Ord. #2004-07, April 2004)

14-1206. <u>Certificates of appropriateness</u>. No exterior feature of any resource which is a designated landmark or landmark site or which is within a designated preservation district, shall be altered, added to, relocated, or demolished until after an application for a certificate of appropriateness of such work has been approved by the commission. Likewise, no construction which affects a resource shall be undertaken without a certificate of appropriateness.

(1) The commission shall serve as a review body with the power to approve and deny applications for certificates of appropriateness.

(2) In approving and denying applications for certificates of appropriateness, the commission shall accomplish the purposes of this chapter.

(3) A certificate of appropriateness shall not be required for work deemed by the commission to be ordinary maintenance or repair of any resource.

(4) All decisions of the commission shall be in writing and shall state the findings of the commission, its recommendations, and the reasons therefore.

(5) Expiration of a certificate of appropriateness: a certificate of appropriateness shall expire eighteen (18) months after its issuance EXCEPT THAT a certificate shall expire if work has not begun within six (6) months of its issuance. When a certificate has expired, an applicant may seek a new certificate.

(6) Resubmitting of applications: twelve months after denial of an application for a certificate of appropriateness, the application may be resubmitted without change. A changed application may be resubmitted at any time. (as added by Ord. #2004-07, April 2004)

14-1207. Criteria for issuance of certificates of appropriateness. The commission shall use the Secretary of the Interior's Standards for Rehabilitation, as the basics for design guidelines created for each district or landmark and the following criteria in granting or denying certificates of appropriateness:

(1) General factors:

(a) Architectural design of existing building, structure, or appurtenance and proposed alteration

(b) Historical significance of the resource

(c) Materials composing the resource

(d) Size of the resource

(e) The relationship of the above factors to, and their effect upon the immediate surroundings and, if within a preservation district, upon the district as a whole and its architectural and historical character and integrity

(2) New construction:

(a) The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, including but not limited to: the height, the gross volume, the proportion between width and height of the facade(s), the proportions and relationship between doors and windows, the rhythm of solids to voids created by openings in the facade, the materials, the textures, the patterns, the trims, and the design of the roof.

(b) Existing rhythm created by existing building masses and spaces between them shall be preserved.

(c) The landscape plan shall be compatible with the resource, and it shall be visually compatible with the environment with which it is visually related. Landscaping shall also not prove detrimental to the fabric of a resource, or adjacent public or private improvements like sidewalks and walls.

(d) No specific architectural style shall be required.

(3) Exterior alteration:

(a) All exterior alterations to a building, structure, object, site, or landscape feature shall be compatible with the resource itself and other resources with which it is related, as is provided in § 14-1207(1) and (2), and the design, over time, of a building, structure, object, or landscape feature shall be considered in applying these standards.

(b) Exterior alterations shall not adversely affect the architectural character or historic quality of a landmark and shall not destroy the significance of landmark sites.

(4) In considering an application for the demolition of a landmark or a resource within a preservation district; the following shall be considered:

(a) The commission shall consider the individual architectural, cultural, and/or historical significance of the resource.

(b) The commission shall consider the importance or contribution of the resource to the architectural character of the district.

(c) The commission shall consider the importance or contribution of the resource to neighboring property values.

(d) The commission shall consider the difficulty or impossibility of reproducing such a resource because of its texture, design, material, or detail.

(e) Following recommendation for approval of demolition, the applicant must seek approval of replacement plans, if any, as set forth in § 14-1207(2), prior to receiving a demolition permit and other permits. Replacement plans for this purpose shall include, but shall not be restricted to project concept, preliminary elevations and site plans, and completed working drawings for at least the foundation plan which will enable the applicant to receive a permit for foundation construction.

(f) Applicants that have received a recommendation for demolition shall be required to have a demolition permit as well as certificate of appropriateness for the new construction. Permits for demolition and construction shall not be issued simultaneously.

(g) When the commission recommends approval of demolition of a resource, a permit shall not be issued until all plans for the site have received approval from all appropriate city boards, commissions, departments, and agencies. (as added by Ord. #2004-07, April 2004)

14-1208. <u>Procedures for issuance of certificates of appropriateness, review process, and fees</u>. Anyone desiring to take action requiring a certificate of appropriateness concerning a resource for which a permit, variance, or other authorization from the city building official is also required, shall make application therefore in the form and manner required by the applicable code section or ordinance. Anyone desiring to take any action requiring a certificate of appropriateness shall submit an application for such certificate of appropriateness with the city building official. Applications for certificates of appropriateness shall be accompanied by a fee of fifty (50) dollars payable to the City of Cleveland, Tennessee. After receipt of any such application, the city building official shall be assured that the application is proper and complete. No building permit shall be issued by the city building official which affects a resource without a certificate of appropriateness. In the event that a building permit need not be obtained for construction, alteration, demolition, or relocation of any resource, a certificate of appropriateness is still

required before such work can be undertaken. Such application shall be reviewed in accordance with the following procedure:

(1) When any such application is filed, the city building official shall immediately notify the commission chairman, vice-chairman, or staff of the application having been filed.

(2) The chairman or vice-chairman shall set the agenda for the regular meeting date or set a time and date, which shall be not later than thirty (30) days after the filing of the application for a hearing by the commission, and the city building official shall be so informed.

(3) The applicant shall, upon request, have the right to a preliminary hearing by the commission for the purpose of making any changes or adjustments which might be more consistent with the commission's standards.

(4) Not later than three (3) days before the date set for the said hearing, the city official designated by the city manager shall provide written or verbal notice thereof to the applicant and to all members of the commission.

(5) Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the city at least three (3) days before such hearing and by posting such notice on the bulletin board in the lobby of city hall.

(6) At such hearing, the applicant for a certificate of appropriateness shall have the right to present any relevant evidence in support of the application. Likewise, the city shall have the right to present any additional relevant evidence in support of the application.

(7) The commission shall have the right to conditional approval.

(8) Either at the meeting or within not more than fifteen (15) days after the hearing on an application, the commission shall act upon it, either approving, denying, on deferring action until the next meeting of the commission, giving consideration to the factors set forth in § 14-1207 hereof. Evidence of approval of the application shall be by certificate of appropriateness issued by the commission and, whatever its decision, notice in writing shall be given to the applicant and the city building official.

(9) The issuance of a certificate of appropriateness shall not relieve an applicant for a building permit, special use permit, variance, or other authorization from compliance with any other requirement or provision of the laws of the city concerning zoning, construction repair, or demolition. (as added by Ord. #2004-07, April 2004)

14-1209. <u>Economic hardship</u>. No decision of the commission shall cause undue economic hardship. If an applicant requests, a hearing on economic hardship shall be conducted after a certificate of appropriateness has been denied. (as added by Ord. #2004-07, April 2004)

14-1210. <u>Appeals</u>. The applicant who desires to appeal a decision by the commission shall file an appeal with the circuit court (after the determination

of the issue by the commission) in the manner provided by law.(as added by Ord. #2004-07, April 2004)

14-1211. Minimum maintenance requirements. In order to insure the protective maintenance of resources, the exterior features of such properties shall be maintained to meet the requirements of the city's minimum housing code and the city's building code. (as added by Ord. #2004-07, April 2004)

14-1212. Public safety exclusion. None of the provisions of this chapter shall be construed to prevent any action of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, or part thereof, where such condition has been declared unsafe or dangerous by the city building official or the fire department and where the proposed actions have been declared necessary by such authorities to correct the said condition provided, however, that only such work as is necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any resource designated as a landmark or located within a preservation district shall be damaged by fire or other calamity to such an extent that it cannot be repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws, provided that:

(1) The city building official concurs with the property owner that the resource cannot be repaired and restored and so notifies the commission in writing.

(2) The commission, if in doubt after receiving such notification from the city building official, shall be allowed time to seek outside professional expertise from the state historic preservation office and/or an independent structural engineer before issuing a certificate of appropriateness for the demolition. The commission may indicate in writing by letter to the city building official that it will require a time period of up to thirty days for this purpose, and, upon such notification to the city building official, this section shall be suspended until the expiration of such a delay period. (as added by Ord. #2004-07, April 2004)

14-1213. Enforcement and penalties. The historic preservation commission shall be enforced by the city building official, who shall have the right to enter upon any premises necessary to carry out his duties in this enforcement. Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two ($2.00) nor more than fifty dollars ($50.00) for each offense. Each day such violation shall continue shall constitute a separate offense. (as added by Ord. #2004-07, April 2004)

14-1214. Appropriations. The city council may make appropriations on behalf of the commission as necessary for the expenses of the operation of the commission and may make additional amounts available as necessary for the

acquisition, restoration, preservation, operation, and management of historic properties. (as added by Ord. #2004-07, April 2004)

14-1215. Disqualification of members by conflict of interest. Because the city may possess relatively few residents with experience in the individual fields of history, architecture, architectural history, archaeology, urban planning, law, or real estate, and in order not to impair such residents from practicing their trade for hire, members of the commission are allowed to contract their services to an applicant for a certificate of appropriateness, and, when doing so must expressly disqualify themselves from the commission during all discussions and voting for that application. In such cases, the city shall, upon the request of the chairman of the commission or the vice-chairman in his stead, appoint a substitute member who is qualified in the same field as the disqualified member and who will serve for that particular case only. If no qualified resident of the city is able to substitute for the disqualified member, the city may appoint, in this case only, a qualified substitute who is a resident. If any member of the commission must be disqualified due to a conflict of interest on a regular and continuing basis, the chairman or the vice-chairman, in his stead, shall encourage the member to resign his commission seat. Failing this resignation, and if the commission member continues to enter into conflict of interest situations with the commission the chairman or vice-chairman of the commission shall encourage the city to replace the member. Likewise, any member of the commission who has an interest in the property in question or in property within three hundred feet of such a property, or who is employed with a firm that has been hired to aid the applicant in any matter whatsoever, or who has any proprietary, tenancy, or personal interest in a matter to be considered by the commission shall be disqualified from participating in the consideration of any request for a certificate of appropriateness involving such a property. In such cases, a qualified substitute shall be appointed as provided above. (as added by Ord. #2004-07, April 2004)

TITLE 15

MOTOR VEHICLES, TRAFFIC AND PARKING[1]

CHAPTER

1. MISCELLANEOUS.
2. EMERGENCY VEHICLES.
3. SPEED LIMITS.
4. TURNING MOVEMENTS.
5. STOPPING AND YIELDING.
6. PARKING.
7. ENFORCEMENT.
8. AUTOMATED TRAFFIC SIGNAL ENFORCEMENT SYSTEMS.
9. RESTRICTIONS ON USE OF CERTAIN STREETS BY CERTAIN TRUCKS; TRUCK ROUTES.

CHAPTER 1

MISCELLANEOUS[2]

SECTION

15-101. Motor vehicle requirements.
15-102. Driving on streets closed for repairs, etc.
15-103. [Deleted.]
15-104. One-way streets.
15-105. Unlaned streets.
15-106. Laned streets.
15-107. Yellow lines.
15-108. Miscellaneous traffic control signs, etc.
15-109. Detour or road closed signs; driver obedience required.
15-110. General requirements for traffic control signs, etc.

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[1]Municipal code reference
Excavations and obstructions in streets, etc.: title 16.

[2]State law references
Under Tennessee Code Annotated, § 55-10-307, the following offenses are exclusively state offenses and must be tried in a state court or a court having state jurisdiction: driving while intoxicated or drugged, as prohibited by Tennessee Code Annotated, § 55-10-401; failing to stop after a traffic accident, as prohibited by Tennessee Code Annotated, § 55-10-101, et seq.; driving while license is suspended or revoked, as prohibited by Tennessee Code Annotated, § 55-7-116; and drag racing, as prohibited by Tennessee Code Annotated, § 55-10-501.

15-111. Unauthorized traffic control signs, etc.
15-112. Presumption with respect to traffic control signs, etc.
15-113. School safety patrols.
15-114. Driving through funerals or other processions.
15-115. Clinging to vehicles in motion.
15-116. Riding on outside of vehicles.
15-117. Backing vehicles.
15-118. Projections from the rear of vehicles.
15-119. Causing unnecessary noise.
15-120. Vehicles and operators to be licensed.
15-121. Passing.
15-122. Motorcycles, motor driven cycles, motorized bicycles, bicycles, etc.
15-123. Delivery of vehicle to unlicensed driver, etc.
15-124. Use of roller skates, coasters, etc. restricted; exception.
15-125. Driving on sidewalk.
15-126. Driving on controlled-access roadways.
15-127. Load restrictions upon vehicles using certain highways.
15-128. Commercial vehicles using certain streets.
15-129. Opening and closing vehicle doors.
15-130. Following too closely.
15-131. Overtaking and passing school bus; markings; discharging passengers.
15-132. Unattended motor vehicles.
15-133. Lights on motor vehicles.
15-134. Wearing of seat belts.
15-135. Trespass by motor vehicles.
15-136. [Repealed.]
15-137. Financial responsibility.
15-138. Child restraint systems.
15-139. Transporting child in truck bed.
15-140. Window tinting on motor vehicles.
15-141. Texting while operating motor vehicles.

15-101. Motor vehicle requirements. It shall be unlawful for any person to operate any motor vehicle within the corporate limits unless such vehicle is equipped with properly operating muffler, lights, brakes, horn, and such other equipment as is prescribed and required by Tennessee Code Annotated, title 55, chapter 9. (1981 Code, §§ 14-172, 14-566, 14-567, 14-568, 14-569, 14-570, and 14-571, modified)

15-102. Driving on streets closed for repairs, etc. Except for necessary access to property abutting thereon, no motor vehicle shall be driven upon any street that is barricaded or closed for repairs or other lawful purpose.

15-103. [Deleted.] (1981 Code, § 14-185, as deleted by Ord. #2005-11, March 2005)

15-104. <u>One-way streets</u>. On any street for one-way traffic with posted signs indicating the authorized direction of travel at all intersections offering access thereto, no person shall operate any vehicle except in the indicated direction. (1981 Code, §§ 14-217, 14-218, 14-219, and 14-220, modified)

15-105. <u>Unlaned streets</u>. (1) Upon all unlaned streets of sufficient width, a vehicle shall be driven upon the right half of the street except:

(a) When lawfully overtaking and passing another vehicle proceeding in the same direction.

(b) When the right half of a roadway is closed to traffic while under construction or repair.

(c) Upon a roadway designated and signposted by the city for one-way traffic.

(2) All vehicles proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven as close as practicable to the right hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.

15-106. <u>Laned streets</u>. On streets marked with traffic lanes, it shall be unlawful for the operator of any vehicle to fail or refuse to keep his vehicle within the boundaries of the proper lane for his direction of travel except when lawfully passing another vehicle or preparatory to making a lawful turning movement.

On two (2) lane and three (3) lane streets, the proper lane for travel shall be the right hand lane unless otherwise clearly marked. On streets with four (4) or more lanes, either of the right hand lanes shall be available for use except that traffic moving at less than the normal rate of speed shall use the extreme right hand lane. On one-way streets either lane may be lawfully used in the absence of markings to the contrary. (1981 Code, § 14-190, modified)

15-107. <u>Yellow lines</u>. On streets with a yellow line placed to the right of any lane line or center line, such yellow line shall designate a no-passing zone, and no operator shall drive his vehicle or any part thereof across or to the left of such yellow line except when necessary to make a lawful left turn from such street.

15-108. <u>Miscellaneous traffic control signs, etc</u>.[1] It shall be unlawful for any pedestrian or the operator of any vehicle to violate or fail to comply with

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[1]Municipal code references

Stop signs, yield signs, flashing signals, pedestrian control signs, traffic control signals generally: §§ 15-505--15-509.

any traffic control sign, signal, marking, or device placed or erected by the state or the city unless otherwise directed by a police officer.

It shall be unlawful for any pedestrian or the operator of any vehicle willfully to violate or fail to comply with the reasonable directions of any police officer. (1981 Code, §§ 14-236 and 14-543, modified)

15-109. Detour or road closed signs; driver obedience required. It shall be unlawful to tear down or deface any detour sign or to break down or drive around any barricade erected for the purpose of closing any section of a street to traffic during construction, repair, or for any purpose incident to the needs of public safety or convenience, or to drive over such section of the street until again thrown open to public traffic; however, such restriction shall not apply to the persons in charge of such construction or repair or project for public safety or convenience.

At any time that a street or alley is closed for any purpose the signs placed on said street or alley shall clearly designate that said street or alley is closed. (Ord. of May 1994)

15-110. General requirements for traffic control signs, etc. All traffic control signs, signals, markings, and devices shall conform to the latest revision of the Manual on Uniform Traffic Control Devices for Streets and Highways,[1] published by the U. S. Department of Transportation, Federal Highway Administration, and shall, so far as practicable, be uniform as to type and location throughout the city. (1981 Code, § 14-542, modified)

15-111. Unauthorized traffic control signs, etc. No person shall place, maintain, or display upon or in view of any street, any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic control sign, signal, marking, or device or railroad sign or signal, or which attempts to control the movement of traffic or parking of vehicles, or which hides from view or interferes with the effectiveness of any official traffic control sign, signal, marking, or device or any railroad sign or signal. (1981 Code, § 14-548, modified)

15-112. Presumption with respect to traffic control signs, etc. When a traffic-control sign, signal, marking, or device has been placed, the presumption shall be that it is official and that it has been lawfully placed by the proper city authority.

15-113. School safety patrols. All motorists and pedestrians shall obey the directions or signals of school safety patrols when such patrols are assigned

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[1]This manual may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

under the authority of the chief of police and are acting in accordance with instructions; provided, that such persons giving any order, signal, or direction shall at the time be wearing some insignia and/or using authorized flags for giving signals.

15-114. Driving through funerals or other processions. Except when otherwise directed by a police officer, no driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated.

Oncoming traffic is hereby instructed to proceed as normal when meeting a funeral procession. (1981 Code, § 14-178(5), modified)

15-115. Clinging to vehicles in motion. It shall be unlawful for any person traveling upon any bicycle, motorcycle, coaster, sled, roller skates, or any other vehicle to cling to, or attach himself or his vehicle to any other moving vehicle upon any street, alley, or other public way or place. (1981 Code, § 14-14, modified)

15-116. Riding on outside of vehicles. It shall be unlawful for any person to ride, or for the owner or operator of any motor vehicle being operated on a street, alley, or other public way or place, to permit any person to ride on any portion of such vehicle not designed or intended for the use of passengers. This section shall not apply to persons engaged in the necessary discharge of lawful duties nor to persons riding in the load-carrying space of trucks. (1981 Code, § 14-10, modified)

15-117. Backing vehicles. The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic. (1981 Code, § 14-180, modified)

15-118. Projections from the rear of vehicles. Whenever the load or any projecting portion of any vehicle shall extend beyond the rear of the bed or body thereof, the operator shall display at the end of such load or projection, in such position as to be clearly visible from the rear of such vehicle, a red flag being not less than twelve (12) inches square. Between one-half (½) hour after sunset and one-half (½) hour before sunrise, there shall be displayed in place of the flag a red light plainly visible under normal atmospheric conditions at least two hundred (200) feet from the rear of such vehicle.

15-119. Causing unnecessary noise. It shall be unlawful for any person to cause unnecessary noise by unnecessarily sounding the horn, "racing" the motor, or causing the "screeching" or "squealing" of the tires on any motor vehicle.

15-120. Vehicles and operators to be licensed. (1) It shall be unlawful for any person to operate any motor vehicle within the corporate limits of the City of Cleveland, Tennessee, unless such vehicle complies with the requirements of Tennessee Code Annotated, title 55, chapter 4, entitled "Registration and Licensing of Motor Vehicles."

(2) It shall be unlawful for any person to operate any motor vehicle within the corporate limits of the City of Cleveland unless such person complies with the requirements of Tennessee Code Annotated, title 55, chapter 50, entitled the "Uniform Classified and Commercial Drive License Act of 1988." (1981 Code, §§ 14-170 and 14-172, as replaced by Ord. #2004-31, Aug. 2004)

15-121. Passing. Except when overtaking and passing on the right is permitted, the driver of a vehicle passing another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the street until safely clear of the overtaken vehicle. The driver of the overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

When the street is wide enough, the driver of a vehicle may overtake and pass upon the right of another vehicle which is making or about to make a left turn.

The driver of a vehicle may overtake and pass another vehicle proceeding in the same direction either upon the left or upon the right on a street of sufficient width for four (4) or more lanes of moving traffic when such movement can be made in safety.

No person shall drive off the pavement or upon the shoulder of the street in overtaking or passing on the right.

When any vehicle has stopped at a marked crosswalk or at an intersection to permit a pedestrian to cross the street, no operator of any other vehicle approaching from the rear shall overtake and pass such stopped vehicle.

No vehicle operator shall attempt to pass another vehicle proceeding in the same direction unless he can see that the way ahead is sufficiently clear and unobstructed to enable him to make the movement in safety. (1981 Code, §§ 14-186, 14-187, 14-188, and 14-189, modified)

15-122. Motorcycles, motor driven cycles, motorized bicycles, bicycles, etc.

(1) Definitions. For the purpose of the application of this section, the following words shall have the definitions indicated:

(a) "Motorcycle." Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor or motorized bicycle.

(b) "Motor-driven cycle." Every motorcycle, including every motor scooter, with a motor capacity that does not exceed five (5) brake horsepower, or with a motor with a cylinder capacity not exceeding one hundred and twenty-five cubic centimeters (125cc);

(c) "Motorized bicycle." A vehicle with two (2) or three (3) wheels, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty (50) cubic centimeters which produces no more than two (2) brake horsepower and is capable of propelling the vehicle at a maximum design speed of no more than thirty (30) miles per hour on level ground.

(2) Every person riding or operating a bicycle, motor cycle, motor driven cycle or motorized bicycle shall be subject to the provisions of all traffic ordinances, rules, and regulations of the city applicable to the driver or operator of other vehicles except as to those provisions which by their nature can have no application to bicycles, motorcycles, motor driven cycles, or motorized bicycles.

(3) No person operating or riding a bicycle, motorcycle, motor driven cycle or motorized bicycle shall ride other than upon or astride the permanent and regular seat attached thereto, nor shall the operator carry any other person upon such vehicle other than upon a firmly attached and regular seat thereon.

(4) No bicycle, motorcycle, motor driven cycle or motorized bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(5) No person operating a bicycle, motorcycle, motor driven cycle or motorized bicycle shall carry any package, bundle, or article which prevents the rider from keeping both hands upon the handlebars.

(6) No person under the age of sixteen (16) years shall operate any motorcycle, motor driven cycle or motorized bicycle while any other person is a passenger upon said motor vehicle.

(7) Each driver of a motorcycle, motor driven cycle, or motorized bicycle and any passenger thereon shall be required to wear on his head a crash helmet of a type approved by the state's commissioner of safety.

(8) Every motorcycle, motor driven cycle, or motorized bicycle operated upon any public way within the corporate limits shall be equipped with a windshield or, in the alternative, the operator and any passenger on any such motorcycle, motor driven cycle or motorized bicycle shall be required to wear safety goggles, faceshield or glasses containing impact resistant lens for the purpose of preventing any flying object from striking the operator or any passenger in the eyes.

(9) It shall be unlawful for any person to operate or ride on any vehicle in violation of this section, and it shall also be unlawful for any parent or guardian knowingly to permit any minor to operate a motorcycle, motor driven cycle or motorized bicycle in violation of this section. (1981 Code, §§ 14-13, 14-181, 14-391, 14-392, 14-393, 14-394, 14-395, 14-396, 14-397, 14-398, 14-399, 14-400, and 14-401, modified)

15-123. Delivery of vehicle to unlicensed driver, etc.

(1) Definitions. (a) "Adult" shall mean any person eighteen years of age or older.

(b) "Automobile" shall mean any motor driven automobile, car, truck, tractor, motorcycle, motor driven cycle, motorized bicycle, or vehicle driven by mechanical power.

(c) "Custody" means the control of the actual, physical care of the juvenile, and includes the right and responsibility to provide for the physical, mental, moral and emotional well being of the juvenile. "Custody" as herein defined, relates to those rights and responsibilities as exercised either by the juvenile's parent or parents or a person granted custody by a court of competent jurisdiction.

(d) "Drivers license" shall mean a motor vehicle operators license or chauffeurs license issued by the State of Tennessee.

(e) "Juvenile" as used in this chapter shall mean a person less than eighteen years of age, and no exception shall be made for a juvenile who has been emancipated by marriage or otherwise.

(2) It shall be unlawful for any parent or person having custody of a juvenile to permit any such juvenile to drive a motor vehicle upon the streets, highways, roads, parkways, avenues or public ways in the city in a reckless, careless, or unlawful manner, or in such a manner as to violate the ordinances of the city. (1981 Code, §§ 14-170 and 14-171, modified)

15-124. Use of roller skates, coasters, etc., restricted; exception. No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk. When so crossing such person shall be granted all the rights and shall be subject to all of the duties applicable to pedestrians. (1981 Code, § 14-9, modified)

15-125. Driving on sidewalk. The driver of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway. (1981 Code, § 14-179)

15-126. Driving on controlled-access roadways. No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority. (1981 Code, § 14-182)

15-127. Load restrictions upon vehicles using certain highways. When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of the amounts specified at any time upon any of the streets or parts of streets so posted. (1981 Code, § 14-193)

15-128. Commercial vehicles using certain streets. (1) Definitions. As used in this section, a "commercial vehicle" shall mean any "tractor/trailer truck" or any category of truck or other motor-driven vehicle with a gross weight in excess of 8,999 pounds.

(2) Commercial vehicles prohibited on certain city streets. When signs are erected on a city street stating "Commercial vehicles prohibited," no person shall operate any commercial vehicle at any time upon any of the city streets or parts of city streets so marked, except that commercial vehicles may be operated thereon for the purpose of delivering or picking up materials or merchandise and then only by entering such city street at the intersection nearest the destination of the commercial vehicle and proceeding thereon no further than the nearest intersection thereafter.

(3) Further exceptions. The foregoing provisions prohibiting commercial vehicle traffic shall not apply to any emergency vehicle, school bus, or any road construction equipment being operated by or for the City of Cleveland in connection with repairs on city property or a right of way owned by the City of Cleveland.

(4) Designated streets for commercial vehicle traffic. When signs are erected stating "truck routes," the following city streets are hereby designated as "truck routes." Commercial vehicle traffic is not prohibited on these streets.

(a) Cherry Street, NE between 20th Street and 16th Street;

(b) 16th Street, NE between Cherry Street and Carolina Avenue;

(c) 15th Street, NE between Carolina Avenue and Parker Street;

(d) 6th Street, SE between Wildwood Avenue and Linden Avenue;

(e) 3rd Street, SE between Linden Avenue and Ocoee Street;

(f) Linden Avenue, SE between Inman Street and 3rd/6th Street;

(g) Euclid Avenue, SE between 3rd Street and 14th Street;

(h) 14th Street, SE between Euclid Avenue and Church Street;

(i) Church Street, SE between 14th Street and 19th Street.

(5) Enforcement. A violation of this section shall be punished by a fine not to exceed $50.00. (1981 Code, § 14-194, as replaced by Ord. #2003-19, June 2003)

15-129. Opening and closing vehicle doors. No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a motor vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers. (1981 Code, § 14-15)

15-130. Following too closely. (1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having

due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway which is following another motor truck or motor vehicle drawing another vehicle, shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle. (1981 Code, § 14-191)

15-131. Overtaking and passing school bus; markings; discharging passengers. (1) The driver of a vehicle upon a highway or street upon meeting or overtaking from either direction any school bus which has stopped on the highway or street for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus and such driver shall not proceed until such school bus resumes motion or is signaled by the school bus driver to proceed or the visual signals are no longer actuated.

(2) All motor vehicles used in transporting school children to and from school in this city are required to be distinctly marked "School Bus" on the front and rear thereof in letters of not less than six (6) inches in height, and so plainly written or printed and so arranged as to be legible to persons approaching such school bus, whether traveling in the same or the opposite direction.

(3) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway. For the purpose of this paragraph, separate roadways shall mean roadways divided by an intervening space which is not suitable to vehicular traffic.

(4) Except as otherwise provided by this section, the school bus driver is required to stop such school bus on the right-hand side of such street or highway, and such driver shall cause the bus to remain stationary and the visual stop signs on the bus actuated until all school children who should be discharged from the bus have been so discharged and until all children whose destination causes them to cross the road or highway at that place have negotiated such crossing. (1981 Code, § 14-192)

15-132. Unattended motor vehicles. (1) No person driving or in charge of a motor vehicle shall permit it to stand unattended in any public place without first stopping the engine, locking the ignition, removing the ignition key from the vehicle, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

(2) Whenever any police officer shall find a motor vehicle standing unattended with the ignition key in the vehicle, in violation of this section, such

police officer is authorized to remove such key from such vehicle and to deliver such key to the police station.

(3) The registered owner of a vehicle found in violation of this section shall be held prima facie responsible for any such violation. (1981 Code, § 14-195)

15-133. Lights on motor vehicles. (1) (a) Every motor vehicle other than a motorcycle, road roller, road machinery or farm tractor operated on any street, road or highway within the corporate limits of the City of Cleveland shall be equipped with at least two (2) and not more that four (4) headlights, with at least one (1) on each side of the front of the motor vehicle.

(b) The headlights of every motor vehicle shall be so constructed, equipped, arranged, focused, aimed, and adjusted, that they will at all times mentioned in the Tennessee Code Annotated, § 55-9-401, and under normal atmospheric conditions and on a level road produce a driving light sufficient to render clearly discernible a person two hundred feet (200') ahead, but shall not project a glaring or dazzling light to persons in front of such headlights.

(c) Such headlights shall be displayed during the period from one-half (½) hour after sunset to one-half (½) before sunrise, during fog, smoke, or rain and at all other times when there is not sufficient light to render clearly discernable any person on the road at a distance of two hundred feet (200') ahead of such vehicle.

(d) Operation of headlights during periods of rain, as required in this section, shall be made during any time when rain, mist, or other precipitation, including snow, necessitates the constant use of windshield wipers by motorists.

(2) (a) Whenever the road lighting equipment on a motor vehicle is so arranged that the driver may select at will between two (2) or more distributions of light from headlights or lamps or auxiliary road lighting lamps or lights, or combinations thereof, directed to different elevations, the following requirements shall apply while driving during the times when lights are required:

(i) When there is no oncoming vehicle within five hundred feet (500'), the driver shall use an upper distribution of light; provided, that a lower distribution of light may be used when fog, dust, or other atmospheric conditions make it desirable for reasons of safety, and when within the corporate limits of the City of Cleveland, there is sufficient light to render clearly discernable persons and vehicles on the street, highway, or road at a distance of five hundred feet (500') ahead and when following another vehicle within five hundred feet (500'); and

(ii) When within five hundred feet (500') of an oncoming vehicle, a driver shall use a distribution of light so aimed that the glaring rays therefrom are not directed into the eyes of the oncoming driver.

(b) Headlights shall be deemed to comply with the provisions of Tennessee Code Annotated, § 55-9-406, prohibiting glaring and dazzling lights, if the headlights are of a type customarily employed by manufacturers of automobiles and in addition are equipped with some anti-glare device approved by the Tennessee Department of Safety.

(c) No non-emergency vehicle shall operate or install emergency flashing light systems, such as strobe, wig-wag, or other flashing lights within the headlight assembly or grill area of the vehicle; provided, however, that a school bus may operate a flashing, wig-wag lighting system within the headlight assembly of the vehicle when the vehicle's visual stop signs are actuated for receiving or discharging school children.

(d) Auxiliary road lighting lamps may be used, but not more than two (2) of such lamps shall be lighted at any one (1) time in addition to the two (2) required headlights.

(e) No spotlight or auxiliary lamp shall be so aimed upon approaching another vehicle that any part of the high intensity portion of the beam therefrom is directed beyond the left side of the motor vehicle upon which the spotlight or auxiliary lamp is mounted, nor more than one hundred feet (100') ahead of such motor vehicle.

(f) Each lamp and headlight required under this section shall be in good condition and operational.

(3) (a) Every motor vehicle shall be equipped with two (2) red tail lamps and two (2) red stoplights on the rear of such vehicle, and one (1) tail lamp and one (1) stoplight shall be on each side, except that passenger cars manufactured or assembled prior to January 1, 1939, trucks manufactured or assembled prior to January 1, 1968, trucks manufactured or assembled prior to January 1, 1968, and motorcycles and motor-driven cycles shall have at least one (1) red tail lamp and one (1) red stoplight.

(b) No non-emergency vehicle shall operate or install emergency flashing light systems such as strobe, wig-wag, or other flashing lights in tail light lamp, stoplight area, or factory installed emergency flasher and backup light area; provided, however, that the foregoing prohibition shall not apply to the utilization of a continuously flashing light system on a motorcycle. For the purposes of this part, "continuously flashing light system" means a brake light system on a motorcycle in which the brake lamp pulses rapidly for no more than five (5) seconds when the brake is applied, and then converts to a continuous light as a normal brake lamp until such time as the brake is released.

(c) The stoplight shall be so arranged as to be actuated by the application of the service or foot brake and shall be capable of being seen and distinguished from a distance of one hundred feet (100') to the rear of a motor vehicle in normal daylight, but shall not project a glaring or dazzling light.

(d) The stoplight may be incorporated with the tail lamp.

(e) Each lamp and stoplight required under this section shall be in good condition and operational.

(4) (a) No vehicle operated on any street, highway or road within the corporate limits of the City of Cleveland shall be equipped with any flashing red or white light or any combination of red or white lights which displays to the front of such vehicle except school buses, a passenger motor vehicle operated by a rural mail carrier of the United States postal service while performing the duties of a rural mail carrier, authorized law enforcement vehicles only when used in combination with a flashing blue light, and emergency vehicles used in firefighting, including ambulances, emergency vehicles used in firefighting which are owned or operated by the division of forestry, firefighting vehicles, rescue vehicles, privately owned vehicles of regular or volunteer firefighters certified in Tennessee Code Annotated, § 55-9-201(c), or other emergency vehicles used in firefighting owned, operated, or subsidized by the governing body of any county or municipality.

(b) Any emergency rescue vehicle owned, titled and operated by a state chartered rescue squad, a member of the Tennessee Association of Rescue Squads, privately owned vehicles of regular or volunteer firefighters certified in Tennessee Code Annotated, § 55-9-201(c), and marked with lettering at least three inches (3") in size and displayed on the left and right sides of the vehicle designating it an "Emergency Rescue Vehicle," any authorized civil defense emergency vehicle displaying the appropriate civil defense agency markings of at least three inches (3"), and any ambulance or vehicle equipped to provide emergency medical services properly licensed as required in the State of Tennessee and displaying the proper markings, shall also be authorized to be lighted in one (1) or more of the following manners:

(i) A red or red/white visibar type with public address system;

(ii) A red or red/white oscillating type light; and

(iii) Blinking red or red/white lights, front and rear.

(c) Any vehicle, other than a school bus, a passenger motor vehicle operated by a rural mail carrier of the United States postal service while performing the duties of a rural mail carrier or an emergency vehicle authorized by this section to display flashing red or red/white lights, or authorized law enforcement vehicles using red, white,

and blue lights in combination, that displays any such lights shall be considered in violation of this subsection.

(d) Notwithstanding any provision of law to the contrary, nothing in this section shall prohibit a highway maintenance or utility vehicle, or any other type vehicle or equipment participating, in any fashion, with highway or utility construction, maintenance, or inspection, from operating a white, amber, or white and amber light system on any location on such vehicle or equipment, other than in the tailgate lamp, stoplight area, or factory installed emergency flasher and backup light area, if such light system is a strobe, flashing, oscillating, or revolving system, while the vehicle or equipment is parked upon, or entering or leaving any highway or utility construction, maintenance, repair or inspection site. A vehicle described in this subsection may display either:

(i) A white light system within the headlight assembly or grill area or that displays to the front of the vehicle; or

(ii) An amber light system on any location on such vehicle other that in the taillight lamp, stoplight area, or factory installed emergency flasher and backup light area, if such light system is flashing, oscillating, or revolving, while the vehicle is engaged in repair or maintenance work on or near any public highway.

(e) As used in subsection (4)(d), "utility" means any person, municipality, county, metropolitan government, cooperative, board, commission, district, or any entity created or authorized by public act, private act, or general law to provide electricity, natural gas, water, waste water services, telephone service, or any combination thereof, for sale to consumers in any particular service area. As used herein, "cooperative" means any cooperative providing utility services including, but not limited to, electric or telephone services, or both.

(f) Nothing in this subsection imposes any duty or obligation to install or utilize the lighting systems allowed in this section.

(5) A violation of any of the provisions of this section is punishable by a fine of not more that $50.00 plus court costs and litigation tax, if applicable. (1981 Code, § 14-569, as replaced by Ord. #2006-19, June 2006)

15-134. <u>Wearing of seat belts</u>. No person shall operate a passenger motor vehicle unless such person is restrained by a safety belt at all times the vehicle is in forward motion. The driver of said vehicle is responsible to see that front seat passengers under the age of sixteen (16) are properly belted. This section does not apply to:

(1) A passenger or operator with a physically disabling condition whose physical disability would prevent appropriate restraint in such safety belt.

(2) A passenger motor vehicle operated by a letter carrier while performing his/her duties.

(3) Salespersons or mechanics test-driving vehicles as part of their employment.

(4) Utility workers, water, gas and electric meter readers in the course of their employment.

(5) A newspaper delivery motor carrier service while delivering newspapers. (as amended by Ord. of 8/26/96)

15-135. Trespass by motor vehicles. (1) Any person who drives, parks, stands, or otherwise operates a motor vehicle on, through or within a parking area, driving area or roadway located on privately owned property which is provided for use by patrons, customers or employees of business establishments upon such property, or adjoining property or for use otherwise in connection with activities conducted upon such property, or adjoining property, after such person has been requested or ordered to leave the property or to cease doing any of the foregoing actions shall be guilty of a civil offense. A request or order under this section may be given by a law enforcement officer or by the owner, lessee, or other person having the right to use or control of the property, or any authorized agent or representative thereof, including, but not limited to, private security guards hired to parol the property.

(2) As used in this section, "motor vehicle" includes an automobile, truck, van, bus, recreational vehicle, camper, motorcycle, motor bike, mo-ped, go-cart, all terrain vehicle, dune buggy, and any other vehicle propelled by motor.

(3) A property owner, lessee or other person having the right to the use or control of property may post signs or other notices upon a parking area, driving area or roadway giving notice of this section and warning that violators will be prosecuted; provided, however, that the posting of signs or notices shall not be a requirement to prosecution under this section and failure to post signs or notices shall not be defense to prosecution hereunder. (1981 Code, § 15-130, modified)

15-136. [Repealed.] This section was repealed by Ord. dated 3/24/97. (Ord. of June 1995, as amended by Ord. of 7/22/96 and repealed by Ord. of 3/24/97)

15-137. Financial responsibility. (1) Effective January 1, 2002, every vehicle driven on city streets and the public roads of the City of Cleveland, Tennessee, must be in compliance with the Tennessee Financial Responsibility law.

(2) At the time a driver of a motor vehicle is charged with any moving violation under title 55 of the Tennessee Code Annotated, chapters 8 and 10, parts 1 through 5, or chapter 50; or any city ordinance regulating the operation of motor vehicles within the city under this code of ordinances; or the time of an accident for which notice is required under Tennessee Code Annotated,

§ 55-10-106, the officer shall request evidence of financial responsibility as required by this section. In case of an accident for which notice is required under Tennessee Code Annotated, § 55-10-106, the officer shall request such evidence from all drivers involved in the accident, without regard to apparent or actual fault.

For purposes of section 15-137, "Proof of financial responsibility" means:

(a) Documentation, such as the declaration page of an insurance policy, an insurance binder, or an insurance card from an insurance company authorized to do business in Tennessee, stating that a policy of insurance meeting the requirements of the Tennessee Financial Responsibility law of 1997 has been issued; or

(b) A certificate, valid for one (1) year, issued by the Commission of the Department of Safety, stating that a cash deposit or bond of the amount required by the Tennessee Financial Responsibility law of 1997 has been paid or filed with the commissioner, or has qualified as a self-insurer under Tennessee Code Annotated, § 55-12-111; or

(c) The motor vehicle being operated at the time of the violation was owned by a carrier subject to the jurisdiction of the Department of Safety or the Interstate Commerce Commission, or was owned by the United States, the State of Tennessee, or any political subdivision thereof, and that such motor vehicle was being operated with the owner's consent.

(3) It is an offense to fail to provide evidence of financial responsibility pursuant to this section. Any violation of this section is punishable by a fine of not more than fifty dollars ($50.00).

(4) The fine imposed by this section shall be in addition to any other fine imposed for any other violations of state law or any other ordinance under the city code.

(5) On or before the court date for the hearing on the citation for failure to provide financial responsibility as required by this section, the person so charged may submit evidence of compliance with this section at the time of the violation. If the city judge is satisfied that in compliance was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility may be dismissed. (as added by Ord. of 11/13/2001)

15-138. Child restraint systems. (1) Any person transporting a child, under one (1) year of age, or any child weighing twenty (20) pounds or less, in a motor vehicle upon a road, street or highway within the corporate limits of the City of Cleveland, Tennessee, is responsible for the protection of the child and properly using a child passenger restraint system in a rear-facing position, meeting federal motor safety standards in the rear seat if available or according to the child safety restraint system or vehicle manufacturer's instructions.

(2) Any person transporting any child, one (1) through three (3) years of age weighing greater than twenty (20) pounds, in a motor vehicle upon a road,

street or highway within the corporate limits of the City of Cleveland, Tennessee, is responsible for the protection of the child and properly using a child passenger restraint system in a forward-facing position, meeting federal motor vehicle safety standards in the rear seat if available or according to the child safety restraint system or vehicle manufacturer's instructions.

(3) (a) Any person transporting any child, four (4) through eight (8) years of age and measuring less than four feet, nine inches (4'9") in height, in a passenger motor vehicle upon a road, street or highway within the corporate limits of the City of Cleveland, Tennessee, is responsible for the protection of the child and properly using a belt positioning booster seat system, meeting federal motor vehicle safety standards in the rear seat, if available, or according to the child safety restraint system or vehicle manufacturer's instructions.

(b) If a child is not capable of being safely transported in a conventional child passenger restraint system as provided for in this subsection, a specially modified, professionally manufactured restraint system meeting the intent of this subsection shall be in use; provided that the provisions of this subsection shall not be satisfied by use of the vehicle's standard lap or shoulder safety belts independent of any other child passenger restraint system. A motor vehicle operator who is transporting a child in a specially modified, professionally manufactured child passenger restraint system shall possess a copy of the physician's signed prescription that authorizes the professional manufacture of the specially modified child passenger restraint system.

(c) A person shall not be charged with a violation of this subsection if such person presents a copy of the physician's prescription in compliance with the provisions of this subdivision to the arresting officer at the time of the alleged violation.

(d) A person charged with a violation of this section may, on or before the court date, submit a copy of the physician's prescription and evidence of possession of a specially modified, professionally manufactured child passenger restraint system to the court. If the court is satisfied that compliance was in effect at the time of the violation, the charge for violating the provisions of this section may be dismissed.

(4) Any person transporting any child, nine (9) through twelve (12) years of age, or any child through twelve (12) years of age, measuring four feet, nine inches (4'9") or more in height, in a passenger motor vehicle upon a road, street or highway within the corporate limits of the City of Cleveland, Tennessee, is responsible for the protection of the child and properly using a seatbelt system meeting federal motor vehicle safety standards. It is recommended that any such child be placed in the rear seat if available.

(5) Any person transporting any child, thirteen (13) through fifteen (15) years of age, in a passenger motor vehicle upon a road, street or highway within the corporate limits of the City of Cleveland, Tennessee, is responsible

for the protection of the child and properly using a passenger restraint system, including safety belts, meeting federal motor vehicle safety standards.

(6) No more than one citation per vehicle per occasion may be issued for a violation of any of the foregoing subsections.

(7) If the driver of a vehicle who violates any of the foregoing subsections is neither a parent or legal guardian of the child and the child's parent or legal guardian is present in the vehicle, the parent or legal guardian is responsible for insuring that the provisions of the foregoing subsections are complied with. If no parent or legal guardian is present in the vehicle at the time of the violation, then the driver of the vehicle is solely responsible for compliance with the foregoing subsections.

(8) As used in this section, the term "passenger motor vehicle" means any motor vehicle with a manufacturer's gross vehicle weight rating of ten thousand pounds (10,000 lbs.) or less, that is not used as a public or livery conveyance for passengers. A "passenger motor vehicle"as used in this section does not apply to motor vehicles which are not required by federal law to be equipped with safety belts.

(9) A violation of 15-138(1), 15-138(2), or 15-138(3) will subject the offender to a fine in an amount not to exceed $50, plus court costs and litigation tax, if applicable. A violation of 15-138(4) or 15-138(5) will subject the offender to a fine in the amount not to exceed $50. However, a violation of 15-138(4) or 15-138(5) will not result in the imposition of any court costs or litigation tax. (as added by Ord. of 4/8/2002, replaced by Ord. #2004-29, Aug. 2004, and amended by Ord. #2004-37, Oct. 2004, and Ord. #2005-49, Jan. 2006)

15-139. <u>Transporting child in truck bed</u>. (1) No person shall transport a child between six (6) years of age and under twelve (12) years of age in the bed of a truck with a manufacturer's ton rating not exceeding three-quarter (3/4) ton and having a pickup body style.

(2) The provisions of this section do not apply to a person transporting such child in the bed of such vehicle when such vehicle is being used as part of an organized parade, procession, or other ceremonial event, and when such vehicle is not exceeding the speed of twenty miles per hour (20 m.p.h.).

(3) The provisions of this section do not apply when the child being transported is involved in agricultural activities.

(4) A violation of this section will subject the offender to a fine in an amount not to exceed fifty dollars ($50.00), which does not include applicable court costs. (as added by Ord. #2004-15, May 2004)

15-140. <u>Window tinting on motor vehicles</u>. (1) (a) It is unlawful for any person to operate upon a public highway, street, or road within the corporate limits of the City of Cleveland any motor vehicle registered in this state, in which any window, which has a visible light transmittance equal to, but not less than, that specified in the Federal Motor Vehicle

Safety Standard No. 205, has been altered, treated or replaced by the affixing, application or installation of any material which:

(i) Has a visible light transmittance of less that thirty-five percent (35%); or

(ii) With the exception of the manufacturer's standard installed shade band, reduces the visible light transmittance in the windshield below seventy percent (70%).

(b) Any vehicle model permitted by federal regulations to be equipped with certain windows tinted so as to not conform to the specifications of § 15-140(1)(a) is exempt from § 15-140(1)(a) with respect to those certain windows. Likewise, vehicles bearing commercial license plates shall be exempt from the specifications of § 15-140(1)(a) for those windows rearward of the front doors. Section 15-140(1)(a) shall not be construed in any way to exempt the front door windows of any vehicle of any kind from the specifications set forth in § 15-140(1)(a).

(2) (a) Notwithstanding the provisions of § 15-140(1)(a) to the contrary, any person with a medical condition that is adversely affected by ultraviolet light may submit a statement to the Tennessee Department of Safety from that person's physician certifying that the person has a medical condition which requires reduction of light transmission in the windows of such person's vehicle in excess of the standards established in § 15-140(1)(a). If an exemption is ultimately granted by the Tennessee Department of Safety, then the Commissioner of the Tennessee Department of Safety will supply a certificate or decal, indicating the degree of exemption, to the applicant. The applicant shall then display the certificate or decal in the motor vehicle at all times. If the exemption certificate or decal is displayed in the vehicle, then the operator of the vehicle with tinted windows shall be exempt from the provisions of § 15-140(1)(a) to the extent set forth on the exemption certificate or decal.

(3) It is probable cause for a full-time police officer of this city to detain a motor vehicle being operated on the public streets, highways or roads of this city when such officer has a reasonable belief that the motor vehicle is in violation of § 15-140(1)(a) for the purpose of conducting a field comparison test.

(4) It is a civil offense for the operator of a motor vehicle to refuse to submit to the field comparison test when directed to do so by a full time, salaried police officer, or for any person to otherwise violate any provisions of this section.

(5) A violation of this section is punishable by a fine of not more that $50.00 plus court costs and litigation tax, if applicable. (as added by Ord. #2006-20, June 2006)

15-141. <u>Texting while operating motor vehicles</u>. (1) For the purpose of this section, unless the context otherwise requires:

(a) "Mobile telephone" means a cellular, analog, wireless or digital device that provides for voice communication and for data communication other than by voice; and

(b) "Personal digital assistant" means a wireless electronic communication device that provides for data communication other than by voice.

(2) No person while driving a motor vehicle on any public road or highway within the corporate limits of the City of Cleveland shall use a hand-held mobile telephone or a hand-held personal digital assistant to transmit or read a written message; provided, that a driver does not transmit or read a written message for the purpose of this subsection if such driver reads, selects or enters a telephone number or name in a hand-held mobile telephone or a personal digital assistant for the purpose of making or receiving a telephone call.

(3) The provisions of this section shall only apply to a person driving a motor vehicle that is in motion at the time a written message from a mobile telephone or hand-held personal digital assistant is transmitted or read by such person.

(4) A violation of any provision of this section is a municipal ordinance violation, subject only to imposition of a civil penalty, not to exceed fifty dollars ($50.00), and court costs, not to exceed ten dollars ($10.00), including, but not limited to, any statutory fees of officers. No state or local litigation taxes shall be applicable to a case prosecuted under this section.

(5) The provisions of this section shall not apply to the following persons:

(a) Officers of the state, or of any county, city or town, charged with the enforcement of the laws of the state, when in the actual discharge of their official duties;

(b) Campus police officers and public safety officers, as defined by Tennessee Code Annotated, § 49-7-118, when in the actual discharge of their official duties;

(c) Emergency medical technicians, emergency medical technician-paramedics, and firefighters, both volunteer and career, when in the actual discharge of their official duties; and

(d) Emergency management agency officers of the state, or of any county, city or town, when in the actual discharge of their official duties.

(6) A traffic citation that is based solely upon a violation of this section shall be considered a nonmoving traffic violation and no points shall be added to a driver record for such violation. (as added by Ord. #2009-61, July 2009)

CHAPTER 2

EMERGENCY VEHICLES

SECTION

15-201. Authorized emergency vehicles defined.
15-202. Operation of authorized emergency vehicles.
15-203. Operation of other vehicles upon approach.
15-204. Following emergency vehicles.
15-205. Running over fire hoses, etc.

15-201. Authorized emergency vehicles defined. Authorized emergency vehicles shall be fire department vehicles, police vehicles, and such ambulances and other emergency vehicles as are designated by the chief of police.

15-202. Operation of authorized emergency vehicles.[1] (1) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of an authorized emergency vehicle may:

(a) Park or stand irrespective of the provisions of this chapter.

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.

(c) Exceed the maximum speed limits so long as he does not endanger life or property.

(d) Disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visible signals meeting the requirements of such applicable laws of this sate, except that an authorized emergency vehicle operating as a police vehicle may be equipped with or display a red light only in combination with a blue light visible from in front of the vehicle.

(4) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the

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[1]Municipal code reference
Operation of other vehicle upon the approach of emergency vehicles: § 15-501.

consequences of his reckless disregard for the safety of others. (1981 Code, § 14-11, modified)

15-203. Operation of other vehicles upon approach. (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals required by § 15-202, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(2) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. (1981 Code, § 14-12)

15-204. Following emergency vehicles. No driver of any vehicle shall follow any authorized emergency vehicle apparently traveling in response to an emergency call closer than five hundred (500) feet or drive or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. (1981 Code, § 14-173, modified)

15-205. Running over fire hoses, etc. It shall be unlawful for any person to drive over any hose lines or other equipment of the fire department except in obedience to the direction of a fireman or policeman. (1981 Code, § 14-174, modified)

CHAPTER 3

SPEED LIMITS

SECTION

15-301. In general.
15-302. At intersections.
15-303. In school zones.

15-301. In general. It shall be unlawful for any person to operate or drive a motor vehicle upon any highway or street at a rate of speed in excess of thirty (30) miles per hour except where official signs have been posted indicating other speed limits as established by the transportation director in accordance with the Manual on Uniform Traffic Control Devices, in which cases the posted speed limit shall apply. (1981 Code, § 14-232, modified)

15-302. At intersections. It shall be unlawful for any person to operate or drive a motor vehicle through any intersection at a rate of speed in excess of fifteen (15) miles per hour unless such person is driving on a street regulated by traffic control signals or signs which require traffic to stop or yield on the intersecting streets. (1981 Code, § 14-233, modified)

15-303. In school zones. Pursuant to Tennessee Code Annotated, § 55-8-152, the city shall have the authority to enact special speed limits in school zones. Such special speed limits shall be enacted based on an engineering investigation; shall not be less than fifteen (15) miles per hour; and shall be in effect only when proper signs are posted with a warning flasher or flashers in operation. It shall be unlawful for any person to violate any such special speed limit enacted and in effect in accordance with this paragraph.

In school zones where the city council has not established special speed limits as provided for above, any person who shall drive at a speed exceeding twenty (20) miles per hour when passing a school during a recess period when a warning flasher or flashers are in operation, or during a period of forty (40) minutes before the opening hour of a school, or a period of forty (40) minutes after the closing hour of a school, while children are actually going to or leaving school, shall be prima facie guilty of reckless driving. (1981 Code, § 14-234, modified)

CHAPTER 4

TURNING MOVEMENTS

SECTION

15-401. Signals for turns.
15-402. Right turns.
15-403. Left turns on two-way roadways.
15-404. Left turns on other than two-way roadways.
15-405. Restricted turn signs.
15-406. Limitations on "U" turns.

15-401. Signals for turns. (1) Every driver who intends to start, stop or turn, or partly turn from a direct line, shall first see that such movement can be made in safety, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal required in this section, plainly visible to the driver of such other vehicle of the intention to make such movement.

(2) The signal herein required shall be given by means of the hand and arm, or by some mechanical or electrical device approved by the department of safety, in the manner herein specified. Whenever the signal is given by means of the hand and arm, the driver shall indicate the intention to start, stop, or turn, or partly turn by extending the hand and arm from and beyond the left side of the vehicle, in the following manner:

(a) For left turn, or to pull to the left, the arm shall be extended in a horizontal position straight from and level with the shoulder;

(b) For right turn, or pull to the right, the arm shall be extended upward; and

(c) For slowing down or to stop, the arm shall be extended downward.

(3) Such signals shall be given continuously for a distance of a least fifty feet (50') before stopping, turning, partly turning, or materially altering the course of the vehicle.

(4) Drivers having once given a hand, electrical or mechanical device signal, must continue the course thus indicated, unless they alter the original signal and take care that drivers of vehicles and pedestrians have seen and are aware of the change.

(5) Drivers receiving a signal from another driver shall keep their vehicles under complete control and shall be able to avoid an accident resulting from a misunderstanding of such signal.

(6) Drivers of vehicles, standing or stopped at the curb or edge before moving such vehicles, shall give signals of their intention to move into traffic, as hereinbefore provided, before turning in the direction the vehicle shall proceed from the curb.

15-402. Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right hand curb or edge of the roadway. (1981 Code, § 14-271, modified)

15-403. Left turns on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of the intersection of the center lines of the two roadways. (1981 Code, § 14-271, modified)

15-404. Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left hand lane lawfully available to traffic moving in such direction upon the roadway being entered. (1981 Code, § 14-271, modified)

15-405. Restricted turn signs. All persons operating vehicles on the streets of the city shall obey all authorized signs prohibiting right, left or "U" turns. (1981 Code, § 14-273, modified)

15-406. Limitations on "U" turns. No person operating a vehicle in the city shall turn such vehicle so as to proceed in the opposite direction upon any street in a business district or upon any other street unless such movement can be made in safety and without interfering with other traffic. (1981 Code, § 14-274, modified)

CHAPTER 5

STOPPING AND YIELDING

SECTION

15-501. Upon approach of authorized emergency vehicles.
15-502. Vehicle entering highway from private road, parking lot, driveway or alley.
15-503. To prevent obstructing an intersection.
15-504. At railroad crossings.
15-505. Vehicle entering through highway or stop intersection.
15-506. At "yield" signs.
15-507. At traffic control signals generally.
15-508. At flashing traffic control signals.
15-509. At pedestrian control signals.
15-510. Stops to be signaled.

15-501. Upon approach of authorized emergency vehicles.[1] Upon the immediate approach of an authorized emergency vehicle making use of audible and/or visual signals meeting the requirements of the laws of this state, the driver of every other vehicle shall immediately drive to a position parallel to, and as close as possible to, the right hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

15-502. Vehicle entering highway from private road, parking lot, driveway or alley. The driver of a vehicle emerging from private road, parking lot, driveway or alley shall stop such vehicle immediately prior to driving onto any sidewalk, street or highway and shall yield the right of way to all vehicles approaching on the street or highway. Such vehicles shall not drive on the sidewalk, street or highway until they have yielded and they can safely proceed without colliding or interfering with pedestrians or vehicles. (1981 Code, § 14-256, modified, as amended by Ord. of 12/13/99)

15-503. To prevent obstructing an intersection. No driver shall enter any intersection or marked crosswalk unless there is sufficient space on the other side of such intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of traffic in or on the intersecting

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[1]Municipal code reference
Special privileges of emergency vehicles: title 15, chapter 2.

street or crosswalk. This provision shall be effective notwithstanding any traffic control signal indication to proceed. (1981 Code, § 14-257, modified)

15-504. At railroad crossings. Any driver of a vehicle approaching a railroad grade crossing shall stop within not less than fifteen (15) feet from the nearest rail of such railroad and shall not proceed further while any of the following conditions exist:

(1) A clearly visible electrical or mechanical signal device gives warning of the approach of a railroad train.

(2) A crossing gate is lowered or a human flagman signals the approach of a railroad train.

(3) A railroad train is approaching within approximately fifteen hundred (1500) feet of the highway crossing and is emitting an audible signal indicating its approach.

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing. (1981 Code, § 14-258, modified)

15-505. Vehicle entering through highway or stop intersection.

(1) The driver of a vehicle approaching a stop sign shall stop completely before entering a crosswalk on the near side of the intersection, or if there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at a point nearest the intersecting roadway where the driver or operator has a view of the approaching traffic on the intersecting roadway before entering the intersection. The driver of a vehicle approaching a stop sign shall stop as required herein at the entrance to a through highway and shall yield the right of way to other vehicles which have entered the intersection from the through highway or which are approaching so closely on the through highway as to constitute an immediate hazard.

(2) The driver of a vehicle approaching a stop sign shall stop in obedience to a stop sign at an intersection where a stop sign is erected at one or more entrances thereto although not part of the through highway. The driver shall yield the right of way to vehicles not obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard. (1981 Code, §§ 14-253 and 14-254, modified, as amended by Ord. of 12/13/99)

15-506. At "yield" signs. The drivers of all vehicles shall yield the right of way to approaching vehicles before proceeding at all places where "yield" signs have been posted. (1981 Code, §§ 14-253 and 14-255, modified)

15-507. At traffic control signals generally. Traffic control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, shall show the following colors only and shall apply to drivers of vehicles and pedestrians as follows:

(1) Green alone, or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow alone, or "Caution":

(a) Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter, and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(3) Steady red alone, or "Stop":

(a) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone. Provided, however, that generally a right turn on a red signal shall be permitted at all intersections within the city, provided that the prospective turning car comes to a full and complete stop before turning and that the turning car yields the right of way to pedestrians and cross traffic traveling in accordance with their traffic signal. However, said turn shall not endanger other traffic lawfully using said intersection. A right turn on red shall be permitted at all intersections except those clearly marked by a "No Turns On Red" sign, which may be erected by the city at intersections which the city decides require no right turns on red in the interest of traffic safety.

(b) Pedestrians facing such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(4) Steady red with green arrow:

(a) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.

(b) Pedestrians facing such signal shall not enter the roadway unless authorized so to do by a pedestrian "Walk" signal.

(5) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any

such sign or marking the stop shall be made a vehicle length short of the signal. (1981 Code, § 14-545, modified)

15-508. At flashing traffic control signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal placed or erected in the city it shall require obedience by vehicular traffic as follows:

(a) Flashing red (stop signal). When a red lens is illuminated with intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) Flashing yellow (caution signal). When a yellow lens is illuminated with intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules set forth in § 15-504 of this code. (1981 Code, § 14-547, modified)

15-509. At pedestrian control signals. Wherever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" have been placed or erected by the city, such signals shall apply as follows:

(1) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) Wait or Don't Walk. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to the nearest sidewalk or safety zone while the wait signal is showing. (1981 Code, § 14-546)

15-510. Stops to be signaled. No person operating a motor vehicle shall stop such vehicle, whether in obedience to a traffic sign or signal or otherwise, without first signaling his intention in accordance with the requirements of the state law,[1] except in an emergency.

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[1]State law reference
Tennessee Code Annotated, § 55-8-143.

CHAPTER 6

PARKING

SECTION

15-601. Generally.
15-602. Angle parking.
15-603. Occupancy of more than one space.
15-604. Designation of spaces.
15-605. Where prohibited.
15-606. Loading and unloading zones.
15-607. Presumption with respect to illegal parking.
15-608. Removal of illegally parked vehicles.
15-609. Parking in alleys.
15-610. Parking for display of vehicle for sale or repair.
15-611. Lamps on parked vehicles.
15-612. Buses; loading and unloading on streets, etc.
15-613. Use of bus, taxicab stands by other vehicles restricted.
15-614. Parking restrictions on vehicles that exceed certain capacity limits in residential area.

15-601. Generally. No person shall leave any motor vehicle unattended on any street without first setting the brakes thereon, stopping the motor, removing the ignition key, and turning the front wheels of such vehicle toward the nearest curb or gutter of the street.

Except as hereinafter provided, every vehicle parked upon a street within this city shall be so parked that its right wheels are approximately parallel to and within eighteen (18) inches of the right edge or curb of the street. On one-way streets where the city has not placed signs prohibiting the same, vehicles may be permitted to park on the left side of the street, and in such cases the left wheels shall be required to be within eighteen (18) inches of the left edge or curb of the street.

Notwithstanding anything else in this code to the contrary, no person, unless residing within the fire limits, shall park or leave a vehicle parked on any public street or alley within the fire limits between the hours of 1:00 A.M. and 5:00 A.M. or on any other public street or alley for more than seventy-two (72) consecutive hours without the prior approval of the chief of police.

Furthermore, no person shall wash, grease, or work on any vehicle, except to make repairs necessitated by an emergency, while such vehicle is parked on a public street. (1981 Code, § 14-291, modified)

15-602. Angle parking. On those streets which have been signed or marked by the city for angle parking, no person shall park or stand a vehicle other than at the angle indicated by such signs or markings. No person shall

angle park any vehicle which has a trailer attached thereto or which has a length in excess of twenty-four (24) feet. (1981 Code, § 14-292, modified)

15-603. Occupancy of more than one space. No person shall park a vehicle in any designated parking space during the restricted or regulated time applicable to the parking zone in which such space is located so that any part of such vehicle occupies more than one such space or protrudes beyond the markings designating such space, except that a vehicle which is of a size too large to be parked within a single designated space shall be permitted to occupy two (2) adjoining parking spaces. (Ord. of Aug. 1995)

15-604. Designation of spaces. The city traffic engineer shall be responsible for having the parking space to be used designated by appropriate markings upon the curb and/or the pavement of the street. Parking spaces so designated shall be of appropriate length and width so as to be accessible from the traffic lanes of such street. (Ord. of Aug. 1995)

15-605. Where prohibited. No person shall park a vehicle in violation of any sign placed or erected by the state or city, nor:

(1) On a sidewalk; provided, however, a bicycle may be parked on a sidewalk if it does not impede the normal and reasonable movement of pedestrian or other traffic. Notwithstanding the prohibition against parking a motor vehicle on a sidewalk, a vehicle may be parked on a sidewalk if the city has posted a sign specifically allowing vehicles to park on a sidewalk on a specific street, or a portion thereof. Before posting a sign allowing parking on a sidewalk, the public works department shall determine that parking on a sidewalk on a specific street or a portion thereof is necessary due to specific traffic considerations which make it necessary to allow such parking.

Before the posting of any sign allowing parking on any sidewalk, the public works department shall also make reasonable efforts to notify nearby residents and give them opportunity to comment before any signs are posted.

(2) In front of a public or private driveway;

(3) Within an intersection;

(4) Within fifteen feet (15') of a fire hydrant;

(5) Within a pedestrian crosswalk;

(6) Within twenty feet (20') of a crosswalk at an intersection;

(7) Within thirty feet (30') upon the approach of any flashing beacon, stop sign or traffic control signal located at the side of a roadway;

(8) Within fifty feet (50') of the nearest rail of a railroad crossing;

(9) Within twenty feet (20') of the driveway entrance to any fire station, and on the side of the street opposite the entrance to any fire station within seventy-five feet (75') of such entrance when properly signposted;

(10) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(11) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(12) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(13) In a parking space clearly identified by an official sign as being reserved for the physically handicapped, unless, however, the person driving the vehicle is (a) physically handicapped, or (b) parking such vehicle for the benefit of a physically handicapped person. A vehicle parking in such a space shall display a certificate of identification or a disabled veteran's license plate issued under Tennessee Code Annotated, title 55, chapter 21.

(14) Fire lanes. (1981 Code, § 14-308, modified, as amended by Ord. of 11/13/2001, and Ord. #2009-68, Aug. 2009)

15-606. Loading and unloading zones. No person shall park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers or merchandise in any place marked by the city as a loading and unloading zone. (1981 Code, §§ 14-346 and 14-347, modified)

15-607. Presumption with respect to illegal parking. When any unoccupied vehicle is found parked in violation of any provision of this chapter, there shall be a prima facie presumption that the registered owner of the vehicle is responsible for such illegal parking. (1981 Code, § 14-295, modified)

15-608. Removal of illegally parked vehicles. (1) Members of the police department are hereby authorized to remove a vehicle from a street or highway to the nearest garage or other place of safety, or to a garage designated or maintained by the police department, or otherwise maintained by the city under the circumstances hereinafter enumerated.

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic.

(b) When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.

(c) When any vehicle is left unattended upon a street and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.

(d) Whenever a vehicle is found to be illegally parked in a controlled area and the records at the police department indicate that such vehicle has more than five (5) delinquent parking tickets the same shall be subject to impoundment as provided for herein.

(e) Whenever a vehicle is found to be parked or abandoned on a street that has been designated as a snow or ice emergency route and

said vehicle is impeding the safe and orderly flow of traffic after the mayor has officially proclaimed that a snow or ice emergency exists in the city.

(2) Whenever an officer removes a vehicle from a street as authorized in this section and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, the officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefor and of the place to which such vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage.

(3) Whenever an officer removes a vehicle from a street under this section and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice as hereinabove provided, and in the event the vehicle is not returned to the owner within a period of three (3) days, the officer shall immediately send or cause to be sent a written report of such removal by mail to the state department whose duty it is to register motor vehicles and shall file a copy of such notice with the proprietor of any public garage in which the vehicle may be stored. Such notice shall include a complete description of the vehicle, the date, time and place from which removed, the reasons for such removal, and the name of the garage or place where the vehicle is stored. (1981 Code, § 14-296, modified)

15-609. <u>Parking in alleys</u>. No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such position as to block the driveway entrance to any abutting property. (1981 Code, § 14-310)

15-610. <u>Parking for display of vehicle for sale or repair</u>. No person shall park a vehicle upon a roadway for the principal purpose of:

(1) Displaying such vehicle for sale.

(2) Washing, greasing or repairing such vehicle except repairs necessitated by an emergency. (1981 Code, 14-311)

15-611. <u>Lamps on parked vehicles</u>. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed. (1981 Code, § 14-294, modified)

15-612. <u>Buses; loading and unloading on streets, etc</u>. It shall be unlawful for any owner and/or operator of any bus to allow the loading of passengers onto, or to allow the discharge of passengers from, any omnibus while such bus is upon any street, alley or thoroughfare of the city except where such loading or unloading is casual, intermittent and at a place apart from any bus terminal facility, or where the same is confined to passengers traveling to

and from points within the city to the area within the county immediately adjacent to the city. (1981 Code, § 12-6)

15-613. Use of bus, taxicab stands by other vehicles restricted. No person shall stop, stand or park a vehicle other than a bus in a bus stop or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone. (1981 Code, § 14-352)

15-614. Parking restrictions on vehicles that exceed certain capacity limits in residential area. It shall be unlawful to park between the hours of 9:00 P.M. and 6:00 A.M. any truck with three (3) or more axles, or a bus or van with a capacity of more than fifteen (15) passengers, or a trailer of more than thirty (30) feet in length, or similarly large vehicle generally intended for uses other than personal transportation, within a block along any street classified as a local street by the subdivision regulations of the Cleveland Municipal Planning Commission where the majority of the lots or parcels adjoining the street in that block are developed with residential structures. (as added by Ord. #2007-40, Oct. 2007)

CHAPTER 7

ENFORCEMENT

SECTION

15-701. Issuance of traffic citations.
15-702. Failure to obey citation.
15-703. Illegal cancellation of traffic citations.
15-704. Illegal parking.
15-705. Impoundment and immobilization of vehicles.
15-706. Disposal of abandoned motor vehicles.
15-707. Violation and penalty.

15-701. Issuance of traffic citations.[1] When a police officer halts a traffic violator other than for the purpose of giving a warning, and does not take such person into custody under arrest, he shall take the name, address, and operator's license number of said person, the license number of the motor vehicle involved, and such other pertinent information as may be necessary, and shall issue to him a written traffic citation containing a notice to answer to the charge against him in the city court at a specified time. The officer, upon receiving the written promise of the alleged violator to answer as specified in the citation, shall release such person from custody. It shall be unlawful for any alleged violator to give false or misleading information as to his name or address. (1981 Code, § 14-132, modified)

15-702. Failure to obey citation. It shall be unlawful for any person to violate his written promise to appear in court after giving said promise to an officer upon the issuance of a traffic citation, regardless of the disposition of the charge for which the citation was originally issued. (1981 Code, § 14-137, modified)

15-703. Illegal cancellation of traffic citations. It shall be unlawful for any person to cancel or solicit the cancellation of any traffic citation in any manner other than as provided by this chapter. (1981 Code, § 14-134)

15-704. Illegal parking. Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by this

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[1]Municipal code reference
Issuance of citations in lieu of arrest and ordinance summonses in non-traffic related offenses: title 6, chapter 3.
State law reference
Tennessee Code Annotated, § 7-63-101, et seq.

code, the officer finding such vehicle shall take its license number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a citation for the driver and/or owner to answer for the violation by the next municipal court date during the hours and at a place specified in the citation. (1981 Code, §§ 14-138 and 14-297, modified)

15-705. Impoundment and immobilization of vehicles. 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, or which has been parked for more than one (1) hour in excess of the time allowed for parking in any place, or which has been involved in two (2) or more violations of this title for which citations have been issued and the vehicle not removed. 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 of impoundment and storage, or until it is otherwise lawfully disposed of.

The officer may, at his discretion, immobilize the vehicle by installing on, or attaching to such vehicle, a device designed to restrict the normal movement of the vehicle. If the vehicle is immobilized, the officer shall affix to the vehicle a notice in writing, on a form provided by the chief of police, advising the owner, driver or person in charge of the vehicle that the vehicle has been immobilized by the City of Cleveland Police Department and that release from the immobilization may be obtained at a designated place for a fee of $50.00. It shall be unlawful for any person to remove or attempt to remove any such device before a release is obtained.

15-706. Disposal of abandoned motor vehicles. "Abandoned motor vehicles," as defined in Tennessee Code Annotated, § 55-16-103, shall be impounded and disposed of by the police department in accordance with the provisions of Tennessee Code Annotated, §§ 55-16-103 through 55-16-109.

15-707. Violation and penalty. Any violation of this title shall be a civil offense punishable as follows:

(1) Traffic citations. Traffic citations shall be punishable by a civil penalty up to fifty dollars ($50.00) for each separate offense.

(2) Parking citations. (a) Time limit parking. If the offense, and each violation shall be considered a separate offense, is a time limit parking violation, the offender may, prior to the next municipal court date, have the charge against him disposed of by paying to the city clerk a fine of fifteen dollars ($15.00) for each offense within twenty-four hours of the time when such citation was attached to such vehicle. If he or she fails

to pay the citation on or before the scheduled court date, the fine shall be thirty dollars ($30.00) for each offense.

(b) Handicapped parking. For the violation of parking in a handicapped parking space under § 15-604(13) of this code, the offender may be punished by a civil penalty of up to fifty dollars ($50.00).

(c) Upon finding that a vehicle has been parked in excess of the time allowed and has outstanding three (3) unpaid delinquent parking citations, the officer may, at his discretion, immobilize the vehicle by installing a boot on, or attaching to such vehicle, a device designed to restrict the normal movement of the vehicle. If the vehicle is immobilized, the officer shall affix to the vehicle a notice in writing, on a form provided by the chief of police, advising the owner, driver or person in charge of the vehicle that the vehicle has been immobilized by the City of Cleveland Police Department and that a release from the immobilization may be obtained by payment of all fees and expenses. Booted vehicles that remain longer than 24 hours may be towed and a hold will be placed on the vehicle until such time as all fines and towing costs are resolved. It is owner's responsibility to pay all costs associated with towing. It shall be unlawful for any person to move, remove or attempt to remove any such device or the vehicle before a release is obtained.

(d) Upon finding a vehicle parked in a fire lane or within 15 feet of a fire hydrant the vehicle will be towed. The violator is responsible for the tow bill and any storage bill. The officer will remain with the vehicle until the tow truck arrives unless called to respond to another call. The tow truck will be canceled by the officer when possible should the violator return to the vehicle before the tow truck arrives. A violation of this section will result in a fine not to exceed $50.00. A second or subsequent violation of this section will result in an additional fine not to exceed $50.00, and the vehicle will be towed. (as amended by Ords. of 1/22/2001, and Ord. of 12/10/2001)

CHAPTER 8

AUTOMATED TRAFFIC SIGNAL ENFORCEMENT SYSTEMS

SECTION

15-801. Definitions.
15-802. Administration.
15-803. Offenses.
15-804. Procedure.
15-805. Civil penalty.
15-806. Miscellaneous.

15-801. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

(1) "Citations and warning notices" shall include:

(a) The name and address of the registered owner of the vehicle;

(b) The registration plate number of the motor vehicle involved in the violation;

(c) The violation charged;

(d) The location of the violation;

(e) The date and time of the violation;

(f) A copy of the recorded image;

(g) The amount of the civil penalty imposed and the date by which the civil penalty should be paid;

(h) A signed statement by a member of the police department that, based on inspection of recorded images, the motor vehicle was being operated in violation of § 15-803;

(i) A statement that recorded images are evidence of a violation of § 15-803; and

(j) Information advising the person alleged to be liable under this section:

(i) Of the manner and time in which liability alleged in the citation occurred and that the citation may be contested in the Cleveland Municipal Court; and

(ii) Warning that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

(2) "In operation" means operating in good working condition.

(3) "Recorded images" means images recorded by a traffic control photographic system:

(a) On:

(i) A photograph; or

(ii) A microphotograph; or

(iii) An electronic image; or
(iv) A videotape; or
(v) Any other medium; and

(b) At least one (1) image or portion of take, clearly identifying the registration number of the motor vehicle.

(4) "Stop line" is a transverse white marking at an approach to an intersection that indicates a point behind which all vehicles must stop when so required by a traffic control sign, signal or device.

(5) "System location" is the approach to an intersection toward which a photographic, video or electronic camera is directed and is in operation.

(6) "Traffic control photographic system" is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control sign, signal or device, and to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control sign, signal or device.

(7) "Vehicle owner" is the person identified by the Tennessee Department of Safety as the registered owner of a motor vehicle or a lessee of a motor vehicle under a lease of six (6) months or more. (as added by Ord. #2008-05, Jan. 2008)

15-802. <u>Administration</u>. (1) The Cleveland Police Department or an agent of the department shall administer the traffic control photographic systems and shall maintain a list of system locations where traffic control photographic systems are installed. The city may contract with third parties to perform ministerial and clerical functions.

(2) Any citation or warning for a violation of § 15-803 issued by an officer of the Cleveland Police Department at a system location shall be treated in the manner prescribed in this chapter.

(3) No third party contractor shall have the authority to issue citations and no citations shall be issued except upon the review of the photograph(s), digital and/or video images by the Cleveland Police Department. Upon review of such images by the Cleveland Police Department, on each case, and upon express approval for the issuance of a citation by the Cleveland Police Department, a third party contractor may perform the ministerial and clerical functions of preparing, mailing, serving and/or processing citations.

(4) The city shall adopt procedures for the issuance of citations and warnings under this section. A citation or warning alleging that the violation of § 15-803 of this chapter occurred, sworn to or affirmed by officials or agents of the city, based on inspection of recorded images produced by a traffic control photographic system, shall be prima facie evidence of the facts contained therein and shall be admissible in any proceeding alleging a violation under this chapter. The citation or warning shall be forwarded by first-class mail postmarked no later than thirty (30) days after the date of the alleged violation, to the vehicle owner's address as given on the motor vehicle registration records

maintained by the State of Tennessee Department of Safety and other states' motor vehicle registration departments. Personal delivery to or personal service of process on the owner of the vehicle shall not be required.

(5) Signs to indicate the use of traffic control photographic systems shall be clearly posted. Signs to indicate the use of traffic control photographic systems shall be posted in advance of individual system locations and may be posted elsewhere in the city.

(6) The City of Cleveland shall have all necessary power and authority to contractually provide for the purchase, lease, rental acquisition and/or to enter a service contract(s) so as to fully and necessarily implement the provisions of the traffic control photographic system authorized hereby. (as added by Ord. #2008-05, Jan. 2008)

15-803. Offense. It shall be unlawful for a vehicle to cross the stop line at a system location, in disregard or disobedience of the traffic control sign, signal or device at such location, or to otherwise violate any section of the Cleveland Municipal Code with respect to obedience to traffic lights, stop signs or traffic signals.

The owner of a vehicle shall be responsible for a violation under this chapter, except as provided herein. When such owner provides evidence in accordance with the procedures set forth in § 15-804(2) that the vehicle was in the care, custody or control of another person at the time of the violation, then the person who had the care, custody and control of the vehicle at the time of the violation shall be responsible. (as added by Ord. #2008-05, Jan. 2008)

15-804. Procedure. (1) A person who receives a citation or warning notice under this chapter may:

(a) Pay the civil penalty, in accordance with instructions on the citation, directly to the City of Cleveland; or

(b) Elect to contest the citation for the alleged violation in a hearing before the City Judge of the Cleveland Municipal Court, in accordance with the instructions on the citation.

(2) Liability under this chapter shall be determined based upon preponderance of the evidence. Admission into evidence of a citation or warning notice, together with proof that the defendant was, at the time of the violation, the registered owner of the vehicle shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(a) Testifies under oath in open court that the owner was not the operator of the vehicle at the time of the alleged violation and the trier of fact accepts such testimony as true; or

(b) Furnishes to city court, prior to the return date established on the citation or warning notice, the owner's sworn notarized affidavit

or statement, under penalty of perjury, that the vehicle was in the care, custody or control of another person or entity at the time of the violation and accurately identifying the name and accurately stating the current address and relationship to or affiliation with the owner of the person or entity who leased, rented or otherwise had possession of the vehicle at the time of the alleged violation; or

(c) Furnishes to city court, prior to the return date established on the citation or warning notice, a certified copy of a police report showing that the vehicle or the registration plates had been reported to the police as stolen prior to the time of the alleged violation or within a timely manner after the alleged theft occurred; or

(d) Furnishes to city court, prior to the return date established on the citation or warning notice, an affidavit or statement under penalty of perjury signed by the owner before a notary public, stating that, at the time of the alleged violation, the vehicle involved was stolen or was in the care, custody or control of some person who did not have the owner's permission to use the vehicle. If the owner elects to present such an affidavit or statement, the affidavit or statement must include one of the following statements:

(i) The actual operator of the vehicle at the time of the alleged violation is unknown to the owner; or

(ii) The actual operator of the vehicle at the time of the alleged violation is known to the owner. If the affidavit or statement includes this sentence, then the affidavit or statement must also include information accurately identifying the name and the current address of the driver at the time of the alleged violation.

(e) In the case of a commercial vehicle with a registered gross weight of ten thousand (10,000) pounds or more, a tractor vehicle, a trailer operated in combination with a tractor vehicle, or a passenger bus, in order to demonstrate that said owner was not the violator, the owner shall, in a letter mailed to the city court by certified mail, return receipt requested:

(i) State that the person named in the citation was not operating the vehicle at the time of the violation; and

(ii) Provide the name, address and driver's license identification number of the person who was operating the vehicle at the time of he violation.

(3) In the event the owner of a vehicle provides a name and address of a person or entity other than the owner who had leased, rented or otherwise had care, custody, control or possession of the vehicle at the time of the alleged violation, the city shall then issue a citation or warning to the person or entity so identified. (as added by Ord. #2008-05, Jan. 2008)

15-805. **Civil penalty**. (1) Any violation of this chapter shall be deemed a civil violation for which a civil penalty of fifty dollars ($50.00) shall be assessed.

(2) Failure to pay the civil penalty by the designated date, or appear in court to contest the citation on the designated date, or to otherwise provide the information under § 15-804(2)(b),(c),(d) or (e) shall be deemed an acknowledgment by the owner of an indebtedness to the City of Cleveland of fifty dollars ($50.00) and shall result in an imposition of a judgment by default of fifty dollars ($50.00.) Such a default judgment will also result in the assessment of court costs and litigation tax as otherwise provided for under the Cleveland Municipal Code for non-parking offenses. The city may collect this debt in the same manner as any other debt to the city.

(3) All revenues generated from penalties and assessments associated with the enforcement of this chapter shall be applied to the costs incurred in administering the provisions of this chapter, including, but not limited to, equipment costs, administrative costs, and associated processing costs. Any excess revenues shall then be limited to the payment of costs associated with traffic and safety education programs and, thereafter, shall be available for general government operating and capital expenditures.

(4) A violation for which a civil penalty is imposed under this section shall not be considered a moving violation and may not be recorded by the Cleveland Police Department or the Tennessee Department of Safety on the driving record of the owner or driver of the vehicle and may not be considered in the provision of motor vehicle insurance coverage. (as added by Ord. #2008-05, Jan. 2008)

15-806. **Miscellaneous**. All recorded images generated by the traffic control photograph system, including, but not limited to, photographs, electronic images, and videotape, shall be solely owned by the City of Cleveland. (as added by Ord. #2008-05, Jan. 2008)

CHAPTER 9

RESTRICTIONS ON USE OF CERTAIN STREETS BY CERTAIN TRUCKS; TRUCK ROUTES

SECTION

15-901. Restrictions on use of certain streets by certain trucks.
15-902. Truck routes.
15-903. Violations and penalty.

15-901. Restrictions on use of certain streets by certain trucks.

(1) As used in this chapter, the word "truck" shall mean any type of truck with five (5) or more axles.

(2) Trucks, as defined in this chapter, shall not be operated at any time on any of the following streets within the City of Cleveland:

(a) On North Ocoee Street (State Route 74) beginning at its intersection with 25th Street (State Route 60) and continuing north to the intersection of North Ocoee Street and Keith Street (U.S. 11 and State Route 2).

(3) Exceptions. The following are exceptions to the prohibition listed in § 15-901(2).

(a) The operation of any emergency vehicles.

(b) The operation of trucks owned or operated by the city, or any contractor or material man, while engaged in the repair, maintenance, or construction of the street, street improvements, or street utilities.

(c) If the truck has been officially detoured through the city by lawful authority.

(d) The operation of trucks upon any street where necessary to the conduct of business at a destination point within the city, provided streets designated as truck routes are used until reaching the intersection nearest the destination point.

(4) No person shall be charged with a violation of this section unless the street is marked with appropriate signs approved by the Tennessee Department of Transportation which notify trucks with five or more axles of the prohibition on truck traffic.

(5) Any street restricted as to truck traffic under the provisions of this section shall be subject to the posting of a notice on at least two (2) occasions in a newspaper of general circulation. Said notice shall be published at least thirty (30) days prior to the posting of signage on the restricted street. (as added by Ord. #2008-07, Feb. 2008)

15-902. Truck routes. (1) The city hereby designates the following route as a truck route for use by trucks as defined in this chapter.

Beginning with the intersection of 25th Street (State Route 60) and continuing West to Keith Street (U.S. 11 - State Route 2). This truck route shall be posted with appropriate signs as approved by the Tennessee Department of Transportation.

(2) Under the provisions of this section, this truck route shall be subject to the posting of a notice on at least two (2) occasions in a newspaper of general circulation. Said notice shall be published at least thirty (30) days prior to the posting of signage of the truck route. (as added by Ord. #2008-07, Feb. 2008)

15-903. Violations and penalty. It shall be unlawful for any person to violate any provisions of this chapter. Any person violating the provisions of this chapter shall be subject to a civil penalty for each violation not to exceed fifty dollars ($50.00), plus applicable court costs and litigation tax. (as added by Ord. #2008-07, Feb. 2008)

TITLE 16

STREETS, SIDEWALKS, AND DRAINAGE[1]

CHAPTER

1. MISCELLANEOUS.
2. STREET CUTS.
3. RAILROADS AND TRAINS.
4. STORM-WATER DRAINAGE.

CHAPTER 1

MISCELLANEOUS

SECTION

16-101. Trees projecting over streets, etc., regulated.
16-102. Trees, etc., obstructing view at intersections prohibited.
16-103. Projecting signs and awnings, etc., restricted.
16-104. Banners and signs located on streets or public ways restricted.
16-105. Obstruction of drainage ditches.
16-106. Abutting occupants to keep sidewalks clean, etc.
16-107. Parades, etc., regulated.
16-108. Animals and vehicles on sidewalks.
16-109. Unlawful to seize, trespass upon, etc., public streets, etc.
16-110. Unlawful to burn trash, etc., on streets.
16-111. Chapter not to interfere with cleanup or sanitation of city.
16-112. Unlawful to hang wires lower than sixteen feet from top of ground.
16-113. Unlawful to construct gates, etc., which open over the sidewalk.
16-114. Projecting signs and awnings, etc., restricted.
16-115. Use of streets, etc. by tracked vehicles, farm machinery, etc.
16-116. Unlawful to place or leave ashes, leaves, paper, construction related debris (including mud), etc. on street or sidewalk.
16-117. Unlawful to place boxes, barrels, brush, etc., on streets so as to obstruct free passage of the public.
16-118. Abutting property owner may be required to build and/or repair sidewalks.
16-119. Notice to property owner to build; construction by city upon owner's failure.
16-120. Specifications.
16-121. Permission and direction required for building or repairs.

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[1]Municipal code reference
Motor vehicle and traffic regulations: title 15.

16-122. Misdemeanor to fail to build sidewalks when so ordered.
16-123. Procedures for abandonment of streets, alleys, etc.
16-124. Prohibition on play and the use of skateboards, roller skates, and coasters within the City of Cleveland.
16-125. Traffic calming measures.

16-101. <u>Trees projecting over streets, etc., regulated</u>. It shall be unlawful for any property owner or occupant to allow any limbs of trees on his property to project over any street or alley at a height of less than fourteen (14) feet or over any sidewalk at a height of less than eight (8) feet.

16-102. <u>Trees, etc., obstructing view at intersections prohibited</u>. It shall be unlawful for any property owner or occupant to have or maintain on his property any tree, shrub, sign, or other obstruction which prevents persons driving vehicles on public streets or alleys from obtaining a clear view of traffic when approaching an intersection.

16-103. <u>Projecting signs and awnings, etc., restricted</u>. Signs, awnings, or other structures which project over any street or other public way shall be erected subject to the requirements of the building code.[1]

16-104. <u>Banners and signs located on streets or public ways restricted</u>. (1) It shall be unlawful for any person to place or have placed a sign or banner across, above or within any public street or way except as provided herein:

(a) The Cleveland/Bradley Chamber of Commerce is hereby designated as the coordinating agency to receive applications and recommend approval of installations to the Cleveland Planning and Inspections Office who shall issue the appropriate permit(s);

(b) Cleveland Utilities, Electric Division, shall, upon compliance with the approved application procedures and notification of such approval by the Chamber of Commerce, install to certain specifications and remove all approved banners;

(c) Banners that span across any public street or way are prohibited.

(d) A specified number of locations of street light poles located in the area along 25th Street from Interstate 75 East to North Ocoee Street (U.S. 11) are permitted for installation of an approved banner to include the following street light pole numbers:

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[1]Municipal code reference
Building code: title 12, chapter 1.

675, 676, 681, 684, 688, 689, 693, 694, 699, 700, 704, 707, 712, 717, 718, 721, 722, 727, 730, 735, 740, 745, 748, 752, and an unnumbered pole on the Southwest corner of 25th Street and North Ocoee Street.

In addition to the foregoing, approved poles are also located in the downtown Cleveland area on Inman Street from the railroad underpass to Keith Street and on Ocoee and Broad Streets from Firehall No. 1 to the monument. Approved poles are also located on certain streets in and around the Lee University area. Downtown poles and Lee University area poles are subject to approval by Cleveland Utilities. The approved poles located within the downtown area and within the Lee University area are as follows:

LOCATION #	DESCRIPTION	STREET LIGHT #
1	Parker Street North of Central Avenue	2442
2	Corner of Parker Street and 4th Street	2441
3	Corner of Parker Street and 5th Street	2440
4	Corner of Parker Street and 6th Street	2439
5	Corner of Parker Street and 7th Street	2438
6	Corner of Parker Street and 8th Street	2285
7	Corner of 8th Street and Trunk Street	2284
8	Corner of 8th Street and Walker Street	2283
9	8th Street between Walker and Montgomery Street	2282
10	Corner of 8th Street and Montgomery Avenue	2281
11	8th Street between Parker Street and Church Street	2286
12	Corner of 8th Street and Church Street	2554
13	8th Street West of Church Street	5338
14	8th Street East of Ocoee Street	4135
15	8th Street between Ocoee Street and Broad Street	2945
16	Corner of Broad Street and 8th Street	2991
17	East side of Ocoee Street North of 8th Street	2946

18	Ocoee Street South of Bowman Avenue	2947
19	9th Street East of Ocoee Street	3146
20	Ocoee Street North of Bowman Avenue	2948
21	Ocoee Street North of Bowman Avenue	3275
22	Ocoee Street North of Bowman Avenue	2949
23	Ocoee Street North of 11th Street	2950
24	Ocoee Street North of 11th Street	2951
25	Corner of Ocoee Street and Centenary Avenue	2952
26	Ocoee Street North of Centenary Avenue	2953
27	Ocoee Street North of Centenary Avenue	3276
28	Corner of 13th Street and Ocoee Street	2954
29	Ocoee Street North of 13th Street	3277
30	Corner of Ocoee Street and 14th Street	2955
31	East side of Ocoee Street South of 15th Street	3283
32	Ocoee Street across from 15th Street	2956
33	15th Street between Ocoee Street and Church Street	2378
34	Corner of 15th Street and Church Street	2542
35	Church Street between 15th and 16th Streets	2541
36	Corner of Church Street and 16th Street	2540
37	Church Street between 16th and 18th Streets	2539
38	Church Street between 16th and 18th Streets	2538
39	Corner of Church Street and 18th Street	2537
40	Church Street between 18th Street and 20th Street	2536
41	Corner of Church Street and 20th	2535

42	20th Street between Church and Parker Streets	1512
43	20th Street between Church and Parker Streets	1513
44	20th Street between Church and Parker Streets	1514
45	18th Street between Parker and Church Streets	2460
46	15th Street between Church and Parker Streets	2377
47	Magnolia Avenue South of 20th Street	2410
48	Corner of Magnolia Avenue and 19th Street	2411
49	Corner of Magnolia Avenue and 18th Street	2412
50	Corner of Magnolia Avenue and 17th Street	2413
51	Corner of Magnolia Avenue and 15th Street	2375
52	Corner of Magnolia Avenue and 15th Street	2374
53	Corner of Magnolia Avenue and 13th Street	2417
54	Corner of Magnolia Avenue and 12th Street	2418
55	15th Street between Magnolia Avenue and Peoples Street	2373
56	Corner of 15th Street and Peoples Streets	2372
57	Peoples Street between 13th and 15th Streets	2475
58	Corner of Peoples Street and 13th Street	2473
59	Corner of 12th Street and People Street	2479
60	13th Street between Peoples and Montgomery Streets	2471
61	Corner of 12th Street and Montgomery Street	2478
62	13th Street between Peoples Street and Magnolia Avenue	2470

A map of approved pole locations shall be available in the Chamber of Commerce office and at Cleveland Utilities, Electric Division.

There shall be no exceptions to the foregoing approved pole locations unless additional pole locations are approved by an ordinance amending this section approved by the city council.

(e) The standard banner size shall be no larger than 30 inches in width by 102 inches in length (30" x 102") on 25th Street and be limited to only 30 inches in width by sixty inches in length (30" x 60") in the downtown area and the Lee University area and further is subject to the following specifications:

(i) The banner material shall be heavy-duty, weather-resistant, and double-sided;

(ii) The diameter of the banner mounting pole shall be one and one-quarter (1-1/4") inches;

(iii) The banner sleeve diameter shall be six and one-half (6-1/2") inches; and,

(iv) The approved applicant shall mount the two (2) bars per banner in the sleeve prior to installation by Cleveland Utilities.

(f) Banners may be used only for the purpose of promoting and/or sponsoring non-profit events, activities and functions.

(g) Banners that are for political campaigns, for profit advertising or any other purpose deemed to be a violation of the non-profit theme as stated in item (f) of this section are prohibited. The Chamber of Commerce shall be responsible for deciding the eligibility of the application for a banner.

(h) Organizations or persons shall make application to the Chamber of Commerce a minimum of thirty (30) calendar days prior to the opening date of the event. The chamber shall determine the eligibility of the event, then notify the applicant of their decision within seven (7) calendar days of receipt of the application. If the application is approved, the applicant shall provide the chamber the banner(s) as well as any necessary mounting equipment, supports and/or related hardware to properly install the banner(s). The sponsoring organization shall provide the chamber proof of liability insurance with the application.

(i) Banner(s) shall be removed by Cleveland Utilities, Electric Division, a minimum of two (2) weeks following an event's closing date. The banners may be reclaimed by the applicant or the applicant's designee within seven (7) calendar days without charge. Banners stored after the seven (7) days may be subject to a fee for storage not to exceed five ($5) dollars per day. The chamber or the employees of the chamber or Cleveland Utilities or employees of the City of Cleveland shall not be held liable for any damage to any banner during any phase of this process of approving, installing, displaying, removing or storage of a banner(s).

(j) The Chamber of Commerce shall assess a fee of up to twenty dollars ($20.00) per banner to defray the cost of Cleveland Utilities personnel and equipment used to install or remove a banner(s). The

chamber shall periodically reimburse Cleveland Utilities after receipt of a statement that specifies the date of the work performed, personnel and equipment utilized, the number of banners installed or removed and a total cost to be remitted. (as replaced by Ord. of 7/14/97, and amended by Ord. of 7/8/02, and Ord. #2005-48, Jan. 2006)

16-105. Obstruction of drainage ditches. It shall be unlawful for any person to permit or cause the obstruction of any drainage ditch in any public right of way.

16-106. Abutting occupants to keep sidewalks clean, etc. The occupants of property abutting on a sidewalk are required to keep the sidewalk clean. Also, immediately after a snow or sleet, such occupants are required to remove all accumulated snow and ice from the abutting sidewalk.

16-107. Parades, etc., regulated. It shall be unlawful for any person, club, organization, or other group to hold any meeting, parade, demonstration, or exhibition on the public streets without some responsible representative first securing a permit from the city clerk. Such group shall also provide a $500 refundable deposit for failure to clean up litter and trash resulting from the parade. If the group cleans the parade route they shall be refunded their $500 deposit fee. If the route is not clean, the city will clean the route and deduct the cost from the $500 deposit.

Such group shall also file a certificate of insurance indicating that it is insured against claims for damages for personal injury as well as against claims for property damage up to $500,000.

16-108. Animals and vehicles on sidewalks. It shall be unlawful for any person to ride, lead, or tie any animal, or ride, push, pull, or place any vehicle across or upon any sidewalk in such manner as unreasonably interferes with or inconveniences pedestrians using the sidewalk. It shall also be unlawful for any person knowingly to allow any minor under his control to violate this section.

16-109. Unlawful to seize, trespass upon, etc., public streets, etc. It shall be unlawful within the city for any person to seize, trespass upon, hold or occupy any of the streets, alleys or highways of the city or any other public place without due permission of the city or of such other body politic, officer or custodian as may be lawfully in charge of such public place, or to refuse to disperse or vacate same when so directed by any lawful officer of the city. (1981 Code, § 21-1)

16-110. Unlawful to burn trash, etc., on streets. It shall be unlawful and a misdemeanor for any person to burn any trash, rubbish or other waste

material whatsoever upon any street, avenue, highway or alley, or portion thereof or willfully or negligently to damage or destroy such streets, avenues, alleys or highways or any portion thereof, by the willful or negligent application of heat in any manner whatsoever; or willfully or negligently to damage or destroy the same by the leakage, drainage or wastage of crude oil, gasoline, benzine, naptha, kerosene, petroleum or bituminous or other damaging products upon the same. (1981 Code, 21-3)

16-111. Chapter not to interfere with cleanup or sanitation of city. Nothing in this chapter shall be construed to prohibit or interfere with the cleanup or sanitation of the city. Rubbish and/or refuse may be placed on the streets or sidewalks by citizens for collection purposes in the manner and on the dates as prescribed by the public works director. (1981 Code, § 21-12, modified)

16-112. Unlawful to hang wires lower than sixteen feet from top of ground. It shall be unlawful for any telegraph, telephone, cable television, or electric utility, or for any other person to place wires or guy wires on the streets or alleys within the limits of the city lower than sixteen (16) feet from the top of the ground; except upon written permit granted by the city manager. (1981 Code, § 21-4, modified)

16-113. Unlawful to construct gates, etc., which open over the sidewalk. It shall be unlawful for any person to construct, erect or hang any gates, doors or any kind of device so that same opens or swings upon or across any sidewalk, street or alley within the corporate limits of the city. (1981 Code, 21-5)

16-114. Projecting signs and awnings, etc., restricted. Signs, awnings, or other structures which project over any street or other public way shall be erected subject to the requirements of the building code.

16-115. Use of streets, etc., by tracked vehicles, farm machinery, etc. (1) It shall be unlawful and a misdemeanor for any person owning or operating any traction engine, farm implement, piece of machinery or any vehicle whatsoever mounted upon tracks, the wheels of which are rimmed with steel, iron or other metallic substance with treads bearing upon their exposed faces, corrugations, protuberances or raised portions, or any conductor, driver or operator of such vehicle, to drive, haul or otherwise transport such vehicle as hereinbefore described over, upon or across any street, the surface of which shall have been improved or paved with permanent material, or any material other than gravel, chert or water-bound macadam, except as hereinafter provided.

(2) In case such person owning or operating any such vehicle as is hereinabove fully described and set forth wishes to transport, drive, haul or pass such vehicle across any such paved or improved street as is hereinabove

described for the purpose of passing from one portion to another of some unimproved cross street, avenue, highway or alley, or to or from any property or lot of land adjacent to or abutting upon any such paved or improved street as is hereinabove described, it shall be his duty to first apply to the city manager for a license or permit so to do, and, upon receipt of such license or permit as the city manager may at his discretion grant, it shall be his further duty fully to protect such improved and paved street at the point where he may wish to cross the same with such vehicle, by means of wooden skids or wheelways, or other suitable device satisfactory to the city manager, and it shall further be the duty of such person as hereinabove set forth, in case of damage or destruction, by accident or otherwise consequent upon the passage of such vehicle, to the paved or improved surface of such street to bear the cost of repairing or replacing such damaged or destroyed portions of such paved or improved street after such repairs or replacements shall have been made by authority of the city and cost thereof fully determined, and to make bond to the city in such amount as may by inspection appear to cover such damage or destruction, with good and satisfactory surety, conditioned that he will bear such cost of repairs or replacements as soon as the amount thereof shall have been fully determined. (1981 Code, § 21-8, modified)

16-116. Unlawful to place or leave ashes, leaves, paper, construction related debris (including mud), etc., on street or sidewalk. It shall be unlawful for any person to place or cause to be placed or left upon any street, alley or sidewalk within the city, any leaves, straw, ashes, paper, dirt, bottles, pieces of glass, construction related debris (including mud), or any substances, instrument or materials which does or is calculated to in any way render the condition of such street, alley or sidewalk, unsightly or not sanitary, or to interfere with traffic or drainage. (1981 Code, § 21-9, modified)

16-117. Unlawful to place boxes, barrels, brush, etc., on streets so as to obstruct free passage of the public. It shall be unlawful for any person to obstruct the streets, alleys or sidewalks of the city, by placing boxes, barrels, brush or any other thing thereon so as to obstruct the free passage of the public. (1981 Code, § 21-10)

16-118. Abutting property owner may be required to build and/or repair sidewalks. Any person owning real estate abutting on any street, avenue or alley may be required to build and keep in repair such sidewalks as the city council shall direct to be built, the building of which shall be done under the direction of the city manager. (1981 Code, § 21-46, modified)

16-119. Notice to property owner to build; construction by city upon owner's failure. (1) Whenever it is deemed necessary by the city council that any sidewalk within the limit of the city shall be constructed or repaired,

the city manager shall have notice served upon the owner of the abutting property or upon the person having the same in charge to construct or repair the sidewalk or pavement, notifying him of the character of material to be used, the width and other reasonable requirements, which notice shall give him thirty (30) days within which to build such pavement, and which notice may be served by the chief of police.

(2) If after having received such notice any property owner shall fail to construct his walk of such material as the city manager may designate and in strict accordance with the specifications such city manager may make, then the city manager is authorized to contract for the construction or repair of such sidewalk or pavement upon the best terms obtainable and cause the same to be made according to such specifications, and when the cost of the same shall have been paid from the city treasury, the amount so paid shall constitute a charge against the owner or owners of such property and become a lien on such property, and may be recovered before any tribunal having jurisdiction of such matters. The owner of such property shall be given ninety (90) days within which to reimburse the city for such expenditure and shall be charged interest on such amount from the time of completion of the work, and an additional sum of one dollar ($1.00) as a penalty. (1981 Code, § 21-47, modified)

16-120. Specifications. The city council through the city manager shall designate such sidewalks and the material to be used in their construction as shall be in keeping with the locality of the property affected, and shall designate the width and make such other specifications as would be suitable and in keeping with the value of the property and the location of the same, making the sidewalks in any certain locality all of the same material and of uniform dimensions. (1981 Code, § 21-48, modified)

16-121. Permission and direction required for building or repairs. The construction and repair of all sidewalks shall be under the direction of city authorities, and no property owner shall undertake to build or repair any walks or pavements anywhere within the limits of the city unless the same shall be done with the permission of the city manager and under the direction of the city manager or other person authorized to superintend such work.

Properties within the area zoned for central business district are eligible for financial assistance to install decorative sidewalks, depending upon the availability of funds. Projects will be selected giving priority to those covering the largest total continuous linear feet of sidewalk. The city will remove the existing sidewalk and contract for the installation of decorative brick sidewalks using plans and specifications approved by the director of public works and city manager. The adjoining property owners will pay for one half (1/2) of the contract price to install the decorative brick sidewalks. Said payment must be agreed to before the removal and reconstruction begins, using an agreement acceptable to the city attorney. The actual payment must be received by the city

clerk no later than ninety (90) days from billing, which will be issued upon completion of the construction contract. (1981 Code, § 21-49, modified, as amended by Ord. of June 1998)

16-122. Misdemeanor to fail to build sidewalks when so ordered. Any property owner failing to comply with the demands of the city in building sidewalks or pavements within the time specified in his notice from the city, or any person who shall construct or repair any sidewalk without first obtaining permission as above provided shall be guilty of a misdemeanor. (1981 Code, § 21-50)

16-123. Procedures for abandonment of streets, alleys, etc. The procedures for abandonment of a street, alley or any other right of way or easement shall be as follows:

(1) The party or parties requesting the abandonment shall submit an application to the city manager which shall be signed by all owners of the property adjoining the street, alley or right of way which is to be abandoned. The application shall have a tax map from the assessor of property's office designating the area to be abandoned.

(2) The application shall then be submitted to the planning commission for approval or disapproval. The city planning commission shall submit the request to Cleveland city departments and any other interested party for a determination of their interest in the right of way.

(3) If the planning commission recommends the abandonment the planning director, utilizing personnel and equipment of the public works department, shall have a sign placed at each end of the right of way proposed for abandonment. An ad shall be placed in a local newspaper which shall contain the date the city council will have a public hearing to consider the request and also contain a copy of the tax map showing the area sought to be abandoned. No action shall be taken by city council until 5 days after both the ad and signs have been placed. (Ord. of Aug. 1995, as amended by Ord. of 9/13/99, § 1)

16-124. Prohibitions on play and the use of skateboards, roller skates, and coasters within the City of Cleveland. (1) Definitions: For the purpose of this section, the following words shall have the following meanings:

(a) "Coaster" shall mean a footboard mounted upon two or more wheels and is most often propelled by the user in an upright standing position or while kneeling.

(b) The "courthouse and courthouse annex area" of the City of Cleveland means all that area of land bounded by Worth Street on the West, Second Street on the North, Ocoee Street on the East, and First Street on the South, including the sidewalks lining these streets on either side.

(c) The "downtown area" of the City of Cleveland means from and including Broad Street (NE and SE) on the West, Central Avenue (NE and NW) on the North, Edwards Street (NE and SE) on the East, and Third Street (SW and SE) on the South. The downtown area is inclusive of these street sections, their intersections with each other and connecting streets, and sidewalks lining these street sections on either side.

(d) "Roller skates" or "roller blades" shall mean any footwear or device which may be attached to the foot or footwear, to which wheels are attached, including wheels that are "in line" and where such wheels may be used to aid the wearer in moving or propulsion.

(e) "Skateboard" shall mean a foot board of any material, which has wheels attached to it, and is usually propelled by the user who sometimes sits, stands, kneels or lays upon the device while it is in motion.

(2) Actions prohibited. (a) Within the courthouse and courthouse annex area. It shall be unlawful for any person to use roller skates, roller blades, coasters, or skateboards within, in, or upon any property within the courthouse and courthouse annex area of the City of Cleveland, Tennessee, at any time. This prohibition is applicable 24 hours a day, 7 days a week, 365 days a year.

(b) Within the downtown area of the City of Cleveland (excluding the courthouse and courthouse annex area). It shall be unlawful for any person to play on any of the streets or highways within the downtown area of the City of Cleveland. It shall be also unlawful for any person to use roller skates, roller blades, coasters, or skateboards on any public street, public parking lot, public sidewalk, public alley, public park, or upon any other public property within the downtown area of the City of Cleveland, Tennessee, during the hours of 9:00 A.M. to 5:00 P.M. local time.

(c) Actions prohibited on designated city streets and highways within the city. In addition to the actions prohibited in 16-124(2)(a), no person shall play on or use skateboards, roller skates, coasters, upon any of the following streets of highways within the corporate limits of the City of Cleveland.

(i) I-75 within the city limits of Cleveland, Tennessee

(ii) APD-40 (SR 311) within the city limits of Cleveland, Tennessee

(iii) South Lee Highway (SR 2) from the city limits to Keith Street (SR 2)

(iv) Keith Street (SR 2) from South Lee Highway (SR 2) to Paul Huff Parkway

(v) North Lee Highway (SR 2) from Paul Huff Parkway to the city limits

(vi) Paul Huff Parkway from Georgetown Road (SR 60) to North Lee Highway

(vii) 25th Street (SR 60) from I-70 to the city limits

(viii) Norman Chapel Road from Peerless Road to I-75

(ix) Westside Drive from 25th Street (SR 60) to Norman Chapel Road

(x) Georgetown Road from Harrison Pike (SR 312) to 25th Street (SR 60)

(xi) Peerless Road from Georgetown Road to Paul Huff Parkway

(xii) Mouse Creek Road from North Ocoee Street (SR 74) to Valley Head Road

(xiii) Valley Head Road from Mouse Creek Road to Peerless Road

(xiv) North Ocoee Street (SR 74) from Inman Street (SR 40) to Keith Street

(xv) South Ocoee Street (SR 74) from Inman Street (SR 40) to Blue Springs Road

(xvi) Blue Springs Road from Old Chattanooga Pike to APD-40 (SR 311)

(xvii) Broad Street (SR 74) from 8th Street to 6th Street

(xviii) Harrison Pike (SR 312) from Keith Street (SR 2) to Westside Drive

(xix) Inman Street (SR 40) from Keith Street (SR 2) to East of Lowery Street

(xx) South Lee Highway (SR 40) from Keith Street (SR 2) to 3rd Street (SR 40)

(xxi) 3rd Street (SR 40) from South Lee Highway (SR 2) to North Ocoee Street (SR 74)

(xxii) Wildwood Avenue(SR 74) from Inman Street (SR 40) to Spring Place Road (SR 74)

(xxiii) Dalton Pike (SR 311) from Spring Place Road (SR 74) to APD-40 (SR 311)

(xxiv) Spring Place Road (SR 74) from Dalton Pike (SR 11) to White Street

(xxv) 20th Street, NW from Georgetown Road to Old Tasso Road

(xxvi) Old Tasso Road from 20th Street, NW to Stuart Road

(xxvii) Stuart Road from North Lee Highway (SR 2) to the city limits

(xxviii) Stuart Road from the city limits to Old Tasso Road

(xxix) Michigan Avenue Road within the City of Cleveland

(xxx) Stuart Road from Old Tasso Road to Michigan Avenue Road.

(xxxi) Blythe Ferry Road from North Ocoee Street (SR 74) to Old Tasso Road

(xxxii) 20th Street from Old Tasso Road to Michigan Avenue Road

(xxxiii) 37th Street from Old Tasso Road to 20th Street

(xxxiv) Raider Drive from Keith Street (SR 2) to Peerless Road

(xxxv) Mimosa Drive from Mouse Creek Road to Peerless Road

(xxxvi) Mouse Creek Road from Paul Huff Parkway to the city limits

(xxxvii) Peerless Road from Paul Huff Parkway to Valley Head Road

(xxxviii) Adkisson Drive from Executive Park Drive to Paul Huff Parkway

(xxxix) Frontage Road from Paul Huff Parkway to the city limits

(xl) Norman Chapel Road from Adkisson Drive to I-75

(xli) Candies Lane from Georgetown Road (SR 60) to Freewill Road

(xlii) Freewill Road from Interlackin Circle (city limits) to city limits

(xliii) 17th Street from Georgetown Road to North Ocoee Street (SR 74)

(xliv) Parker Street from 3rd Street to 25th Street (SR 60)

(xlv) Central Avenue from Highland Drive (SR 74) to Gaut Street

(xlvi) Gaut Street from Inman Street to 6th Street

(xlvii) 6th Street from Gaut Street to Benton Pike

(xlviii) Edwards Street from 3rd Street to Central Avenue

(xlix) 3rd Street North Ocoee Street (SR 74) to Mill Street

(l) Mill Street from 7th Street to Inman Avenue (SR 74)

(li) 7th Street from Mill Street to King Edward Avenue (SR 74)

(lii) King Edward Avenue from 7th Street to 6th Street

(liii) 6th Street from King Edward Avenue to Wildwood Avenue

(liv) Smith Drive from South Lee Highway (SR 2) to South Ocoee Street (SR 74)

(lv) 20th Street from South Ocoee Street (SR 74) to Dalton Pike (SR 311)

(lvi) Blackburn Road from Dalton Pike (SR 311) to Dockery Lane

(lvii) Dockery Lane from Blue Springs Road to the city limits

(lviii) Blue Springs Road from the city limits to APD-40 (SR 311)

(lix) Sunset Drive from Henderson Avenue to Ocoee Street

(lx) Henderson Avenue from Keith Street to 25th Street

(lxi) Chambliss Avenue from 20th Street to 25th Street

(lxii) Villa Drive from Georgetown Road to Freewill Road

(lxiii) Executive Park Drive from Adkisson Drive to Ridgeway Drive

(lxiv) Ridgeway Drive from Executive Park Drive to Georgetown Road

(lxv) Clingan Ridge Drive from Westside Drive to Peerless Road

(lxvi) Julian Drive from 25th Street to McIntire Drive

(lxvii) McIntire Drive from Julian drive to Ocoee Street

(lxviii) Westside Drive from Georgetown Road to Harrison Pike

(lxix) 11th Street from Georgetown Road to Harrison Pike

(lxx) 15th Street from Ocoee Street to Carolina Avenue

(lxxi) Carolina Avenue from 11th Street to 15th Street

(lxxii) Willow Street from Georgetown Road to Highland Avenue

(lxxiii) Highland Avenue from Inman Street to 17th Street

(lxxiv) 8th Street from Highland Avenue to Benton Pike

(lxxv) Church Street from 11th Street, NE to 6th Street, SE

(lxxvi) Grove Avenue from Harrison Pike to South Lee Highway

(lxxvii) 2nd Street from Worth Street to 1st Street

(lxxviii) 1st Street from Highland Avenue to Edwards Street

(lxxix) East Street from 6th Street, NE, to Wildwood Avenue

(lxxx) 9th Street from East Street to Euclid Avenue

(lxxxi) Euclid Avenue from 3rd Street to 9th Street

(lxxxii) King Edward Avenue from 9th Street to 20th Street

(lxxxiii) 14th Street from Wildwood Avenue to Johnson Blvd.

(lxxxiv) Johnson Blvd. from Bates Pike to Wildwood Lake Road

(lxxxv) Wildwood Lake Road from Wildwood Avenue to Spring Place Road

(lxxxvi) White Street from Baldwin Street to Wildwood Lake Road

(lxxxvii) Baldwin Street from APD 40 to Dalton Pike

(lxxxviii) Red Food Drive from APD 40 to Dalton Pike

(lxxxix) Westland Drive from APD 40 to Victory Street

(xc) Victory Street from Westland Drive to South Lee Highway

(d) Actions prohibited where property is posted. In addition to the actions prohibited in 16-124(2)(a) through 16-124(2)(c), no person shall play on or use skateboards, roller skates, or coasters upon any property, public or private, within the corporate limits of the City of Cleveland which has been posted with a sign which reads: "No Skateboards," "No Skateboarding," "No Skates," "No Skating," or any similar language which is intended to inform a reasonable person that said activities are prohibited on the property.

(3) Civil penalty. A person who violates any provision of this section is guilty of a civil offense punishable by a civil penalty not to exceed $50, plus applicable court costs and litigation taxes. (as added by Ord. of 10/28/96, and replaced by Ord. #2005-14, April 2005; and Ord. #2006-8, March 2006)

16-125. Traffic calming measures. All requests for the installation of traffic calming measures will be directed to the public works director. The public works director will receive these requests and compare the existing condition at the proposed location to the minimum standards for traffic calming as contained herein. Any locations which do not meet the minimum standards will be rejected. All locations which meet or exceed the minimum standards will be subjected to an engineering study which will determine:

(1) The extent of the conflicts between vehicular traffic and pedestrians.

(2) The probability that traffic calming measures will reduce the conflicts between vehicular traffic and pedestrians.

(3) Based upon recognized engineering guidelines, recommendations regarding specific traffic claming measures, if any, which should be installed to reduce conflicts between vehicular traffic and pedestrians.

Based upon the results of the engineering study, the public works director will make the determination regarding the installation of the traffic calming measures, and make recommendations accordingly to the city manager. The city manager will review the recommendations and submit them to the city council for appropriate action. In determining whether to install traffic calming devices, the city council will consider the benefit to be derived, the cost, and the relative priority of the particular project compared to all other planned transportation projects, given the limited funding available on an annual basis.

The minimum standards for traffic calming are as follows:

	Major Collector	Minor Collector	Local Street
Traffic Volume	> 8,000 vpd	> 4,000 vpd	> 1,000 vpd
85th Percentile Speed	10 mph > speed limit	10 mph > speed limit	> speed limit
Pedestrian Volume	> 100 per hour	> 50 per hour	> 25 per hour

(as added by Ord. of 8/14/2000)

CHAPTER 2

STREET CUTS[1]

SECTION

16-201. Permit required.
16-202. Applications.
16-203. Fee.
16-204. Deposit or bond.
16-205. Safety restrictions on excavations.
16-206. Restoration of streets, etc.
16-207. Insurance.
16-208. Time limits.
16-209. Supervision.
16-210. Driveway curb cuts.

16-201. Permit required. It shall be unlawful for any person, firm, corporation, association, or others, including utility districts to make any excavation in any street, alley, sidewalk or public place, or to tunnel under any street, alley, sidewalk or public place without having first obtained a permit as herein required, and without complying with the provisions of this chapter; and it shall also be unlawful to violate, or vary from, the terms of any such permit; provided, however, any person maintaining pipes, lines, or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately and a permit cannot reasonably and practicably be obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the public works director is open for business, and the permit shall be retroactive to the date when the work was begun. Cleveland Utilities and all franchised utilities shall be given a blanket permit annually, but must notify the public works director on such form as he shall require each time a cut or bore is made. (Ord. of Sept. 1995)

16-202. Applications. Applications for such permits shall be made to the public works director, or such person as he may designate to receive such applications, and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the person, firm, corporation,

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[1]State law reference
This chapter was patterned substantially after the ordinance upheld by the Tennessee Supreme Court in the case of City of Paris, Tennessee v. Paris-Henry County Public Utility District, 207 Tenn. 388, 340 S.W.2d 885 (1960).

association, or others doing the actual excavating, the name of the person, firm, corporation, association, or others for whom the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done. Such application shall be approved or rejected by the public works director within twenty-four (24) hours of its filing. (Ord. of Sept. 1995)

16-203. **Fee**. (1) The fee for such permits shall be two hundred dollars ($200.00). This fee is to cover the costs of inspection of backfill, and an asphalt patch of up to forty-eight (48) square feet. Any excavation larger than forty-eight (48) square feet shall require an additional fee, to be determined by the public works director based on the size of the excavation.

(2) In addition to the fee(s) set forth in subsection (1), there shall be an additional fee imposed when any street cut results in any section of a city street having street cut(s) that comprise twenty percent (20%) or more of any five hundred foot (500') section of that street.

(a) This additional fee will be equal to the city's cost of repaving that five hundred foot (500') section of that city street.

(b) This additional fee will be paid by the entity making the street cut. When more than one (1) entity is responsible for the street cuts within a particular five hundred foot (500') section, the additional fee shall be prorated between the entities making the street cuts on a percentage basis. The percentage assessed to each entity will be equal to their percentage of the total street cuts that exist within a particular five hundred foot (500') section. This assessment is illustrated by the following example: Assume Entity A makes a street cut in a particular city street that results in twenty percent (20%) or more of a five hundred foot (500') section of that city street having street cuts. Assume further that after this last street cut is made there are a total of fifteen (15) street cuts within that five hundred foot (500') section of that city street. Assume further that one (1) entity made ten (10) of those street cuts and another entity made five (5). The first entity would pay the city an amount equal to two-thirds (2/3) of the city's costs of repaving that five hundred foot (500') section of the city street, and the second entity would pay the remaining one-third (1/3).

(c) The additional fee set forth in subsection (b) will not be charged if that five hundred foot (500') section of that particular city street is already scheduled to be repaved by the city within three (3) years. (Ord. of Sept. 1995, as amended by Ord. of Oct. 1995, and Ord. #2003-14, June 2003, and replaced by Ord. #2008-52, Aug. 2008, and Ord. #2010-23, June 2010)

16-204. **Deposit or bond**. No such permit shall be issued unless and until the applicant therefor has deposited with the city a cash deposit. The

deposit shall be in the sum of five hundred dollars ($500.00) if no pavement is involved or one thousand dollars ($1,000.00) if the excavation is in a paved area and shall insure the proper restoration of the ground and pavement, if necessary. Where the amount of the deposit is clearly inadequate to cover the cost of restoration, the public works director may increase the amount of the deposit to an amount he deems adequate to cover the cost. From this deposit shall be deducted the expense to the city of relaying the surface of the ground or pavement, and of making the refill if this is done by the city or its contractor. The balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored. The public works director shall waive the bond requirements for Cleveland Utilities and any utility company franchised by the City of Cleveland or the State of Tennessee.

In lieu of a deposit the applicant may deposit with the city clerk a surety bond in such form and amount as the public works director shall deem adequate to cover the costs to the city if the applicant shall fail to make proper restoration. (Ord. of Sept. 1995)

16-205. Safety restrictions on excavations. Any person, firm, corporation, association, or others making any excavation or tunnel shall do so according to the terms and conditions of the application and permit authorizing the work to be done. Barricades and lights shall be maintained to protect persons and property from injury by or because of the excavation being made. If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed and provided which shall be safe for travel and convenient for users, as required in the Uniform Manual for Traffic Control Devices. (Ord. of Sept. 1995)

16-206. Restoration of streets, etc. Any person, firm, corporation, association, or others making any excavation or tunnel in or under any street, alley, sidewalk, or public place in this city shall restore the street, alley, sidewalk, or public place to its original condition following guidelines established by the public works director. However, the asphalt resurfacing shall be done by the city, but shall be paid for promptly upon completion by such person, firm, corporation, association, or others for which the excavation or tunnel was made. In case of unreasonable delay in restoring the street, alley, sidewalk, or public place, the city shall give notice to the person, firm, corporation, association, or others that unless the excavation or tunnel is refilled properly within a specified reasonable period of time, the city will do the work and charge the expense of doing the same to such person, firm, corporation, association, or others. If the conditions of the above notice have not been met within the specified time, the work shall be done by the city, an accurate account of the expense involved kept, and the total cost shall be charged to the person, firm, corporation, or others making the excavation or tunnel. Reasonable time

for repair is defined as forty-eight (48) hours from the time the excavation begins. Utility companies may request a time extension if line repair requires it. If requested by the applicant, the city shall make the sidewalk repairs and charge the full expense thereof to the applicant.

Any person, firm, corporation, association, or others making any bore under any street, alley, sidewalk, or public place in this city shall restore the street, alley, sidewalk, or public place to its original condition if boring results in any damage to the original condition. Said repairs shall be made following guidelines established by the public works director. If the necessary repairs are not made within a reasonable time as set out by the public works director, the work shall be done by the city, an accurate account of the expenses involved kept, and the total cost charged to the person, firm, corporation, or others making the bore.

If the public works director makes any changes in the guidelines authorized in this chapter for repair of the streets, sidewalks, or other public places, then the city council shall be notified in writing of the change(s) at its next regularly scheduled meeting. The notification shall explain fully the reasons for the changes. (Ord. of Sept. 1995, as amended by Ord. of Oct. 1995)

16-207. Insurance. In addition to making the deposit or giving the bond hereinbefore required to insure that proper restoration is made, each person applicant for an excavation permit shall file a certificate of insurance indicating that he is insured against claims for damages for personal injury as well as against claims for property damage which might arise from or out of the performance of the work, either by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The amount of the insurance shall be prescribed by the city clerk in accordance with the nature of the risk involved; provided, however, that the liability insurance for bodily injury shall not be less than $150,000 for each person and $350,000 for each accident, and for property damages not less than $50,000 for any one (1) occurrence, and a $75,000 aggregate. (Ord. of Sept. 1995)

16-208. Time limits. Each application for a permit shall state the length of time it is estimated will elapse from the commencement of the work until the restoration of the surface of the ground or pavement, or until the refill is made ready for paving by the city. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the public works director. (Ord. of Sept. 1995)

16-209. Supervision. The public works director or his designees shall inspect all excavations and tunnels being made in or under any public street, alley, sidewalk or other public place in the city, and shall be responsible for the

enforcement of the provisions of this chapter. Notice shall be given to him or his designees at least two (2) hours before the work of refilling any such excavation or tunnel commences. The public works director or his designees are hereby authorized to issue stop work orders on any job where the excavation or refilling is not being carried out safely, or in compliance with this chapter and the guidelines for restoration required in § 16-206. (Ord. of Sept. 1995)

16-210. Driveway curb cuts. No one shall cut, build, or maintain a driveway across a curb or sidewalk without first obtaining a permit from the public works director. Such a permit will not be issued when the contemplated driveway is to be so located or constructed as to create an unreasonable hazard to pedestrian and/or vehicular traffic. No driveway shall exceed thirty-five (35) feet in width at its outer or street edge and when two (2) or more adjoining driveways are provided for the same property a safety island of not less than ten (10) feet in width at its outer or street edge shall be provided. Driveway aprons shall not extend out into the street. (Ord. of Sept. 1995)

CHAPTER 3

RAILROADS AND TRAINS

SECTION

16-301. Watchman, gates or signal device required at certain crossings.
16-302. Trains to sound bell or whistle at short intervals.
16-303. Unlawful to create unnecessary noise.
16-304. Trail toilets to be closed and not used while in city.
16-305. Unlawful to obstruct road crossing for more than ten minutes at a time.
16-306. Penalties.

16-301. Watchman, gates or signal device required at certain crossings. Any railroad company owning or otherwise responsible for railroad tracks within the city limits is hereby required to place and install gates or suitable signal devices at all grade crossings within the city designated by the city council. (Ord. of Nov. 1998)

16-302. Trains to sound bell or whistle at short intervals. Railroad trains shall not be run inside of the city without the bell or whistle being sounded at short intervals. Any engineer, fireman, or other servant or employee in charge may be held liable for the violation of this section. (Ord. of Nov. 1998)

16-303. Unlawful to create unnecessary noise. It shall be unlawful for any engineer, fireman or other person in charge of a railroad engine unnecessarily to blow the whistle or create any other unnecessary noise, within the limits of the city; provided, nothing in this section shall prohibit the observance of the provisions of the laws of the state with reference to the prevention of accidents by the sounding of alarms. (Ord. of Nov. 1998)

16-304. Trail toilets to be closed and not used while in city. It shall be unlawful for any railroad cars to enter the city limits with the toilet doors open, or for such doors to be left open while such cars are in the city, for any person to enter the same and deposit offal therein while in the city. The railroad company or conductor in charge, or either of them, may be held liable for a violation of this section. (Ord. of Nov. 1998)

16-305. Unlawful to obstruct road crossing for more than ten minutes at a time. No railroad company shall obstruct a road crossing by cars, or otherwise, more than ten (10) minutes at a time, and the company or the engineer and conductor, fireman, flagman or other servant in charge, or all or either of them may be held liable for any violation of this section; provided, however, that no member of a train crew may be held personally guilty of a

violation of this section upon proof that his action was necessary to comply with the orders or instructions of his employer or its officers. (Ord. of Nov. 1998)

16-306. Penalties. Violations of this chapter shall be punishable by a fine not to exceed fifty dollars ($50.00) plus court costs for each offense. Each day any violation of this chapter continues shall constitute a separate civil offense. The imposition of such civil penalty 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. (Ord. of Nov. 1998, as amended by Ord. of 2/10/03)

CHAPTER 4

STORM-WATER DRAINAGE

SECTION

16-401. Drainage ditches.
16-402. Private ditches.
16-403. Ditch enclosure by owner.
16-404. Priorities for drainage improvements.
16-405. New drainage systems.
16-406. Waiver of assessments and costs.

16-401. Drainage ditches. Where drainage ditches, creeks, streams, and other waterways cross private property, it shall be the responsibility of the property owner to keep the banks clean and to keep the ditches, creeks, streams, and other waterways clear of all obstructions which could impede the natural flow of rainfall runoff. The property owner who changes the natural flow of water or intensifies the flow of water off of his property may be liable to the adjacent property owner(s) for any damages in accordance with Tennessee law. No buildings shall be constructed on top of drainage systems or within any drainage easement. (Ord. of Jan. 1999)

16-402. Private ditches. Any ditch which originates on private property or exists outside of an accepted right-of-way or storm drainage easement shall be considered a private ditch. The city will not participate in the construction or maintenance of a private ditch, or of its enclosure. (Ord. of Jan. 1999)

16-403. Ditch enclosure by owner. Plans and specifications shall be approved by the department of public works on all ditch enclosure projects planned by the owner. No approval will be required by the property owner who plans to enclose a private ditch unless the ditch receives direct discharge from a city street or upstream properties. (Ord. of Jan. 1999)

16-404. Priorities for drainage improvements. (1) The city may participate in the enclosure of ditches and improvement of existing drainage pipes and catch basins on a priority basis. The city will determine the feasibility of enclosing the ditches or improving existing drainage pipes and catch basins, and notify the adjoining property owner(s) of its intentions. The city council shall annually determine in its budgeting process, if not before, those projects to be undertaken based upon available financial resources. Any drainage request shall be forwarded to the public works director, who shall make a recommendation to the city manager and city council of a priority ranking, using

the ranking system herein. Upon receiving the recommendation, the city council shall determine the priority of the request for future funding.

(2) The city shall bear the full cost of design, labor, materials and equipment for those projects listed below as first priority. The city shall pay for that portion of an approved joint project listed below as a second priority which it has agreed to in negotiations. On all such second priorities, the city manager shall make a recommendation to the city council, after consulting with the public works director.

(3) For all other priorities, the city will participate in enclosing or improving a ditch by furnishing engineering design, labor and equipment. All materials costs for other than first or second priorities shall be borne by the affected property owners benefited using any cost assessment formula allowed by Article II, Section I of the city charter and the general statutes of the state; and approved by the city council. In addition, benefited property owners must provide any required drainage easements or rights-of-way to the city. All work will be performed or contracted by the city, with payment of property owners' shares by special assessment. In determining the ranking of projects, the city council will consider among other things the willingness of the benefiting property owners to pay special assessments. All design of drainage facilities is subject to approval by the city engineer, and must meet the minimum design standards as established by ordinances.

(4) The five priority rankings for drainage improvements shall be as listed below. These rankings may be changed by the city council due to unforeseen circumstances that constitute an emergency.

(a) First priority will be drainage facilities and ditches that are the responsibility of the city, and are inadequately sized or constructed such that they represent a hazard to life or property. This shall include any regional detention/retention pond recommended to reduce the hazard to life or property. In determining priorities within this classification, projects improving or removing hazards to life shall take precedence over those improving or removing hazards only to property.

(b) Second priority will be joint projects with a developer coinciding with his improvements, when in the opinion of the city council it is in the city's best long-term interest to make this investment to improve the city's drainage system. These projects shall be negotiated by the city manager and the public works director on behalf of the city council, but shall not be final without approval by the city council. Since these projects often come up at unexpected times, the city council may designate a certain portion of its annual budget for drainage projects as a contingency for such projects.

(c) Third priority will be ditches receiving direct discharge from a city-maintained street.

(d) Fourth priority will be ditches receiving secondary discharge from a city-maintained street. (Example: A ditch receiving water from

an abutting lot that receives direct discharge from a city-maintained street.)

(e) Fifth priority will be ditches paralleling existing city-maintained streets. However, where new residential, commercial, institutional, or industrial construction requires piping for a driveway connection, the property owner shall be responsible for the full cost of piping installation and materials. (Ord. of Jan. 1999)

16-405. New drainage systems. (1) Owners or developers of property 10,000 square feet or more in size shall submit for approval by the city engineer a soil erosion and sedimentation control plan meeting city regulations prior to any construction or lot-clearing. Owners or developers of property five (5) acres or more in size shall submit a soil erosion and sedimentation control plan to the state for approval, with a copy sent to the city engineer.

(2) Owners or developers of property prior to any development shall submit plans and specifications for the construction of a drainage system when required by the soil erosion and sediment control ordinance or the subdivision regulations. The owners or developers must install at their cost the improvements required by said ordinances and regulations, with all necessary easements, rights-of-way and drainage system improvements dedicated to the city at no cost. After acceptance of such dedication, the city shall be responsible for maintenance of the accepted drainage system. (Ord. of Jan. 1999)

16-406. Waiver of assessments and costs. The city council may waive the payment of all or any portion of a special assessment or cost for a drainage improvement project for any property owner whose family income would qualify them for a housing loan under the Tennessee Housing Development Agency (THDA) program, as amended. The city shall use the same income verification process that THDA uses to determine eligibility for this waiver. Any waiver granted shall not increase the amount of assessment or cost of other property owners benefiting by the drainage project. The city shall absorb the cost of any waived assessments or costs. (Ord. of Jan. 1999)

TITLE 17

REFUSE AND TRASH DISPOSAL[1]

CHAPTER

1. SOLID WASTE AND REFUSE COLLECTION.

CHAPTER 1

SOLID WASTE AND REFUSE COLLECTION

SECTION

17-101. Definitions.
17-102. Responsibility for administration of this chapter.
17-103. Residential housing facilities, containers, collection procedures, and general regulations.
17-104. Commercial housing facilities, containers, collection procedures, and general regulations.
17-105 Sanitation user fee for residential housing facilities and commercial housing facilities.
17-106. Commercial facilities-collection procedures, containers, and general regulations.
17-107. Commercial collection fee for commercial facilities.
17-108. Premises to be kept clean.
17-109. Prohibited substances and practices.
17-110. Yard waste, brush collection, bulk rubbish, and other refuse.
17-111. Solid waste brought into the city.
17-112. Civil penalties for violations of this chapter.

17-101. Definitions. As used in this chapter, the following words shall have the following meanings:

(1) "Bag" is a plastic sack designated to store garbage with sufficient wall strength to maintain physical integrity when lifted by the top. As used in this chapter, the total weight of a bag and its contents shall not exceed thirty-five (35) lbs.

(2) "Bulk container" is a "commercial container."

(3) "Bulk rubbish" means wooden and cardboard boxes, crates, appliances, furniture, bedding, and other refuse items which by their size and shape cannot be readily placed in city-approved containers.

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[1]Municipal code reference
Property maintenance regulations: title 13.

(4) "Commercial container" is a dumpster container with a capacity of two (2) to eight (8) cubic yards that remains at the point of collection designated by the city.

(5) "Commercial establishment" is any business, industrial, institutional or agricultural establishment, office or professional building, shopping center, multiple business complex, college dormitory, church, hospital, club or other similar organization. However, a commercial establishment does not include any commercial or industrial establishment that is served by an on-site commercial trash compactor which is not serviced by the city's solid waste contractor in their capacity as the city's contractor.

(6) "Commercial housing facility" is a structure or grouping of structures, an apartment complex, or a mobile home park, containing four (4) or more dwelling units whether singly owned or owned by various persons but having the appearance and utility of other housing complexes within a contiguous area. However, a commercial housing facility does not include any facility that is served by an on-site commercial trash compactor which is not serviced by the city's solid waste contractor in their capacity as the city's contractor.

(7) "Commercial housing facility garbage" means solid waste resulting from the operation, maintenance or use of any dwelling unit located within a commercial housing facility as defined in this chapter.

(8) "Commercial solid waste" means solid waste resulting from the operation of any commercial, industrial, institutional or agricultural establishment, office or professional building, shopping center, multiple business complex, church, club or other similar organization.

(9) "Construction waste" means materials from construction, demolition, remodeling, or construction-site preparation, including, but not limited to, rocks, bricks, dirt, debris, fill, plaster, guttering, and all types of scrap materials.

(10) "Garbage" means all household wastes, including but not limited to food waste, bottles, wastepaper, tin cans, clothing, small mechanical parts, small dead animals, and rubbish. As used in this chapter, "garbage" does not include tree limbs, shrubbery, trimmings, leaves, construction waste, human or animal waste, large dead animals, large mechanical parts, and "bulk rubbish."

(11) "Hazardous waste" is defined as that term is defined by the State of Tennessee in its statutes and regulations regarding hazardous waste.

(12) "Multiple business complex" is any group of more than one (1) business located on one (1) tract of property.

(13) "Refuse" means solid waste.

(14) "Residential garbage" means garbage resulting from the operation and maintenance of a residential housing facility. It does not include garbage resulting from the operation, maintenance or use of a dwelling unit located within a commercial housing facility nor does it include garbage resulting from the operation of a commercial establishment as defined in this chapter.

(15) "Residential garbage container" means a garbage container with a capacity of greater than twenty (20) gallons but less than thirty-five (35) gallons, constructed of plastic, metal or fiberglass, having handles of adequate strength for lifting, and having a tight fitting lid capable of preventing entrance into the container by animals, including, but not limited to, dogs, cats, insects, rodents, or other vermin. The weight of a residential garbage container and its contents shall not exceed sixty (60) lbs.

(16) "Residential housing facility" is a single structure containing three (3) dwelling units or less and not operated as a part of a commercial housing facility. It includes a single family dwelling.

(17) "Service level" means the maximum number of times or frequency that containers are serviced.

(18) "Solid waste" is unwanted or discarded waste materials in a solid or semi-solid state, including but not limited to garbage, ashes, street refuse, rubbish, dead animals, animal and agricultural wastes, yard wastes, appliances, furniture, special wastes, industrial wastes, and demolition and construction wastes, excluding "bulk rubbish" and hazardous or infectious wastes.

(19) "Yard waste" means grass clippings, leaves, tree and shrubbery trimmings, and other related yard waste materials. (1981 Code, § 10-16, as amended by Ord. of Oct. 1994; Ord. of June 1995; Ord. of 10/24/2000; Ord. #2003-36, Dec. 2003; and Ord. #2005-39, Oct. 2005, as replaced by Ord. #2009-76, Dec. 2009)

17-102. <u>Responsibility for administration of this chapter</u>. (1) The public works director is responsible for:

(a) The enforcement of this chapter; and

(b) Coordination of the services provided herein; and

(c) Making recommendations to the city manager for improvements to the city's solid waste collection and disposal system; and

(d) Periodically reviewing the city's cost of providing solid waste collection, disposal, and recycling; and

(e) Periodically recommending an adjustment to the fees for such services to offset the city's costs. (Ord. of Oct. 1994, as replaced by Ord. #2009-76, Dec. 2009)

17-103. <u>Residential housing facilities, containers, collection procedures, and general regulations</u>. (1) The normal collection policy for all residential housing facilities is to collect garbage from each residential housing facility once per week. The collection routes shall be established by the public works director.

(2) All garbage generated by residential housing facilities shall be placed in a "residential garbage container" or securely in "bag(s)."

(3) Residential garbage containers or bag(s) from residential housing facilities shall be placed for collection no earlier than 3:00 P.M. on the day before

collection. Residential garbage containers or bag(s) should be placed for collection no later than 7:00 A.M. on the date of collection to assure collection of the garbage. No residential garbage containers or bag(s) are permitted to remain at the curbside collection point later than 9:00 P.M. on the day of collection.

(4) On the scheduled day for collection, all residential garbage containers or bag(s) must be placed at the edge of the street, curb or other designated location approved for pickup. Residential garbage containers or bag(s) shall be placed in such a location and in such a manner as to be readily accessible by collection equipment. Residential garbage containers or bag(s) must not be placed in a location that interferes with overhead power lines or tree branches, parked cars, vehicular traffic, or in any other way that would constitute a public hazard or nuisance.

(5) It is unlawful to leave a residential garbage container or a bag at curbside except during the time periods specified in this section. It is also unlawful to leave a residential garbage container unsecured (without its lid tightly secured) if it contains garbage. It is also unlawful to place a bag of garbage for collection at curbside unless the bag is securely tied or fastened at its opening.

(6) Bulk rubbish and construction waste, as defined in this chapter, are hereby prohibited from being placed for collection by the city's solid waste contractor. Bulk rubbish and construction waste shall be placed for collection in accordance with the provisions of § 17-110. (1981 Code, §§ 10-20, 10-21, 10-22, and 10-23, as amended by Ord. of Oct. 1994; Ord. of June 1997; Ord. of June 1998; replaced by Ord. #2005-39, Oct. 2005; amended by Ord. #2005-46, Nov. 2005; and replaced by Ord. #2006-7, March 2006, as replaced by Ord. #2009-76, Dec. 2009)

17-104. <u>Commercial housing facilities, containers, collection procedures, and general regulations</u>. (1) A "commercial housing facility" shall be serviced with a "commercial container(s)", in order to accommodate the "commercial housing facility garbage" generated by the tenants of the commercial housing facility.

(2) "Commercial housing facility garbage" intended for collection by the city, shall be placed in a city-approved "commercial container." Tenants of commercial housing facilities must deposit all "commercial housing facility garbage" within the commercial container(s) serving the commercial housing facility.

(3) No residential housing containers may be placed for collection at any commercial housing facility where a commercial container is provided. No trash bags may be placed for collection at any commercial housing facility where a commercial container is provided unless the bag(s) are placed within the commercial container.

(4) All commercial containers must be compatible with the commercial solid waste collection equipment used by the city's garbage contractor. The city

reserves the right to recommend a smaller or larger container, and require more or less pick-ups per week, if in the judgment of the public works director such change will be more cost effective or provide more efficient service. The container(s) for commercial housing facilities shall be furnished by the commercial housing facility desiring service.

(5) The owner/user of all containers shall be responsible for the sanitary maintenance, structural maintenance and the replacement of said containers.

(6) If the public works director determines that a commercial housing facility cannot accommodate a commercial container, then the public works director is hereby granted the authority to require the owner of the commercial housing facility to construct and maintain a receptacle large enough to hold and retain a sufficient number of residential housing containers for all of the residents or tenants of the particular commercial housing facility.

If the public works director determines that a commercial housing facility cannot accommodate a commercial container and the director will allow the use of a receptacle, the public works director will notify the owner of the commercial housing facility of said determination and give the owner thirty (30) days from the date of the notice to provide an appropriate receptacle in lieu of a commercial container. It shall be unlawful for an owner of a commercial housing facility to fail to provide a receptacle within thirty (30) days after receiving this written notification by the public works director.

The size, shape, configuration, location and construction of this receptacle shall be subject to the review and final approval of the public works director.

Each tenant who resides in a commercial housing facility with an approved receptacle must place all garbage securely in bags. The bags must then be placed in residential garbage containers and these containers must be placed within the receptacle. (1981 Code, §§ 10-29 and 10-34, as amended by Ord. of Oct. 1994; Ord. of June 1995; Ord. of 6/23/97; and Ord. #2005-39, Oct. 2005, as replaced by Ord. #2009-76, Dec. 2009)

17-105. <u>Sanitation user fee for residential housing facilities and commercial housing facilities</u>. The city's costs of collection and disposal of garbage, refuse, and other solid waste are hereby offset by a sanitation user fee imposed upon all residential housing facilities and each individual unit located within any commercial housing facility in the city. The sanitation user fee is hereby levied, and it shall be billed and collected by Cleveland Utilities as an additional line item on a monthly utility billing. The amount billed for services used for less than a complete month shall be prorated according to Cleveland Utilities' policies on proration. The sanitation user fee shall be set by ordinance of the city council. (Ord. of Oct. 1994, as replaced by Ord. #2009-76, Dec. 2009)

17-106. <u>Commercial facilities-collection procedures, containers, and general regulations</u>. (1) "Commercial solid waste" intended for collection by the city shall be placed in a city-approved container. All containers must be compatible with the commercial solid waste collection equipment used by the city's garbage contractor. The city reserves the right to recommend a smaller or larger container, and require more or less pick-ups per week, if in the judgment of the public works director such change will be more cost effective. The container shall be furnished by the commercial establishments desiring service.

(2) The normal collection policy for commercial solid waste is to collect from each container of each commercial establishment, the number of times per week, not to exceed once per day, excluding Sundays, that the establishment selects for service.

(3) Bulk containers shall at all times be kept in a place easily accessible to the collection equipment used by the city's garbage contractor. No service shall be given those establishments permitting objects, obstructions, or vehicles to hinder in any way whatsoever the servicing of said containers.

(4) The public works director may establish a special collection district due to the density of commercial facilities, such as the downtown area, and provide a unified service for said district. The public works director shall submit the district boundaries to the city manager and the city council for approval.

(5) The owner/user of all bulk containers shall be responsible for the sanitary maintenance, structural maintenance and the replacement of said containers.

(6) The owner or developer of commercial, industrial, or institutional facilities, such as regional malls, shopping centers, hospitals, medical centers, commercial housing facilities, and other major developments shall be required to show methods of handling solid waste and locations of all solid waste containers on an approved site plan to the public works director prior to beginning construction. (Ord. of Oct. 1994, as replaced by Ord. #2009-76, Dec. 2009)

17-107. <u>Commercial collection fee for commercial facilities</u>. The city's costs of collection and disposal of commercial solid waste are hereby offset by a commercial collection fee imposed upon all commercial facilities within the city. The applicable commercial collection fee is hereby levied, and it shall be collected by Cleveland Utilities as an additional line item on a monthly utility billing.

The commercial fee charged each commercial establishment shall be calculated as follows: The number of cubic yards (container size) times the number of pickups weekly times 4.33 times the rate per cubic yard equals the monthly fee.

The city council shall annually establish by ordinance the rate, after receiving the recommendation of the public works director.

The commercial recycling user fee shall be set by an ordinance adopted by the city council. (Ord. of Oct. 1994, as amended by Ord. of Nov. 1994, and Ord. of 8/27/2001, as replaced by Ord. #2009-76, Dec. 2009)

17-108. Premises to be kept clean. It shall be unlawful for any person or persons owning, leasing, occupying or having control of property within the corporate limits of the city, regardless of whether such property is vacant or contains structures thereon, to permit the accumulation of garbage, refuse, hazardous waste, or other undesirable materials thereon. It is the responsibility of the individual(s) having control of residential housing facilities, commercial housing facilities, and commercial establishments to maintain the container(s) and the surrounding area in a clean, neat and sanitary condition at all times. (as added by Ord. of 4/10/2000, as replaced by Ord. #2009-76, Dec. 2009)

17-109. Prohibited substances and practices. (1) Prohibited substances. The following substances are hereby prohibited and shall not be placed nor deposited in any approved containers serviced by the collection equipment used by the city's solid waste contractor:

(a) Flammable liquids, solids or gases, such as gasoline, benzene, alcohol or other similar substances.

(b) Any material that could be hazardous or injurious to city employees or contractor's employees or which could cause damage to the equipment belonging to the city or the city's contractor.

(c) "Construction waste" as defined in this chapter.

(d) Hot materials such as ashes, cinders, etc.

(e) Human waste.

(f) Animal waste unless it is placed and secured in a plastic bag.

(g) Infectious wastes as classified by the following:

(i) Isolation wastes. Wastes contaminated by patients who are isolated due to communicable disease as provided in the U.S. Centers for Disease Control Guidelines for Isolation Precautions in Hospitals (July 1983).

(ii) Cultures and stocks of infectious agents and associated biological cultures and stocks of infectious agents, including specimen cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, waste from the production of biologicals, discarded live and attenuated vaccines, and cultural dishes and devices used to transfer, inoculate, and mix cultures.

(iii) Human blood and blood products. Waste human blood and blood products such as serum, plasma, and other blood components.

(iv) Pathological wastes. Pathological wastes, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy.

(v) Discarded sharps. All discarded sharps (e.g. hypodermic needles, syringes, Pasteur pipettes, broken glass, scalpel blades) used in patient care, medical research or industrial laboratories.

(vi) Contaminated animal carcasses, body parts, and bedding. Contaminated animal carcasses, body parts and bedding of animals that were intentionally exposed to pathogens in research, in the production of biologicals or in the in vitro testing of pharmaceuticals.

(vii) Facility-specified infectious wastes. Other wastes determined to be infectious by a written facility policy.

(h) Human/animal remains.

(2) Prohibited practices. (a) The following practices are prohibited and it shall be unlawful for:

(i) Any person to move, remove, reset, scatter, tamper with, use, carry away, deface, mutilate, destroy, damage or interfere with any type of garbage container. (as added by Ord. #2005-39, Oct. 2005, as replaced by Ord. #2009-76, Dec. 2009)

17-110. Yard waste, brush collection, bulk rubbish, and other refuse. (1) Yard waste, brush and bulk rubbish collection. (a) Normal schedule. Schedule for brush collection, yard waste and bulk rubbish shall be two pickups each month. The public works director shall recommend routes to the city manager, dividing the city into ten (10) daily routes, with two (2) zones in each route. The recommendation shall be in the form of a map with written descriptions of the boundaries; and is subject to the approval of the city council. Any modification to the routing also must be approved by the city council. During the seasonal leaf collection period referred to in this section, the leaf collection routes shall coincide with the routes for yard waste and bulk rubbish.

(b) Placement of brush for collection. All brush (tree limbs, shrubbery and hedge trimmings, etc.) must be placed at the edge of a street or serviceable alley easily accessible with city collection equipment.

(c) Piling of brush for collection. All brush shall be neatly stacked and not scattered. Brush collections shall not be made where it is loosely scattered. A notice shall be given to the resident that collection cannot be made and the reason why it cannot be made.

(d) Length and size of brush. Tree trunks, stumps, and limbs larger than seven inches (7"), measured across the diameter of the butt end, shall not be collected by the city. All tree limbs must not exceed seven feet (7') in length and must be stacked as required.

(e) Separation of refuse. No items of refuse may be mixed with brush trimmings. Mixing wire, metal, lumber, brick, rock, dirt or similar items with brush trimmings is prohibited by landfill regulations and collection shall be limited to separated items. Mixing leaves and grass clippings with other brush is also prohibited.

(f) Placement of yard waste for collection. No item of yard waste placed out for disposal shall be placed on top of water/gas meters or valves, piled against utility poles, guy wires, fire hydrants, fences or structures or any item which could be damaged by collection equipment, or directly under electrical distribution lines.

(g) Grass clippings and leaves to be bagged except during seasonal leaf collection. Except during seasonal leaf collection as outlined in (5) below, all leaves and grass clippings collected by the city shall be placed in clear plastic bags.

(2) Refuse generated through private enterprise. The city shall not be responsible for the collection and disposal of construction waste, bulk rubbish, brush or any other forms of solid waste generated or produced by contractors, tree trimmers, or persons doing work for profit or personal gain. Nor will any such collection of refuse be made from lot or land clearing projects including remodeling or alterations of homes or businesses or such other private project or improvements, whether or not a contractor is employed. However, residents having remodeling or construction waste may request a special pick-up as outlined in subsection (4) of this section.

(3) Bulk rubbish (junk) service. Bulk rubbish service will be performed on the same schedule as brush collection. Bulk rubbish shall not be placed at the street for collection until the day before the route is to be picked up. No bulk rubbish will be picked up that exceeds the maximum rated lifting capacity of the collection equipment. If collection cannot be made for this reason, notice shall be given the resident of the reason for non-collection. It shall be unlawful for any person, firm, partnership, corporation, syndicate, joint stock company, association or other group operating as a unit, owning, leasing, occupying or having control of property within the corporate limits of the city, to violate or permit to be violated the requirements of this section.

(4) Self-help program. The public works director, or his designee, shall have the authority to establish a reasonable self-help program for residents who have unusual amounts of refuse, or unusual circumstances which would prevent hauling or disposal for themselves. Such program, or special pick-up, will be at no cost to the residents.

(5) Seasonal leaf collection. Fall leaf collection will begin between October 1 and November 15 depending on climatic conditions and will continue through the end of January. During this time period, leaves must be placed at the curb, unbagged and accessible to leaf suction machinery. Except during this time period, all leaves must be placed in clear plastic bags for collection as scheduled by the public works director. (as added by Ord. #2009-76, Dec. 2009)

17-111. Solid waste brought into the city. (1) It shall be unlawful for any person to bring solid waste into the city that was generated by any person or entity outside the city for the purpose of dumping or depositing such waste for collection by municipal forces or the city's garbage contractor, unless authorized by the city manager or the public works director. This section shall not be constructed to prohibit a refuse transfer station or recycling facility.

(2) Each day that such illegal dumping or depositing occurs shall constitute a separate offense. Any complaints of illegal dumping or depositing in violation of this section shall be forwarded to the code enforcement officer, who shall determine ownership of the dumped or deposited waste and then issue a municipal citation to the offender, or forward the information to the police department for prosecution under Tennessee Code Annotated, § 39-14-502 or any other applicable state law. (as added by Ord. #2009-76, Dec. 2009, and amended by Ord. #2010-13, May 2010)

17-112. Civil penalties for violations of this chapter. A violation of any rule, regulation, section or provision of this chapter is hereby declared to be unlawful and shall be punishable by the imposition of a civil penalty in an amount not to exceed fifty dollars ($50.00), plus court costs and litigation tax as provided for in the Cleveland Municipal Code. Each day of violation of any rule, regulation, section or provision of this chapter shall constitute a separate offense. (as added by Ord. #2009-76, Dec. 2009)

TITLE 18

WATER AND SEWERS[1]

CHAPTER

1. SEWERS AND SEWAGE DISPOSAL.
2. CROSS-CONNECTIONS, ETC.
3. MS4 PHASE II STORMWATER MANAGEMENT PROGRAM.

CHAPTER 1

SEWERS AND SEWAGE DISPOSAL[2]

SECTION

18-101. Purpose and policy.
18-102. Definitions.
18-103. Use of public sewers.
18-104. Building sewers, connections, and permits.
18-105. Private domestic wastewater disposal.
18-106. Prohibitions and limitations on discharges.
18-107. Control of prohibited pollutants.
18-108. Wastewater discharge permits.
18-109. Inspections, monitoring, and records.
18-110. Enforcement.
18-111. Wastewater volume determination.
18-112. Wastewater charges and fees.
18-113. Administration of sewer system.

18-101. Purpose and policy. The purpose of this chapter is to set uniform requirements for users of the city's wastewater collection system and treatment works to enable the city to comply with the provisions of the Clean Water Act and other applicable federal and state law and regulations, and to provide for the public health and welfare by regulating the quality of wastewater discharged into the city's wastewater collection system and treatment works. This chapter establishes conditions for connection to the sanitary sewer system and requires a permit. Certain acts which may be detrimental to the sewer system are prohibited. This chapter provides a means for determining wastewater volumes, constituents and characteristics, the

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[1]Municipal code references
Building, utility and housing codes: title 12.
Refuse disposal: title 17.

[2]Municipal code reference
Plumbing code: title 12, chapter 6.

setting of charges and fees, and the issuance of permits to certain users. This chapter establishes effluent limitations and other discharge criteria and provides that certain users shall pretreat waste to prevent the introduction of pollutants into the publicly owned treatment works (POTW) which will interfere with due operation of the POTW, may cause environmental damage, interfere with the use or disposal of sewage sludge; and to prevent the introduction of pollutants into the POTW which will pass through the treatment works into the receiving waters or the atmosphere, or otherwise be incompatible with the treatment works; and to improve the opportunities to recycle and reclaim wastewaters and the sludges resulting from wastewater treatment. This chapter provides measures for the enforcement of its provisions and abatement of violations thereof. (Ord. of Sept. 1994)

18-102. <u>Definitions</u>. (1) For purposes of this chapter, the following phrases and words shall have the meaning assigned below, except in those instances where the content clearly indicates a different meaning:

(a) "Clean Water Act (CWA)," "Act," or "the Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 United States Code (U.S.C.) 1251, et seq.

(b) "Approved Publicly Owned Treatment Works (POTW) Pretreatment Program" or "Program" or "POTW Pretreatment Program." A program administered by a publicly owned treatment works that meets the criteria established in Chapter 40 of the Code of Federal Regulations (40 CFR) §§ 403.8 and 403.9, and which has been approved by a regional administrator or state director in accordance with 40 CFR § 403.11.

(c) "Board." Cleveland Utilities Board.

(d) "Bradley County Health Department." The agency designated by Bradley County and the Tennessee Department of Environment and Conservation (TDEC) as responsible for supervision and administration of private wastewater disposal systems in Bradley County.

(e) "Building drain." That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning 5 feet outside the inner face of the building wall.

(f) "Building sewer." A sewer conveying wastewater from the building drain to a community sanitary sewer or other place of disposal.

(g) "Bypass." The intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(h) "Categorical standards." National pretreatment standards established by the Environmental Protection Agency (EPA) for specific industrial user Standard Industrial Classification (SIC) code categories.

(i) "Centralized Waste Treatment Facility (CWT)." A commercial centralized waste treatment facility (other than a landfill or an incinerator) which treats or stores aqueous wastes generated by facilities not located on the CWT site and which disposes of these wastes by introducing them to the POTW.

(j) "City." City of Cleveland, Tennessee.

(k) "Cleveland Utilities." The department of the City of Cleveland charged with the responsibility for operation, maintenance, and financial management of the electric distribution system; the water treatment and distribution system; wastewater collection, treatment, and disposal system; and all facilities to perform the necessary services provided by these utilities under the direction of the Cleveland Utilities Board.

(l) "Combined sewer." A sewer which has been designed to carry both sanitary sewage and storm water runoff.

(m) "Community sewer." A sanitary sewer to which all owners of abutting properties have equal rights and which is owned by the utility.

(n) "Conventional pollutant." Biochemical oxygen demand (BOD), total suspended solids (TSS), pH, fecal coliform bacteria, and oil and grease.

(o) "Direct discharge." The discharge of treated or untreated wastewater directly to the waters of the State of Tennessee.

(p) "Discharge monitoring report." A report submitted by an industrial user to the utility pursuant to this chapter containing information relating to the nature and concentration of pollutants and flow characteristics of a discharge from the industrial user to the POTW using standard methods approved by the utility.

(q) "Environmental Protection Agency (EPA)." An agency of the United States or the administrator or other duly authorized official of said agency.

(r) "Grab sample." A sample taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

(s) "Holding tank waste." Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks. This specifically includes wastewater from industrial users conveyed to the POTW by any means other than by a standard connection to a sanitary combined sewer.

(t) "Indirect discharge." The discharge or the introduction of pollutants from any source regulated under Section 307(b), (c), or (d) of the Act (33 U.S.C. 1317) into the POTW (including holding tank waste discharged into the system) for treatment before direct discharge to state waters.

(u) "Industrial user." A source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to Section 402 of the Act. For the purposes of this chapter, an industrial user is a source of nondomestic wastes from industrial processes.

(v) "Infiltration." Water other than wastewater that enters a sewer system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

(w) "Inflow." Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, fountain drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, storm waters, surface runoff, street wash waters, and drainage. Inflow does not include, and is distinguished from, infiltration.

(x) "Interference." A discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(ii) therefore, is a cause of a violation of any requirement of the POTW's National Pollutant Discharge Elimination System (NPDES) permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations), Section 405 of the CWA, the Solid Waste Disposal Act (SWDA), including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research, and Sanctuaries Act.

(y) "Mass emission rate." The weight of material discharged to the community sewer system during a given time interval. Unless otherwise specified, the mass emission rate shall mean pounds per day of the particular constituent or combination of constituents.

(z) "Maximum concentration." The maximum amount of a specified pollutant in a volume of water or wastewater.

(aa) "National pretreatment standard." Any regulations containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1347) which applies to industrial users. These terms also include prohibited

discharges promulgated in 40 CFR 403.5 and local limits adopted as part of the city's approved pretreatment program.

(bb) "New source."

(i) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that one of the following criteria is applicable:

(A) The building, structure, facility, or installation is constructed at a site at which no other source is located.

(B) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source.

(C) The production or wastewater generated processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(ii) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (i)(B) or (C) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

(iii) Construction of a new source as defined under this paragraph has commenced if the owner or operator has taken one of the following actions:

(A) Begun or caused to begin as part of a continuous on-site construction program:

- Any placement, assembly, or installation of facilities or equipment.
- Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment.

(B) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable

time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(cc) "National Pollution Discharge Elimination System (NPDES) Permit." A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

(dd) "Normal wastewater." Effluent which contains constituents and characteristics similar to effluent from a domestic premise, and specifically for the purposes of this chapter, does not contain BOD_5, COD, or TSS in concentrations in excess of the following:

BOD_5 -- 300 milligrams per liter
COD -- 600 milligrams per liter
TSS -- 400 milligrams per liter

(ee) "Pass through." A discharge which exits the POTW into waters of the United States in the quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation). In the case of POTW receiving discharges from CWTs as defined above, pass through also means the failure of the CWT and the POTW to reduce pollutant discharges from the POTW to the degree required under Section 301(b)(2) of the CWA if the CWA discharged directly to surface waters.

(ff) "Person." Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.

(gg) "Pollution." The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(hh) "Premises." A parcel of real estate or portion thereof, including any improvements thereon which is determined by the utility to be a single user for purposes of receiving, using, and paying for services.

(ii) "Pretreatment." The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes; process changes or by other means, except as prohibited by 40 CFR § 403.6(d).

Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR § 403.6(e).

(jj) "Pretreatment requirements." Any substantive or procedural requirement related to pretreatment other than a national pretreatment standard imposed on an industrial user.

(kk) "Publicly Owned Treatment Works (POTW)." A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292). This definition includes any sewers that convey wastewater to such a treatment works and any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or liquid industrial waste, but does include pipes, sewers, or other conveyances not connected to a facility providing treatment.

(ll) "Reclaimed water." Water which, as a result of the treatment of waste, is suitable for direct beneficial or controlled use that would not occur otherwise.

(mm) "Sanitary sewer" A sewer which carries wastewater and from which storm, surface, and ground waters are intentionally excluded.

(nn) "Severe property damage." Substantial physical damage to property, damage to pretreatment facilities rendering them inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(oo) "Significant industrial user."

(i) All dischargers subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter 1, Subchapter N.

(ii) All non-categorical dischargers that contribute a process wastestream which makes up 5 percent or more of the average dry weather capacity of the POTW treatment plant, or more than an average of 25,000 gallons per day of process wastewater to the POTW.

(iii) All non-categorical dischargers that, in the opinion of the utility, have a reasonable potential to adversely affect the POTW's operation. This may include but not be limited to all centralized waste treatment discharges, all tank and drum cleaning facilities, and all paint manufacturing facilities.

(iv) All non-categorical discharges that contain more than 100 pounds per day of combined BOD and TSS load above that level found in normal wastewater, or that contain more than 1,000 pounds in a month of combined BOD and TSS load above that level found in normal wastewater.

(pp) "Standard industrial classification." A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.

(qq) "Toxic pollutant." Any pollutant or combination of pollutants listed as toxic in 40 CFR Part 401 promulgated by the Administrator of the EPA under the provisions of 33 U.S.C. 1317.

(rr) "Treatment works." Any devices and systems used in the storage, treatment, recycling, and reclamation of domestic sewage of liquid industrial wastes, including interceptor sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including land, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; and including combined storm water and sanitary sewer systems.

(ss) "Twenty-four-hour, flow-proportional composite sample." A sample consisting of several effluent portions collected during a 24-hour period in which the portions of sample are proportionate to the flow and combined to form a representative sample.

(tt) "Unpolluted water." Water to which no constituent has been added, either intentionally or accidentally, which would render such water unacceptable to the State of Tennessee or the EPA having jurisdiction thereof for disposal to storm or natural drainage or directly to surface waters.

(uu) "User." Any person, firm, corporation, or governmental entity that discharges, causes, or permits the discharge of wastewater into a community sewer.

(vv) "Utility." The General Manager of Cleveland Utilities, superintendents, engineers, technicians, or other employees of Cleveland Utilities, designated by the general manager to act on behalf of the general manager and report directly to the general manager.

(ww) "Utility board." Cleveland Utilities Board, a department of the City of Cleveland.

(xx) "Waste." Sewage and other waste substances (liquid, solid, gaseous, or radioactive) associated with human habitation or of human or animal origin, or from any producing, manufacturing, or processing

operation, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(yy) "Wastewater." Wastewater and water, whether treated or untreated, discharged into or permitted to enter a community sewer.

(zz) "Wastewater constituents and characteristics." The individual chemical, physical, bacteriological and radiological parameter including toxicity, volume, and flow rate and such other parameters that serve to define, classify, or measure the contents, quality, quantity, and strength of wastewater.

(aaa) "Waters of the State of Tennessee." Any water, surface or underground, within the boundaries of the state.

(2) The following abbreviations shall have the following meanings:

(a) BAT - Best Available Technology.
(b) BPT - Best Practical Technology.
(c) BOD_5 - Biochemical Oxygen Demand (5-day).
(d) CFR - Code of Federal Regulations.
(e) COD - Chemical Oxygen Demand.
(f) CWA - Clean Water Act.
(g) CWT - Centralized Waste Treatment Facility.
(h) EPA - Environmental Protection Agency.
(i) GMP - Good Management Practices.
(j) MBAS - Methylene-blue-active substances.
(k) mg/l - Milligrams per liter.
(l) NPDES - National Pollutant Discharge Elimination System.
(m) POTW - Publicly Owned Treatment Works.
(n) RCRA - Resource Conservation and Recovery Act.
(o) SIC - Standard Industrial Classification.
(p) SWDA - Solid Waste Disposal Act, 42 U.S.C. 6901, et seq.
(q) TSS - Total Suspended Non-filterable Solids.
(r) U.S.C. - United States Code. (Ord. of Sept. 1994)

18-103. Use of public sewers. (1) Connection with sanitary sewer required. (a) Sewer connection required. Every building having plumbing fixtures installed and intended for human habitation, occupancy, or use on premises abutting a street, alley, or easement in which segment there is a sanitary sewer which is adjacent to the property line of the parcel containing the building shall be considered as being served by the utility's sanitary sewer system. The utility shall make any decision as to the availability of sewer service to a premise. All premises served by the utility sanitary sewer are subject to sewer user charges as described in § 18-112(5) whether connected to the utility's sewer or not.

All new buildings hereafter constructed on property which is served by the utility's sewer system shall not be occupied until the connection has been made. Septic tanks shall not be used for new

buildings where sanitary sewers are available. All existing buildings shall be connected to the utility's sanitary sewer system within ninety (90) days after date of official notice that sewer service is available to the property except as provided in paragraph 18-103(b).

(b) Unconnected sewer service lines prohibited where connection is available. Except for discharge to a properly functioning septic tank system approved by the Bradley County Health Department or discharges permitted by a National Pollutant Discharge Elimination System permit (hereinafter NPDES) issued by the TDEC, the discharge of sewage into places other than the utility's sewer system is prohibited. The owner or occupant of each lot or parcel of land which is now served or which may hereafter be served by the utility's sewer system shall cease to use any other method for the disposal of sewage except as approved for direct discharge by the TDEC or by discharge to a properly functioning and approved septic tank system.

(c) Insufficient capacity, connection moratorium. In those parts of the utility sewer collection system where no additional dry weather flow capacity exists or no additional treatment capacity is available at the treatment works, no new or additional sewer connections shall be permitted. Connection permits issued prior to the date of the moratorium and other connections that have received prior legal authorization may be made. No permits shall be issued for new sewer connections in a moratorium area after the effective date of the moratorium nor shall any new line extensions be made in that area that have not received prior legal approval. A moratorium shall continue in effect until the capacity restriction has been corrected.

(d) Illegal connections. No person shall make or permit connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. If evidence of such illegal connections is discovered by the utility, the owner will be notified in writing and directed to eliminate the illegal connection and/or repair the building sewer, as appropriate.

(2) Adequate and minimum fixtures. (a) Minimum number of fixtures. All new dwellings shall have at least one commode, one bathtub or shower, one lavatory, one kitchen-type sink, and an adequate source of hot water for each family unit to meet minimum basic requirements for health, sanitation, and personal hygiene. All other buildings, structures, or premises intended for human occupancy or use shall be provided with adequate sanitary facilities as may be required by any other law or regulation, but not less than one commode and one hand-washing lavatory.

(b) Adequate water for disposal of waste required. It shall be unlawful for any person in possession of premises into which a pipe or other connection with the city sanitary sewers and drains have been laid to permit the same to remain without adequate fixtures attached to allow a sufficient quantity of water to be so applied as properly to carry off all waste matter and keep the same unobstructed.

(3) Right to enter, inspect connection. The utility, the plumbing inspector, or other designated employees of the city shall have free and unobstructed access to any part of the premises where house drains or other drains connected with or draining into the utility's sewer are laid for the purpose of examining the construction, condition, and method of use of the same, upon cause or reasonable suspicion that there may be inadequate plumbing, that the facilities present may not be properly functioning, or that there is an unproper discharge, or for a period systematic inspection of a particular drainage basin or other large segment of the system at any time of the day between the hours of 7:00 a.m. and 6:00 p.m. or any other time in the event of an emergency. If such entry is refused, the sewer service may be disconnected upon reasonable notice and an opportunity for a hearing. The service may be suspended immediately in the event of an emergency if there is reasonable cause to suspect that the discharge will endanger the public health or the environment, shall have the potential to interrupt the treatment process, or shall damage the utility's lines or facilities, and a hearing shall thereafter be afforded the user as soon as possible.

(4) Demolished buildings. When a building is demolished or relocated, it shall be the responsibility of the owner to have the sewer service line plugged securely so that extraneous water will not enter the sewer. The owner of the premises or his agent shall notify the plumbing inspector of such a plug and allow same the inspected prior to covering of any work. If such line is to be reused, it must first undergo inspection by the plumbing inspector and be in conformity with current standards for building sewers.

(5) Locations on point of discharge; temporary facilities. No person shall discharge any substance directly into a manhole or other opening in a utility sanitary sewer other than through an approved building sewer unless he has been issued a temporary permit by the utility. Permission may be granted at the discretion of the utility to provide for discharges from portable sanitary facilities for festivals or public shows or for other reasonable purposes. The utility shall incorporate in such a temporary permit such conditions as he deems reasonably necessary to ensure compliance with the provisions of this chapter. Any discharge other than through an approved building sewer shall be unlawful.

(6) Vehicle wash racks. All new gasoline filing stations, garages, self-service automobile washers, and other public wash racks where vehicles are washed shall install catch basins in conformity with the plumbing code in accordance with a permit obtained from the plumbing official. In the event any existing premises does not have a catch basin and the sewer line servicing the

facility stops up due to grit or slime in the sewer lines, then the owner or operator of such premises shall be required to modify these facilities to construct a catch basin as a condition of continuing use of the system. If such users are industrial users as defined in § 18-102, a permit as specified therein will be required. No stormwater shall be diverted to these catch basins.

(7) Grease traps, grit traps, oil traps, and lint traps. All new restaurants, laundries, wash racks, vehicle service stations, private multi-user systems, engine or machinery repair shops, and other facilities that produce, grease, grit, oil, lint, or other materials which accumulate and cause or threaten to cause stoppages or impair the efficiency of the utility's sewers or threaten the safety of its employees, shall install and maintain a grease trap, grit trap, lint trap, oil interceptor, or other appropriate device of standard design and construction to prevent excess discharges of such materials. The design and construction of any such device shall be subject to prior approval of the utility and constructed in accordance with applicable building codes.

(8) Multi-user private sewer systems. Excluding those industrial waste facilities with a permit issued pursuant to § 18-108 the owner or operator of a private sewer system such as, but not limited to, multi-tenant buildings, building complexes, and shopping centers shall be responsible for the quality of wastewater discharged at the point of connection to the utility's sanitary sewer system and shall be responsible for any violations of the provisions of this chapter, including liability for the damage or injury caused to the utility's system as a result of any discharge through the private system. (Ord. of Sept. 1994, as amended by Ord. #2005-40, Oct. 2005)

18-104. Building sewers, connections, and permits. (1) Installation, maintenance, repair of sewer service lines; charge; exception.

(a) Definition. A standard sanitary sewer service line is a 4 or 6-inch pipe extending from the sewer main or trunk location in a street, alley, or easement to the property served by the main or trunk.

(b) Installation of sewer service lines. The construction and installation of all building sewers shall be in accordance with the requirements of the latest edition of the Standard Plumping Code published by the Southern Building Code Congress International, Inc. The utility may establish additional requirements/or standards for materials and methods of installation in accordance with good engineering practice.

Four-inch building sewers shall be laid on a grade of at least 1 percent. Larger building sewers shall be laid on a grade that will produce a velocity when flowing full of a least 2 feet per second. The slope and alignment of all building sewers shall be neat and regular and shall be bedded in material suitable to achieve proper slope and alignment.

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another

as an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

Building sewers shall be constructed only one of the following approved materials:

(i) cast iron soil pipe using rubber compression joints of approved type;

(ii) polyvinyl chloride pipe with rubber compression joints;

(iii) ABS composite sewer pipe with solvent-welded or rubber compression joints of approved type; or

(iv) similar materials of equal or superior quality following utility approval. Under no circumstances will cement mortar joints be acceptable.

Each connection to the sewer system must be made at a tee or stubbed-out service line, or in the absence of any other provision, by means of a saddle of a type approved by the utility, attached to the sewer. No connection may be made by breaking into an existing sewer and inserting the service line.

The building sewer may be brought into the building below the basement floor when gravity flow from the building to the sewer is at a grade of 1 percent or more where possible. In cases where basement or floors are lower than the ground elevation at the point of connection to the sewer, adequate precautions through the installation of check valves or other backflow prevention devices to protect against flooding shall be provided by the owner. In all buildings in which any building drain is too low to permit gravity flow to the sewer, wastes carried by such building drain shall be lifted by an approved means and discharged into the utility's sewer.

(c) Standard sewer stub-outs. Hereafter, as a part of sanitary sewer projects in the City of Cleveland, the utility shall install, or cause to be installed, standard sanitary sewer service stub-outs from mains or trunks located in a street, alley, or easement to the property line of each lot or residence on the street being sewered. In the case of sewers being constructed in undeveloped subdivisions located within a designated sewer project, the standard sanitary sewer service stub-out may be constructed to each lot as shown by the developer on the plat of the subdivision as filed in the Register's Office of Bradley County, Tennessee. Sewer service stub-outs may not be constructed at the expense of the utility in a street where the property is unsubdivided and undeveloped. In such cases, a fee shall be charged upon connection to the sewer line as provided in § 18-112.

(d) Sewer service stub-out charge. A sewer connection charge shall be paid by property owners at the time that application is made to the utility for permission to tie on to the sanitary sewer line. The collection of such payments shall be the responsibility of the utility. This service connection charge shall be in addition to any required fees for inspection, street cuts, or other fees.

(e) Title and maintenance. When a property owner ties into a sanitary sewer stub-out installed pursuant to paragraph (c) of this section and pays the sewer service line charge levied in paragraph (d) of this section, thereafter, all repairs and maintenance of the sanitary sewer service due shall be the responsibility of the property owner or user of the sewer.

(f) Location of sewer stub-outs and tees. The plumbing contractor is responsible for locating sewer service line stub-outs and tees. Utility personnel will provide whatever information is available for this purpose. If a manhole needed for locating a service line has been lost, then the utility shall be responsible for locating the manhole.

(g) Taps on utility sewers. Where a sewer service line stub-out has not been provided, the utility shall provide one. If no stub-out exists within 3 feet of either side of the location shown in the utility's records, then a tap will be provided by the utility. All taps made directly into the utility's sewer lines shall be made by utility personnel.

(h) Manhole required. A new manhole will be required whenever a sewer service line larger than 6 inches is needed to tie into the utility's sewer. The utility's personnel shall install the manhole. The cost of the manhole, including labor and materials, shall be included in the connection fee.

(i) Maintenance of sewer service lines. All repairs and maintenance of the sanitary sewer service line to include correction of excessive inflow or infiltration shall be the responsibility of the property owner or user of the sewer. The utility shall be responsible for the maintenance of collector lines only up to the point where the owner's sewer service line connects to the utility's stub-out.

If, upon smoke testing or visual inspection by the utility, roof downspout connections, exterior foundation drains, area drains, basement drains, building sewer leaks or other sources of rainwater, surface runoff or groundwater entry into the POTW sewer system are identified on building sewers on private property, the superintendent may take any of the following actions.

(i) Notify the property owner in writing of the nature of the problem(s) identified on the property owner's building sewer and the specific steps required to bring the building sewer within the requirements of this chapter. All steps necessary to comply with this chapter must be complete within 60 days from the date

of the written notice and are entirely at the expense of the property owner. The inspection requirements of § 18-104(2) of this chapter apply.

(ii) Notify the property owner in writing of the nature of the problem(s) identified on the property owner's building sewer and inform the property owner that the city will provide all labor, equipment and materials necessary to make the repairs required to bring the building sewer within the requirements of this chapter. The work on private property will be performed at the city's convenience and the cost of all labor, equipment and materials used will be charged to the property owner. The city will be responsible for bringing any excavations back to original grade, replacing topsoil and hand raking all disturbed areas; however, the property owner shall be responsible for final landscaping, including but not limited to seeding, fertilizing, watering, mulching, sodding and replacing any shrubbery or trees displaced or damaged by the city during the execution of the work.

(j) Cost of building sewers. All costs and expenses incidental to the installation and connection of the building sewer to the community sewer shall be borne by the owner. All costs and expenses associated with the installation and operation of pumping equipment necessary to lift sewage to the level of the community sewer shall be borne by the owner. The owner shall indemnity Cleveland Utilities from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(k) Service lines to enter sanitary sewers at junction; exception. No service lines shall enter a sanitary sewer at any point except where a junction has been made and left therefore unless by special permission of the utility. In all cases where such permission is given, the work shall be done by the utility's personnel and at the risk and expense of the party requesting the connection.

(2) Permit required to make connection. (a) Before the owner of any property connects such property into the utility sewer, the owner or owner's agent shall make application to and be issued permits by both the city and the utility. The work shall be performed only by a plumber approved by the city and utility who has also signed the permits. All connections shall be inspected and approved by both the City of Cleveland Plumbing Inspector and the utility.

(b) In order to secure the required connection permits, the owner or owner's agent shall:

(i) Make application for a plumbing permit to the City of Cleveland Plumbing Inspector's Office. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the plumbing

inspector. A permit and inspection fee shall be paid to the City of Cleveland at the time the application for permit is filed.

(ii) Take the plumbing permit to Cleveland Utilities and make application for service and pay the appropriate connection charge and inspection fee.

(c) Connections made without an approved application may be severed by order of the utility. Such unapproved connection may be allowed to remain active if inspected and accepted; however, the owner shall be required to pay an alternative fee in lieu of the permit application fee in an amount double the current regular fee.

(d) No permit for a connection which may be used for discharge of industrial process wastes or other non-domestic waste regulated by § 18-106 shall be issued except upon separate application to the utility and approval of the discharge under the provisions of § 18-108.

(3) Sewer construction; acceptance of work. All sewer construction involving sanitary sewer lines, pump stations, metering stations, and appurtenances which are to become a part of the utility's sewer system shall not be constructed until the plans are approved and the construction inspected and approved by the utility. Any construction work where utility sewers are opened, uncovered, or undercut must have the prior approval of the utility. (Ord. of Sept. 1994)

18-105. Private domestic wastewater disposal. (1) Availability. When a public sanitary sewer is not available under the provisions of § 18-103(1), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this chapter.

(2) Requirements. (a) A private domestic wastewater disposal system may not be constructed within the sewer service area unless and until a written statement is obtained from the utility stating that a public sewer is not accessible to the property and no such sewer is proposed for construction in the immediate future. No written statement shall be issued for any private domestic wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than that specified by zoning regulations and the Bradley County Health Department.

(b) Before commencement of construction of a private sewage disposal system, the owner shall first obtain written permission from the Bradley County Health Department. The owner shall supply any plans, specifications, and other information as are deemed necessary by the Bradley County Health Department.

(c) A private sewage disposal system shall not be placed in operation until the installation is completed to the satisfaction of the Bradley County Health Department. They shall be allowed to inspect the work at any stage of construction and, in any event, the owner shall

notify the Bradley County Health Department when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within a reasonable period of time after the receipt of notice by the Bradley County Health Department.

(d) The type, capacity, location, and layout of a private sewage disposal system shall comply with all recommendations of the Tennessee Department of Environment and Conservation (TDEC) and the Bradley County Health Department. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(e) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times at no expense to the utility.

(f) No statement contained in this chapter shall be construed to interfere with any additional requirements that may be imposed by the Bradley County Health Department. (Ord. of Sept. 1994)

18-106. Prohibitions and limitations on discharges. (1) Purpose and policy. This section establishes limitations and prohibitions on the quantity and quality of wastewater which may be legally discharged into the POTW. Pretreatment of some wastewater discharges will be required to achieve the goals established by this chapter and the Clean Water Act. The specific limitations set forth in § 18-106(10) hereof, and other prohibitions and limitations of this chapter, are subject to change as necessary to enable the utility to provide efficient wastewater treatment, to protect the public health and environment, and to enable the utility to meet requirements contained in its NPDES permit. The utility shall review said limitations from time to time to ensure that they are sufficient to protect the health and safety of sewer system personnel, and the operation of the treatment works to enable the facility to comply with its NPDES permit, provide for a cost-effective means of operating the treatment works, and protect the public health and the environment. The utility shall recommend changes or modifications as necessary.

(2) Prohibited pollutants. No person shall introduce into the POTW any pollutant(s) which cause pass-through or interference. Additionally, the following specific prohibitions apply:

(a) Pollutants which create a fire or explosion hazard in the POTW, including but not limited to, pollutants with a closed-cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Centigrade), as determined by a Pensky-Martens closed-cup tester, using the test method specified in the American Society for Testing and Materials (ASTM) D-93-79 or D-93-80k, or a Setaflash closed-cup tester, using the test method specified in ASTM D-3278-78, or pollutants which cause an exceedance of 10 percent of the lower explosive limit (LEL) at any point within the POTW.

(b) Pollutants which cause corrosive structural damage to the POTW, but in no case discharges with a pH lower than 5.0 or higher than 10.5.

(c) Solid or viscous pollutants in amounts which cause obstruction to the flow of the sewers, or other interference with the operation of or which cause injury to the POTW, including waxy or other materials which tend to coat and clog a sewer line or other appurtenances thereto.

(d) Any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a discharge (slug) of such volume or strength as to cause interference in the POTW or individual unit operations or cause adverse effects on its workers or the environment.

(e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the treatment works influent exceeds 40 degrees Centigrade (104 degrees Fahrenheit). Unless a higher temperature is allowed in the user's wastewater discharge permit, no user shall discharge into any sewer line or other appurtenance of the POTW wastewater with a temperature exceeding 65.5 degrees Centigrade (150 degrees Fahrenheit).

(f) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker's health and safety problems.

(g) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(h) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that cause interference or pass-through.

(3) Affirmative defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in § 18-106(2) and the specific prohibitions in paragraphs (c), (d), (e), (f), and (h) of that section where the user can demonstrate one of the following:

(a) A local limit designed to prevent pass-through and/or interference, as the case may be, was developed pursuant to § 18-106(10) and (11) for each pollutant in the user's discharge that caused pass-through or interference and the user was in compliance with each such local limit directly prior to and during the pass-through or interference.

(b) If a local limit designed to prevent pass-through and/or interference, as the case may be, has not been developed for the pollutant(s) that caused the pass-through or interference and the user's discharge directly prior to and during the pass-through or interference did not change substantially in nature of constituents from the user's prior discharge activity when the POTW was regularly in compliance

with the POTW's NPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(4) Wastewater constituent evaluation. The wastewater of every industrial user shall be evaluated using the following criteria:

(a) Wastewater containing any element or compound which is known to be an environmental hazard and which is not adequately removed by the treatment works.

(b) Wastewater causing a pass-through, discoloration, foam, floating oil and grease, or any other condition in the quality of the utility's treatment work effluent such that receiving water quality requirements established by law cannot be met.

(c) Wastewater causing conditions at or near the utility's treatment works which violate any statute, rule, or regulation of any public agency of Tennessee or the United States.

(d) Wastewater containing any element or compound known to act as a lacrimator, known to cause nausea, or known to cause odors constituting a public nuisance.

(e) Wastewater causing interference with the effluent or any other product of the treatment process, residues, sludges, or scums causing them to be unsuitable for reclamation, reuse, causing interference with the reclamation process, or causing them to be unsuitable for disposal.

(f) Wastewater discharged at a point in the collection system that is upstream of any overflow, bypass, or combined sewer overflow and which may thereby cause special environmental problems or specific discharge limitations.

(g) Wastewater having constituents and concentrations in excess of those listed in § 18-106(10) or cause a violation of the limits in § 18-106(11).

(h) The capacity of existing sewer lines to carry the anticipated wastewater flow, particularly with respect to any problems, overflows, or overloads caused by heavy rain infiltration.

The utility shall establish reasonable limitations, prohibitions, or monitoring requirements in addition to the limits established pursuant to § 18-106(5) and (10) in the wastewater discharge permit of any industrial user that discharges wastewater violating any of the above criteria or that has processes that generate wastewater that could violate any of the above criteria prior to pretreatment as shall be reasonably necessary to achieve the purpose and policy of this chapter.

(5) National pretreatment standards. Certain industrial users are now or hereafter shall become subject to national pretreatment standards promulgated by the EPA specifying quantities or concentrations of pollutants or pollutant properties which may be discharged into the POTW. All industrial users subject to such standard shall comply with all requirements and with any

additional or more stringent limitations contained in this chapter. Compliance with national pretreatment standards for existing sources subject to such standards or for existing sources which hereafter become subject to such standards shall be within 3 years following promulgation of the standards unless a shorter compliance time is specified. Compliance for new sources shall be required upon promulgation. New sources shall have in operating condition and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards.

(6) Dilution. Except where expressly authorized by an applicable national pretreatment standard, no industrial user shall increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitution for adequate treatment to achieve compliance with such standard.

(7) Limitation on radioactive waste. No person shall discharge or permit to be discharged any radioactive waste into a community sewer, except as follows:

(a) When the person is authorized to use radioactive materials by the TDEC or the Nuclear Regulatory Commission (NRC).

(b) When the waste is discharged in strict conformity with applicable laws and regulations of the agencies having jurisdiction.

(c) When a copy of permits received from said regulatory agencies has been filed with the utility.

(8) Septic tank pumping, hauling, and discharge. No person owning vacuum or cesspool pump trucks or other liquid waste transport trucks shall discharge sewage directly or indirectly into the POTW, unless that person first receives from the utility a septic tank truck discharge permit for each vehicle used in this manner. All applicants for a septic tank truck discharge permit shall complete the forms required by the utility, pay appropriate fees, and agree in writing to abide by the provisions of this chapter an any special conditions or regulations established by the utility.

(a) The owners of such vehicles shall affix and display the permit number in 4-inch block figures on the side of each vehicle used for such purposes.

(b) The permit shall be valid for a period of 1 year from date of issuance, provided that the permit should be subject to suspension or revocation by the utility for violation of any provisions of this code, regulations as established by the utility, or other applicable laws and regulations. A revocation or suspension of the permit shall be for a period not to exceed 5 years. Such revocation or suspension shall bind the permittee, any member of the immediate family of the permittee, or any person who has purchased the business or a substantial amount of the assets of the permittee who paid less than fair market value for such

business or assets. Users found operating in violation of a permit issued under this subsection and whose permit is therefore revoked by the utility, shall be notified of the violation by certified mail or by a notice personally delivered to the user.

(c) Septic tank discharge permits are not automatically renewed. Application for renewal must be made to the utility.

(d) Such permits shall be limited to the discharge of domestic sewage waste containing no industrial waste. All other hauled wastes shall be governed by § 18-106(9). Any user transporting, collecting, or discharging non-domestic industrial process wastewaters or a mixture of such wastewaters with domestic wastewater shall obtain a holding tank discharge permit in accordance with § 18-106(9).

(e) The utility shall designate the locations and times where such trucks may be discharged and may refuse to accept any truckload of waste at his absolute discretion where it appears that the waste could interfere with the effective operation of the treatment works or any sewer line or appurtenance thereto, or where it appears that a truckload of waste contains industrial process waste or a mixture of domestic sewage and industrial process waste.

(f) The utility shall have authority to investigate the source of any hauled waste and to require testing of the waste at the expense of the discharger prior to discharge.

(9) Other holding tank waste. No user shall discharge any other holding tank wastes, including hauled industrial waste, into the POTW unless he has been issued a holding tank discharge permit by the utility. Unless otherwise allowed under the terms and conditions of the permit, a separate permit must be secured for each separate discharge. All applicants for a holding tank discharge permit shall complete forms required by the utility, pay appropriate fees, and agree in writing to abide by the provisions of this chapter and any special conditions or regulations established by the utility. All such dischargers and transporters must show that they have complied with federal manifest and other regulations under RCRA. The permit shall state the specific location of the discharge, the time of day the discharge is to occur, the volume of the discharge, and the source and character of the waste, and shall limit the wastewater constituents and characteristics of the discharge. The user shall pay any applicable charges or fees and shall comply with the conditions of the permit. However, the utility may waive at his discretion the application and the fees for discharge of domestic waste from a recreational vehicle holding tank.

(10) Limitations on wastewater strength (local limits). No user shall discharge wastewater with pollutant concentrations in excess of the concentration set forth in Table 1 below unless:

(a) an exception has been granted the user under the provisions of § 18-107(8) or

(b) the user's wastewater discharge permit provides as a special permit condition temporarily allowing a higher interim concentration level in conjunction with a requirement that the user construct a pretreatment facility or institute changes in operation and maintenance procedures to reduce the concentration of pollutants to levels not exceeding the standards set forth in the table within a fixed period of time.

TABLE 1

Limitations on Wastewater Strength

Parameter	Maximum Concentration (24 Hour Flow Proportional Composite Sample) (mg/L)	Maximum Concentration (Instantaneous Grab Sample) (mg/L)
Aluminum	3,900.00	7,800.00
Antimony	7.45	14.90
Arsenic	0.13	0.26
Barium	625.00	1,250.00
Boron	19.00	38.00
Cadmium	0.62	1.24
Total Chromium	12.40	24.80
Hexavalent chromium	6.54	13.08
Copper	6.96	13.92
Total Cyanide	0.53	1.06
Lead	0.42	0.84
Manganese	7.66	15.32
Mercury	0.025	0.05
Nickel	0.55	1.10
Selenium	0.08	0.16
Silver	0.70	1.40
Titanium	109.00	218.00
Zinc	1.37	2.74
Total Dissolved Solids	8,300.00	16,600.00
Phenols	---	3.32
Sulfide	6.53	13.06
Surfactants (MBAS)	40.00	80.00

(11) Criteria to protect the treatment plant influent. The utility shall monitor the treatment works influent for each pollutant in Table 2. Industrial user shall be subject to the reporting and monitoring requirements

set forth in § 18-109 as to these pollutants. In the event that the influent at the treatment works reaches or exceeds the established levels, the utility shall initiate technical studies to determine the cause of the influent violation and shall recommend remedial measures as necessary, including but not limited to, the establishment of new or revised pretreatment levels for these pollutants. The utility shall also recommend changes to any of these criteria in the event the POTW effluent standards or applicable laws or regulations are changed, or when changes are necessary for a more effective operation.

TABLE 2

Treatment Plant Protection Criteria

Pollutant	Protection Criteria (mg/l)
Conventional Pollutant	300.0
BOD_5	
Non-Conventional Pollutant	
Total Dissolved Solids	1,800.0
Phenols	0.050
Cadmium - Total	0.0066
Chromium - Total	.100
Chromium - Hexavalent	0.06
Copper - Total	0.148
Cyanide	0.056
Lead	0.0540
Mercury	0.0004
Nickel	0.200
Silver	0.0102
Zinc	0.263
Base Neutral Organics	
Naphthalene	0.0010
Bis (2-ethyl hexyl) phthalate	
Butyl benzyl phthalate	
Di-n-butyl phthalate	
Deithyl phthalate	
Sum of phthalates	.033
Volatile organics	
Benzene	0.0030
Carbon Tetrachloride	0.0150
1, 1, 1-trichloroethane	0.0300
Chloroform	0.0850
1,2-Trans dichlorethylene	0.0015

Pollutant	Protection Criteria (mg/l)
Ethylbenzene	0.0040
Methylene Chloride	0.0500
Tetrachloroethylene	0.0250
Toluene	0.0150
Trichloroethylene	0.0100

(12) Storm drainage, ground water, unpolluted water, and contaminated storm water. (a) No storm water, ground water, rain water, street drainage, rooftop drainage, basement drainage, subsurface drainage, foundation drainage, yard drainage, swimming pool drainage, process water drainage, cooling water, or other unpolluted or minimally polluted water shall be discharged into the city's sewer unless no other reasonable alternative is available, except with permission from the utility. Reasonable conditions shall be prescribed, and a sewer service charge will be issued based upon the quantity of water discharged as measured by a flowmeter or a reasonable estimate accepted by the utility. All users shall be required to maintain their private sewer lines so as to prevent infiltration of ground or storm water as a condition of use of the system and shall immediately repair or replace any leaking or damaged lines.

(b) The utility will accept the discharge of contaminated storm water if the following criteria are met:

(i) All known and available technology will not prevent contamination or treat contaminated water to meet state standards for discharge to receiving waters or will cause unreasonable financial burden;

(ii) The contaminated storm water meets the utility's discharge limits and all state and federal pretreatment requirements; and

(iii) Adequate containment and storage facilities are available as to allow the discharge to occur at such a time and flow rate approved by the utility. At a minimum, the storm water discharge will not be allowed until after the hydraulic loading from a storm event has subsided.

(13) Limitations on the use of garbage grinders. No waste from commercial or institutional garbage grinders shall be discharged into the utility's sewers except from private garbage grinders used in an individual residence or upon approval of the utility for preparation of food consumed on premises, and then only where applicable fees are paid. Installation of any garbage grinder equipped with a three-fourths horsepower (or greater) motor

shall require approval. The utility may grant approval when there is inadequate space on the user's premises to properly store food preparation waste between regularly scheduled garbage pickup by a service with in equal or greater frequency of collection. Provided, further, that such grinders shall shred the waste sufficiently that it can be carried freely under normal flow conditions prevailing in the utility's sewer lines. It shall be unlawful for any person to use a garbage grinder connected to the sewer system for the purpose of grinding and discharging plastic, paper products, inert materials, or anything other than the waste products from normal food preparation and consumption.

(14) Hospital or medical waste. It shall be unlawful for any person to dispose of medical waste, surgical operating room waste, or delivery room waste into the utility's sewer.

(15) Obstruction of or damage to sewer lines. It shall be unlawful for any person to deposit or cause to be deposited any waste which may obstruct or damage storm or sanitary sewer lines or which may inhibit, disrupt, or damage either system, including the sewer treatment process and operations. This prohibition includes all substances, whether liquid, solid, gaseous, or radioactive and whether associated with human habitation, of human or animal origin, or from any producing, manufacturing, or processing. It shall be unlawful to block or obstruct any catch basin, sewer line, or other appurtenance; or to break, injure, or remove any portion from any part of a sewer, drain, or catch basin, including plates covering manhole. (Ord. of Sept. 1994)

18-107. Control of prohibited pollutants. (1) Pretreatment requirements. Industrial users of the POTW shall design, construct, operate, and maintain wastewater pretreatment facilities when necessary to reduce or modify the user's wastewater composition to achieve compliance with the limitations in wastewater strength set forth in § 18-106(10), to meet applicable national pretreatment standards, to prevent slug discharges or to meet any other wastewater condition or limitation contained in the industrial user's wastewater discharge permit.

(2) Plans and specifications. Plans and specifications for wastewater monitoring and pretreatment facilities shall be prepared, signed, dated, and sealed by a registered engineer, and be submitted to the utility for review in accordance with accepted engineering practices. The utility shall review the plans, within 45 days of receipt and recommend to the industrial user any appropriate changes. Prior to beginning construction of a monitoring or pretreatment facility, the user shall submit a set of construction plans and specifications to be maintained by the utility. Prior to beginning construction, the industrial user shall also secure building, plumbing, and all other required permits.

The industrial user shall construct the pretreatment facility within the time provided in the industrial user's wastewater discharge permit. Following completion of construction, the industrial user shall provide the utility with

as-built drawings to be maintained by the utility. The review of such plans and specifications will in no way relieve the user from the responsibility of modifying the facilities as necessary to produce an effluent complying with the provisions of this chapter. Any subsequent changes in the pretreatment facilities or methods of operations shall be reported to and be approved by the utility prior to implementation.

(3) Prevention of accidental discharges. All users shall provide such facilities and institute such procedures as are reasonably necessary to prevent or minimize the potential for accidental discharge into the POTW of waste regulated by this chapter from liquid or raw material storage areas, from truck loading and unloading areas, from in-plant transfer or processing and materials handling areas, and from diked areas or holding ponds of any waste regulated by this chapter. The wastewater discharge permit of any industrial user who has a history of significant leaks, spills, or other accidental discharge of waste regulated by this chapter shall be subject on a case-by-case basis to a special permit condition or requirement for the construction of facilities or establishment of procedures which will prevent or minimize the potential for accidental discharge. Plans, specifications, and operating procedures for special permit conditions shall be developed by the user and submitted to the utility for review under the provisions of § 18-108(5)(k) and (l).

(4) Oil and grease discharge, control program. Disposal of oil by discharge to the sewer system is not permitted. Oils include automotive lubricating oils, transmission and brake fluid, other industrial oils, and vegetable oils used in a restaurant or food processing facility.

The utility shall contact all wastewater discharge permit holders, restaurants, service stations, septic tank pumpers, commercial food processors, oil tank firms and transporters, and others as appropriate, by letter as often as needed to advise them of requirements for oil and grease discharge control. These discharger will also be informed of approved oil and grease disposal options available in the Cleveland vicinity. The dischargers of oil and grease waste shall be required to provide an equivalent of primary treatment based on gravity separation of visible and floating oil and grease and oil and grease sludge from wastewater discharges. Such pretreatment processes shall be subject to the good management practices as required by § 18-107(8)(f) and approval by the utility. Discharges shall also be subject to monitoring, entry, inspection, reporting, and other requirements as determined by the utility at his discretion. These dischargers may be required by the utility to apply for industrial waste discharge permits if the utility determines that the dischargers are a source of prohibited pollutants, toxic pollutants in toxic amounts, or are otherwise controlled by federal or state regulations. All dischargers of oil and grease as listed above are subject to all enforcement and penalty provisions of this chapter.

(5) Slug control program. (a) Each user shall provide protection from slug discharges of restricted materials or other substances regulated by

this chapter. A slug is defined as any pollutants, including oxygen demanding pollutants (BOD, COD, NH_3, etc.) released in a discharge of such volume or strength as to cause interference in the POTW or individual unit operations or cause adverse effects upon its workers or the environment. No user who commences discharge to the sewerage system after adoption of this chapter shall be permitted to introduce pollutants into the system until the need for slug discharge control plans or procedures has been evaluated by the utility.

(b) Certain users will be required to prepare Slug Discharge Prevention and Contingency Plans (SDPC) showing facilities and operating procedures to provide this protection. These plans shall be submitted to the utility for review and approval. All existing users required to have SDPC plans shall submit such a plan within 3 months after notification from the utility and complete implementation within 6 months. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter.

(c) In the case of a slug discharge, it is the responsibility of the user to immediately notify the POTW of the incident by telephone or in person. Information concerning the location of the discharge, type of waste, concentration and volume, and corrective action shall be provided by the user.

Within 5 days following a slug discharge, the user shall submit a detailed written report describing the cause of the discharge and the measures being taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the sewerage system, fish kills, or any other damage to person or property, nor shall notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or other applicable law.

(d) A notice shall be permanently posted on the user's premises advising employees of a contact to call in the event of a slug discharge. The user shall ensure that all employees who may cause or allow such slug discharge to occur are advised of the proper emergency notification procedure.

(6) <u>Prohibition of bypass</u>. (a) Except as allowed in paragraph (c) below, bypass is prohibited, and the utility may take enforcement action against an industrial user for a bypass, unless:

(i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate

backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance.

(iii) The industrial user submitted notices as required in § 18-109(13).

(b) The utility may approve an anticipated bypass after considering its adverse effect if the utility determines that it will meet the three conditions listed in paragraph (a) of this section.

(c) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the reporting provisions of § 18-109(13).

(7) Centralized waste treatment facilities. The utility shall establish effluent limits for centralized waste treatment facilities (CWT) in order that the level of pollution discharged from the CWT through the POTW to the environment will not exceed the level that would be allowed if the CWT discharged directly to surface waters under Section 301(b)(2) of the Act (33 U.S.C. § 1311). Additionally, centralized waste treatment facilities shall maintain records and submit reports as directed by the utility regarding the SIC codes of their customers and the frequency, characteristics, and volume of wastes from the various categories.

(8) Exception to wastewater strength standard. (a) Applicability. This section provides a method for industrial users subject to the limitation on wastewater strength pollutants listed in § 18-106(10) to apply for and receive a temporary exception to the discharge level for one or more pollutants or parameters.

(b) Time of application. Applicants shall apply for a temporary exception when they are required to apply for a wastewater discharge permit or renewal provided that the utility allows applications at any time unless the applicant has submitted the same or substantially similar application within the preceding year that was denied by the board.

(c) Written applications. All applications for an exception shall be in writing and shall contain sufficient information for evaluation of each of the factors to be considered by the utility pursuant to paragraph (d) of this section.

(d) Review by utility. All applications for an exception shall be reviewed by the utility. If the application does not contain sufficient information for complete evaluation, the utility shall notify the applicant of the deficiencies and request additional information. The applicant shall have 30 days following notification by the utility to correct such deficiencies. This 30-day period may be extended by the utility upon

application and for just cause shown. Upon receipt of a complete application, the utility shall evaluate it within 30 days and approve or deny the application based upon the following factors:

(i) The utility shall consider if the applicant is subject to a national pretreatment standard containing discharge limitations more stringent than those in § 18-106(10) and grant an exception only if such exception is within the limitations of applicable federal regulations.

(ii) The utility shall consider if the exception would apply to discharge of a substance classified as a toxic substance under regulations promulgated by the EPA under the provisions of Section 307(a) of the Act (33 U.S.C. 1317), or similar state regulation, and then grant an exception only if such exception may be granted within the limitations of federal and state regulations.

(iii) The utility shall consider if the exception would create conditions or a hazard to utility personnel that would reduce the effectiveness of the treatment works taking into consideration the concentration of said pollutant in the treatment works' influent and the design capability of the treatment works.

(iv) The utility shall consider the possibility of the exception causing the treatment works to violate its NPDES permit.

(v) The utility shall consider if the exception would cause elements or compounds to be present in the sludge of the treatment works which would prevent sludge use or disposal by the utility or which would cause the utility to violate any regulation promulgated by EPA, under the provisions of Section 405 of the Act (33 U.S.C. 1345) or similar state regulatory measure.

(vi) The utility may consider the cost of pretreatment or other types of control techniques which would be necessary for the user to achieve effluent reduction, but prohibitive cost alone shall not be the basis for granting an exception.

(vii) The utility may consider the age of equipment and industrial facilities involved to the extent that such factors affect the quality or quantity of wastewater discharge.

(viii) The utility may consider the process employed by the user and process changes available which would affect the quality or quantity of wastewater discharge.

(ix) The utility may consider the engineering aspects of various types of pretreatment or other control techniques available to the user to improve the quality or quantity of wastewater discharge.

(x) The utility may consider an application for exception based upon the fact that water conservation measures instituted or proposed by the user result in a higher concentration of particular pollutants in the wastewater discharge of the user without increasing the amount of mass of pollutants discharged. To be eligible for an exception under this subparagraph, the applicant must show that except for water conservation measures, the applicant's discharge has been or would be in compliance with the limitations on wastewater strength set forth in § 18-106(10). No such exception shall be granted if the increased concentration of pollutants in the applicant's wastewater would have significant adverse impact upon the operation of the POTW.

(e) Review by utilities board. The board shall review any appeal to a denial by the utility of an application for an exception and shall take into account the same factors considered by the utility. At such hearing, the applicant and the utility shall have the right to present relevant proof by oral or documentary evidence. The procedure set forth in § 18-110(4) shall be applicable to such a hearing. The applicant shall bear the burden of proof in an appeal hearing.

(f) Good management practices required. The utility shall not grant an exception unless the applicant demonstrates to the utility that good management practices (GMP) are being employed to prevent or reduce the contribution of pollutants to the POTW. GMP's include, but are not limited to, preventive operating and maintenance procedures, schedule of activities, process changes, prohibiting activities, and other management practices to reduce the quantity of pollutants discharged and to control plant site runoff, spillage, leaks, and drainage from raw material storage. (Ord. of Sept. 1994)

18-108. Wastewater discharge permits. (1) Applicability. The provisions of this chapter are applicable to all industrial users of the POTW. The utility has an "Approved POTW Pretreatment Program" as that term is defined in 40 CFR, Part 403.3(d) and any permits issued hereunder to industrial users who are subject to or who become subject to a National Categorical Pretreatment Standard as defined in 40 CFR, Part 403.3(j) shall be conditioned upon the industrial user also complying with all applicable substantive and procedural requirements promulgated by the EPA or the State of Tennessee regarding such categorical standard unless an exception for the utility's program or for specific industrial categories is authorized.

(2) Application and permit requirements for industrial users. Prior discharging non-domestic waste into the POTW, all significant industrial users of the POTW shall obtain a wastewater discharge permit. The industrial user shall request that the utility determine if the proposed discharge is significant as defined in § 18-102. If the discharge is determined not to be significant, then

the utility may still establish appropriate discharge conditions for the user. Any noncategorical industrial user designated as significant may petition the utility to be deleted from the list of significant industrial users on the grounds that there exists no potential for adverse effect on the POTW's operation or violation of any pretreatment standard or requirement.

All significant industrial users shall obtain an industrial wastewater discharge permit and shall complete such forms as required by the utility, pay appropriate fees, and agree to abide by the provisions of this chapter and any specific conditions or regulations established by the utility. All original applications shall be accompanied by a report containing the information specified in § 18-108(3). All original applications shall also include a site plan, floor plan, and mechanical and plumbing plans with sufficient detail to show all sewers and appurtenances in the user's premises by size and location. The industrial user shall also submit revised plans to the utility when alterations or additions to the user's premises affect said plans.

(3) Report requirement. The report required for all significant industrial users by § 18-108(2) or other provisions of this chapter shall contain in units and terms appropriate for evaluation the information listed in subparagraphs (a) through (e) below. Industrial users subject to national pretreatment standards shall submit to the utility a report which contains the information listed in paragraphs (a) through (f) below within 180 days after the promulgation by the EPA of a National Pretreatment Standard under Section 307(b) or (c) [33 U.S.C. 1317(b) or (c)] of the Act. This report is called the Baseline Monitoring Report (BMR). Industrial users who are unable to achieve a discharge limit set forth in § 18-106 without improved operation and maintenance procedures or pretreatment shall submit a report which contains the information listed in paragraphs (a) through (g) of this section.

As specified, the report shall contain all applicable portions of the following:

(a) The name and address of the industrial user.

(b) The location of the industrial user.

(c) The nature, average rate of production, and standard industrial classification of the operation(s) carried out by the industrial user.

(d) The average and maximum flow in gallons per day of discharge from the industrial user to the POTW.

(e) The nature and concentration of pollutants in the discharge from each regulated and unregulated process from the industrial user and identification of any applicable pretreatment standards and requirements. The concentration shall be reported as a maximum or average level as provided for in the applicable pretreatment standard and as determined by standard methods approved by the utility. If an equivalent concentration limit has been calculated in accordance with any pretreatment standard, this adjusted concentration limit shall also be

submitted to the utility for approval. When pH information is required in the initial report or in regular periodic self-monitoring reports, it shall be provided to the utility as a copy of the charge from a continuous pH recorder or copy of logged PH readings taken at least every hour of operation using a "probe" type PH meter.

(f) A statement that has been reviewed by an authorized representative of the industrial user and certified by a professional engineer indicating if pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance procedures or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(g) If additional pretreatment or operation and maintenance procedure will be required to meet the pretreatment standards the report shall contain the shortest schedule by which the industrial user will provide the additional pretreatment. The completion date in this schedule shall be no later than the compliance date established for the applicable pretreatment standard.

For purposes of this paragraph when the context so indicates, the phrase "pretreatment standard" shall include either a national pretreatment standard or a pretreatment standard imposed as a result of the industrial user's discharging any incompatible pollutant regulated by § 18-106. For purposes of this paragraph, the term "pollutant" shall include any pollutant identified in a national pretreatment standard or any incompatible pollutant identified in § 18-106.

(4) Incomplete applications. The utility will act only on applications that are accompanied by a report which contains all the information required in § 18-108(3). Industrial users who have filed incomplete applications will be notified by the utility that the application is deficient and the nature of such deficiency and will be given 30 days to correct the deficiency. If the deficiency is not corrected within that period or with such extended time allowed by the utility, the utility shall deny the application and notify the applicant in writing of such action.

(5) Evaluation of application permit conditions. Upon receipt of complete applications, the utility shall review and evaluate the applications and shall propose such special permit conditions as the utility deems advisable. All wastewater discharge permits shall be expressly subject to all the provisions of this chapter and all other applicable ordinances, laws, and regulations. The utility may also propose that the wastewater discharge permit be subject to one or more special conditions in regard to any of the following:

(a) Pretreatment requirements.

(b) The average and maximum wastewater constituents and characteristics.

(c) Limits on rate and time of discharge of requirements for flow regulations and equalization.

(d) Requirements for installation of inspection and sampling facilities.

(e) Specifications for monitoring programs that may include sampling, number, types, and standards for tests and reporting schedule.

(f) Requirements for submission of technical reports or discharge reports.

(g) Requirements for maintaining records relating to wastewater discharge.

(h) Mean and maximum mass emission rates, or other appropriate limits when toxic pollutants (as set forth in § 18-106) are proposed or present in the industrial user's wastewater discharge.

(i) Other conditions deemed appropriate by the utility to ensure compliance with this chapter or other applicable ordinance, law, or regulation.

(j) A reasonable compliance schedule, as determined by the utility, up to one year in duration or such earlier date as may be required by other applicable law or regulation, whichever is sooner, to ensure the industrial user's compliance with pretreatment requirements or improved methods of operation and maintenance.

(k) Requirements for the installation of facilities to prevent and control accidental discharge or spills at the user's premises.

(l) The unit discharge or schedule of charges and fees for the wastewater to be discharged to a community sewer.

(6) Applicant to be notified of proposed permit conditions; right to object. (a) Upon completion of the evaluation, the utility shall notify the applicant of any special permit conditions proposed for inclusion in the wastewater discharge permit.

(b) The applicant shall have 30 days from and after the date of the utility's recommendations for special permit conditions to review same and file written objections with the utility in regard to any special permit conditions recommended. The utility may, but is not required, to schedule a meeting with applicant's authorized representative within 15 days following receipt of the applicant's objections, to attempt to resolve disputed issues concerning special permit conditions.

(c) If applicant files no objection to special permit conditions proposed by the utility or a subsequent agreement is reached concerning same, the utility shall issue a wastewater discharge permit to applicant with such special conditions incorporated therein. Otherwise, the utility shall submit the disputed matters to the board for resolution.

(7) Board to establish permit conditions; hearing. (a) In the event the utility cannot issue a wastewater discharge permit pursuant to § 18-108(6), the utility shall submit to the board the proposed permit conditions and the applicant's written objections thereto at the next regularly scheduled meeting of the board or a specially called meeting.

(b) The board shall schedule a hearing within 90 days following the meeting referred to above unless such time is extended for just cause shown to resolve any disputed matters relevant to such permit.

(c) The utility shall notify the applicant of the date, time, place, and purpose of the hearing scheduled by the board. The applicant and the utility shall have the right to participate in the hearing and present any relevant evidence to the board concerning proposed special permit conditions or other matters being considered by the board.

(d) Following the hearing or additional hearings deemed necessary and advisable by the board, the board shall establish special permit conditions deemed advisable to ensure the applicant's compliance with this chapter or other applicable laws or regulations and direct the utility to issue a wastewater discharge permit to the applicant accordingly.

(8) Compliance schedule and reporting requirements. The following conditions shall apply to the schedules required by § 18-108(5):

(a) Schedule components. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment requirements for the industrial user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing the engineering report, completing final plans, executing contracts for major components, commencing construction, completing construction, etc.).

(b) Schedule intervals. No such increment shall exceed 9 months.

(9) Duration of permit. All existing permits for significant industrial users shall be reviewed and reissued with revisions as necessary to comply with new regulatory measures of this chapter within one year of adoption of this ordinance.

Wastewater discharge permits shall be issued for a period not to exceed 5 years. Permits issued to industrial users granted an exception pursuant to § 18-107(8) shall be issued for a period of 1 year. A permit may remain effective after the expiration date if the IU has submitted a formal appeal or the utility requires an extended time for review.

Notwithstanding the foregoing, industrial users subject to a national pretreatment standard shall apply for new permits on the effective date of such national pretreatment standards. The utility shall notify in writing any industrial user whom the utility has cause to believe is subject to a national pretreatment standard of the promulgation of such federal regulations, but any failure of the utility in this regard shall not relieve the industrial user of the duty of complying with such national pretreatment standards. An industrial user must apply in writing for a renewal permit within the period of time not

more than 90 days and not less than 30 days prior to expiration of the current permit.

Limitations or conditions of a permit are subject to modification or change as such changes become necessary due to changes in applicable water quality standards, changes in the utility's NPDES permit, changes in § 18-106(11), changes in other applicable law or regulation, or for other just cause. Industrial users shall be notified of any proposed changes in their permit by the utility at least 30 days prior to the effective date of the change. Any change or new condition in a permit shall include a provision for a reasonable time schedule for compliance. The industrial user may appeal the decision of the utility in regard to any changed permit conditions as otherwise provided in this chapter.

(10) Transfer of a permit. Wastewater discharge permits are issued to a specific industrial user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, a different premises, or a new or changed operation, unless as approved by the utility.

(11) Revocation of permit. Any permit issued under the provisions of this chapter is subject to modification, suspension, or revocation in whole or in part during its term for cause, including but not limited to, the following:

(a) Violation of any terms or conditions of the wastewater discharge permit or other applicable law or regulation.

(b) Obtaining of a permit by misrepresentation or failure to disclose fully all relevant facts.

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(d) Refusal of reasonable access to the user's premise for the purpose of inspection or monitoring. (Ord. of Sept. 1994)

18-109. Inspections, monitoring, and records. (1) Inspections, monitoring, and entry. (a) When required to carry out the objective of this chapter, including but not limited to:

(i) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, standard of performance, or permit condition under this chapter;

(ii) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, standard of performance, or permit condition;

(iii) any requirement established under this section.

(b) The utility shall require any industrial user to:

(i) establish and maintain records;

(ii) make reports;

(iii) install, use, and maintain monitoring equipment or methods, including where appropriate, biological monitoring methods;

(iv) sample effluents in accordance with these methods, at such locations, at such intervals, and in such manner as the utility shall prescribe; and

(v) provide such other information as the utility may reasonably require.

(c) Specific requirements under the provisions of paragraph (b) of this section shall be established by the utility, or the board as applicable, for each industrial user and such requirements shall be included as a condition of the industrial user's wastewater discharge permit. The nature of degree of any requirement under this provision shall depend upon the nature of the user's discharge, the impact of the discharge on the POTW, the volume of water discharged, and the technical feasibility of an economic reasonableness of any such requirement imposed.

(d) The utility or his authorized representative shall, upon presentation of his credentials:

(i) Have a right of entry to, upon, or through any user's premises in which an effluent source is located or in which any records required to be maintained under this subsection are located.

(ii) Have access at reasonable times to and copy any records, inspect any monitoring equipment or method required under paragraph (b), and sample any effluents which the owner or operator of such source is required to sample.

(e) In the event any industrial user denies the utility or his authorized representative the right of entry for inspection, sampling effluents, inspecting and copying records, or verifying that a user is not discharging industrial wastes or performing such other duties as shall be imposed upon the utility by this chapter, the utility shall seek a warrant or use such other legal procedures as advisable and reasonably necessary to discharge the duties of this section.

(f) Any industrial user failing or refusing to discharge any duty imposed upon the user under the provisions of this section, or who denies the utility or authorized representative the right to enter the user's premises for purposes of inspection, sampling effluents, inspecting and copying records, or such other duties as may be imposed upon him by this section, shall be deemed to have violated the conditions of the wastewater discharge permit and such permit shall be subject to modification, suspension, or revocation under the procedures established in this chapter. A user who does not have an industrial waste discharge permit and denies the utility or authorized representative the right to

inspect as described herein is subject to having the sewer service in question terminated by the utility.

(2) Reports. (a) Progress reports. No later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the utility, including as a minimum, whether it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for the delay, and steps being taken by the industrial user to return the construction to the schedule established. In no event shall more the 9 months elapse between such progress reports to the utility.

(b) 90-day report, new source compliance. Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the utility a report containing the information described in § 18-108(3)(d) through (f).

(c) Self-monitoring reports. (i) All significant industrial users shall submit to the utility during the months of May and November, unless required more frequently in the pretreatment standard or by the utility, a report indicating the nature and concentration of pollutants in the effluent which are limited by their permit. In addition, this report shall include a record of the total daily flows. At the discretion of the utility and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the utility may agree to alter the months during which the above reports are to be submitted.

(ii) The utility, as applicable, may impose mass limitations on industrial users employing dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by paragraph (c) (i) of this section shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the industrial user.

(d) The reports required in this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration or production rate and mass limits where requested by the utility, as applicable, of pollutants contained therein which are limited by the applicable pretreatment standards or industrial permit. For industrial user subject to equivalent mass or concentration limits established by the utility as alternative standards, the report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per

unit of production (or other measure of operation), the report shall include the user's actual average production rate for the reporting period. The frequency of monitoring shall be prescribed in the applicable treatment standard.

(3) Monitoring facilities. (a) All significant industrial users shall install a monitoring station of a standard design or one satisfactory to the utility within one year from adoption of this chapter. All users who propose to discharge or who in the judgment of the utility could now or in the future discharge wastewater with constituents and characteristics different from that produced by a domestic premise may be required to install a monitoring facility.

(b) Installation. Required monitoring facilities shall be constructed, operated, and maintained at the user's expense. The purpose of the facility is to allow inspection, sampling, and flow measurement of wastewaters. If sampling or metering equipment is also required by the utility, it shall be provided, installed, and operated at the user's expense. The monitoring facility will normally be required to be located on the user's premises outside the building. The utility may, however, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street right-of-way with the approval of the public agency having jurisdiction of that right-of-way and located so that it will not be obstructed by landscaping or parked vehicles.

(c) Access. If the monitoring facility is inside the user's fence, there shall be accommodations to allow safe and immediate access for utility personnel. There shall be ample room in or near such facility to allow accurate sampling and compositing of samples for analysis. The entire facility and any sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition by and at the expense of the user.

(d) The industrial user shall be required to design any necessary facility and to submit according to the permit compliance schedule an engineering report, including detailed design plans and operating procedures to the utility for review in accordance with accepted engineering practices. The utility shall review the plans and other documents within 45 days and shall recommend to the industrial user any change deemed appropriate.

(e) Upon approval of plans and other documents, the industrial user shall secure all building, electrical, plumbing, and other permits required and proceed to construct any necessary facility and establish required operating procedures within the time provided in the industrial user's wastewater discharge permit.

(4) Sampling and analysis. (a) All collected samples must be of such nature that they provide a true and accurate representation of the industry's normal workday effluent quality.

(b) Chain-of-custody procedures, sample preservation techniques, and sample holding times recommended by EPA shall be followed in all self-monitoring activities. Grab samples must first be used for cyanide, phenols, oil and grease, sulfide, volatile organics, and when a continuous monitor is not used, pH. All other samples shall be 24-hour flow-proportional composite samples, unless otherwise approved by the utility.

(c) Monitoring shall be performed at the approved monitoring station on the effluent sewer. Location and design of the monitoring station shall be subject to the review and approval of the utility. Any change in monitoring location will be subject to the approval of the utility.

(d) All analyses shall be performed in accordance with procedures established by EPA under the provisions of Section 304(h) of the Act [33 U.S.C. 1314(h)] and contained in 40 C.F.R. Part 136 and amendments thereto or with any other test procedures approved by EPA or the utility. Sampling shall be performed in accordance with the techniques approved by EPA or the utility.

(5) Dangerous discharge notification. (a) Telephone notification. Any person or user causing or suffering any discharge, whether accidental or not, which presents or may present an imminent or substantial endangerment to human health and welfare or the environment, or which is likely to cause interference with the POTW, shall notify the utility immediately by telephone. In the absence of the utility, notification shall be given to the utility employee then in charge of the treatment works. Such notification will not relieve the permit holder from any expense, loss, liability, fines, or penalty which may be incurred as a consequence of the discharge.

(b) Written report. Within 5 days following such occurrence, the user shall provide the utility with a detailed written report describing the cause of the dangerous discharge and measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or other applicable law.

(c) Notice to employees. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employers of a contact in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

(6) Slug reporting. The industrial user shall notify the POTW immediately by telephone of any slug loading, as defined by § 18-107(5), by the industrial user.

(7) Notification of the discharge of hazardous wastes. (a) The industrial user shall not as soon as practicable the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities of any discharge into the POTW of a substance which is a listed or characteristic waste under Section 3001 of RCRA (42 USCA § 6921). Such notification must include a description of any such wastes discharged, specifying the volume and concentration of such wastes and the type of discharge (continuous, batch, or other), identifying the hazardous constituents contained in the listed wastes and estimating the volume of hazardous wastes expected to be discharged during the following 12 months. The notification must take place within 180 days after notification by the utility. This requirement shall not apply to pollutants already reported under the self-monitoring requirements of § 18-109(2).

(b) Dischargers are exempt from the requirements of this paragraph during a calendar month in which they generate no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.5(2), (f), (g), and (j). Generation of more than 100 kilograms of hazardous wastes in any given month requires a one-time notification. Subsequent months during which the industrial user generates more than 100 kilograms of hazardous waste do not require additional notification, except for the acute hazardous wastes specified in 40 CFR 261.5(3), (f), (g), and (j).

(c) In the case of new regulations under Section 3001 of RCRA (42 USCA § 6921) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW of the discharge of such substance within 90 days of the effective date of such regulations, except for the exemption in paragraph (b) of this section.

(d) In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of wastes generated to the degree it has determined to be economically practicable and that it has selected the method of treatment, storage, or disposal currently available which minimizes the present and future threat to human health and the environment.

(8) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes, for which the industrial user submitted initial notification under § 18-109(7).

(9) Provisions governing fraud and false statements. The reports required to be submitted under this chapter shall be subject to the provisions of 18 U.S.C. § 1001 relating to fraud and false statements and the provisions of Sections 309(c)(4) and (6) of the Act (33 USCA § 1311), as amended, governing false statements, representation, or certifications in reports required under the Act.

(10) Signatory requirements for industrial user reports. The reports required by this chapter shall include a certification statement as follows:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The reports shall be signed as follows:

(a) By a responsible corporate officer if the industrial user submitting the reports required by this section is a corporation. For the purpose of this paragraph, a responsible corporate officer is:

(i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) the manager of one or more manufacturing, production or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports required by this section is a partnership or sole proprietorship, respectively.

(c) By a duly authorized representation of the individual designation in paragraph (a) of this section if:

(i) The authorization is made in writing by the individual described in paragraph (a).

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, well field utility, or a person in position of equivalent responsibility or with overall responsibility for environmental matters for the company.

(iii) The written authorization is submitted to the control authority.

(d) If an authorization under paragraph (c) of this section is no longer accurate because, a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (c) of this section must be submitted to the utility prior to or in conjunction with any reports to be signed by an authorized representative.

(11) Reporting of violation. If sampling performed by an industrial user indicates a violation, the user shall notify the utility within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the utility within 30 days after becoming aware of the violation. The industrial user is not required to resample if one of the following criteria is met:

(a) The utility performs sampling at the industrial user at a frequency of at least once per month.

(b) The utility performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(12) Reporting of all monitoring. If an industrial user subject to the reporting requirements, by this section of this chapter monitors any pollutant more frequently than required by the utility using approved procedures prescribed in this chapter, the results of this monitoring shall be included in the report unless otherwise exempted by the utility.

(13) Notice of bypass. (a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the utility. If possible, this should be submitted at least 10 days before the date of the bypass.

(b) An industrial user shall submit oral notice to the utility of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times; and, if the bypass has not been corrected, the anticipated time it is exposed to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The utility may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(14) Maintenance of records. Any industrial user subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

(a) The date, exact place, method, and time of sampling and the names of the persons taking the samples.

(b) The dates analyses were performed.

(c) Who performed the analyses.

(d) The analytical techniques/methods.

(e) The results of the analyses.

(15) Retention period. Any industrial user subject to the reporting requirement established in this section shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make these records available for inspection and copying by the utility, TDEC Director of the Division of Water Pollution Control, and EPA. The retention period shall be extended during the course of any unresolved litigation regarding the industrial user or upon request from the utility, the director, or the EPA.

(16) Confidential information. Any records, reports, or information obtained under this section shall:

(a) in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or permit condition, and

(b) available to the public to the extent provided by 40 CFR, Part 2.302. If, however, upon showing satisfactory to the utility by any person that, if made public records, reports, information, or particular parts (other than effluent data) to which the utility has access under this section, would divulge methods or processes entitled to protection as trade secrets of such person, the utility shall consider such record, report, or information, or information, particular portion thereof confidential in accordance with the purposes of this chapter. Such record, report, or information may be disclosed to officers, employee, or authorized representatives of the United States or the State of Tennessee concerned with carrying out the provisions of the CWA or when relevant in any proceeding under this chapter or other applicable laws. (Ord. of Sept. 1994)

18-110. Enforcement. (1) Complaints and orders. (a) Should the utility have reason to believe that a violation of any provision of the ordinance or orders of the board issued pursuant thereto has occurred, is occurring, or is about to occur, the utility may order that a written complaint be served upon the alleged violator(s).

(b) The complaint shall specify the provision(s) of the pretreatment program or order alleged to be violated or about to be violated, the facts alleged to constitute a violation thereof, and may order that necessary corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing before the utility board.

(c) Any such order shall become final and not subject to review unless the person or persons named therein request by written petition a hearing before the board as provided in § 18-110(4), no later than 30 days after the date such order is served; provided, however, that the board may review such final order on the same grounds upon which a court of the state may review default judgments.

(2) Additional remedies. In addition to other remedies provided herein, the utility may issue a show-cause notice to any user who appears to be violating any provision of this chapter to show cause why sewer service should not be discontinued. The notice shall include the nature of the violation with sufficient specificity as to the character of the violation and the date(s) which such violation(s) occurred to enable the user to prepare a defense. Such notice shall be mailed to the user by certified mail, return receipt requested, or shall be personally delivered to the user at least 20 days prior to the proposed action, except in the event of an emergency. At the show-cause hearing, the user may present any defense to such charges, either in person or through submission of written or documentary proof. Following the hearing or opportunity for a hearing, the board may at the board's discretion order termination of sewer service if satisfied from all available proof that the violation was willful and the termination is necessary to abate the offending condition or to prevent future violations. The board may terminate service for a period not to exceed 1 year for a willful violation and may terminate service indefinitely to abate offending conditions or prevent future violations subject to the corrections of such conditions or violations by the user.

Any violation of provisions of this chapter that is not corrected or abated following a notice and opportunity for a hearing shall be grounds for termination of water service and/or plugging of the sewer line.

(3) Emergency termination of service. (a) When the utility finds that an emergency exists in which immediate action is required to protect public health, safety, or welfare, the health of animals, fish, or aquatic life, a public water supply, or the facilities of the POTW of the pretreatment agency, the utility may, without prior notice, issue an order reciting the existence of such an emergency and requiring that certain action(s) be taken as the utility deems necessary to meet the emergency.

(b) If the violator fails to respond or is unable to respond to the utility's order, the utility may take such emergency action as deemed necessary or contract with a qualified person(s) to carry out the emergency measures. The utility may assess the person(s) responsible for the emergency condition for actual costs incurred by the utility in meeting the emergency.

(c) In the event such emergency action adversely affects the user, the utility shall provide the user an opportunity for a hearing as soon as practicable thereafter to consider restoration of service upon abatement of the condition or other reasonable conditions. Following the

hearing, the utility may take any such authorized action should the proof warrant such action.

(4) Hearings. (a) Any hearing or re-hearing brought before the board shall be conducted in accordance with the following:

(i) Upon receipt of a written petition from the alleged violator pursuant to this section, the utility shall give the petitioner 30 days written notice of the time and place of the hearing, but in no case shall the hearing be held more than 60 days from the receipt of the written petition unless the utility and the petitioner agree to a postponement.

(ii) The hearing provided may be conducted by the board at a regular or special meeting. A quorum of the board must be present at the regular or special meeting in order to conduct the hearing.

(iii) A verbatim record of the prehearings of the hearings shall be made and filed with the board in conjunction with the findings of fact and conclusions of law made pursuant to paragraph (vi) of this section. The transcript shall be made available to the petitioner or any party to a hearing upon payment of a charge set by the utility to cover the costs of preparation.

(iv) In connection with the hearing, the chairman shall issue subpoenas in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court of Bradley County shall have jurisdiction upon the application of the board or the utility to issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court is punishable by the court as contempt.

(v) Any member of the board may administer oaths and examine witnesses.

(vi) On the basis of the evidence produced at the hearing, the board shall make findings of fact and conclusion of law and enter such decisions and orders as in its opinion will best further the purposes of the pretreatment program and shall give written notice to such decisions and orders to the alleged violator. The order issued under this subsection shall be issued no later than 30 days following the close of the hearing by the person or persons designated by the chairman.

(vii) The decision of the board shall become final and binding on all parties unless appealed to the courts as provided in paragraph (b).

(viii) Any person to whom an emergency order is directed pursuant to § 18-110(3) shall comply therewith immediately but on petition to the board shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than 3 days from the receipt of such petition by the board.

(ix) Upon agreement of all parties, the testimony of any person may be taken by deposition or written interrogatories. Unless otherwise agreed, the deposition shall be taken in a manner consistent with Rules 26 through 33 of the Tennessee Rules of Civil Procedure, with the chairman to rule on such manners as would inquire a ruling by the court under said rules.

(x) The party at the hearing bearing the affirmative burden of proof shall first call witnesses, which shall be followed by witnesses called by other party. Rebuttal witnesses shall be called in the same order. The chairman shall rule on any evidentiary questions arising during such hearing and shall make other rulings necessary or advisable to facilitate an orderly hearing subject to approval of the board. The board, the utility, his representative, and all parties shall have the right to examine any witness. The board shall not be bound by or limited to rules of evidence applicable to legal proceedings.

(xi) Any person aggrieved by any order or determination of the utility where an appeal is not otherwise provided by this section may appeal said order or determination to be reviewed by the board under the provisions of this section. A written notice of appeal shall be filed with the utility and the chairman, and said notice shall set forth with particularity the action or inaction of the utility complained of and the relief being sought by the person filing said appeal. A special meeting of the board may be called by the chairman upon the filing of such appeal, and the board may, at members' discretion, suspend the operation of the order or determination of the utility on which is based the appeal until such time as the board has acted upon the appeal.

(xii) The vice chairman or the chairman pro tem shall possess all the authority delegated to the chairman by this section when acting in his absence or in his place.

(b) An appeal may be taken from any final order or other final determination of the utility or board by any party who is or may be adversely affected thereby to the chancery court pursuant to the common law writ of certiorari set out in Tennessee Code Annotated, § 27-8-101, within 60 days from the date such order or determination is made.

(5) Civil penalty. (a) Any person, including, but not limited to, industrial users, who does any of the following acts or omissions shall be

subject to a civil penalty of up to $10,000 per day for each day during which the act or omission continues or occurs:

(i) Violates any effluent standard or limitation imposed by a pretreatment program.

(ii) Violates the terms or conditions of a permit issued pursuant to a pretreatment program.

(iii) Fails to complete a filing requirement of a pretreatment program.

(iv) Fails to allow or perform an entry, inspection, monitoring, or reporting requirement of a pretreatment program.

(v) Fails to pay user or cost recovery charges imposed by a pretreatment program.

(vi) Violates a final determination or order of the board.

(b) Any civil penalty shall be assessed in the following manner:

(i) The utility may issue an assessment against any person or industrial user responsible for the violation.

(ii) Any person or industrial user against whom an assessment has been issued may secure a review of such assessment by filing with the utility a written petition setting forth the grounds and reasons for his objections and asking for a hearing on the matter involved before the board. If a petition for review of the assessment is not filed within 30 days of the date the assessment is served, the violator shall be deemed to have consented to the assessment, and it shall become final.

(iii) When any assessment becomes final because of a person's failure to appeal the utility's assessment, the utility may apply to the appropriate court for a judgment and seek execution of such judgment and the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment.

(iv) In assessing the civil penalty, the utility may consider the following factors:

(A) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity.

(B) Damages to the utility, including compensation for the damage or destruction of the facilities of the POTW, which also includes any penalties, costs, and attorneys' fees incurred by the utility 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.

(C) Cause of the discharge or violation.

(D) The severity of the discharge and its effect upon the facilities of the POTW and upon the quality and quantity of the receiving waters.

(E) Effectiveness of action taken by the violator to cease the violation.

(F) The technical and economic reasonableness of reducing or eliminating the discharge.

(G) The economic benefit gained by the violator.

(v) The utility may institute proceedings for assessment in the name of the Cleveland Utilities Board in the chancery court of the county in which all or part of the pollution of violation occurred.

(c) The board may establish by regulation a schedule of the amount of civil penalty which can be assessed by the utility for certain specific violations or categories of violations.

(i) Any civil penalty assessed to a violator pursuant to this section may be in addition to any civil penalty assessed by the Commissioner of Environment and Conservation for violations of Tennessee Code Annotated, § 69-3-115(a)(a)(F). Provided, however, the sum of penalties imposed by this section and by Tennessee Code Annotated, § 69-3-115(a) shall not exceed $10,000 per day for each day during which the act or omission continues or occurs.

(6) Assessment for noncompliance with program permits or orders.

(a) The utility may assess the liability of any polluter or violator for damages to the pretreatment agency resulting from any person(s) or industrial user(s) pollution or violation, failure, or neglect in complying with any permits or orders issued pursuant to the provisions of the pretreatment program. Tennessee Code Annotated, §§ 69-3-123, 69-3-124, or 69-3-125, or §§ 18-110(5) or (9).

(b) If an appeal from such assessment is not made to the board by the polluter or violator within 30 days of notification of such assessment, he shall be deemed to have consented to such assessment and it shall become final.

(c) Damages may include any expenses incurred in investigating and enforcing the pretreatment program or Tennessee Code Annotated, §§ 69-3-123 through 69-3-129 or § 18-110(5) through (9), in removing, correcting, and terminating any pollution, and also compensation for any actual damages caused by the pollution or violation.

(d) Whenever any assessment has become final because of a person's failure to appeal within the time provided, the utility may apply to the appropriate court for a judgment and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment.

(7) Judicial proceedings and relief. The utility may initiate proceedings in the chancery or circuit court of the county in which the activities

occurred against any person or industrial user who is alleged to have violated or is about to violate the pretreatment program, Tennessee Code Annotated, §§ 69-3-123 through 69-3-129, § 18-110(5) through (9), or orders of the board. In such action, the utility may seek, and the court may grant, injunctive relief and any other relief available in law or equity.

(8) Administrative enforcement remedies. (a) Notification of violation. When the utility finds that any industrial user has violated or is violating this chapter, or a wastewater permit or order issued hereunder, the utility or his agent may serve upon said user written notice of the violation. Within 15 days of the receipt date of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the utility. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation.

(b) Consent orders. The utility is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the industrial user responsible for the noncompliance. Such orders will include specific action to be taken by the industrial user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraph (d) below.

(c) Show-cause hearing. The utility may order any industrial user which causes or contributes to a violation of this chapter or wastewater permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the hearing. Such notice may be served on any principal executive, general partner, or corporate officer. Whether or not a duly notified industrial user appears as noticed, immediate enforcement action may be pursued.

(d) Compliance order. When the utility finds that an industrial user has violated or continues to violate this chapter or a permit or order issued thereunder, he may issue an order to the industrial user responsible for the discharge directing that, following a specified time period, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances have been installed and are properly operated. Orders may also contain such other requirements deemed reasonably necessary and appropriate to address the

noncompliance, including the installation of pretreatment technology, additional self-monitoring, and management practices.

(e) Cease and desist orders. When the utility finds that an industrial user has violated or continues to violate this chapter or any permit or order issued hereunder, the utility may issue an order to cease and desist all such violations and direct those persons in noncompliance to do one of the following:

(i) Comply with the order.

(ii) Take appropriate remedial or preventive action needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

(9) Assessment of damages to users. When the discharge of waste or any other act or omission cause an obstruction, damage, or any other impairment to the utility's facilities which causes an expense or damages of whatever character or nature to the utility, the utility shall assess the expenses and damages incurred by the utility to clear the obstruction, repair damage to the facility, and otherwise rectify any impairment, and bill the person responsible for the damage for reimbursement of all expenses and damages suffered by the utility. If the person responsible refuses to pay, then the utility shall forward a copy of the statement and documentation of all expenses to the utility's attorney who shall be authorized to take appropriate legal action.

(10) Disposition of damage payments and penalties. All damages and/or penalties assessed and collected under the provisions of § 18-110(5) through (9) shall be placed in a special fund by the utility and allocated and appropriated to the sewer system for the administration of its pretreatment program. (Ord. of Sept. 1994)

18-111. Wastewater volume determination. (1) Metered water supply. Charges and fees related to the volume of wastewater discharged to the utility's sewer system shall be based upon the user's total water consumption from all water supply sources. The total amount of water used shall be determined from public meters installed and maintained by the utility and/or private meters installed and maintained at the expense of the user and approved by the utility.

(2) Actual wastewater volume. When charges and fees are based upon water usage and/or discharge and where, in the opinion of the utility, a significant portion of the water received from any metered source does not flow into the community sewer because of the principal activity of the user or removal by other means, the charges and fees will be applied only against the volume of water discharged from such premises into the community sewer. Written notification and proof of the diversion of water must be provided by the user, and approved by the utility.

The users may install a meter of a type and at a location approved by the utility, to measure either the amount of sewage discharged or the amount of

water diverted. Such meters shall be maintained at the expense of the user and be tested for accuracy at the expense of the user when deemed necessary by the utility.

(3) Estimated wastewater volume. For users where, in the opinion of the utility, it is unnecessary or impractical to install meters, charges and fees may be based upon an estimate of the volume to be discharged. The estimate shall be prepared by the user and approved by the utility. The number of fixtures, seating capacity, population equivalent, annual production of goods and services, and other such factors as deemed rational by the utility shall be used to estimate the wastewater discharge volume.

(4) Domestic flows. For the separate determination of the volumes of domestic and industrial flows from industrial users for purposes of calculating charges based upon industrial wastewater flows alone, users shall install a meter of a type and at a location approved by the utility. For users where, in the opinion of the utility, it is unnecessary or impractical to install such a meter, the volume of the domestic and industrial wastewater shall be based upon an estimate prepared by the users and approved by the utility. (Ord. of Sept. 1994)

18-112. Wastewater charges and fees. (1) Purpose of charges and fees. A schedule of charges and fees shall be adopted by the utility which will enable it to comply with the revenue requirements of the Federal Water Pollution Control Act Amendments. Charges and fees shall be determined in a manner consistent with regulations of the Federal Grant Program in order that sufficient revenues are collected to defray the utility's cost of operating and maintaining adequate wastewater collection and treatment systems and to provide sufficient funds for equipment replacement, capital outlay, bond service costs, capital improvements, and depreciation.

(2) Abutting property owners; to pay charges. The owner or occupant of each lot or parcel of land which abuts upon a street or other public way containing a sanitary sewer upon which lot or parcel a building has been or may hereafter be constructed for residential, commercial, or industrial use shall pay the sewer service charges as provided in this chapter. The utility or his designee shall make the determination whether or not a lot or parcel abuts upon a segment of street, alley, easement, or other public way in which there is a sewer for the purposes of levying service charges; provided that he or she may waive the collection of such charges where the connection is infeasible based upon engineering or hydraulic principles, the connection would not comport with applicable plumbing or building codes, or the connection would not comport with other applicable codes, laws, or regulations.

(3) Contracts for disposal of sewage authorized; charges. The utility may (subject to approval by the city council) enter into contracts with any municipality, county, incorporated district or person for the treatment and disposal of sewage collected and pumped or delivered to some part of the sewer system; provided, however, that the charges to be paid for the treatment and

disposal of such sewage shall not be less than an amount which is fair and equitable, taking into account the cost to the city of such treatment and disposal and the cost of the sewage disposal system. All revenues received pursuant to such contract shall be deemed to be revenue of the sewer system, and shall be applied and accounted for in the same manner as other revenues derived from the operation of such system.

(4) Secondary metering. Whenever a property upon which a sewer user charge is imposed under this chapter uses water for an industrial or commercial purpose, which water so used is not discharged into the sewerage system of the utility, the quantity of water so used and not discharged into the utility's sewers shall be excluded in determining the sewer user charge of the owner or occupant; provided that the quantity of water so used and not discharged into the utility sewers is measured by a device or meter (called a secondary meter) approved by the utility and installed by the owner or occupant without cost to the utility. The sewer user charge based upon the consumption of water to be paid by the owner or occupant of such property shall be computed at the rates provided in this chapter less the quantity not discharged into the utility's sewers. The utility reserves the right to require calibration of secondary meters when appropriate. A secondary meter shall meet the following requirements:

(a) Meters should read in 100 cubic feet.

(b) Meters must be located either in an outdoor meter box or vault, or inside the user's building or structure in a clean, dry, safe place not subject to wide temperature variations so that the meter can be easily examined, read, or removed.

(c) The user shall, at its expense, provide suitable pipe connections and shut-off valves, one each at the inlet and outlet sides of the meter.

(d) The meter box or vault may be constructed to protect the meter from freezing and damage by vehicular traffic, and its location and design shall prevent, as far as possible, inflow of surface water.

(e) Any changes in location of secondary meters, malfunctions, replacements, or any other changes in the approved secondary meter installation must be reported to the utility in writing. Also, a copy must be forwarded to the water company containing all pertinent information regarding that particular meter.

(f) No retroactive credits will be issued if the holder of the secondary meter permit fails to comply with the rules and regulations in force at any particular time.

(g) If any water exempted from the sewer service charge is returned to the sewer system at any time or point, a metering device shall be installed. Any flow registered through such a meter shall be charged for sewer service.

(h) Any secondary meter must be easily accessible by the utility. If this is not possible, remote read meters shall be installed and protected from any magnetic interference. It is the responsibility of the permit holder to assure the accuracy of the remote read to the installed meter.

(i) All meters must be calibrated and certified for accuracy once every 18 months. The certification of the inspection or a copy thereof has to be forwarded to the utility.

(5) Types of charges and fees. The charges and fees established in the utility's schedule of charges and fees may include, but not be limited to, the following:

- Connection fees.
- User charges and surcharges.
- Fees for monitoring requested by user.
- Fees for permit applications.
- Fees for garbage grinders.
- Fees for truck discharge operation permits.
- Fees for discharge of holding tank wastes.
- Inspection fees.

(6) Basis for determination of charges. Charges and fees shall be based upon a minimum basic charge for each premise, computed on the basis of normal wastewater from a domestic premise with the following characteristics:

BOD_5	-	300 mg/l
COD	-	600 mg/l
Suspended Solids	-	400 mg/l
Volume	-	300 gpd per domestic premise

The charges and fees for all users other than the basic domestic premise shall be based upon the relative difference between the average wastewater constituents and characteristics of that user as related to those of a domestic premise.

The charges and fees established for permit users shall be based upon the measured or estimated constituents and characteristics of the wastewater discharge of that user which may include, but not be limited to, BOD, COD, suspended solids, oil and grease, and volume.

(7) User charges. Each user of the utility's sewer system will be levied a charge for payment of bonded indebtedness of the utility and for the user's proportionate share of the operation, maintenance, and replacement costs of the sewer system. A surcharge may be levied against those users with wastewater that exceeds the strength of normal wastewater.

The user charge will be computed from a base charge plus a surcharge. The base charge will be the user's proportionate share of the costs of operation, maintenance, and replacement for handling its periodic volume of normal wastewater plus the user's share of the bond amortization costs of the utility.

(a) Operation, maintenance, and replacement (OM&R) user charges. Each user's share of OM&R costs will be computed by the following formula:

$$Cu = \frac{Ct}{Vt}(Vu)$$

Where:

Cu	=	User's charge for OM&R per unit of time.
Ct	=	Total OM&R cost per unit of time, less cost recovered from surcharges.
Vt	=	Total volume contribution from all users per unit of time.
Vu	=	Volume contribution from a user per unit of time.

(b) Bonded indebtedness charges. Each user's share of bonded indebtedness costs will be based on a schedule which reflects the user's volumetric and/or waste strength contribution to the system.

(c) User surcharges. The surcharge will be the user's proportionate share of the OM&R costs for handling its periodic volume of wastewater which exceeds the strength of BOD_5, SS, and/or other elements in normal wastewater as defined by § 18-112(6). The amount of the surcharge will be determined by the following formula:

$$Cs = (Bc \times B + Sc \times S + Pc \times P)\ 8.34\ Vu$$

Where:

Cs	=	Surcharge for wastewaters exceeding the strength of normal wastewater expressed in dollars per billing period.
Bc	=	OM&R cost for treatment of a unit of BOD_5 expressed in dollars per pound.
B	=	Concentration of BOD_5 from a user above the base level of 300 mg/l expressed in mg/l.
Sc	=	OM&R cost for treatment of a unit of SS expressed in dollars per pound.
S	=	Concentration of SS from a user above the base level of 400 mg/l, expressed in mg/l.
Pc	=	OM&R cost for treatment of a unit of any pollutant which the POTW is committed to treat by virtue of an NPDES permit or other regulatory requirement, expressed in dollars per pound.

P = Concentration of any pollutant from a user above a base level. Base levels for pollutants subject to surcharges will be established by the utility.

Vu = Volume contribution of a user per billing period in million gallons based on a 24-hour average for billing period.

The concentrations of any pollutant of an industrial user and the volume contribution of that user shall be calculated from discharge monitoring reports subject to verification by the utility, from records maintained by the industrial user, and from reliable information obtained from any other source.

The values of parameters used to determine user charges may vary from time to time. Therefore, the utility is authorized to modify any parameter or value as often as is necessary. Review of all parameters and values shall be undertaken where necessary, but in no case less frequently than annually.

(d) Pretreatment program charges. Industrial users may be required to pay a separate pretreatment program charge. The pretreatment program charge will be based on the user's proportional shares of the costs of administering the POTW pretreatment program which includes costs incurred by the utility for verification monitoring, analysis, and reporting. Each user's share of the pretreatment program costs will be computed by the following formula:

$$Cu = \frac{Ct}{Vt}(Vu)$$

Where:

Cu = User's charge for POTW pretreatment program per unit of time.

Ct = Total POTW pretreatment program costs per unit of time.

Vt = Total volume contribution of permitted industrial users per unit of time.

Vu = Volume contribution from a permitted industrial user per unit of time.

(8) Review of OM&R charges. The utility shall review at least annually the wastewater contribution by users, the total costs of OM&R of the treatment works, and its approved user charge system. The utility shall revise the user charges to accomplish the following:

(a) Maintain the proportionate distribution of OM&R costs among users or classes of users.

(b) Generate sufficient revenue to pay the total OM&R costs of the treatment works.

(c) Apply any excess revenues collected to the costs of operation and maintenance for the next year and adjust the rate accordingly.

(9) Charges for extraneous flows. The costs of operation and maintenance for all flow not directly attributable to users, e.g., infiltration/inflow, will be distributed proportionally among all users of the treatment works.

(10) Notification, billing, and collection. (a) Notification. Each user will be notified, at least annually, in conjunction with a regular bill of the rate and that portion of the user charges which are attributable to OM&R charges.

(b) Billing. Wastewater charges imposed by this chapter shall be added to, included in, and collected with the monthly water service bills and shall be due and payable monthly. This shall not affect the right of the utility to collect wastewater charges from customers who utilize private water supplies or public water supplies from other utilities.

Where water is provided by either private or other public sources, rates will be determined by the general manager of the utility for affected customers based upon all known factors at the time of the billing.

(c) Collection. Wastewater charges and fees imposed by this chapter shall be collected by the utility in a manner established by the utilities board.

(d) Delinquent accounts. The utility may discontinue water service to any customer who has a delinquent wastewater charge until such wastewater charge has been paid, except as provided by state or federal law.

(e) Adjustments. The utility shall make appropriate adjustments in the wastewater charge of sewer customers for over or under registration of utility meters, leaks, or other recognized adjustments.

(f) Appeals. A user may contest a credit or billing determination by the utility by paying said bill under protest and within 30 days following the due date of said bill lodging with the utility a written notice of appeal with the utility board. The appeal shall follow the procedures in § 18-110(4). (Ord. of Sept. 1994, as amended by Ord. #2005-40, Oct. 2005)

18-113. Administration of sewer system. (1) Utility board. In addition to any other duty or responsibility otherwise conferred upon the utility board by this chapter, the board shall have the duty and power as follows:

(a) To recommend from time to time to the city council of the City of Cleveland that it amend or modify the provisions of this chapter.

(b) To grant exceptions pursuant to the provisions of § 18-107(8) hereof, and to determine such issues of law and fact as are necessary to perform this duty.

(c) To hold hearings upon appeals from orders of actions of the general manager as may be provided under any provision of this chapter.

(d) To hold hearings relating to the suspension, revocation, or modification of a wastewater discharge permit and issue appropriate orders relating thereto.

(e) To hold other hearings that may be required in the administration of this chapter and to make determinations and issue orders necessary to effectuate the purposes of this chapter.

(f) To request assistance from any office; agent, or employee of the city government and to obtain any necessary information or other assistance for the board.

(g) The board, acting through its chairman, shall have the power to issue subpoenas requiring attendance, the testimony of witnesses, and the production of documentary evidence relevant to any matter properly heard by the board.

(h) The chairman, vice chairman, or chairman pro tem shall be authorized to administer oaths to people giving testimony before the board.

(i) The board shall hold annual meetings and special meetings as the board deems necessary.

(2) General manager. (a) General manager and staff. The general manager and his or her staff shall be responsible for the administration of all sections of this chapter. Administratively, the general manager shall be appointed by and shall report to the Utilities Board.

(b) Authority of general manager. The general manager shall have the authority to enforce all sections of this chapter. The general manager shall be responsible and have the authority to maintain and operate the various treatment works, sewer lines, pump stations, and other appurtenances. The general manager shall be responsible for preparation of operating budget subject to the normal budgetary processes of the utility.

(c) Records. The general manager shall keep in this office or at an appropriate storage facility all applications required under this chapter a complete record thereof, including a record of all wastewater discharge permits.

(d) General manager to assist board. The general manager shall attend all meetings of the utilities board, or when it is necessary for the superintendent to be absent, a designated representative shall be sent to make reports to and assist the board in the administration of this chapter.

(e) Notice on national pretreatment standard. The general manager shall notify industrial users identified in 40 CFR, Part 403.8(f)(2) of any applicable pretreatment standards or other applicable requirements promulgated by the EPA under the provisions of Section 204(b) of the Act (33 U.S.C. 1284), Section 405 of the Act (33 U.S.C. 1345), or under the provisions of Sections 3001 (42 U.S.C. 6921), 3304 (42 U.S.C. 6924), or 4004 (42 U.S.C. 6944) of the SoLid Waste Disposal Act. Failure of the superintendent to notify industrial users shall not relieve the users from the responsibility of complying with these requirements.

(f) Public participation notice. The general manager shall comply with the public participation requirements of 40 CFR, Part 25 in the enforcement of national pretreatment standards. The general manager shall at least annually provide public notification in the largest newspaper published in Bradley County of all significant industrial users which, during the previous 12 months, significantly violated applicable pretreatment standards or other pretreatment requirements. For the purposes of this provision, a significant industrial user is in significant violation if its violations meet one or more of the following criteria:

(i) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken during a 6-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter.

(ii) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken during a 6-month period equal or exceed the product of the daily average maximum limit or the average limit times the applicable TRC (TRC = 1.2 for toxic pollutants, except pH).

(iii) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the superintendent believes has caused, alone or in combination with other discharges, interference, or pass-through, including endangering the health of POTW personnel and the general public.

(iv) Any discharge of a pollutant that has caused imminent endangerment to human health and welfare or to the environment and has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.

(v) Violation by 90 days or more after the schedule date of a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance.

(vi) Failure to provide required reports, such as baseline monitoring reports, 90-day compliance reports, periodic

self-monitoring reports, and reports on compliance with compliance schedules within 30 days of the due date.

(vii) Failure to accurately report noncompliance.

(viii) Any other violation or group of violations which the general manager considers to be significant.

(g) Regulations and standards authorized. The general manager may promulgate rules, regulations, and design criteria not inconsistent with this chapter and have them printed for distribution. These rules may include requirements for performing wastewater characterizations, analyses, and other measurements by standard methods allowed by the utility. Such rules and regulations shall be ratified and adopted by the utilities board.

(h) Sewer credits. The general manager shall approve secondary meters and determine other kinds of sewer user charge credits.

(i) Approves new construction. The general manager shall give approval in acceptance of newly constructed sanitary sewer lines, pump stations. and other appurtenances.

(j) Emergency powers. The general manager shall have the authority to take whatever a emergency action he deems necessary whenever a situation occurs that creates danger to the personnel of Cleveland Utilities or the facilities of the system or where there is a danger to public health. (Ord. of Sept. 1994)

CHAPTER 2

CROSS-CONNECTIONS, ETC.

SECTION

18-201. Definitions.
18-202. Standards.
18-203. Approval of state department of health required.
18-204. Required statement from consumers with other supply sources.
18-205. Inspection of cross-connections.
18-206. Utility's right-of-entry for inspection purposes.
18-207. Correction of defects, etc.
18-208. Protective devices.
18-209. Labeling of water outlet not supplied by potable system.

18-201. Definitions. The following definitions and terms shall apply in the interpretation and enforcement of this chapter:

(1) "Auxiliary intake." Any piping connection or other device whereby water may be secured from a source other than that normally used.

(2) "By-pass." Any system of piping or other arrangement whereby the water may be diverted around any part or portion of a water purification plant.

(3) "Cross-connection." Any physical connection whereby the public water supply is connected with any other water supply system, whether public or private, either inside or outside of any building or buildings, in such manner that a flow of water into the public water supply is possible either through the manipulation of valves or because of ineffective check or back-pressure valves, or because of any other arrangement.

(4) "General manager." Shall mean the general manager of the utility or officials or employees of the utility as may be designated by the general manager.

(5) "Interconnection." Any system of piping or other arrangement whereby the public water supply is connected directly with a sewer, drain, conduit, pool, storage reservoir or other device which does or may contain sewage or other waste or liquid which would be capable of imparting contamination to the public water supply.

(6) "Person." Any and all persons, natural or artificial, including any individual firm or association, and any municipal or private corporation organized or existing under the laws this or any other state or country.

(7) "Public water supply." The Cleveland utilities-water division furnishing to the city and the surrounding areas of the county for general use and which supply is recognized as the public water supply by the state department of public health.

(8) "Utility." Shall mean the Cleveland utilities, a department of the city or duly appointed officials or representatives of Cleveland utilities. (1981 Code, § 23-135)

18-202. Standards. The Cleveland utilities public water supply is to comply with Tennessee Code Annotated, § 68-221-101 and § 68-221-104 as well as the rules and regulations for public water supplies, legally adopted in accordance with this code, which pertain to cross-connections, auxiliary intakes, by-passes and interconnections, and establish an effective ongoing program to control these undesirable water uses. (1981 Code, § 23-136)

18-203. Approval of state department of health required. It shall be unlawful for any person to cause a cross-connection, auxiliary intake, by-pass or interconnection to be made, or allow one to exist for any purpose whatsoever, unless the construction and operation of same has been approved by the state department of health, and the operation of such cross-connection, auxiliary, intake, by-pass or interconnection is at all times under the direct supervision of the general manager of the utility. (1981 Code, § 23-137)

18-204. Required statement from consumers with other supply sources. Any person whose premises are supplied with water from the public water supply, and who also has on the same premises a separate source of water supply or stores water in an uncovered or unsanitary storage reservoir from which the water stored therein is circulated through a piping system, shall file with the general manager of the utility a statement of the nonexistence of unapproved or unauthorized cross-connections, auxiliary intakes, by-passes or interconnections. Such statement shall also contain an agreement that no cross-connection, auxiliary intake, by-pass or interconnection will be permitted upon the premises. (1981 Code, § 23-138)

18-205. Inspection of cross-connections. It shall be the duty of the utility to cause inspections to be made of all properties served by the public water supply where cross-connections with the public water supply are deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the utility and as approved by the state department of health. (1981 Code, § 23-139)

18-206. Utility's right-of-entry for inspection purposes. The officials of the utility, or its authorized representative, shall have the right to enter at any reasonable time, any property served by a connection to the utility for the purpose of inspecting the piping system or systems thereof for cross-connections, auxiliary intakes, by-passes, or interconnections. On request, the owner, lessee, or occupant of any property so served shall furnish to the utility any pertinent information regarding the piping system or systems on

such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross-connections. (1981 Code, § 23-140)

18-207. Correction of defects, etc. (1) Any person who had cross-connections, auxiliary intakes, by-passes or interconnections in violation of the provisions of this chapter on November 28, 1977, shall be allowed a reasonable time within which to comply with the provisions of this chapter. After a thorough investigation of existing conditions and an appraisal of the time required to complete the work, the amount of time shall be designated by the utility.

(2) The failure to correct conditions threatening the safety of the public water system as prohibited by this chapter and Tennessee Code Annotated, § 68-221-104, within a reasonable time and within the time limits set by the utility, shall be grounds for denial of water service. If proper protection has not been provided after a reasonable time, the utility shall give the customer legal notification that water service is to be discontinued, and then physically separate the public water supply from the customer's on-site piping system in such a manner that the two (2) systems cannot again be connected by an unauthorized person.

(3) Where cross-connections, interconnections, auxiliary intakes, or by-passes are found which constitute an extreme hazard of immediate concern of contaminating the public water system, the general manager of the utility shall require that immediate corrective action be taken to eliminate the threat to the public water system. Immediate steps shall be taken to disconnect the public water supply from the on-site piping system unless the eminent hazard is corrected immediately. (1981 Code, § 23-141)

18-208. Protective devices. (1) Where the nature of use of the water supplied a premises by the utility is such that is deemed:

(a) Impractical to provide an effective air-gap separation;

(b) That the owner and/or occupant of the premises cannot or is not willing to demonstrate to the official in charge of the utility, or his designated representative, that the water use and protective features of the plumbing are such as to propose no threat to the safety or potability of the water supply;

(c) That the nature and mode of operation within a premises are such that frequent alterations are made to the plumbing;

(d) There is a likelihood that protective measures may be subverted, altered or disconnected;

The utility shall require the use of an approved protective device on the service line serving the premises to assure that any contamination that may originate in the customer's premises is contained therein. The protective devices shall be a reduced pressure zone type backflow preventer approved by the state

department of health as to the manufacturer, model and size. The method of installation of the backflow protective devices shall be approved by the utility prior to installation and shall comply with the criteria set forth by the state department of health. The installation shall be at the expense of the owner or occupant of the premises.

(2) The utility shall have the right to inspect and test the device or devices on an annual basis or whenever deemed necessary. Water service shall not be disrupted to test the service without the knowledge of the occupant of the premises.

(3) Where the use of water is critical to the continuance of normal operations or protection of life, property, or equipment, duplicate units shall be provided to avoid the necessity of discontinuing water service to test or repair the protective device or devices. Where only one unit is installed and the continuance of service is critical, the utility shall notify, in writing, the occupant of the premises of plans to discontinue water service and arrange for a mutually acceptable time to test and/or repair the device. The utility shall require the occupant of the premises to make all repairs indicate promptly, and the expense of such repairs shall be borne by the owner or occupant of the premises. These repairs shall be made by qualified personnel, acceptable to the utility.

(4) If necessary, water service shall be discontinued (following legal notification) for failure to maintain backflow prevention devices in proper working order. Likewise the removal, by-passing or altering of the protective devices in such a manner as to make them ineffective shall constitute grounds for discontinuance of water service. Water service to such premises shall not be restored until the customer has corrected or eliminated such conditions or defects to the satisfaction of the utility. (1981 Code, § 23-142)

18-209. <u>Labeling of water outlet not supplied by potable system</u>. The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified herein. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as:

W A T E R U N S A F E
F O R D R I N K I N G

A minimum acceptable sign shall have white letters one-inch high located on a red background. (1981 Code, § 23-143)

CHAPTER 3

MS4 PHASE II STORMWATER MANAGEMENT PROGRAM

SECTION

18-301. Creation and title.
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18-301. Creation and title. There is hereby created a MS4 Phase II Stormwater Management Program for the City of Cleveland as mandated by the National Pollutant Discharge Elimination System Permit (NPDES) pursuant to 40 CFR 122.26. This section shall provide authority for establishing and administering the MS4 Phase II Stormwater Management Program. (as added by Ord. #2004-41, Nov. 2004)

18-302. Purpose and jurisdiction. (1) Purpose. The purpose of this chapter is to:

(a) Protect, maintain, and enhance the environment of the City of Cleveland and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the city's stormwater system and to maintain and improve the quality and quantity of stormwater discharges to the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater.

(b) Enable the City of Cleveland to comply with the National Pollutant Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR 122.26 for stormwater discharges.

(c) Allow the City of Cleveland to exercise the powers granted in Tennessee Code Annotated, § 68-221-1105, which provides that among other powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:

(i) Exercise general regulation over the planning, location, construction, and operation and maintenance of

stormwater facilities in the municipality, whether or not owned and operated by the municipality;

(ii) Adopt any rules and regulations deemed necessary to accomplish the purposes of this chapter, including the adoption of a system of stormwater construction inspection fees and permits;

(iii) Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;

(iv) Review and approve plans for development and redevelopment that will result in land disturbing activity.

(v) Issue permits for stormwater discharges, or for the construction, alteration, extension, or repair of stormwater facilities;

(vi) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;

(vii) Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated.

(2) Jurisdiction and administering entity. (a) The "MS4 Phase II Stormwater Management Program"' shall govern all properties within the municipal boundary or corporate limits of the City of Cleveland, Tennessee;

(b) The City of Cleveland Engineering Division of the Department of Public Works in conjunction with the department of community development shall administer the provisions of this chapter;

(c) The City of Cleveland may enter into interlocal agreements to administer stormwater MS4 permit programs located outside the municipal boundary or corporate limits of the City of Cleveland, Tennessee, subject to enabling provisions in Tennessee Code Annotated, § 69-3-101 and approval by the city council. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-303. Definitions. For the purpose of this chapter, the following definitions shall apply:

Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

(1) "As built plans" means drawings developed from field survey data depicting conditions as they are actually constructed.

(2) "Best management practices" or "BMP's" are physical, structural, and/or managerial practices that when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of Cleveland, and that have been incorporated by reference into this chapter as if fully set out herein.

(3) "Board" means stormwater regulations board.

(4) "Building permit" means written authorization issued by the City of Cleveland Department of Community Development for construction that pertains to building activities associated with a structure.

(5) "Building official" means an employee of the City of Cleveland who is a managing inspector certified by the State of Tennessee to inspect structures under specific code requirements.

(6) "Channel" means a natural or artificial watercourse with a defined bed and banks that conveys water continuously or periodically.

(7) "City" means the City of Cleveland, Tennessee.

(8) "City Engineer" means an employee of the City of Cleveland whose position title is "city engineer" and is licensed by the State of Tennessee as a professional engineer.

(9) "Common plan of development or sale" means the definition in effect that is utilized by the Tennessee Department of Environment and Conservation.

(10) "Community water" means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the City of Cleveland.

(11) "Contaminant" means any substance that alters the physical, chemical, biological, or radiological properties of community waters.

(12) "Design storm event" means a hypothetical storm event, of a given frequency interval and duration, used in the analysis and design of a stormwater facility.

(13) "Detention" means the temporary delay of storm runoff prior to discharge into the natural receiving waters.

(14) "Developer" means any individual, firm, corporation, association, partnership, or trust authorized as an owner or corporate officer to obtain permits, whether federal, state, or local and whose plan or intent is to alter or modify land characteristic or attributes.

(15) "Development" means any alteration or modification to land improved or unimproved, including but not limited to, building construction, mining, excavation, dredging filling, grading, paving, excavating, drilling operation, or permanent storage of materials ("materials" of like nature stored in whole or in part for more than a period of 30 days).

(16) "Discharge"'means dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of any solid or liquid matter into the municipal separate storm sewer system.

(17) "Easement" means an acquired privilege or right of use or enjoyment that a person, party, firm, corporation, municipality or other legal entity has in the land of another.

(18) "Easement interest" means the acquired privilege or the right of use or enjoyment that any lot owner in a platted subdivision has in the private stormwater facilities for the storage and conveyance of all stormwater runoff from the individual lot owners' lot and/or any other lot in a platted subdivision.

(19) "Engineer" or "professional engineer" means a person licensed by the State of Tennessee as a professional engineer.

(20) "Erosion" means the removal of soil particles by the action of water, wind, ice or other geological agents, whether naturally occurring or acting in conjunction with or promoted by anthropogenic activities or effects.

(21) "Erosion and sediment control plan" means a written plan (including drawings or other graphic representations) that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities prepared by a professional licensed in the State of Tennessee as a professional civil engineer and certified by the Tennessee Department of Environment and Conservation in Level one and two erosion and sediment control.

(22) "Hotspot"("priority area") means an area where land use or activities generate highly contaminated runoff with concentrations of pollutants in excess of those typically found in stormwater.

(23) "Illicit connections" means illegal and/or unauthorized connections to the municipal separate stormwater system whether or not such connections result in discharges into that system.

(24) "Illicit discharges" means any discharge to the municipal separate storm sewer system that is not composed entirely of stormwater.

(25) "Impaired waters" means a watercourse, stream, creek, river, or wetland delineated by the Tennessee Department of Environment and Conservation which is listed on the "303d" list as degraded or non-supportive of specific classified uses, including but not limited, to recreation, drinking water, agricultural, irrigation, fish and aquatic life.

(26) "Land disturbing activity" means any activity on property that results in an alteration of the existing soil cover both vegetative and non-vegetative and/or the existing soil topography. Land-disturbing activities include development, re-development, demolition, construction, reconstruction, clearing vegetation, grading, filling, and excavation.

(27) "Land disturbing permit" means written authorization issued to an applicant to proceed with or conduct "land disturbing activity" with specific terms and conditions.

(28) "Maintenance" means any activity that is necessary to keep a stormwater facility functional and in conformance with an approved "erosion and sediment control plan." Maintenance shall include complete reconstruction of a stormwater facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any condition on the site property that may directly impair the functions of the stormwater facility.

(29) "Memorial tree fund" means a distinct separate fund or account maintained by the City of Cleveland that is solely dedicated to receive and expend funds to landscape public properties and right-of-ways.

(30) "Municipal separate storm sewer system " (MS4) means the conveyances owned or operated by the municipality for the collection and transportation of stormwater, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

(31) "National Pollutant Discharge Elimination System permit" or "NPDES permit" means a permit issued pursuant to 33 U.S.C. 1342.

(32) "Off-site facility" means a structural BMP located outside the subject property boundary described in the permit application for land development activity.

(33) "On-site facility" means a structural BMP located within the subject property boundary described in the permit application for land development activity.

(34) "Peak flow" means the maximum instantaneous rate of flow of water at a particular point resulting from a storm event.

(35) "Person" means any and all persons, natural or artificial, including any individual, firm or association and any municipal or private corporation organized or existing under the laws of Tennessee or any other state or county.

(36) "Phasing" means planning land disturbance activities in segments or increments to result in the permanent stabilization of one segment prior to the land disturbance of the next segment.

(37) "Priority area" means "hot spot" as defined in § 18-303.

(38) "Priority construction activity" means land disturbance activity in the drainage basin or watershed of an impaired stream listed on the 303d list published by the Tennessee Department of Environment and Conservation.

(39) "Private stormwater facilities" means stormwater storage, conveyance, or treatment facilities that are not located within public right-of-way and shall include but are not limited to detention and retention ponds, structural and non-structural stormwater treatment, and conveyance systems.

(40) " Qualified contractor" means a person who holds certification in the UT/TDEC Level 1 course provided by the Tennessee Department of

Environment and Conservation, or has satisfactorily completed equivalent training provided by the City of Cleveland.

(41) "Regional detention or retention facility" means a stormwater facility constructed with public or private funds in the interest of public safety to abate or reduce the potential of localized flooding and adverse impacts to established flood hazard districts. A regional detention or retention facility is an offsite stormwater facility maintained by the City of Cleveland serving two or more separate property owners in the same watershed or sub watershed.

(42) "Regional detention or retention banking" means a private capital cash or real property investment by a person or a corporate entity for the purpose of building or causing to be built a regional off-site detention or retention stormwater facility to serve existing properties in the same watershed in lieu of on-site detention or retention.

(43) "Retention pond" means artificial pond used to store or detain stormwater runoff to allow for settlement of suspended solids and biological treatment.

(44) "Runoff" means that portion of the precipitation on a drainage area that is discharged from the area into the municipal separate stormwater system.

(45) "Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.

(46) "Sedimentation " means soil particles suspended in stormwater that can settle in streambeds and disrupt the natural flow of the stream.

(47) "Soils report" means a study of soils on a subject property with the primary purpose of characterizing and describing the soils. A qualified soils scientist shall prepare a soils report.

(48) "Stabilization" means providing adequate measures of vegetative and/or structural controls that will prevent erosion from occurring.

(49) "Start of construction " means the first date that mechanized land disturbance is authorized to proceed under a land disturbance permit.

(50) "Stormwater" means stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.

(51) "Stormwater program manager" means an employee of the City of Cleveland charged with the responsibility of implementing and enforcing the provisions of this ordinance.

(52) "Stormwater management" means a program to maintain quality and quantity of stormwater runoff to pre-development levels.

(53) "Stormwater management facilities" means the drainage structures, conduits, ditches, combined sewers, sewers, and all device appurtenances by means of which stormwater is collected, transported, pumped, treated, or disposed of.

(54) "Stormwater management plan" means the set of drawings and other documents prepared by a civil engineer licensed in the State of Tennessee and comprised of information and specifications pertaining to site specific drainage systems, structures, BMP's, concepts and techniques intended to maintain or restore quality and quantity of stormwater runoff to predevelopment levels.

(55) "Stormwater regulations board" means a five (5)-member board appointed by the Cleveland City Council to serve in accordance with the terms of § 18-312.

(56) "Stormwater runoff"' means flow on the surface of the ground, resulting from precipitation.

(57) "Structural Best Management Practices (BMP's) " means devices that are constructed to provide control of stormwater runoff.

(58) "Surface water " includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes and reservoirs.

(59) "Urban forester " means an employee of the City of Cleveland whose position title is "urban forester."

(60) "Watercourse" means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(61) "Watershed" means all the land area that contributes runoff to a particular point along a waterway. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-304. <u>Land disturbance permits</u>. (1) <u>When required</u>. Every person conducting the following "land disturbance activity" is required to obtain land disturbance permit coverage pursuant to the provisions of this chapter, and stormwater management plan approval from the engineering division of the department of public works:

(a) Land disturbing activity that disturbs one (1) or more acres of land;

(b) Land disturbing activity of less than one (1) acre of land if such activity is part of a larger common plan of development, including but not limited to, residential, commercial, and industrial major and minor subdivisions (tract of land divided into parcels with a larger common plan);

(c) Land disturbing activity of less than one (1) acre of land, if such activity is adjacent to an impaired stream appearing on the 303d list of the Tennessee Department of Environment and Conservation;

(d) The creation and operation of borrow pits where material is excavated and relocated offsite, and fill sites where materials or earth is deposited by mechanized methods resulting in an increase elevation or grade.

(2) Exemptions. The following activities are exempt from obtaining a land disturbance permit:

(a) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources, or for the health and safety of the community, or for the continuation of essential services;

(b) Existing nursery and agricultural operation conducted as a permitted main or accessory use;

(c) Logging or agricultural activity that is consistent with an approved farm conservation plan or a timber management plan approved by the Tennessee Department of Environment and Conservation Surface Mining Division, the Tennessee Department of Agriculture, or the Natural Resource Conservation Service;

(3) Building permits. Building permits issued under the authority of the building official, or a designee of, shall be held in abeyance until the applicant, owner, or designated representative has fully satisfied the following requirements:

(a) Site plan approval pursuant to title 14, chapter 2, subsection 6.2 of the Zoning Ordinance of the City of Cleveland;

(b) Submittal of a "Notice of Coverage" issued by the Tennessee Department of Environment and Conservation and provided to the department of community development authorizing the applicant to discharge stormwater associated with construction activity, if applicable;

(c) Approval of a stormwater management plan and post construction components from the engineering division of the department of public works consistent with §§ 18-304 through 18-307 of this chapter;

(d) Attended a pre-construction conference with the division of engineering of the department of public works to review implementation of an approved stormwater management plan in accordance with §§ 18-304 through 18-307 for land. A preconstruction conference shall be conducted for all proposed land disturbance activities of one (1) acre or more located in the watershed of an impaired stream as determined by the 303d classification list of the Tennessee Department of Environment and Conservation.

(4) Application for a land disturbance permit. (a) Authorization to implement land disturbance permit program. The engineering division of the department of public works and the department of community development are authorized to develop and implement a land disturbance permit program and associated policies that are consistent with this chapter. A land disturbance permit application shall include the following:

(i) Name of applicant;

(ii) Address of applicant;

(iii) Name, address, and telephone number of the current property owner of record listed in the office of the assessor of property;

(iv) Address and legal description of subject property including the tax map reference number and parcel number of the subject property;

(v) Name, address and telephone number of the contractor and any subcontractor(s) who shall perform the land disturbing activity and who shall implement the erosion and sediment control plan;

(vi) A narrative statement indicating the nature, extent and purpose of the land disturbing activity, including the size of the area for which the permit shall be applicable and a schedule for completion of the land disturbing activity;

(vii) The estimated cost of stormwater infrastructure to accommodate the proposed development;

(viii) The watershed location and receiving waters for the proposed development;

(ix) Where the property includes a sinkhole and/or waters defined as natural resource or wetland and the proposed land disturbance activity will encroach, potentially impact, or alter state waters, the applicant shall obtain from the Tennessee Department of Environment and Conservation, or appropriate regulatory permits. The issuance of a land disturbing permit under the authority of this chapter will be in abeyance until state and federal permits, if applicable, are obtained;

(x) The inclusion of state or federal permits in the application shall not foreclose the engineering division of the department of public works or the department of community development from imposing additional development requirements and conditions commensurate with this chapter.

(xi) The owner of record of the proposed development shall sign the application, or the applicant must provide certification from the owner of record providing authorization to act as the owner's agent.

(b) Each application shall be accompanied by;

(i) A performance bond in the form of a letter of credit, performance surety, or performance bond valued at the cost of providing as-built drawings in conformance with § 18-304 subsection (9);

(ii) A stormwater management plan satisfying the provisions of § 18-305;

(iii) A fully executed agreement to provide "as-built drawings" of the stormwater infrastructure associated with the

proposed development and permanent site stabilization in post construction pursuant to the requirements of § 18-306;

(iv) A post construction-landscape plan satisfying the provisions of § 18-307, if applicable.

(5) Application review procedures. (a) The engineering division of the department of public works and the department of community development shall review each application for a land disturbance permit to determine conformance with the provisions of this chapter upon submittal of all documents and plans required under § 18-304, subsection 4. Within 10 (ten) standard working days after receiving a completed land disturbance permit application and the plans required by § 18-304, subsection 4, the engineering division of the department of public works shall provide one of the following responses in written form:

(i) Approval of the permit application;

(ii) Approval of the permit application, subject to such reasonable conditions as may be necessary to secure the objectives of this chapter, and issue the permit subject to these conditions; or

(iii) Denial of the permit application, indicating the reason(s) for the denial.

(b) If the engineering division of the department of public works has granted conditional approval of the permit, the applicant shall submit a revised stormwater management plan reflecting the revisions associated with conditional approval prior to the issuance of a land disturbance permit.

(c) If the application for the land disturbance permit is denied, the applicant may request a meeting with the director of public works in an effort to resolve issues pertaining to the permit denied. If issues related to the land disturbance permit denial cannot be resolved, the applicant may appeal the matter to the stormwater regulations board pursuant to the procedures of § 18-312.

(6) Permit duration. Land disturbance permits shall expire and become null and void if substantial work authorized by such permit has not commenced within one hundred eighty (180) calendar days of issuance, and conducted in accordance with an approved stormwater management plan.

(7) Notice of construction and permit monitoring requirements. The applicant shall notify the engineering division of the department of public works stormwater program manager ten (10) standard working days prior to the of the commencement of land disturbance activity approved in conjunction with a land disturbance permit and an approved stormwater management plan. The application for a land disturbance permit shall provide erosion and sediment control site inspections on a frequency of one inspection per week and following each rain event of one-half (½) inch or greater in accordance with an approved stormwater management plan. The applicant shall provide qualified contractors to perform such inspections in accordance with the MS4 Phase II NPDES

program of the Tennessee Department of Environment and Conservation. The engineering division of public works--stormwater program manager shall make available to the applicant inspection reporting forms that shall be submitted by the applicant monthly to the stormwater program manager, and received no later than the tenth (10th) day of each month. The inspection forms shall include, but not be limited to, the following information:

(a) The date and location of the inspection;

(b) Indicate if the land disturbance activity is being conducted in accordance with the approved stormwater management plan;

(c) Variations from the approved construction specifications;

(d) Observed violations that existed and remedial action taken.

(8) Land disturbance permit fees and inspection. Each application for a land disturbance permit shall be accompanied by payment of land disturbance permit fees. The following fees shall apply to the issuance of a land disturbance permit that qualifies as a land disturbance activity regulated in accordance with 40 CFR 122.26 and pursuant to § 18-304 subsection (1):

Land Disturbance Permit Fees

Residential Lot-Single Family Residence	$20.00-one (1) acre or greater
Residential Subdivision	$20.00 per planned lot
Multi-unit Residential	$50.00 per acre
Commercial and Industrial Development	$50.00 per acre

Water Quality Fee--303d Watershed

In addition to the land disturbance permit fee, a water quality impact fee of eighty-five dollars ($85.00) shall apply to the applicants of a land disturbance permit subject to MS4 Phase II 303d oversight mandated by the City of Cleveland NPDES Permit issued by the Tennessee Department of Environment and Conservation including, preconstruction conferences, monthly inspections, and associated administrative reporting. Land disturbance activity associated with the development of individual parcels to accommodate a single-family residential structure that is part of a larger common plan of development (residential subdivision), which was constructed in accordance with an approved stormwater management plan shall be exempt from the water quality impact fee associated with development in a 303d watershed.

(9) "As-built agreement." An applicant for a land disturbance permit shall submit a fully executed "as-built agreement." The form of the as-built agreement shall be as set forth in § 18-313. Appendix. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-305. Stormwater management plan design standards.

(1) Stormwater quality best management practices manual.

(a) Adoption. The City of Cleveland adopts as its stormwater quality best management practices (BMP) manual the following

publications, which are incorporated by reference in this chapter as fully set out herein verbatim:

(i) "Tennessee Department of Environment and Conservation Sediment and Erosion Control Manual"; or

(ii) "Designing for Effective Sediment and Erosion Control on Construction Sites" (Fifield 2001, Forester Press).

Alternative specifications may be utilized upon review and approval by the city engineer.

(2) Stormwater management plans. (a) When required. A stormwater management plan shall be submitted for development requiring a land disturbance permit under the provisions of § 18-304, subsection (1). Individual residential parcels developed in a part of a larger common plan of development (residential subdivision) in conjunction with an approved stormwater management plan and land disturbance permit are exempt from the stormwater management plan submittal, but are required to implement best management practice in accordance with § 18-305 subsection (1)(a) and rules promulgated by the Tennessee Department of Environment and Conservation.

(b) Stormwater management plan must be prepared by a civil engineer licensed to practice engineering in the State of Tennessee;

(c) Control the peak flow rates of stormwater discharges associated with design storm events to reduce the post development stormwater runoff to the pre-development stormwater runoff rate and provide first flush water quality treatment for development, § 18-3, subsection (4);

(d) Utilize pervious areas for stormwater treatment and to infiltrate stormwater runoff from impervious areas including, but not limited to, driveways, sidewalks, rooftops, and parking lots to the maximum extent practicable;

(e) Protect surface water conveyances and natural resource channels from degradation to the maximum extent practical. Stormwater discharges to critical areas with sensitive resources (i.e., wetlands, water supply reservoirs) may be subject to additional performance criteria;

(f) Stormwater discharges from designated "hot spot" areas may require the application of additional measures including, structural best management and pollution prevention practices;

(g) Land disturbance activity, construction, and the creation of impervious areas, whether by private or public action, shall be performed in a manner that will minimize to the maximum extent practicable adverse impacts to stormwater runoff quantity and quality;

(h) Land disturbance activity, construction, and the creation of impervious areas shall not adversely impact existing private or public infrastructure, whether upstream or downstream. Existing stormwater conditions of adjacent areas shall be assessed in the stormwater

management plan prior to the issuance of a land disturbance permit. The applicant or developer shall provide adequate stormwater infrastructure, stormwater storage facilities, and contribute a pro-rata share to mitigate down stream impacts associated with the proposed development;

(i) When an adverse existing or documented flood condition exists and a proposed development could potentially cause further adverse impacts to adjoining property owner(s), the city engineer has the authority to condition approval of a land disturbance permit upon abatement of existing adverse conditions in the interest of public health and safety, including but not limited to, additional stormwater storage facilities.

(3) Minimum design standards - stormwater conveyance system. Stormwater conveyance systems including, but not limited to, open ditches, pipes, culverts, catch basins, drop inlets, and bridges shall be incorporated in the stormwater management plan in conjunction with minimum standards prescribed in this chapter, and shall be designed by a civil engineer licensed in the State of Tennessee. Stormwater facilities constructed in conjunction with a proposed development or property improvements shall be an integral component of a stormwater management plan that shall be reviewed and approved by the city engineer prior to issuance of a land disturbance permit. Stormwater hydrology and hydraulic calculations shall accompany the stormwater management plan and site plan.

The stormwater conveyance system design shall satisfy the minimum design standards:

(a) Erosion, sedimentation, and stormwater control measures, pipes, structures, and devices shall be planned, designed, constructed, operated and maintained so as to provide effective soil erosion and stormwater control from the peak runoff rates. The stormwater system, excluding stormwater detention ponds, water quality control facilities and sinkholes, shall be designed to accommodate a ten (10) year return frequency twenty-four (24) hour duration storm, except for those facilities which would flood public roadway classified by the Tennessee Department of Transportation as a collector or arterials. Where warranted by local controlling factors, an alternative storm frequency shall be required;

(b) In conjunction with Federal Emergency Management Agency (FEMA) requirements, stormwater receiving inlets shall not restrict the flow of floodwaters or increase flood heights. Stormwater culverts shall be designed for a one hundred (100) year flood frequency, when such culvert is located in a one hundred (100) year floodplain. Transportation facilities classified as a collector or arterial by the Tennessee Department of Transportation facility inventory shall utilize a fifty (50) year flood frequency for stormwater culvert design, and a ten (10) year flood frequency shall be utilized for local transportation

facilities. Although roadway overtopping will be allowed for 10 year and 50 year floods, the design shall be such that damage will not occur to the roadway or adjacent properties during a 100 year flood;

(c) Stormwater swales shall be designed utilizing acceptable engineering principles and practices to accommodate a one hundred (100) year storm event and the design shall demonstrate that the stormwater swale at full capacity will not result in structural flooding of adjacent buildings and structures;

(d) Stormwater site runoff calculations shall be developed utilizing the Rational Formula or the Natural Resource Conservation Service (NRCS, formerly the Soil Conservation Service) TR-55 method for watersheds of fifty (50) Acres or less. For watersheds greater than fifty (50) acres, but less than two thousand (2000) acres, the NRCS TR-55 method shall be utilized. For watersheds greater than two-thousand (2000) acres, the flood frequency methodology utilized by the US Army Corps of Engineers shall be employed in the stormwater runoff calculations;

(e) The minimum culvert size shall be fifteen (15) inch inside diameter with a maximum velocity not to exceed fifteen (15) feet per second. The maximum allowable slope of a advert shall be fifteen (15) percent without pipe restraining methods utilized in the design and construction. Energy dissipaters shall be provided at the outlet end of all culverts;

(f) Stormwater discharges and conveyances originating from storage facilities including, but not limited to, detention basin(s) must be routed to an existing natural or manmade stormwater channel. Hydraulic calculations utilizing the methodology of § 18-305, subsection (3)(d) shall demonstrate that the capacity of the receiving stormwater channel will accommodate a two (2) year and ten (10) year design flood event. The hydraulic calculations and stormwater runoff computations must extend at a minimum to the second downstream roadway crossing, or to a blue-line stream appearing on a United States Geological Society (USGS) map. Routing calculations must be extended further downstream, if the city engineer or his representative has reasonable concern of adverse downstream impacts to public infrastructure or property;

(g) Stormwater drainage culverts shall be installed on a uniform grade and with a compacted base. In the event rock is encountered in the culvert trench, the rock shall be removed four (4) inches below the site plan grade. Stormwater culverts shall be installed with the spigot end directed as the flow inlet with joints established utilizing manufacturer's specifications, at a sufficient depth below the surface to ensure the culvert will not collapse, and in conjunction with specifications applicable to the product. The minimum depth of a culvert below a roadbed surface shall be one (1) foot. Roadway cross drains shall be of a minimum length

to collect stormwater from the full roadway width, including shoulders and side slopes;

(h) All stormwater conveyance structures, pipes, or culverts, located under roadways shall incorporate end walls, headwalls, concrete aprons, concrete wing walls, and/or rip-rap rock as end treatment, as necessary, to prevent erosion;

(i) The designer shall incorporate stormwater collection structures to capture runoff from paved surfaces in all sag locations and other depressed areas to ensure positive drainage. Collection structures should be spaced so that the spread (width of stormwater) in roadway areas to collect the design flow shall not exceed six (6) feet;

(j) Inlet capacity at sags shall include provisions for debris blockage by providing twice the required operational flow. Where inlet conditions control the amount of flow that can pass through the culvert, improved inlets can greatly increase the hydraulic performance of a culvert and shall be required at the discretion of the city engineer;

(k) Stormwater collection structures, manholes, and junction boxes shall consist of prefabricated reinforced concrete structures, cast in-place, or an approved equivalent. Stormwater collection or inlet structures shall conform to Tennessee Department of Transportation standards;

(l) Open stormwater conveyance channels, trenches, or ditches incorporated in the stormwater management plan shall include stabilization in accordance with § 18-305 subsection (1) to abate erosion within the channel;

(m) When necessary for proper stormwater conveyance, inlet and outlet ditches shall be provided at drainage structures. Minimum drainage easements shall be provided for residential subdivision developments in accordance with the Cleveland Subdivision Regulation, Section 4.08B, and incorporated on side and rear parcel lines. Where at all possible, primary stormwater conveyances shall be incorporated at the rear of the lot lines and not parallel to the roadway to avoid having oversized stormwater structures under driveway;.

(n) Plans and specifications for all retaining walls, cribbing, planting, anti-erosion devices, or other protective devices, whether temporary or permanent, to be constructed in conjunction with or as a part of the proposed development shall be included in the stormwater management plan. Retaining walls shall meet the requirements specified in § 18-305 subsection (8) of this chapter.

(4) Stormwater detention design--minimum standards. In the interest of public safety and stormwater quality, stormwater detention or retention shall be integrated into the stormwater management plans to abate increased peak stormwater runoff. The primary criteria in evaluating stormwater management plans and site designs shall be the comparison of pre-development site runoff

and post-development site runoff. Other evaluation processes shall include an assessment of potential increase in stormwater flood height, the frequency of flooding, and the proximity to any structures. The stormwater management plan shall utilize pervious areas for detention, stormwater treatment, allow infiltration of stormwater runoff, and comply with the following criteria:

(a) Stormwater storage facilities with first flush water quality treatment shall be required for development meeting the following conditions:

(i) Commercial, industrial, educational, institutional and recreational developments consisting of one (1) acre or more of disturbed area;

(ii) Commercial, industrial, educational, institutional and recreational developments consisting of less than one (1) acre, that is part of a larger common plan of development;

(iii) Any project such as new development, re-development or property improvements which includes the addition of one-half (½) acre or greater of impervious area;

(iv) Residential development of four (4) acres or greater being developed.

(b) When a proposed development or re-development does not exceed the criteria fisted in § 18-305 subsection (4)(a), the city engineer shall have the authority to require stormwater storage detention or retention with first flush water quality treatment to prevent downstream flooding and damage.

(c) All development or re-development meeting the criteria listed in § 18-305, subsection (4)(a) shall control the peak stormwater flow rates of the site stormwater discharges associated with design storms specified in § 18-305, subsection (4)(e)(i) and reduce the post construction stormwater runoff to pre-construction levels.

(d) The stormwater detention or retention storage requirements may be waived or modified if the following occurs:

(i) The peak runoff discharge from the site is mitigated by a regional detention stormwater facility or by off-site detention banking.

(ii) The applicant(s) licensed civil engineer shall demonstrate that installing the required on-site stormwater storage facility(s) is unwarranted, would not increase the potential for flooding hazards, and would not be in the best interest of the City of Cleveland. Hydrologic and hydraulic computations shall be submitted that utilizes accepted engineering practices to support such a conclusion. The primary occurrence of such conditions typically involves direct stormwater discharges into a main stream such as South Mouse Creek, Little Chatata, Candies Creek, and Fillauer Branch without flowing through a named creek or stream,

through a public drainage system, or across a downstream property boundary, and is located in the very lowest downstream reaches of that watershed. It shall be determined by acceptable engineering principles and practices that post development stormwater should be released quickly to avoid the peak discharge timing for the entire watershed and not increase the peak runoff rate for storm events identified in the design standards for storage in § 18-305 subsection 4(e)(i) of this chapter. The hydrologic analysis for such demonstration shall include more than one representative downstream location for comparing hydrographs. Even if stormwater detention is waived for the above situation, the site development must provide first flush treatment or an acceptable alternative in order to protect water quality.

(e) Detention structure design criteria. Standards governing drainage detention control shall comply with the following standards and specifications:

(i) All stormwater detention structures must detain the post development peak flow rates for two (2) year, five (5) year, ten (10) year, and twenty-five (25) year within a twenty-four (24) hour design storm frequency to discharge at or below pre-development peak flow rates and pass a one-hundred (100) year storm without damage to the facility or adjacent property. The first flush volume shall be sized to capture and slowly release the "first flush" of stormwater runoff or the volume most likely to contain contaminants and particulate matter. The outlet structure design criteria shall include slow release of the first three-quarter (3/4) inch of runoff over a twenty-four (24) to seventy-two (72) hour period;

(ii) The required hydrologic and hydraulic computations shall be in accordance with. Natural Resource Conservation Service (NRCS), formerly the Soil Conservation Service; unit hydrograph procedures using Antecedent Moisture Condition (AMC) II curve numbers and Type II rainfall distribution. All post development conditions must be routed to the maximum extent possible at time intervals of one-tenth (0.1 hour) through the detention pond utilizing hand calculations or computer models;

(iii) If hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the city engineer shall impose any requirements deemed necessary to control the volume, timing, and rate of runoff in the interest of public safety,

(iv) The civil engineer representing the owner or developer is charged with determining the predevelopment conditions, including the curve number. If the engineer cannot

determine the predevelopment conditions, then a maximum pre-development curve number of seventy (70) may be used to compute the predevelopment flow and satisfy the requirement. If the downstream system extending from the site to the second existing road crossing or blue line stream is examined and found to be adequate to carry the two (2) and ten (10) year storm events for a twenty-four (24) hour storm event, the requirement for detention for areas of redevelopment may be waived;

(v) Typical stormwater detention or storage facilities are dry detention basins, wet detention basins, retention basins, and constructed wetlands. All detention computations must use NRCS design methods with Type II twenty-four (24) hour storm and average antecedent moisture conditions;

(vi) Detention facilities shall be designed and graded to allow access for maintenance personnel, maintenance vehicles, and equipment. The stormwater management plan shall incorporate a permanent drainage easement to provide access for future maintenance or repair, which shall be designated on the final recorded plat.

(vii) The detention pond design shall incorporate a trash rack or trash collection appurtenance.

(5) Stormwater management plan requirements. The stormwater management plan shall include site attributes to evaluate potential impacts of proposed developments and re-developments, both present and future, and the effectiveness of best management practices proposed for managing stormwater generated at the project site. To accomplish this goal the stormwater management plan shall include the following:

(a) Topographic Base Map: A topographic base is required with a scale of not less than 1" = 100' that extends a minimum of one-hundred (100) feet beyond the limits of the proposed development and shall include:

(i) Existing surface water including, but not limited to, streams, ponds, culverts, ditches, sink holes, spring heads, wetlands;

(ii) Nearest existing upstream and downstream drainage structures with the information such as type, size, and invert elevations of the structures;

(iii) Existing and proposed contours at two (2) foot intervals with reference datum mean sea level;

(iv) Proposed stormwater conveyance systems, pipes, culverts, drainage channels, detention facilities, drainage swales, wetlands, berms, drainage structures, inlets, and manholes. Provide, as applicable, the invert elevations, top of structure

elevations for structures, spot elevations, and percent grade for the drainage system.

(v) Design location of proposed stormwater storage facilities or conveyances including drainage channels, including sumps, basins, channels, culverts, ponds, storm, drains, and drop inlets;

(vi) Current land use including all existing structures, locations of utilities, roads, and easements;

(vii) Existing natural and artificial features;

(viii) Proposed land use with a tabulation of the percentage of surface area utilized for each ancillary use, show drainage patterns, locations of utilities, locations of roads and easements, and provide the limits of clearing and grading;

(ix) Proposed structural and non-structural best management practices;

(x) Existing and proposed building pad elevation(s) and roadway elevations if building construction is proposed;

(xi) A written description of the site plan and justification of proposed changes in natural conditions may also be required;

(xii) Plans and specifications for the proposed stormwater system, retaining walls, cribbing, planting, erosion control devices, whether temporary or permanent, to be constructed in conjunction with, or as a part of the proposed work shall be required, with a map delineating the watershed and a statement explaining the amount of estimated runoff used to determine the design characteristics of any drainage device. The upstream watershed shall be considered in design calculations. If warranted, downstream stormwater system improvements may also be required to abate adverse impacts to existing infrastructure or structures.

(xiii) Upon request a no-rise certificate shall be required by the city engineer that is prepared in accordance with FEMA standards. The City of Cleveland has defined the one-hundred (100) year flood event as the base flood.

(b) Calculations. Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms utilizing accepted engineering principles and practices. These calculations must show that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this chapter and meet the requirements of the city engineer. Such calculations shall include:

(i) A description of the design storm frequency, duration, and intensity where applicable;

(ii) Time of concentration;

(iii) Soil curve numbers or runoff coefficients including assumed soil moisture conditions;

(iv) Peak runoff rates and total runoff volumes for each watershed area;

(v) Infiltration rates, where applicable;

(vi) Stormwater conveyance system capacities;

(vii) Flow velocities;

(viii) Rate and volume of runoff data for the design storms events referenced in the best managements practices manual § 18-305 subsection (1);

(ix) Documentation of sources for all computation methods and field test results.

(c) Affidavit. When fragile, complex, or hazardous areas are present, including but not limited to, unstable slopes, uncontrolled fill, federal jurisdictional wetlands, or sinkholes, the city engineer or stormwater program manager may require an affidavit executed by the owner and engineering representative that may include:

(i) Compaction report where a site is proposed to be filled and used for a building pad or roadway;

(ii) Soil engineering report, including data regarding the nature, distribution, strength of existing soils, conclusions, and recommendations for earthwork procedures;

(iii) Geology report, including a description of site geology, conclusions, and recommendations regarding the effect of geologic conditions on the proposed development.

(d) Soils information. If a stormwater best management practice is dependent on the hydrologic properties of soils, then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles and soil survey reports.

(e) Stream buffer zone. A water quality buffer zone is required along all perennial and intermittent streams, and wetlands. The stream buffer zone will be clearly identified on proposed site plans and stormwater management plans. A stream buffer area will be delineated on a proposed development with field stakes established at fifty (50) foot intervals on each side of the stream, channel or wetland. The stream buffer area metes and bounds shall be shown on the submitted plan. The stream buffer zone area will remain in tact, with no removal of vegetation, including upper and lower story vegetative canopy, during all phases of construction, unless otherwise approved in conjunction with recreational uses identified in the stormwater management plan or subdivision plat. The stream buffer zone will be segregated land disturbance activities conducted in accordance with an approved stormwater management plan. The identification of streams and wetlands shall be included in the stormwater management plan and

determinations shall be determined by the Tennessee Department of Environment and Conservation.

The following standards shall apply to the development of stream buffer zones:

(i) In areas where a floodway profile has been compiled and approved by the Federal Emergency Management Agency (FEMA) and reflected on flood insurance maps, the stream buffer zone shall be the width of the floodway plus a minimum of twenty (20) feet measured perpendicular from the floodway;

(ii) In areas where a floodway profile has not been computed as part of the FEMA flood insurance program and the watershed above the proposed development is two-hundred (200) acres or less, the stream buffer zone shall be a minimum width of fifty (50) feet measured from the top of the bank on each side of the stream for all proposed development;

(iii) In areas where a floodway profile has not been computed as part of the FEMA flood insurance program and the watershed above the proposed development is two-hundred (200) acres or greater, the owner or developer shall establish base flood elevations in accordance with FEMA standards that shall be developed by a civil engineer licensed in the State of Tennessee. The minimum elevation and setback of proposed structures located adjacent to unmapped watercourses shall be identified on the proposed subdivision plat or site plan and include the following certification by a civil engineer licensed in the State of Tennessee:

I _____ have made a flood hazard study of the proposed subdivision _____ and the watershed area above it and all affected lots within this subdivision area marked with a minimum building elevation. A benchmark of public record for a reference is noted on the plat, and established on the subdivision. Unmarked lots have been determined to not require a minimum building elevation due to their location and the existing structure design.

Seal:
Name_____ P.E.#_____

The developer shall use the larger stream buffer width derived from the two methods stated above for a proposed development adjacent to watercourse or streams.

(f) <u>Maintenance agreement stormwater storage facilities</u>. The developer or owner of real property that is served by an on-site or off-site

storm water management facility, including stormwater storage facilities, shall be responsible for maintenance, repair, and operation during site development. The developer's responsibility will terminate after a two-year period from the issuance of a land disturbance permit upon two conditions:

(i) Successful completion of post construction in accordance with §§ 18-306 and 18-307, and

(ii) The sale or transfer of ownership of fifty-one percent (51%) of all parcels in the platted subdivision. As a precondition to any plat approval by the planning commission, all subdivision plats shall contain a "stormwater facility maintenance agreement," which shall include the provisions for future maintenance of the stormwater storage facility. As a general rule, this verbiage contained on the plat shall designate that all lot owners in the platted subdivision shall have an easement interest in the stormwater storage facilities for water runoff from all lots in the subdivision. This easement interest shall be designated upon the recorded plat. Private stormwater storage facilities shall be shown on the find recorded plat. Private storm water facilities shall include but are not limited to stormwater storage facilities, such as detention and retention ponds, structural and non-structural stormwater treatment facilities and open channel conveyances that are not located within public right of ways.

The future maintenance, repair and operation of the private storm water facilities shall be the responsibility of all subdivision lot owners of record of those lots shown on the recorded plat. In the event, a subdivision is developed in phases then all subsequently developed lots in the subdivision shall share the same easement as those lot owners shown on the initial plat and/or plats. It being the intent that all lot owners in any particular subdivision; whether in the initial or any later phase shall share equally in the easement rights in and to the stormwater storage facilities as well as sharing equally in the future maintenance and upkeep of the stormwater storage facilities. As an additional requirement to the approval of any plat, there shall be a stormwater storage bairn easement shown on any recorded plat that contains a stormwater detention basin. This stormwater detention basin easement shall be a twenty (20) foot access easement. This easement is for the purpose of allowing city engineering personnel, storm water inspectors, grading equipment operators, stormwater monitoring personnel and/or other necessary personnel to investigate, inspect, repair and/or maintain the detention basin or stormwater quality structure as needed to determine proper functioning, need for maintenance, maintenance and/or other necessary repairs and/or situations that may occur in times of emergency or urgent conditions. This twenty (20) foot

access easement shall be shown on the recorded plat and shall be provided to and from stormwater detention basins and shall abut on a public right of way for at least twenty (20) feet and must be easily traversable by potential grading equipment (bulldozers and/or back hoes) as well as those individuals noted hove. This twenty (20) foot stormwater detention basin access easement area shall not contain any buildings or structures, large trees or heavy shrubbery, utility poles, manholes, overhead utility lines without adequate clearance, deep ditches or channels and/or any other structures or items causing the stormwater detention basin to be inaccessible. However, the property owner may plant small shrubs of little or no value that can be easily removed or cleared. The property owner may also place small fences in the area that can be easily removed; ideally any fence contained in this easement area shall contain a gate through the fence. Any structure located upon the stormwater detention basin access easement area must be portable and quickly and easily removable. The City of Cleveland shall not be responsible for damage to any structure, utilities or vegetation located within this storm water detention basin access easement area. The City of Cleveland and/or its designated officials should have access over and across this storm water detention basin easement as they deem the same necessary to inspect and/or maintain the stormwater detention facility. The City of Cleveland shall not be responsible for the repair or replacement of structures, utilities and/or vegetation located upon the stormwater detention basin access easement area. This storm water detention basin easement area is normally intended for heavy equipment access rather than ordinary passenger vehicle access. A city stormwater inspector will normally gain access to the detention basin or water quality facility while parking nearby.

(i) Division of tract into parcels for resale. For larger common plans of development, each parcel or lot served by a private stormwater storage facility shall have equivalent or proportioned easement ownership in stormwater facilities. This ownership of each private stormwater facility shall be equally appropriated by the recorded plat to each parcel of the larger common plan of development. Maintenance of private stormwater facilities serving multiple parcels shall be the cumulative responsibility of each parcel owner of record of any platted tract or lot in the subdivision. The final recorded subdivision plat shall reflect the easement ownership for each pared in a larger common plan of development, whether residential, commercial, or industrial. The applicant for a land disturbance permit or owner or record shall present a final plat prior to recording as a final document that designates easement ownership of stormwater

facilities to each parcel prior to recording as an official recorded plat in the Bradley County Register of Deeds.

(ii) Single tract of land. The maintenance of private stormwater facilities constructed in conjunction with development on a single tract shall be the responsibility of the owner by record. The final recorded plat shall identify all private stormwater storage facilities on the same parcel as the associated structure.

(iii) The maintenance agreement shall:

(A) Provide for maintenance of stormwater facilities in accordance with § 18-305 subsection (1);

(B) If private stormwater facilities are not properly maintained as set out herein, then the City of Cleveland shall require the subdivision parcel owners of record served to perform the maintenance and repair at the expense of parcel owners served by said facilities. The city reserves the right to conduct repair(s) of stormwater storage facilities, or may cause to be repaired, and to assess a lien on each individual subdivision parcel owners of record served by the private stormwater facilities. The maintenance agreement shall also provide that the City of Cleveland will be compensated for all expenses associated with performing the maintenance and repair of private stormwater storage facilities, including legal expenses, court costs and/or other expenses incurred in the repair and any associated legal action associated therewith. In the event legal action is deemed necessary by the City of Cleveland and in the event a judgment is rendered on behalf of the City of Cleveland, then the city shall be authorized to issue a lien against each subdivision parcel owner of record, which lien shall be a lien on their respected properties and/or interests in the property.

(6) Sediment and erosion control plan. The sediment and erosion control plan shall satisfy best management practices adopted in § 18-305 subsection (1), and NPDES rules promulgated by the Tennessee Department of Environment and Conservation.

(7) Sediment and erosion control plan requirements. The applicant must prepare a sediment and erosion control plan for all land disturbance activities regulated in accordance with § 18-304, subsection (1). The sediment and erosion control plan shall accurately describe the potential for soil erosion and sedimentation resulting from land disturbing activity and incorporate BMP's appropriate to site conditions. The length and complexity of the plan is to be commensurate with the land disturbance area, topography, and potential for off-site damage. The plan shall bear the seal of a registered professional engineer licensed in the State of Tennessee, and conform to standard adopted

in § 18-305 subsection (1), and NPDES rules promulgated by the Tennessee Department of Environment and Conservation:

(a) Project description - Briefly describe the intended project and proposed land disturbing activity including number of units and structures to be constructed and infrastructure required;

(b) A topographic map with contour intervals of two (2) feet or less showing present conditions and proposed contours resulting from land disturbing activity;

(c) All existing drainage ways, inducting intermittent and wet-weather. Include any designated floodways or flood plains;

(d) A general description of existing land cover. Individual trees and shrubs do not need to be identified;

(e) Stands of existing trees as they are to be preserved upon project completion, specifying their general location on the property. Differentiation shall be made between existing trees to be preserved, trees to be removed and proposed planted trees. Tree protection measures must be identified, and the diameter of the area involved must also be identified on the plan and shown to scale. Information shall be supplied concerning the proposed destruction of exceptional and historic trees in setbacks and buffer strips, where they exist. Complete landscape plans may be submitted separately. The plan must include the sequence of implementation for tree protection measures;

(f) Approximate limits of proposed clearing, grading, and filling;

(g) Approximate flows of existing stormwater leaving any portion of the site;

(h) A general description of existing soil types and characteristics and my anticipated soil erosion and sedimentation problems resulting from existing characteristics;

(i) Location, size and layout of proposed stormwater and sedimentation control improvements;

(j) Proposed drainage network;

(k) Proposed drain tile or waterway sizes;

(l) Approximate flows leaving site after construction and incorporating water run-off mitigation measures. The evaluation must include projected effects on property adjoining the site and on existing drainage facilities and systems. The plan must address the adequacy of outfalls from the development, when water is concentrated, what is the capacity of waterways, if any, accepting stormwater off-site; and what measures, including infiltration, sheeting into buffers, that are going to be used to prevent the scouring of waterways and drainage areas off-site, etc;

(m) The projected sequence of work represented by the grading, drainage and sedimentation and erosion control plans as related to other major items of construction, beginning with the initiation of excavation

and including the construction of any sediment basins or retention facilities or any other structural BMPs;

(n) Specific remediation measures to prevent erosion and sedimentation run-off. Plans shall include detailed drawings of all control measures used, stabilization measures including vegetation and non-vegetation measures, both temporary and permanent, will be detailed. Detailed construction notes and a maintenance schedule shall be included for all control measures in the plan;

(o) Specific details shall be provided for the construction of rock pads, wash down pads, and settling basins for controlling erosion; road access points, eliminating or keeping soil, sediment, and debris on streets and public ways at a level acceptable. Soil, sediment, and debris brought onto streets and public ways must be removed by the end of the work day by machine, broom or shovel. Failure to remove the sediment, soil or debris shall be deemed a violation of this chapter;

(p) Proposed structures; location (to the extent possible) and identification of any proposed additional buildings, structures or development on the site;

(q) A description of on-site measures to be taken to recharged surface water into the ground water system through infiltration;

(8) Retaining wall requirements. (a) Retaining walls located on private property shall be the responsibility of the applicant(s). The applicant(s) shall ensure that the retaining wall is properly constructed. The applicant(s) shall be responsible for maintenance and repairs of all retaining walls on their property. Applicants are not allowed to construct retaining walls of any size within public right-of-way or in areas that will be dedicated for public right-of-way.

To obtain a land disturbance permit for construction of retaining walls 4 feet or taller on private property, the following information must be submitted to the engineering division:

(i) A plan sheet that includes existing and proposed contours of the wall, top elevation of the wall, drainage features, buildings, property lines, proposed wall locations, any public easements, parking facilities and streets.

(ii) A typical wall section showing wall and footing dimensions, backfill slopes, finished grade elevations, steel reinforcement details, weephole locations, and subsurface drainage systems.

(iii) Engineering calculations for the design of the wall, noting all assumptions such as concrete and steel reinforcement strengths, soil parameters, surcharges, bearing pressures, safety factors for bearing capacity, overturning and sliding. The minimum required factors of safety are: Bearing Capacity = 3.0, Overturning = 2.0, & Sliding = 1.5.

(iv) All retaining wall plans, profiles, cross sections and calculations shall be prepared and sealed by a registered professional engineer licensed to practice in the State of Tennessee. The professional engineer must have sufficient education and experience to design a retaining wall that ensures the safety of the general public. The professional engineer shall also have complete control of all aspects of the design and preparation of plans and calculations. Approval of necessary plans and calculations will not transfer responsibility of the retaining wall design to the City of Cleveland.

The professional engineer shall be responsible for all aspects of the retaining wall design. The use of standard designs from reputable manufacturers or from TDOT standard details are allowable and encouraged, but the professional engineer that stamps the drawings and computations are responsible for the retaining wall design. Inadequate information from geotechnical investigations and reports will not excuse the engineer's responsibility or liability. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-306. <u>Post construction--as built plans and site stabilization</u>. (1) <u>As built plans</u>. All persons or entities designated as having a valid land disturbance permit are required to submit actual as-built plans developed from field survey data at the post construction phase. Two benchmarks of public record referenced to Tennessee State Plane Coordinates shall be identified on the as-built plans. The as-built plans shall include all stormwater structures and conveyances, roadways, and private stormwater storage facilities located on-site. The plan must show the final (actual) design specifications for all stormwater structures and roadway gutters and shall include a description of:

(a) Structure materials,

(b) Invert elevations,

(c) Structure dimensions shall include inside pipe diameter(s),

(d) Slope of stormwater conveyances and pipes, and the stream buffer metes and bounds.

The stream buffer zone area will remain in tact, with no removal of vegetation, including upper and lower story vegetative canopy, during all phases of construction. The as-built drawings must also include infrastructure to be accepted by the City of Cleveland and constructed as part of the development and/or redevelopment, including but not limited to curb and gutters, edge of pavement, and stormwater facilities. The as-built drawings must bear the seal by a civil engineer or registered licensed surveyor in the State of Tennessee and submitted to the engineering division of the department of public works in hard copy and electronic format compatible with AutoCAD or Micro station.

(2) <u>Post construction stabilization requirements</u>. (a) Any area of land from which the natural vegetative cover has been either partially or wholly cleared by development activities shall be revegetated according

to a the stormwater management plan approved by the engineering division of the department of public works. Reseeding must be accomplished with an annual or perennial cover accompanied by placement of straw mulch or its equivalent to control erosion until such time as a vegetative cover is established over ninety percent (90%) of the seeded area.

(b) The stormwater management plan shall include permanent stabilization in accordance with § 18-307. In any event, establishing a vegetative cover on denuded areas is a mandatory provision.

(3) Records of installation and maintenance activities. The applicant for a land disturbance permit is responsible for the operation and maintenance of the stormwater facilities, and shall maintain records including the date(s) of installation, maintenance, and repairs to stormwater facilities. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-307. Post construction landscaping. (1) When required. A post construction stabilization and landscape plan shall be required for:

(a) Proposed development requiring a land disturbance permit under the provisions of § 18-304(1) with a land use designation or proposed land use of industrial or commercial.

(b) Multi-unit residential structure(s) with a cumulative living area of five thousand (5,000) square feet or greater.

(c) Redevelopment and property improvements.

(i) Existing industrial, commercial, or multi-unit residential structures that are expanded by fifty percent (50%), or greater;

(ii) The addition of parking spaces to serve an existing industrial, commercial, or multi-unit residential structure where the existing parking area is increased by twenty-five percent (25%), or greater.

(2) Exemptions. The following land disturbance activity or development is exempt from the post construction landscape plan requirement of § 18-307. An exemption of the post construction landscape provisions of § 18-307 does not constitute an exemption from the remaining provisions of this chapter; such remaining provisions shall apply to all land disturbance activity identified in § 18-304, subsection (1) in accordance with the State of Tennessee NPDES MS4 Phase II Stormwater Permit issued to the City of Cleveland.

The following land disturbance activities are exempt from the provisions of § 18-307:

(a) Exempt from obtaining a land disturbance permit under the provisions of § 18-304, subsection (2);

(b) Single family residential parcels that are a part of a larger common plan of development (larger tract divided into parcels). Land disturbance permits in accordance with § 18-304, subsection (1) shall be

required for parcels of a larger common plan of development in accordance with NPDES MS4 Phase II requirements;

(c) Development in the central business district (CBD) zoning district.

(3) Landscape plan requirements. The applicant for a land disturbance permit shall submit a post construction landscape plan in accordance with § 18-307(1). The landscape plan shall be developed by a professional in accordance with rules promulgated by the State of Tennessee Board of Architectural and Engineering Examiners.

The landscape plan shall contain the following:

(a) Plant schedule. The plant schedule shall contain:

(i) Quantity of plant material;

(ii) Common and botanical name of plant material;

(iii) Size and spacing of landscape materials at time of planting;

(iv) General plant comments;

(v) Plant materials located in the public right-of-way;

(vi) Location and description of landscape improvements, including perimeter landscaping, landscaping within parking lots, and buffer zones if the parking area is two (2) or more acres, (the description shall include the size of the parking area and the actual percentage of the parking area used for landscaping);

(vii) Planting and installation details to ensure conformance with all required standards; and

(viii) Irrigation system details.

(4) Landscape plan review procedures. (a) The landscape plan will be reviewed by the urban forester in accordance with the provisions of § 18-304, subsection (5) of this chapter.

(b) Alternative landscaping plan. Recognizing the need for diversified methods of landscaping, the applicant for a land disturbance permit may submit an alternative methods or materials to the urban forester to determine if the proposed alternative satisfies the provisions of this chapter;

(c) Memorial tree fund. If an alternative landscape plan is not feasible as determined by the urban forester, and the applicant for a land disturbance permit is unable to achieve the intent of the landscape plan, the applicant may achieve the necessary equivalency in off-site landscaping in conjunction with the memorial tree fund. The mitigation or exchange ratio shall be 2:1 calculated at the current fair market value to purchase plant materials, planting, and maintenance. Payments received for mitigation or off-site landscaping shall be deposited in the memorial tree fund and shall be expended solely to landscape public properties and right-of-ways.

(5) Landscape plan standards. (a) A landscape plan shall include at a minimum:

(i) Plant materials approved by the urban forester;

(ii) Shade trees shall be a minimum of one and one-half (1 ½) inches in caliper, ornamental trees be a minimum of one and one-half (1 ½) inches in caliper, and evergreen trees shall be a minimum of six (6) feet in height;

(iii) The owner shad ensure that planting areas, i.e., tree pits, hedge trenches, and shrub beds are excavated appropriately. Soil within the planting areas should be reasonably free of rock, debris, inorganic compositions and chemical residues. Plants shall rest on a well compacted surface;

(iv) Existing trees shall be preserved whenever feasible.

(v) Planting areas shall be mulched to a thickness of three (3) to four (4) inch in depth and consist of bark, pine needles, or other suitable materials to cover the planting areas, remaining landscape areas shall be in grass or ground cover;

(vi) Trees and shrubs shall not be located within a dedicated utility easement, whether private or public utilities.

(vii) Landscape plans shall not include plant materials on the undesirable plant list. The urban forester and/or the department of community development shall provide the undesirable plant list.

(b) Perimeter landscaping. (i) Planting yards are required around the perimeter or an equivalent area of a development, with the exclusion egress for vehicles or pedestrians. Traffic considerations shall be paramount in perimeter landscaping.

(A) A planting yard shall be a minimum width of:

(1) Five (5) feet for a parcel with a total area of two (2) acres or less,

(2) Eight (8) feet for a parcel with a total area of two (2) acres, or greater.

(3) The width of perimeter planting yard may range from zero percent (0%) to two-hundred (200%) percent of the required minimum width along the perimeter, but the average width of the perimeter planting yard shall be at least the required minimum.

(ii) Planting yards shall be placed dong the front, side and rear property lines, with traffic and safety considerations being paramount. A property bounded by two or more public right-of-ways has two or more front yards;

(iii) Planting yards shall contain a number of shade trees equivalent to one (1) shade tree for each forty (40) linear feet of perimeter, excluding any vehicular access way. Ornamental trees may be substituted for up to forty percent (40%) of otherwise required shade trees. Shade trees shall not be planted under overhead utility lines. Landscaping trees shall be distributed along property lines; however, distribution is to be in accordance with design considerations particular to the site, such as screening, traffic site distance, safety, and aesthetics. In order to achieve equity in the number of shade trees required for development occurring on sites with equivalent areas, but with different perimeter lengths, the number of shade trees required for each forty feet of perimeter shall not exceed what would have been required had the site been a perfect square.

(iv) Planting yards shall consist of diverse species of trees satisfying spacing criteria cited in this part, and should incorporate shrubs at equal intervals planted between perimeter trees, subject to approval of the urban forester. One tree species shall not comprise more than sixty percent (60%) of the total number of trees provided;

(v) [Deleted.]

(c) Landscaping parking areas - proposed development. Proposed parking areas shall be effectively landscape islands with trees and shrubs to reduce adverse impacts of peak stormwater runoff from impervious areas. Development of lots of record in existence prior to the effective date of this chapter which are being developed so as to be required to provide twenty (20) or fewer parking spaces, and which are not otherwise part of a larger common plan of development, are exempt from the parking area landscaping requirements of this subsection.

(i) Proposed parking areas shall incorporate landscape islands to consist of a minimum of four percent (4%) of the total impervious area, exclusive of the building footprint area.

(ii) Proposed parking areas with a single access aisle shall be designed and constructed with landscape islands dividing rows of parking spaces at increments of twenty (20) spaces. Off-street parking areas with multiple access aisles shall be designed and constructed with landscape islands dividing at least every twelve (12) parking spaces in a row. Landscape islands shall have a minimum width of eight (8) feet and shall have a minimum depth equal to the depth of the adjacent parking stall(s). Landscape island spacing criteria notwithstanding, the greater of five (5) or 20% of the required landscape islands may be combined with other islands or otherwise located around the parking lot or on its perimeter when necessary to accommodate other design

considerations including, but not limited to, the location of handicapped parking, fire lanes, loading zones, and other site features. Each landscape island shall have at least one shade tree, except that an ornamental tree is to be substituted for the shade tree underneath an overhead power line, and three shrubs.

(iii) Landscape islands shall be constructed to include a continuous curbing perimeter, and shall be back-filled with topsoil to a depth of eighteen (18) inches and shall be free of rock, debris, inorganic compositions, and chemical residues detrimental to plant life.

(iv) The landscape requirements for parking lots are in addition to the requirements for buffer zones and perimeter landscaping.

(d) Landscape requirements far existing parking areas:

(i) In parking areas subject to § 18-307 subsection (1)(b) trees shall be planted at the rate of one (1) shade tree per twelve (12) parking spaces;

(ii) Trees shall be located within or adjacent to parking areas as tree islands, medians, at the end of parking bays, traffic delineators, or between rows or parking spaces in a manner;

(iii) The landscape requirements for parking lots are in addition to the requirements for buffer zones and perimeter landscaping.

(6) Irrigation requirement. The post construction landscape plan shall identify irrigation measures to satisfy survival rate requirements.

(a) Landscaping materials installed in accordance with an approved landscape plan shall be watered by one of the following methods:

(i) An above ground or under ground irrigation system; or

(ii) A hose attachment, within one-hundred (100) feet of all landscaping.

(b) Landscape irrigation water shall supplement rainfall at a rate of one (1) inch per week during the growing seasons. Slow release (i.e. "treegators") bags are recommended for supplemental watering.

(7) Landscape installation. Landscaping materials shall be installed in accordance with widely accepted professional planning procedures. Landscape materials, which fail to satisfy the minimum requirements or standards of this chapter at the time of installation, shall be removed and replaced with acceptable materials.

(8) Maintenance requirements--warranty. The applicant shall warranty plant material survival of ninety-percent (90%) for a two (2) year period consistent with an approved landscape plan. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-308. Existing locations and development. (1) Requirements for existing locations and developments. The following requirements shall apply to all locations and development at which land disturbing activities occurred previous to the enactment of this chapter:

(a) Denuded areas shall be vegetated or covered under the standards and best management provisions of § 18-305, subsection (1), and in accordance with rules promulgated by the Tennessee Department of Environment and Conservation;

(b) Cuts and slopes must be properly covered with appropriate vegetation, stabilization matting, or a retaining wall;

(c) Stormwater conveyances shall be properly covered in vegetation or secured with stabilization matting to prevent erosion;

(d) Trash, junk, rubbish, etc. shall be removed from stormwater conveyances;

(e) Stormwater runoff shall be controlled to the maximum extent feasible to prevent pollution of surface waters. Such control measures may include, but are not limited to, the following:

(i) Ponds
- (A) Detention pond
- (B) Extended detention pond
- (C) Wet pond
- (D) Alternative storage measures

(ii) Constructed wetlands

(iii) Infiltration systems
- (A) Infiltration/percolation trench
- (B) Infiltration basin
- (C) Drainage (recharge) well
- (D) Porous pavement

(iv) Filtering systems
- (A) Catch basin inserts/media filter
- (B) Sand filter
- (C) Filter/absorption bed
- (D) Filter and buffer strips

(v) Open channel
- (A) Swale

(2) Requirements for existing locations. The stormwater program manager, or designee of, shall notify in writing the owner(s) of record of existing locations of specific stormwater erosion, or sediment conditions, and provide specific actions required to correct those problems. The notice shall also specify a reasonable period of time to attain compliance, which shall not exceed twelve (12) months. Under conditions compromising public health or safety immediate mitigation of the existing locations shall occur.

(3) Inspection of existing facilities. The stormwater program manager, or designee of, may to the extent mandated by state and federal law establish

inspection programs to verify that stormwater management facilities , including those built before, as well as, after the adoption of this chapter are functioning within design limits. The inspection programs may be established to meet at minimum the state requirements of the MS4 Phase II stormwater program requirements including: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of the municipality's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and alternative best management practices.

(4) Corrections of problems subject to appeal. Corrective measures imposed by the stormwater program manager under this section are subject to the appeals process contained in § 18-312. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-309. Illicit discharges. (1) General. This section shall apply to all water generated on developed or undeveloped land entering the municipality's separate storm sewer system.

(2) Prohibition of illicit discharges. No person shall introduce or cause to be introduced into the municipal separate storm sewer system any discharge that is not composed entirely of stormwater. The commencement, conduct or continuance of any non-stormwater discharge to the municipal separate storm sewer system is prohibited except as described as follows:

Uncontaminated discharges from the following sources:

(a) Water line flushing or other potable water sources,
(b) Landscape irrigation or lawn watering with potable water,
(c) Diverted stream flows,
(d) Rising ground water,
(e) Groundwater infiltration to storm drains,
(f) Pumped groundwater,
(g) Foundation or footing drains,
(h) Crawl space pumps,
(i) Air conditioning condensation,
(j) Springs,
(k) Non-commercial washing of vehicles,
(l) Natural riparian habitat or wetland flows,

(m) Swimming pools (if dechlorinated-typically less than one PPM chlorine),

(n) Fire fighting activities, and

(o) Dye testing conducted in conjunction with the operation of water distribution and wastewater utilities.

(3) Prohibition of illicit connections. (a) The construction, use, maintenance or continued existence of illicit connections to the separate municipal storm sewer system is prohibited.

(b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(4) Reduction of stormwater pollutants. Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, the BMP's necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

(5) Notification of spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into stormwater, or the municipal separate storm sewer system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the department of public works engineering division stormwater office in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be entered in a telephone log maintained by the engineering division of the department of public works-stormwater program manager. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained in accordance with NPDES requirements for the facility, or in accordance with the Tennessee Water Quality Control Act and/or any subsequent revisions as a matter of law. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-310. Enforcement and compliance. (1) Enforcement authority. It shall be unlawful for any person to violate the provisions of this chapter or

conduct operations that violate the terms of the Tennessee Water Quality Control Act 69-3-101. Under the provisions of Tennessee Code Annotated, § 68-221-1106, violations will be subject to enforcement action. The engineering division of the department of public works-stormwater program manager and the department of community development are authorized under the provisions of Tennessee Code Annotated, § 68-221-1106 to conduct administrative enforcement and shall have the authority to issue notices of violation and citations.

(2) Notification of violation. (a) Written notice. Whenever the stormwater program manager or the building official, or designees of, determines that any permittee or any other person discharging stormwater has violated or is violating a provision of this chapter, a permit, or order issued hereunder, the stormwater program manager or the building official, or designees of, may serve upon such person written notice of the violation. Within ten (10) days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the stormwater program manager. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(b) Consent orders. The stormwater program manager with approval or concurrence of the public works director is empowered to execute consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (d) and (e) below.

(c) Show cause hearing. The stormwater program manager may order any person who violates this chapter or permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least five (5) days prior to the hearing.

(d) Compliance order. When the stormwater program manager finds that my person has violated or continues to violate this chapter or a permit or order issued hereunder, the stormwater program manager may issue an order to the violator directing that, following a specific time period, adequate structures, devices, be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to

address the noncompliance, including the installation of structures and devices, self-monitoring, and management practices.

(e) Cease and desist orders. When the stormwater program manager finds that any person has violated or continues to violate this chapter or any permit or order issued hereunder, the stormwater program manager may issue an order to cease and desist all such violations and direct those persons in noncompliance to:

(i) Comply forthwith; or

(ii) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-311. Penalties. (1) Violations. Any person who shall commit any act declared unlawful under this chapter, who violates any provision of this chapter, who violates the provisions of any permit issued pursuant to this chapter, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the stormwater program manager shall be guilty of a civil offense.

(2) Penalties. Under the authority provided in Tennessee Code Annotated, § 68-221-1106, the municipality declares that any person violating the provisions of this chapter may be assessed a civil penalty by administrative order signed by the public works director of not less than fifty dollars ($50.00) and not more than five thousand dollars ($5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation

(3) Measuring civil penalties. In assessing a civil penalty, the public works director with recommendations from the stormwater program manager shall consider:

(a) The harm done to the public health or the environment, including the severity of the discharge and its effect upon public stormwater facilities and upon the quality and quantity of the receiving waters;

(b) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(c) The economic benefit gained by the violator;

(d) The amount of effort put forth by the violator to remedy this violation and the effectiveness of action taken by the violator to cease the violation;

(e) Damages to the city, including compensation for the damage or destruction of public storm water facilities, and also including any penalties, costs and attorneys' fees incurred by the city as a result of the illegal activity as well as the expenses involved in enforcing this chapter and the costs involved in rectifying any damages;

(f) The amount of penalty established by ordinance or resolution for specific categories of violations, if any;

(g) The technical and economic reasonableness of reducing or eliminating the discharge;

(h) The cause of the discharge or violation;

(i) Any equities of the situation, which outweigh the benefit of imposing any penalty or damage assessment.

(4) Schedule of civil penalties and enforcement protocol. The stormwater regulations board may establish by regulation a schedule of the amount of civil penalties which can be assessed by the public works director for certain specific violations or categories of violations. The stormwater regulations board may also establish by regulation an enforcement protocol in order to assure fair and just enforcement to all parties involved and to provide adequate guidance to stormwater field personnel.

(5) Recovery of damages and costs. In addition to the civil penalty in § 18-311, subsection (2) above, the City of Cleveland may recover;

(a) All damages proximately caused by the violator to the municipality, which may include any reasonable expenses incurred in investigating violations of, and attorney's fees and expenses in enforcement procedures associated with this chapter, or any other actual damages caused by the violation.

(b) The costs of the municipality's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this chapter.

(6) Other remedies. The City of Cleveland may institute civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to publicly owned stormwater facilities by any person, or to seek injunctive or other equitable relief to enforce compliance with the provisions of this chapter or to enforce compliance with any consent order of the public works director, the stormwater program manager, or the stormwater regulations board.

(7) Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action-that one (1) or more of the remedies set forth herein has been sought or granted.

(8) Failure to appeal civil penalties or damage assessments. If an appeal to the stormwater regulations board is not filed within thirty (30) days after the date that a civil penalty or damage assessment has been served in any manner allowed by law, the violator shall be deemed to have consented to the civil penalty or damage assessment, and it shall become final. Whenever a damage assessment or civil penalty has become final because of a failure to appeal, and it has not been paid, the city may apply to the appropriate chancery court for a judgment and seek execution of the judgment in any manner allowed by law. The chancery court, in such proceeding, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment as provided

in Tennessee Code Annotated, § 68-221-1106. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005)

18-312. Stormwater regulations board administrative appeals.

(1) Board established. There is hereby established a board of five (5) members to be shown as the "stormwater regulations board."

(2) Composition; terms; filling vacancies. The five (5) members of this board shall be appointed by the city council. The city council shall appoint members with the following qualifications: one (1) environmental engineer, environmental scientist, or environmental technician, one (1) attorney, one (1) person employed or retired from an industrial or commercial establishment regulated by this article, and two (2) persons that shall not have any particular qualifications, but to the extent practical shall be selected to maintain diversity on the board. Initial appointments are to be made for staggered terms as follows: two (2) seats for a term of one (1) year; two seats for a term of two (2) years; and one seat for a term of three (3) years. Subsequent appointments to each seat are to be for terms of four (4) years. All members shall serve until their successor is appointed and all members shall serve at the pleasure of the city council. A member of the stormwater regulations board may be removed from the board at any time by a majority vote of the city council when it is demonstrated that such board member has a pattern of repeated absences from board meetings, or when such board member exhibits disregard for controlling state and federal laws and local ordinances, or when such board member fails to declare a conflict of interest in a given case and votes on the case. In the event of a vacancy, the city council shall appoint a member to fill the unexpired term. The board members shall serve without compensation, but shall receive actual expenses incurred in attending meetings of the board and the performance of any duties as members of the board.

(3) General duties of the board. The board shall have the following duties and powers in addition to any other duties or responsibilities conferred upon the board by this chapter.

(a) To recommend from time to time to the city council that it amend or modify the provisions of this chapter;

(b) To hold hearings upon appeals from orders or actions of the stormwater program manager, the public works director, or building official as may be provided under any provision of this chapter;

(c) To hold hearings relating to the suspension, revocation, or modification of a stormwater discharge permit and issue appropriate orders relating thereto;

(d) To hold hearings relating to an appeal concerning any civil penalty imposed under this chapter;

(e) To hold such other hearings as may be required in the administration of this chapter and to make such determinations and

issue such orders as may be necessary to effectuate the purposes of this chapter;

(f) To request assistance from any officer, agent, or employee of the city and to obtain such information or other assistance as the board might need;

(g) The board acting through its chairperson shall have the power to issue subpoenas requiring attendance and testimony of witnesses and the production of documentary evidence relevant to any matter properly heard by the board; and

(h) The chairperson or vice chairperson shall be authorized to administer oaths to those persons giving testimony before the board.

(4) Election of officers; meetings; and quorum. The following constitutes rules and procedure for the stormwater regulations board. The board may adopt such other rules and procedures as the board deems appropriate provided that such rules are consistent with procedures described herein.

(a) Election of officers. The board shall elect from among its own member a chairperson and a vice-chairperson. The terms of the chairperson and vice chairperson shall be for one year with eligibility for re-election so long as they remain a member of the Stormwater Regulations Board. Secretarial services shall be provided by the City of Cleveland in a member to be prescribed by the city manager.

(b) Initial meeting. Within thirty (30) days of the initial appointment of the board members, the board shad hold an initial meeting. At the initial meeting the board will elect officers as provided by this chapter and review the general duties of the board identified in § 18-312 subsection 3.

(c) Regular meetings. Regular meetings shall be held at a time and place chosen by the stormwater regulations board. The board shall hold regular semiannual meetings and called meetings as the board may find necessary.

(d) Called meetings. The chairperson or vice-chairperson or any two members may schedule a called meeting of the stormwater regulations board as deemed necessary provided that advance notice is given to each board member at least forty-eight (48) hours prior to the commencement of the called meeting.

(e) Public notice of regular meetings. Public notice of regular meetings shall be by publication in a newspaper of general circulation at least five (5) days in advance of the meeting with a general description of the agenda.

(f) Open meetings. All meeting of the board shall be open to the public.

(g) Conduct of meetings. The board shall generally conduct meetings in accordance with Robert's Rules of Order.

(h) Quorum and voting. The presence of three (3) members of the stormwater regulations board shall constitute a quorum. If the chairperson and vice-chairperson are absent from the meeting in which

there is a quorum, the members present shall elect from among the board members present a chairperson of the meeting. If only three members are present and one cannot vote due to a conflict of interest on a particular item, the remaining two members shall constitute a quorum for the purpose of that item. In the event of a tie vote on any motion, the motion shall fail. A motion shall have passed upon the affirmative vote of a majority of the quorum of board members present and voting.

(5) Variances. (a) General. The stormwater regulations board may grant a variance from the requirements of this chapter which would not result in the violation of any state or federal law or stormwater regulation consistent with the NPDES permit issued to the City of Cleveland, and if exceptional circumstances applicable to the site exist such that strict adherence to the provisions of this chapter will result in unnecessary hardship and will not result in a condition contrary to the intent of the chapter.

(b) Conditions for a variance. The minimum requirements for stormwater management may be waived in whole or in part upon written request of the applicant, provided that at least one of the following conditions applies and the applicant can satisfy § 18-312, subsection (5)(c):

(i) It can be demonstrated that the proposed variance is not likely to impair attainment of the objectives of this chapter.

(ii) Alternative minimum requirements for on-site management of stormwater discharges have been established in a stormwater management plan that has been approved by the city engineer.

(iii) Provisions are established to manage stormwater by an off-site facility. The off-site facility must be in place and designed to provide the level of stormwater control that is equal to or greater than that which would be afforded by on-site practices. Further, the facility must be operated and maintained by an entity that is legally obligated to continue the operation and maintenance of the facility.

(c) Downstream damage and adverse impact prohibited. In order to receive a variance, the applicant must demonstrate utilizing sound engineering principals that the issuance of a variance will not lead to any of the following conditions downstream:

(i) Deterioration of existing culverts, bridges, dams, and other structures;

(ii) Degradation of biological functions or habitat;

(iii) Accelerated stream bank or streambed erosion or siltation;

(iv) Increased threat of flood damage to public health, life or property.

(d) Variance request. The following procedures and information will be required prior to the stormwater regulations board's consideration of a variance:

(i) A written petition for a variance shall be required and shall state the specific variance sought and the reasons, with supporting data, and provide specifics regarding valid reasons a variance should be granted. The petition should include all information necessary to evaluate the proposed variance and shall be filed with the stormwater program manager.

(ii) The stormwater program manager shall conduct a review of the request for a variance within ten (10) working days after receipt and may either support the petition or may object to the petition. If the stormwater program manager objects to the variance, the stormwater program manager shall state the reasons.

(iii) Once the stormwater program manager's review is complete or the ten (10) days for review have expired, the petition shall be subject to board action at the next regularly scheduled meeting or at a called meeting.

(6) Administrative appeals. Pursuant to Tennessee Code Annotated, § 68-221-1106, subsection (d), any person aggrieved by the imposition of an administrative civil penalty or damage assessment as provided by this chapter may appeal said administrative civil penalty or damage assessment to the stormwater regulations board. Any person or entity aggrieved by any order or determination issued under this chapter may appeal said order or determination to the stormwater regulations board who shall review the order or determination reviewed under the provisions of this section.

(a) Appeals must be in writing. All appeals must be in writing and filed with the stormwater program manager and with the board chairperson. The appeal shall set forth with particularity the action or inaction complained of and the relief sought by the person filing said appeal. The chairperson may call a special board meeting upon the filing of such appeal. As such special meeting, the board may in its discretion suspend or stay the operation of any civil penalty, damage assessment, order or determination until such time as the board has conducted a public hearing on the appeal.

(b) Deadline for appeal. All appeals must be filed within thirty (30) days after the civil penalty or damage assessment is served in any manner authorized by law. An appeal of any other order or determination issued under this chapter shall be filed within thirty (30) days from the effective date of the order or determination.

(c) Public hearing. Upon the receipt of an appeal to the stormwater regulations board, the board shall hold a public hearing within thirty (30) days. Five (5) days prior notice of the time, date, and

location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days notice by registered mail or certified mail (return receipt requested) shall also be provided to the appealing party. This notice of hearing shall be sent to the address provided by the appealing party at the time of the filing of the appeal.

(d) Record of appeal hearing. At any such hearing, all testimony presented shall be under oath or upon solemn affirmation in lieu of oath. The board shall make a record of such hearing, but the same need not be a verbatim record. Any party coming before the board shall have the right to have such hearing recorded stenographically at their expense, but in such event the record need not be transcribed unless any party seeks judicial review of the order or action of the board by common law writ of certiorari, and in such event the party seeking such judicial review shall pay for the transcript and provide the board with the original of the transcript so that it may be certified to the court.

(e) Subpoenas. The chairperson may issue subpoenas requiring attendance and testimony of witnesses or the production of evidence, or both. A written request for the issuance of a subpoena must be filed with the chairperson by no later than seven (7) days prior to the scheduled hearing date. The written request for a subpoena must set forth the name and address of the party to be subpoenaed and it must identify with particularity any evidence to be produced by the witness. If a request for the issuance of a subpoena is timely, the chairperson shall issue the subpoena if the witness is a city resident. If the chairperson issues a subpoena, the same shall be delivered to the chief of police for service by any police officer of the city. If the witness does not reside in the city, the chairperson shall mail a written notice to the witness requesting that the witness attend the hearing.

(f) Depositions. Upon agreement of all parties, the testimony of any person may be taken by deposition or written interrogatories. Unless otherwise agreed, the deposition shall be taken in a manner consistent with Rules 26 through 33 of the Tennessee Rules of Civil Procedure, with the chairperson to rule on such matters as would require a ruling by the court under such rules.

(g) Hearing procedure. The appealing party at a public hearing shall first call that party's witnesses; to be followed by witnesses called by other parties, to be followed by any witnesses that the board may desire to call. Rebuttal witnesses shall be called in the same order. The chairman shall rule on any evidential questions arising during such hearing and shall make such other rulings as may be necessary or advisable to facilitate an orderly hearing subject to approval of the board. The board, the stormwater program manager, his or her representative, and all parties shall have the right to examine any witness. The board

shall not be bound by the rules of evidence applicable to legal proceedings.

(h) Appeals from a decision of the stormwater regulations board. If a party is not satisfied with the decision of the stormwater regulations board, they may appeal the decision of the stormwater regulations board pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8. If an appeal of the decision of the stormwater regulations board is not filed within the time allowed by law, the party shall be deemed to have consented to the decision of the stormwater regulations board, and it shall become final. Whenever a damage assessment or civil penalty has become final because of a failure to appeal and it remains unpaid, the city may apply to the appropriate chancery court for a judgment and seek exemption of the judgment in any manner allowed by law. The chancery court, in such proceeding, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment as provided in Tennessee Code Annotated, § 68-221-1106. (as added by Ord. #2004-41, Nov. 2004, and amended by Ord. #2005-38, Oct. 2005, and Ord. #2006-25, July 2006)

18-313. Appendix. (1) As-built agreement form.

City of Cleveland
Division of Engineering
Stormwater MS4 Phase II

Project Title:_____

Tax Map-Group-Parcel_____

Agreement

This agreement is entered into in accordance with the provisions of the City of Cleveland's Stormwater Management Program codified as Sections 18-301 through 18-313 of the City of Cleveland's Municipal Code.

The undersigned _____ is the Developer of a Tract of land as shown and described on the attached Exhibit A. The property shall be referred to herein as "the Property."

Developer agrees that this agreement shall be and is binding upon the undersigned developer, his or her heirs, assigns and successors in interest. Developer, his or her heirs, assigns and successors in interest are collectively referred to herein as "Developer".

As Built Drawings. In compliance with Section 18-306 of the Cleveland Municipal Code, Developer agrees to provide as built drawings of the stormwater infrastructure associated with the proposed development on the Property. Developer understands and agrees that Developer is responsible to provide a cost estimate for the cost of these as built drawings. This cost estimate must be provided at the time this agreement is executed. Developer will not be able to obtain a land disturbance permit until this cost estimate has been provided to the City. Developer understands and agrees that this written estimate must bear the seal of a licensed Tennessee Civil Engineer or the seal of a licensed Tennessee surveyor.

The as built drawings shall be provided to the City of Cleveland by Developer upon completion of post construction site stabilization as defined in Section 18-306 of the Cleveland Municipal Code. If Developer fails to provide the as built drawings to the City within 30 days after completion of post construction site stabilization as defined in Section 18-306 of the Cleveland Municipal Code, then Developer is in default under this agreement. The City will notify the Developer of this Default and give Developer 30 days to cure the Default. If the Default is not cured within 30 days after notice to the Developer, then the City will have the right to hire a licensed Tennessee Surveyor to provide the as built drawings to the City. If the City is forced to hire a surveyor to provide the as built drawings due to the Developer's default, Developer will be obligated to pay the City an amount equal to twice the City's cost in obtaining the as built drawings. In addition, the Developer will be responsible for the City's attorneys fees and litigation expenses should the City be required to hire an attorney to enforce the City's rights under this agreement.

City of Cleveland
Division of Engineering
Stormwater MS4 Phase II

Post Construction Site Stabilization. In compliance with Section 18-306 of the Cleveland Municipal Code, the Developer further agrees to complete post construction site stabilization on the Property. If the Developer fails to comply with this provision, the Developer will be subject to enforcement action under Section 18-310 of the Cleveland Municipal Code.

Post Construction Landscape Plan. If applicable, Developer further agrees to provide a post construction landscape plan in accordance with the provisions of Section 18-307 of the Cleveland Municipal Code. If the Developer fails to comply with this provision, the Developer will be subject to enforcement action under Section 18-310 of the Cleveland Municipal Code.

The undersigned understands and agrees that this Agreement and ultimately the overall Application for a Land Disturbance permit shall be subject to the acceptance, amendment and/or rejection by the City Engineer.

Dated this _____ day of _____, 20_____.

DEVELOPER

By: _____

Title: _____

STATE OF TENNESSEE)
COUNTY OF BRADLEY)

Before me personally appeared _____, to me known to be the person(s) described herein (or proved to me on the basis of satisfactory evidence) and who executed the foregoing instrument, and acknowledge the execution of the same as his/ her free act and deed.

WITNESSED by me this_____ day of _____, 200___.

_____
NOTARY PUBLIC

My commission expires:_____.

(as added by Ord. #2005-38, Oct. 2005)

TITLE 19

ELECTRICITY AND GAS

CHAPTER

1. ELECTRICITY
2. GAS.

CHAPTER 1

ELECTRICITY

SECTION

19-101. To be furnished by Cleveland Utilities and Volunteer Electric Cooperative.

19-101. To be furnished by Cleveland Utilities and Volunteer Electric Cooperative. Electricity shall be provided to the City of Cleveland and its inhabitants by Cleveland Utilities and by the Volunteer Electric Cooperative as provided in appropriate agreements. The rights, powers, duties, and obligations of the City of Cleveland and its inhabitants, are stated in the agreements between the parties.[1]

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[1]The agreements dated July 14, 1993, are of record in the office of the city clerk. There is an agreement between Cleveland Electric System and Southeastern Cable Company, Inc., for the cable company to attach wires to poles of the electric system.

CHAPTER 2

GAS

SECTION

19-201. To be furnished under franchise.

19-201. To be furnished under franchise. Gas service shall be furnished for the City of Cleveland and its inhabitants by the Chattanooga Gas Company. The rights, powers, duties, and obligations of the City of Cleveland, its inhabitants, and the grantee of the franchise shall be clearly stated in the written franchise agreement which shall be binding on all parties concerned.[1] (1981 Code, § 13-401)

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[1]The agreement granting gas service to the city by Chattanooga Gas Company is in Appendix B at the end of this municipal code.

TITLE 20

MISCELLANEOUS

CHAPTER

1. SCHOOLS--IN GENERAL.
2. BOARD OF EDUCATION.
3. SUPERINTENDENT OF CITY SCHOOLS.
4. CUSTODIAN OF SCHOOL FUND.
5. SHADE TREES.
6. PARKS AND CEMETERIES.
7. WATERVILLE GOLF COURSE.
8. FAIR HOUSING REGULATIONS.
9. ALARM SYSTEM REGULATIONS.
10. DISPOSITION OF ABANDONED AND LOST PERSONAL PROPERTY.
11. OPEN BURNING.
12. WRECKERS AND TOWING SERVICES.
13. CODE OF ETHICS.

CHAPTER 1

SCHOOLS--IN GENERAL

SECTION

20-101. Persons entitled to go to schools; when suspension authorized.

20-101. Persons entitled to go to schools; when suspension authorized. All children residing within the corporate limits of the city within the scholastic age are entitled to the benefit of the free schools of the city as prescribed by law, but the city board of education may expel or suspend such students, as in its judgment may seem right or necessary, for disobedience or insubordination. Children residing outside the corporate limits of the city may be admitted to the benefits of the schools of the city upon the payment in advance of such tuition fees as the board of education may prescribe; such fees to be paid to the city clerk and custodian of the school fund, and to be collected by such person as the board of education may direct. (1981 Code, § 20-1, modified)

CHAPTER 2

BOARD OF EDUCATION

SECTION

20-201. Created.
20-202. Powers.
20-203. To meet, qualify and elect a chairman who shall have various duties.
20-204. General duties.
20-205. Members to comply with and enforce state laws and regulations.
20-206. May establish night schools and middle and senior high schools.
20-207. To prescribe rules and regulations for schools.
20-208. To provide reports to the city council.
20-209. Subject to supervision of the city council.
20-210. No member to be personally interested in any school contract.
20-211. No member to participate in incurring debts beyond income.
20-212. Unlawful to hire unqualified teachers.

20-201. Created. (1) There is hereby created a city Board of Education consisting of seven (7) members, all residing within the corporate limits of the city. One (1) shall be elected from each of the five (5) districts established for the election of city council members. The other two (2) shall be elected from the city at large. The term of office shall be for four (4) years, and shall be staggered. All elections of school board members shall be non-partisan, and conducted at the same time and date as the regular election for city council members. Members shall take office at the first regular board meeting in September, following their election. Any member moving out of the district he represents can no longer serve on the board as the district representative. Any member moving out of the city limits can no longer serve on the board as an at-large member. Any vacancy on the board shall be filled by the city council, until the next scheduled election, at which time a replacement shall be elected to serve any remainder of the unexpired term. All board members shall receive compensation at the same salary that is paid to the city council members and be reimbursed for expenses incurred in the performance of school board duties.

(2) At the city election in August, 1996, three of the school board members shall be elected for four-year terms. Those members shall be one at-large, and members representing Districts #1 and 2. The candidate with the highest number of votes in each contest shall be elected. Thereafter, these three seats shall be elected every four years. The four most recently appointed members shall continue to serve on the board until the other four seats are voted upon in August, 1998.

(3) At the city election in August, 1998, the other four school board members shall be elected for four-year terms. Those members shall be one at-

large, and members representing Districts #3, 4, and 5. The candidate with the highest number of votes in each contest shall be elected. Thereafter, these four seats shall be elected every four years. (Ord. of Sept. 1995, as amended by Ord. of 11/13/2000)

20-202. Powers. The board of education shall have full power as trustees and directors to manage and control the public schools of the city; to elect or employ a superintendent of city schools; to hire principals, teachers, janitors, truant officers and other necessary employees; and to prescribe all needful rules and regulations. (1981 Code, § 20-17)

20-203. To meet, qualify and elect a chairman who shall have various duties. It shall be the duty of the city board of education to hold such regular or special meetings as it may deem necessary. After election such board members shall qualify by taking an oath faithfully to perform the duties of their office and shall then organize by electing one of their number as chairman of such board. It shall be the duty of the chairman to countersign all warrants issued by the superintendent of city schools an authorized by the city board of education; to preside at all meetings of such board of education; to appoint all committees authorized by such board; to visit and inspect all school property in the city from time to time; to make such general recommendations to such board as he may deem for the best interest of the schools; to call special meetings of the city board of education whenever in his judgement the interests of the public schools require it or when requested by a majority of the board; and to sign any and all contracts authorized by such board of education. (1981 Code, § 20-18, modified)

20-204. General duties. It shall be the duty of the board of education to elect all principals and teachers, to fix their salaries; to locate, build, repair, furnish and keep in sanitary condition all school houses; to furnish grounds and equipment; to fix all salaries and wages; to employ a truant officer and janitors and such other persons as may be necessary to take care of the school property and carry on the educational interests of the city; to take care of, manage and control all school property; to buy or sell all school supplies, equipment, furniture and fixtures deemed necessary; provided that, the purchase or sale of all supplies, furniture, fixtures and materials of all and every kind shall be made through a purchasing committee, which committee shall be appointed by the chairman; and it is expressly provided that all expenditures for building purposes, repairs, school supplies, furniture, etc., amounting to one hundred dollars ($100.00) or more shall be let on competitive bids. It shall also be the duty of such board to consider and approve all school building plans; to approve or disapprove any proposed expansion or enlargement of the educational system; to determine or approve the annual budget of expenditures for school purposes; to establish the length of the school year; to advise the superintendent upon the

course of study and to adopt the proper courses; to require and consider reports of the superintendent concerning the progress of the schools; to pass upon all recommendations of the superintendent; and to act as a court of final appeal for teachers, principals and school patrons in matters decided adversely to such teacher, principals or patrons by the superintendent. (1981 Code, § 20-19, modified)

20-205. **Members to comply with and enforce state laws and regulations**. It is expressly made the duty of each member of the board of education to comply with the school laws of the state in the management and control of the public schools of the city; and such board shall require the city superintendent of schools and all school teachers to comply with all the schools laws of the state and with the rules and regulations of the state board of education. (1981 Code, § 20-20)

20-206. **May establish night schools and middle and senior high schools**. The city board of education is authorized to establish and maintain night schools in which persons who are fifteen (15) or more years of age may be enrolled and taught. Such night schools, when established, shall be a part of the free common school system of the city and may be maintained out of the city school fund at the discretion of the board of education. Such board of education is also authorized to establish middle or senior high schools, or both, when required, at the discretion of such board. (1981 Code, § 20-21, modified)

20-207. **To prescribe rules and regulations for schools**. The board of education shall prescribe the rules and system of government of the school, and shall take all such other and further action as it may deem necessary to place the school system of the city on a sound basis, as required by the state board of education for all elementary schools. (1981 Code, § 20-22)

20-208. **To provide reports to the city council**. It shall be the duty of the city board of education through its chairman and secretary to provide monthly reports to the city council, showing the receipts and expenditures of such board of education for the respective months ending before such dates, and such other reports as may be requested by the city council. At a special meeting in April of the city council, such board of education shall make a written itemized report or budget of the amount of money that will be required to run the schools of the city efficiently for the ensuing year and particularly showing the amount of money necessary to be appropriated by the city council to defray the legitimate and necessary expenses thereof. (1981 Code, § 20-23, modified)

20-209. **Subject to supervision of the city council**. The city board of education created shall be subject to the advice, direction and supervision of the city council and the schools and school system of the city are under the

control of the city council acting by and through the city board of education. (1981 Code, § 20-24, modified)

20-210. **No member to be personally interested in any school contract**. No member of the board of education shall contract with such board for any school supplies materials, furniture, fixtures, erections or repairs of any school buildings, etc. (1981 Code, § 20-25)

20-211. **No member to participate in incurring debts beyond income**. It shall be unlawful and shall constitute a forfeiture of his office for any member of the board of education to participate in incurring debts beyond the legitimate school income for any particular school year. (1981 Code, § 20-26)

20-212. **Unlawful to hire unqualified teachers**. It is unlawful for the board of education to employ any person as a teacher in the schools of the city who does not possess the qualifications prescribed by law for teachers. (1981 Code, § 20-27)

CHAPTER 3

SUPERINTENDENT OF CITY SCHOOLS

SECTION

20-301. To be elected by board of education; general duties.
20-302. Additional duties.
20-303. Not to be personally interested in any school contract.
20-304. Not to hire unqualified teacher.

20-301. To be elected by board of education; general duties. The board of education shall elect a superintendent of city schools and fix his compensation. He shall possess all the qualifications prescribed by the state board of education for school superintendents for cities the size of this city. Such superintendent of city schools shall be the executive officer of the city board of education. It shall be his duty to attend all meetings of the board; to act as ex officio secretary of such board; and to make such recommendations as he deems for the best interests of the city public schools. (1981 Code, § 20-41)

20-302. Additional duties. It shall also be the duty of the city superintendent of schools:

(1) To keep a record of all of his official acts in a well-bound book to be provided for that purpose.

(2) To issue all warrants authorized by the city board of education for expenditures from the public school fund and to sign the same, together with the chairman of the board.

(3) To keep a well-bound book in which he shall enter a record of all warrants issued and countersigned, showing the amount of each warrant, to whom issued, for what purpose, and to which school; and said city superintendent shall include in his monthly reports to the city council a full, clear and succinct statement of all warrants so signed by him.

(4) To keep in well-bound books to be provided by the city board of education, a full and accurate record of such meeting of the board and an account of all financial transactions. Such books shall be kept in his office. Upon the expiration of the superintendent's term of office, all books and records shall be delivered to his successor or to the chairman of the board of education.

(5) To keep on file in his office all contracts with school teachers together with either the original or a copy of each teacher's state certificate; and he shall not permit the employment of any person as a teacher who does not possess the qualifications prescribed by law for teachers.

(6) To cause to be taken an enumeration or census of the scholastic population of the city, at the time and in the manner prescribed by law, and to cause the same to be filed with the county superintendent of school and such

other officials as may be prescribed by law, the compensation of such census takers to be fixed by the board of education.

(7) Subject to the supervision and approval of the board of education:

(a) To act as executive officer of the school board and, generally, to direct all employees connected with the schools.

(b) To have supervision of the public schools of the city and their organization and classification.

(c) To plan and develop, with the aid of the principals and teachers, courses of study, and to arrange daily programs of study, instruction and recreation.

(d) To make such rules and regulations for the management and government of the schools as he and the teachers may deem necessary and proper.

(e) To elect and approve textbooks, apparatus and educational supplies.

(f) To investigate applicants for positions in the schools, and to recommend and nominate teachers for election by the board of education.

(g) To assign and transfer teachers and to recommend the reelection or dismissal of teachers.

(h) To fix times and prescribe modes of regular examinations; to supervise the promotion and classification of pupils; and to classify applicants for admission to the schools.

(i) To see that registers and all other necessary records are properly kept.

(j) To hold teachers' meetings as often as he thinks advisable, for the discussion of methods of teaching, and matters pertaining to the daily program, discipline, examination and other school subjects.

(k) To promote effective teamwork among teachers, and to effect harmony and interest in all school work.

(l) To employ temporary or substitute teachers in cases of sickness or inability of regular teachers.

(m) To suspend pupils when necessary.

(n) To have general supervision over the janitors' work and see that it is properly done.

(o) To keep the board of education informed of the progress, needs and conditions of the schools; to suggest means for improvements; and to make such reports as the board may require.

(p) To attend all meetings of the board of education.

(q) In cases of vacancies occurring in the teaching staff, to appoint teachers to fill such vacancies, subject to approval by the board at its next regular or called meeting.

(r) To perform such other duties as may be required of him by the city board of education; and to comply with all the requirements of law and all the rules and regulations of the state board of education

pertaining to this city in the operation of its public schools. (1981 Code, § 20-42, modified)

20-303. **Not to be personally interested in any school contract**. The superintendent of the city schools shall not contract with the board of education for any school supplies, materials, furniture, fixtures, erection or repairs of any school buildings. (1981 Code, § 20-43)

20-304. **Not to hire unqualified teacher**. It is unlawful for the city school superintendent to recommend for employment any person as teacher in the schools of the city who does not possess the qualifications prescribed by law for teachers. (1981 Code, § 20-44, modified)

CHAPTER 4

CUSTODIAN OF SCHOOL FUND

SECTION

20-401. Bond.
20-402. Duties.

20-401. Bond. The city clerk as custodian of the school fund shall enter into bond to be approved by the board in such sum as state law or the board shall require for the faithful discharge of his duties and to account for all moneys that come into his hands. (1981 Code, § 20-61, modified)

20-402. Duties. The custodian of the school fund shall disburse any or all school funds belonging to the corporation on the order of the school board. He shall keep in a book for that purpose a correct account of all receipts and disbursements and make with the board an accurate settlement of all his transactions at the close of each month and of each fiscal year. (1981 Code, § 20-62, modified)

CHAPTER 5

SHADE TREES

SECTION

20-501. Purpose and intent.
20-502. Definitions.
20-503. Administration; shade tree board.
20-504. Protection of existing trees.
20-505. Tree maintenance.
20-506. Tree removal.
20-507. Planting and replacement.
20-508. Landmark tree.
20-509. Interference with municipal forester.
20-510. Penalties.

20-501. Purpose and intent. (1) The purposes of this chapter are to promote the health, safety and public welfare in the City of Cleveland, and consistent with forestry policy and practice for urban areas promulgated by the Division of Forestry of the State of Tennessee:

(a) To encourage the planting of trees in the City of Cleveland;

(b) To encourage the maintenance and protection of existing trees; and

(c) To encourage the removal of undesirable or diseased trees.

(2) The standards herein are hereby established in order to lessen air pollution, to promote clean air quality by increasing dust filtration, to reduce noise, heat, and glare, to prevent soil erosion, to improve surface drainage and minimize flooding, to ensure that activities in one area do not adversely affect activities within adjacent areas, to emphasize the importance of trees as a visual screen, to beautify and enhance improved and undeveloped land, to maintain the ambience of the city, to ensure that tree planting and removal does not reduce property values, and to minimize the cost of construction and maintenance of drainage systems necessitated by the increased flow and diversion of surface waters. (1981 Code, § 22.5-21, as replaced by Ord. of Nov. 25, 1996)

20-502. Definitions. (1) "City" shall mean the City of Cleveland, Tennessee.

(2) "Crownspread" - the distance from the ends of branches on one side of the tree, through the trunk, to the ends of the branches on the other side.

(3) "Drip line" - all points directly underneath the end of the branches.

(4) "Line clearance" - removal of limbs and branches growing within a set distance of electrical distribution lines.

(5) "Private tree" - a tree growing in an area owned by a private individual, business or commercial establishment, company, or industry, private institution, or other area not owned by government entities.

(6) "Proper pruning method" - selective removal and thinning of the upper portions of the tree using natural target techniques, taking into account the natural structure of the tree.

(7) "Pruning" - selective removal and thinning of the upper portions of the tree taking into account the shape and natural structure of the tree.

(8) "Public tree" - a tree growing in an area owned by the community, including parks, public buildings, schools, hospitals, and other areas to which the public has free access.

(9) "Public utility" - that section of local government in charge of electrical distribution in the community and having responsibility for keeping distribution lines free of hazards, including trees.

(10) "Shrub" - a woody plant with a multiple stem capable of growing to a height of up to fifteen (15) feet.

(11) "Street tree" - a tree growing within a public right-of-way along a street, in a median or in a similar area in which the public right-of-way borders areas owned by private individuals.

(12) "Topping" - arbitrary removal of various portions of the tree, thereby leaving stubs, with no regard for the natural structure of the tree.

(13) "Tree" - a woody plant, at least one (1) inch in diameter, with a single trunk, or multiple trunk capable of growing to a height of fifteen (15) feet or more.

(14) "Utility tree" - a tree that will contact any utility structure. (1981 Code, § 22.5-22, as amended by Ord. of March 1993, as replaced by Ord. of Nov. 25, 1996)

20-503. Administration; shade tree board. The shade tree board shall be responsible for carrying out the tree ordinance:

(1) Creation and establishment of a city shade tree board. There is hereby created and established the Cleveland Shade Tree Board which shall be composed of nine (9) members appointed by the mayor and approved by the city council. Five (5) members shall be appointed for two-year terms, and four (4) members shall be appointed for one-year terms. At the end of one year, four (4) members shall be appointed to two-year terms to replace those members whose terms have expired; and thereafter all members shall be appointed for two-year terms. All members of the shade tree board shall be citizens and residents of the city. One member shall be a member of the city planning commission; one shall be a city council member; one member shall be a private developer; one member shall be a representative of the public utility; one member shall be a representative of Main Street-Cleveland; and four (4) members shall be from the community at large.

(2) Compensation. Members of the board shall serve without compensation.

(3) Duties and responsibilities. The duties of the tree board shall include, but not be limited to, the following:

(a) Develop and administer a master tree plan for the city subject to review by the city transportation director;

(b) Develop and review, as necessary, recommend policies to carry out the intent of this chapter;

(c) Assist in coordinating tree-related activities;

(d) Coordinate publicity concerning trees and tree programs;

(e) Conduct an Arbor Day ceremony;

(f) Provide tree information to the community;

(g) Maintain a recommended tree list for the community;

(h) Recognize groups and individuals completing tree projects;

(i) Coordinate donations of trees or money to purchase trees;

(j) Hear citizen concerns regarding tree problems during scheduled meetings; and

(k) Perform other tree-related duties and opportunities that arise from time to time.

(4) Operation. The board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

(5) Review by city council. The city council shall have the right to review the conduct and acts of the shade tree board. Any person may appeal from any ruling of the shade tree board to the city council who may hear the matter and make a final decision. Such appeal shall be made within ten (10) days after the ruling of the shade tree board and shall be filed in the office of the city clerk. An appeal shall stay the ruling of the shade tree board until a decision is made by the city council. (1981 Code, § 22.5-23, modified, as replaced by Ord. of Nov. 25, 1996)

20-504. Protection of existing trees. (1)(a) No person shall plant, spray, fertilize, preserve, prune, remove, cut aboveground or otherwise disturb any tree or shrub by digging, boring, removal, concrete constructions, etc., on any public right-of-way or municipal property without first filing an application and obtaining a permit.

(b) The forester shall issue the permits as are required by this chapter.

(c) The forester shall issue the permit provided for in this chapter if, in the forester's judgement, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit granted shall contain a definite date of expiration, and the work shall be completed in the time allowed on the permit and in the manner described.

(d) Applications. (i) Applications for permits must be made forty-eight hours in advance of the time the work is to be started.

(ii) Content. The application shall contain, but shall not be limited to the following:

(A) The number of trees and shrubs to be planted, and the location, variety and method of planting;

(B) The scope of work, including description of pruning, spraying, trimming, fertilizing, etc.;

(C) Assurance. The written agreement of each person who applies for such permit that said person will comply with the requirements, regulations and standards of this chapter;

(D) The time schedule for the proposed work; and

(E) Such other information as the forester deems necessary for the protection of the public.

(iii) Applications for permits may be made by telephone.

(iv) Tree locations will be staked at urban foresters discretion.

(2)(a) All trees on public rights-of-way near any excavation or construction work shall be guarded with a substantial fence, frame, or box not more than 30 inches high and eight feet square, or a barrier a distance in feet from the tree equal to the distance of the trunk in inches at 4.5 feet above the ground, whichever is greater, and all building material, dirt, or other debris shall be kept outside the barrier.

(b) No person shall excavate any tunnels, trenches, or lay any drive within a radius of ten feet from any public tree without first obtaining a permit.

(c) The provisions of this section shall not apply to utility companies, their agents, employees or subcontractors, providing the forester has participated in a preconstruction meeting, except to the extent that the forester judges it necessary to so regulate excavations within a radius of five feet from a public tree for such operations.

(d) Grade changes and trenching within the crown spread (ends of branches) of public trees should be conducted in such a way as to minimize root system damage. Owners of private trees are encouraged to consult the tree board before proceeding with these activities.

(3) As it pertains to commercial and residential development, the city maintains that it is in the best interest of all concerned to save as many existing trees as practical to maintain the ambience of our city.

(4) The public utility shall keep the board informed of all tree trimming activities of street trees and will advise them of all trees that must be removed before removal except in the case of emergency or special circumstances. (1981 Code, § 22.5-24, modified, as replaced by Ord. of Nov. 25, 1996)

20-505. Tree maintenance. (1) Tree topping of all public trees is prohibited, except as the first stage of tree removal, and topping of private trees is strongly discouraged.

(2) Obstruction of view - Pruning. (a) It is the duty of any person owning or occupying real property on any street where there are trees or shrubs to prune those trees and shrubs in such a manner that they will not obstruct vision of traffic signs, or obstruct view of any street or alley intersection.

(b) The normal minimum clearance of any overhanging portion of trees shall be ten feet over sidewalks and fourteen feet over all streets, unless in the judgement of the urban forester and city transportation director, additional clearance is necessary for traffic safety, a higher minimum may be required.

(3) Tree maintenance may include pruning, fertilizing, watering, insect and diseases control or other tree care activities. The city shall take responsibility for those maintenance activities needed to keep the public trees reasonably healthy and minimize the risk of hazard trees could cause to residents and visitors of the city. Determination of maintenance needs will be made by the tree board following the recommendation of the urban forester. Tree care may be accomplished by trained city personnel or by contract with qualified commercial tree care companies, under the direction of the urban forester.

(4) Care and maintenance of private trees are encouraged to minimize safety hazards to people and the health risk to other trees in the community. The tree board will provide information in a timely manner to residents about all aspects of tree care including the latest techniques and procedures currently being practiced.

(5) Tree pruning in the vicinity of power lines shall be undertaken by the public utility to assure the supply of electricity to its customers. Drop crotch pruning and pruning to laterals are the recognized methods. Where practicable, the utility shall undertake a program of replacing removed trees with appropriate replacement tree species or cultivars recommended by the urban forester.

(6) The standard tree pruning method will be branch collar pruning as opposed to stubs or flush cuts. Large limbs and branches will be pre-cut (3-cut method) to prevent excessive peeling of the bark, followed by cutting the remaining stub.

(7) The tree board will recommend to the urban forester areas that need to be pruned along streets and sidewalks. (1981 Code, § 22.5-21, as replaced by Ord. of Nov. 25, 1996)

20-506. Tree removal. Dead, diseased, and dying trees that pose a safety or health risk to residents, utility lines, service lines or to other trees shall be removed in a timely manner. This section will apply to public trees.

The urban forester will make the risk determination. The appropriate governmental department will be contacted with the recommendation that a tree be removed. All tree removal will be through the urban forester who may contract with the public utility for removal. (1981 Code, § 22.5-22, as replaced by Ord. of Nov. 25, 1996)

20-507. **Planting and replacement**. The city shall replace all public or street trees that require removal including, but not limited to, trees requiring removal by reason of disease or storm damage. If it is undesirable at the location of removal, then a new location for replanting will be determined by the tree board. Each tree removed must be replaced on a one-to-one basis. Spacing of trees shall be determined by the forester according to local conditions, the species, cultivars, or varieties used, their mature height, spread and form. Generally, all large trees shall be planted forty feet on-center; medium-sized trees shall be planted approximately thirty-five feet on-center; and all small trees shall be planted approximately twenty-five feet on-center. No tree shall be planted closer than thirty feet from street intersections and no closer than fifteen feet from driveways and alleys and no closer than ten feet to utility poles and fire hydrants under normal circumstances.

(1) Size. Unless otherwise specified by the tree board, all medium to large cultivars and varieties shall comply with the American Association of Nurserymen standards and be at least one and one-fourth (1¼) to one and one-half (1½) inches in diameter six (6) inches above ground level, and at least eight (8) to ten (10) feet in height when planted. The crown shall be in good balance with the trunk. All small deciduous tree species and their cultivars or varieties shall be at least five (5) to six (6) feet or more in height and have six (6) or more branches.

(2) Tree removal to ground level is considered part of the tree removal process (0 to 6 inches from the soil is considered ground level). (1981 Code, § 22.5-27, as replaced by Ord. of Nov. 25, 1996)

20-508. **Landmark tree**. The shade tree board will compose a list of any public trees which qualify as a "landmark tree". A tree may qualify as a landmark tree at the determination of the city shade tree board. The tree board shall use criteria such as rarity, old age, association with a historical event or person, abnormality, or scenic enhancement. Private trees may also qualify as a "landmark tree" the request of landowner. The tree board shall keep a list of all landmark trees, both public and private. (1981 Code, § 22.5-28, as replaced by Ord. of Nov. 25, 1996)

20-509. **Interference with municipal forester**. No person shall hinder, prevent, delay, or interfere with the municipal forester or any of his assistants while they are engaged in carrying out the execution or enforcement of this chapter; provided, however, that nothing herein shall be construed as an

attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the city. (as added by Ord. of Nov. 25, 1996)

20-510. **Penalties**. Any person violating this chapter shall be punished as provided for in the Code of Ordinances of the City of Cleveland. Each subsequent day that any violation continues unabated shall constitute a separate offense. (1981 Code, § 22.5-29, as replaced by Ord. of Nov. 25, 1996)

CHAPTER 6

PARKS AND CEMETERIES

SECTION

20-601. Hours regulated.
20-602. Park rules and regulations.
20-603. Skate park rules and regulations.

20-601. Hours regulated. Except for unusual and unforeseen emergencies, parks and cemeteries shall be open to the public every day of the year during designated hours. The opening and closing hours for each individual park or cemetery shall be as established by the parks and recreation director and posted therein for public information. City parks, facilities and cemeteries will be closed for public use during the hours posted on the signs in each park or cemetery.

It shall be unlawful for any person to use the parks or facilities during said hours except for public participation or attendance during activities or events specifically authorized by the city manager. Any section or part of any park or cemetery may be declared closed to the public by the administrator at any time and for any interval of time, either temporarily or at regular and stated intervals, daily or otherwise, and either entirely or to merely certain uses, as the administrator shall find reasonably necessary. The physical closing of the parks or municipally owned cemeteries will be the responsibility of the parks and recreation department. Cemeteries shall be closed from sunset to sunrise each day. (1981 Code, § 14-184, as amended by Ord. #2003-33, Nov. 2003)

20-602. Park rules and regulations. (1) Definitions. As used in this section the following definitions will apply:

(a) "Department." The Parks and Recreation Department of the City of Cleveland.

(b) "Director." The Director of the Parks and Recreation Department of the City of Cleveland, or his or her designee.

(c) "Park." Includes any city property currently or hereafter used as a city park, including, but not limited to, Deer Park, Fletcher Park, Johnston Park, Elrod Park, Mosby Park, Tinsley Park, and any park located on or adjacent to a city school. As used in this chapter, the word "park" also includes the greenway throughout the corporate limits of the City of Cleveland.

(d) "Pavilion." Includes the pavilions located at Deer Park and Tinsley Park.

(2) Rules and regulations. (a) No person shall ride, park or drive any bicycle, motorcycle, motor vehicle, skate board, roller blade, roller skate,

land sailing device, horse or pony on, over or through any park or portion of a park designated by signage as being restricted from such activities. Parking of vehicles shall be limited to those areas specifically designated for that purpose.

No person shall be permitted to hunt, capture, net or harm any living creature or possess any device, weapon or item designated or designed for such purposes in any park. However, to the extent allowed by state law, individuals may fish within the creeks or streams or other bodies of water that are located within a city park.

(b) No fire shall be built except in fireplaces or grills designed for such purpose. All embers shall be disposed of in a proper manner.

(c) All animals brought to any park shall be properly restrained on a leash or similar device not exceeding 8 feet in length. It is unlawful to allow or permit any domestic animal to run at large in any park, or to enter any lake, pond, fountain or stream therein. The owner or handler of any animal shall also be responsible for the proper disposal of the animal's waste. Any person with an animal in their possession at any park shall be responsible for the conduct of the animal.

(d) No person shall engage in any activity that interferes with the activities of those persons or groups who have obtained a special use permit from the department.

(e) No person shall bring glass containers into a park.

(f) No person shall deposit any refuse or trash brought from private property into receptacles located in a park. Nothing in this subsection is intended to prohibit the disposal of refuse generated from park use or activities, such as picnics, parties, barbeques, etc., so long as all such refuse and waste is disposed of in receptacles provided for such purpose.

(g) No person shall remove, destroy, mutilate or deface any structure, statue, fountain, fence, railing, bench, shrub, tree or any other property in any park.

(h) No person shall use, place or erect any sign, poster, billboard, bulletin board, post, pole, or device of any kind for advertising in any park; or attach any bill, poster or sign to any tree or structure within any park without the prior written permission of the director.

(i) No person shall place or erect any text, trailer, amusement device, or other similar structure in any park without the prior written permission of the director.

(j) No person shall swim or bathe in any area not designated for such purpose. Swimming shall be permitted in designated areas only. All persons using designated swimming areas shall obey all posted rules and/or the instructions of lifeguards and/or other department employees.

(k) No person shall wash any person, object or animal in any stream, pond, lake or fountain that is located in or on any park.

(l) No person shall possess, consume, dispense, convey, or give away any alcoholic beverages, including beer, in any park. No person shall bring any alcoholic beverages, including beer, into a park. However, this section shall not be construed to prohibit the possession or consumption of beer which is sold at the Waterville Golf Course.

(m) All sales, raffles or other fund-raising activities (including sports tournaments) are expressly prohibited unless prior written permission is obtained from the director.

(n) No person shall possess any firework, firecracker, explosive, bow and arrow, BB gun or slingshot in any park without prior written permission from the director.

(o) No person shall refuse to leave a park when directed to leave by a department employee or officer of the Cleveland Police Department.

(p) No person shall play car stereos, radios, portable audio equipment (including, but not limited to, tape players, CD players, or boom boxes) so loudly that they interfere with normal conversations or cause annoying vibrations at a distance of 75 feet or more.

(3) Priority of use. Activities and programs scheduled by the department will have first priority for use of all parks and facilities, including pavilions.

(4) Pavilion reservation. Individuals or groups which desire to reserve a pavilion may be granted special use permits by the department but will be subject to a permit fee. Special conditions of use will be established by the department and noted on the permit. Individuals or groups who obtain a special use permit must have the permit in their possession and be able to display it upon demand at the time and place listed in the permit.

(5) Enforcement. The director, as well as members of the Cleveland Police Department, shall, in conjunction with their other duties imposed by law, enforce the provisions of this section.

(6) Ejection citation for violations. The director and members of the Cleveland Police Department shall have the authority to eject from all parks any person who violates any rule or regulation promulgated under this section. Officers of the Cleveland Police Department are further authorized to issue citations for any violation of any rule or regulation promulgated under this section.

(7) Penalty. In addition to ejection, a violation of any provision of this section shall be punishable by a fine not to exceed $50.00 for each violation. (as added by Ord. #2004-06, March 2004, and amended by Ord. #2010-14, May 2010, and Ord. #2010-21, June 2010)

20-603. Skate park rules and regulations. (1) Definitions. As used in this section, the following definitions will apply:

(a) "Department." The Parks and Recreation Department of the City of Cleveland.

(b) "Director." The Director of the Parks and Recreation Department of the City of Cleveland, or his or her designee.

(c) "Skate park" means the skate park located within Tinsley Park.

(2) Rules and regulations. (a) The skate park is unsupervised. However, department staff will be on site at irregular times. Skaters must follow the directions of department staff or city police. No person shall refuse to leave the skate park when directed to leave by the director, department staff, or an officer of the Cleveland Police Department.

(b) Skaters are using the skate park at their own risk. There is an inherent risk of injury in skating and participation in skate park activities. Users of the skate park, by their participation, accept these risks.

(c) No skater may use the skate park without first obtaining a skate park sticker from the parks and recreation department. In order to obtain a skate park sticker, the skater must sign a waiver form. If the skater is a minor, the parent(s) or legal guardian(s) of the minor must also execute the waiver. Waiver forms and stickers may be obtained from the parks and recreation department during normal operating hours.

(d) The sticker must be placed on the skater's helmet and be clearly visible at all times while the skater is using the skate park. No one may use the skate park without wearing a helmet with the appropriate sticker attached to their helmet.

(e) All skaters must wear appropriate safety equipment and shoes at all times. All skaters must wear a helmet. Helmets must fit well and must have the helmet straps securely fastened at all times. Kneepads, wrist pads, and elbow pads are strongly recommended to be used at all times.

(f) Only skateboards and in-line skates are permitted in the skate park. Bicycles, scooters, mountain bikes and all other motorized devices are prohibited. The department reserves the right to post times for certain uses and to discontinue certain uses if necessary.

(g) Use or consumption of any of the following items is prohibited at all times in the skate park: food, chewing gum, glass containers, cigarettes or other tobacco products, alcohol, or drugs.

(h) Because rain, snow, or other moisture can make the skate park surface slippery, the skate park is considered closed when the skate park surface area is wet and/or during periods of inclement weather.

(i) The skate park is to be used as designed. No modifications to the surface or features are allowed. No ramps, jumps, or obstacles may be added within the skate park. No other items such as benches or tables may be used as ramps or jumps in the skate park. No personally owned ramps, boxes or other similar devices are allowed in the skate park.

(j) Spectators are not permitted entry into the skate park area unless they are wearing the required safety equipment, including a helmet with a city-issued sticker. Spectators who enter the skate park area are considered skaters and are subject to the same rules as skaters.

(k) Personal property is the responsibility of the skater and may not be stored at the skate park.

(l) Profanity, foul language, recklessness and/or boisterous behavior are prohibited in the skate park.

(m) Vandalism or defacing, including, but not limited to, graffiti, stickers and tagging, is prohibited.

(n) Skating is prohibited on the Tinsley Park tennis courts, sidewalks, steps, tables, or any other area of Tinsley Park outside of the skate park fence.

(o) The skate park closes at dark. The skate park may not be used after dark.

(p) Anytime the skate park fence is locked it is considered closed. No person may use the skate park at any time when it is closed.

(q) Organized events require a special event permit from the parks and recreation department.

(r) Skaters ten (10) and under must be accompanied by a parent or guardian.

(3) Priority of use. Activities and programs scheduled by the department will have first priority for use of the skate park.

(4) Skate park reservation. Individuals or groups which desire to reserve the skate park may be granted special use permits by the department but will be subject to a permit fee. Special conditions of use will be established by the department and noted on the permit. Individuals or groups who obtain a special use permit must have the permit in their possession and be able to display it upon demand at the time and place listed in the permit.

(5) Enforcement. The director, the employees of the recreation department, as well as members of the Cleveland Police Department, shall, in conjunction with their other duties imposed by law, enforce the provisions of this section.

(6) Penalties for violations of skate park rules. The director and members of the Cleveland Police Department shall have the authority to eject from the skate park any person who violates any skate park rule or regulation under this section. Officers of the Cleveland Police Department are further authorized to issue citations for any violation of any skate park rule or regulation under this section. A skater may be issued a citation and ejected for the same violation.

In addition to or in lieu of ejection from the skate park and/or the issuance of a citation, the director, employees of the recreation department, and officers of the Cleveland Police Department may also elect to, and are hereby

authorized to, utilize any or all of the following measures to deal with any violation of the skate park rules and regulations:

(a) Verbal warning

(b) Incident report write-up

(c) Notification to parents or guardians if the skater is under age eighteen (18).

(d) Suspension of skate park privileges for a specified time.

(7) Civil penalty for citations. If a citation is issued to a skater for a violation of any provision of this section or any of the skate park rules, a skater, or any other person found guilty of such violation in municipal court, shall be assessed a civil penalty not to exceed fifty dollars ($50.00) for each violation, plus court costs and litigation tax as otherwise specified in the Cleveland Municipal Code.

(8) Compliance with other laws. These rules and regulations are in addition to any other applicable city ordinances, including city park rules and regulations under §§ 20-601 or 20-602, or any other applicable state and/or federal laws. (as added by Ord. #2008-55, Aug. 2008)

CHAPTER 7

WATERVILLE GOLF COURSE

SECTION

20-701. Parks and recreation director to oversee operations.
20-702. Use of fees.
20-703. [Deleted.]
20-704. Waterville Golf Course Advisory Committee.
20-705. Committee's annual review of operations and recommendations.
20-706. Discounts - senior golfers, junior golfers and promotional.
20-707. Use of private carts.
20-708. Prohibition on private coolers or containers.
20-709. Rates and fees to be set by resolution.
20-710. Reservation of right to lease or contract for management.

20-701. Parks and recreation director to oversee operations. Waterville Golf Course is hereby declared to be a division of the Parks and Recreation Department. The operation and maintenance of the course shall be the responsibility of the parks and recreation director, under the general direction of the city manager. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, and Ord. #2008-51, Aug. 2008)

20-702. Use of fees. Rates and fees for various golf services shall be used for costs associated with the course, including operating expenses, replacement of golf carts and maintenance equipment, and all improvements to the golf course, clubhouse, and appurtenant maintenance and storage facilities. (Ord. of Dec. 1995, as replaced by Ord. #2005-47, Jan. 2006)

20-703. [Deleted.] (Ord. of Dec. 1995, as deleted by Ord. #2005-47, Jan. 2006)

20-704. Waterville Golf Course Advisory Committee. There is hereby created the Waterville Golf Course Advisory Committee, consisting of two city council members appointed by the city council, the city manager, and three golfers having annual memberships at Waterville Golf Course at the time of their election. The three golfers shall be elected by the vote of those golfers holding annual memberships on the first day of January of each calendar year. The election shall be held on the first Monday following the first day of January of each calendar year, or the following day if the first Monday of January is a legal holiday declared by the city council. The election shall be held at a time and place set by the parks and recreation director. Voting by proxy will not be allowed. The term for each golfer representative shall be for one year. There shall be no limit to the number of terms a golfer representative may serve. In

the event of a vacancy occurring during the year, the other two golfer representatives shall select another golfer representative from among the active annual membership roster to fill the unexpired term. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, Ord. #2005-47, Jan. 2006, and Ord. #2008-51, Aug. 2008)

20-705. Committee's annual review of operations and recommendations. (1) By the last day of February of each year, the Waterville Golf Course Advisory Committee shall have been called together by the parks and recreation director, and shall have submitted written recommendations to the director. The director shall consider these recommendations for inclusion in the director's annual budget request to the city manager. The city manager shall forward copies of the recommendations to the mayor and city council as part of the annual budget process.

(2) The annual report on recommendations required in subsection 20-705(1) shall include the following:

(a) A thorough review of the financial condition of the course.

(b) A recommendation on the rate schedule for the next year.

(c) A recommendation on the capital improvements to the course or clubhouse for the next fiscal year.

(d) A recommendation on the capital equipment to be purchased in the next fiscal year.

(e) A recommendation on the number of annual memberships to be authorized in the next calendar year, and whether they should be limited by category.

(f) Any other recommendations which the committee believes will enhance the operation of the course. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, Ord. #2005-47, Jan. 2006, and Ord. #2008-51, Aug. 2008)

20-706. Discounts - senior golfers, junior golfers and promotional. It is the intent of this chapter that senior golfers (defined as those persons 62 years of age or older) and junior golfers (defined as those persons under 18) shall be given a reasonable discount for some costs during non-peak usage times. Discounts of twenty percent (20%) from the normal rates shall be established in the rate schedule for senior golfers and junior golfers for both annual memberships and weekday green fees. However, there shall be no senior golfer or junior golfer discounts given for weekend or holiday green fees, trail fees, or any cart rental fees. However, a non-cart owner, when riding with a private cart owner, can be given a discount from the normal cart rental fee of up to twenty percent (20%), provided that the discount is established in the rate schedule. Promotional discounts may also be offered to golfers periodically if approved by the parks and recreation director. Promotional discounts may include reduced

green fees so long as they are approved by the parks and recreation director. (Ord. of Dec. 1995, as replaced by Ord. #2005-47, Jan. 2006)

20-707. Use of private carts. It is the intent of this chapter to grandfather existing private carts currently stored at Waterville Golf Course, but to discontinue any new private carts being stored or used on the course. Therefore, only those golfers currently paying a cart storage fee as of November 18, 1995, shall be entitled to continue said cart use. That use can only continue so long as the current cart owner(s) and permittee(s) continue to own his/her existing golf cart. No additional dual ownerships and permits beyond those existing on November 18, 1995, and paid in full, shall be allowed. No current private cart owner and permittee may transfer, swap, sell, give, bequeath or in any manner relinquish his grandfathered right to continue using his/her private cart to any other person, firm, corporation or partnership. If any current cart owner and permittee shall allow the owner's cart storage fee to become delinquent for any reason, the owner shall immediately forfeit the right to continue private cart usage. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, Ord. #2005-47, Jan. 2006, and Ord. #2008-51, Aug. 2008)

20-708. Prohibition on private coolers or containers. The use of private coolers or similar containers is hereby prohibited on the Waterville Golf Course property. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, replaced by Ord. #2005-47, Jan. 2006, amended by Ord. #2008-51, Aug. 2008, and replaced by Ord. #2010-14, May 2010)

20-709. Rates and fees to be set by resolution. The city council shall establish and amend the rates and fees for the Waterville Golf Course by resolution. The current rates and fees established by resolution shall be posted in the pro shop in a conspicuous place at all times, and a copy kept in the office of the parks and recreation director. (Ord. of Dec. 1995, as amended by Ord. of Dec. 1998, and Ord. #2008-51, Aug. 2008)

20-710. Reservation of right to lease or contract for management. Nothing herein shall preclude the city council from entering into a lease agreement or a management contract pertaining to Waterville Golf Course. The city council specifically reserves the right to enter into a lease agreement or management contract in the future. (Ord. of Dec. 1995, as replaced by Ord. #2005-47, Jan. 2006, and amended by Ord. #2008-51, Aug. 2008)

CHAPTER 8

FAIR HOUSING REGULATIONS

SECTION

20-801. Policy.
20-802. Definitions.
20-803. Unlawful practice.
20-804. Discrimination in the sale or rental of housing.
20-805. Discrimination in the financing of housing.
20-806. Discrimination in the provision of brokerage services.
20-807. Exemption.
20-808. Administration.
20-809. Education and conciliation.
20-810. Enforcement.
20-811. Investigations; subpoenas; giving of evidence.
20-812. Enforcement by private persons.

20-801. Policy. It is the policy of the City of Cleveland to provide, within constitutional limitations, for fair housing throughout the city. (Ord. of Aug. 1995)

20-802. Definitions. (1) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(2) "Family" includes a single individual.

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

(4) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises owned by the occupant.

(5) "Discriminatory housing practice" means an act that is unlawful under §§ 20-804, 20-805 or 20-806. (Ord. of Aug. 1995)

20-803. Unlawful practice. Subject to the provisions of § 20-807(2), the prohibitions against discrimination in the sale or rental of housing set forth in § 20-804 shall apply to:

(1) All dwellings except as exempted by subsection (2).

(2) Nothing in § 20-804 shall apply to:

(a) Any single-family house sold or rented by an owner: Provided that such private individual owner does not own more than

three such single-family houses at any one time: Provided further that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: Provided further that the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented.

(i) without the use in any manner of the sale or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and

(ii) without the publication, posting or mailing, after notice of any advertisement or written notice in violation of § 20-804(3), but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

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

(3) For the purposes of subsection (2), a person shall be deemed to be in the business of selling or renting dwellings if:

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

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

(c) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families. (Ord. of Aug. 1995)

20-804. <u>Discrimination in the sale or rental of housing</u>. As made applicable by § 20-803 and except as exempted by §§ 20-803(2) and 20-807, it shall be unlawful:

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

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

(3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status or handicap, or an intention to make any such preference, limitation or discrimination.

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

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, familial status or handicap.

(6) To refuse to permit, at the expense of the person with a disability, reasonable modifications are necessary to afford that person full enjoyment of the premises.

(7) To refuse to make reasonable accommodations in rules, policies, practices, or service, when such accommodations are necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. (Ord. of Aug. 1995)

20-805. <u>Discrimination in the financing of housing</u>. It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, national origin, familial status or handicap of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, that nothing contained in this section shall impair the scope or effectiveness of the exception contained in § 20-803(2). (Ord. of Aug. 1995)

20-806. Discrimination in the provision of brokerage services. It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms of conditions of such access, membership, or participation, on account of race, color, religion, sex, national origin, familial status or handicap. (Ord. of Aug. 1995)

20-807. Exemption. Nothing in this chapter shall prohibit a religious organization, association, or society, or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwelling which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, sex, national origin, familial status or handicap. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. (Ord. of Aug. 1995)

20-808. Administration. (1) The authority and responsibility for administering this Act shall be with the mayor.

(2) The mayor may delegate any of these functions, duties, and powers to employees of the city or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter under this chapter. The mayor shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officer in the city, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(3) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the mayor to further such purposes. (Ord. of Aug. 1995)

20-809. Education and conciliation. Immediately after the enactment of this chapter, the mayor shall commence such educational and conciliatory activities as will further the purposes of this chapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this chapter and his suggested means of implementing it, and shall endeavor with their advise to work out programs of voluntary compliance and of enforcement. (Ord. of Aug. 1995)

20-810. Enforcement. (1) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a compliant with the Tennessee Human Rights Commission. Complaints shall be in writing and shall contain such information and be in such form as the Tennessee Human Rights Commission requires. Upon receipt of such a complaint, the Tennessee Human Rights Commission shall furnish a copy of the same to the person or persons who allegedly committed or is about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (3), the Tennessee Human Rights Commission shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Tennessee Human Rights Commission decides to resolve the complaints, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by information methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned. Any employee of the Tennessee Human Rights Commission who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(2) A complaint under subsection (1) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Tennessee Human Rights Commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(3) If within thirty days after a complaint is filed with the Tennessee Human Rights Commission has been unable to obtain voluntary compliance with this chapter, the person aggrieved may, within thirty days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The Tennessee Human Rights Commission will assist in this filing.

(4) If the Tennessee Human Rights Commission has been unable to obtain voluntary compliance within thirty days of the complaint, the person aggrieved may, within thirty days hereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this chapter, insofar as such rights relate to the subject of the compliant. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent

from engaging in such practice or order such affirmative action as may be appropriate.

(5) In any proceeding brought pursuant to this section, the burden of proof shall be on the complaint.

(6) Whenever an action filed by an individual shall come to trial, the Tennessee Human Rights Commission shall immediately terminate all efforts to obtain voluntary compliance. (Ord. of Aug. 1995)

20-811. Investigations; subpoenas; giving of evidence. (1) In conducting an investigation, the Tennessee Human Rights Commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: Provided, however, that the Tennessee Human Rights Commission first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Tennessee Human Rights Commission may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court of the district in which the investigation is taking place. The Tennessee Human Rights Commission may administer oaths.

(2) Upon written application to the Tennessee Human Rights Commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Tennessee Human Rights Commission to the same extent and subject to the same limitations as subpoenas issued by the Tennessee Human Rights Commission himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(3) Witnesses summoned by subpoena of the Tennessee Human Rights Commission shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to the witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

(4) Within five days after service of a subpoena upon any person, such person may petition the Tennessee Human Rights Commission to revoke or modify the subpoena. The Tennessee Human Rights Commission shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularly the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(5) In case of contumacy or refusal to obey a subpoena, the Tennessee Human Rights Commission or other person at whose request it was issued may petition for its enforcement in the municipal or state court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Tennessee Human Rights Commission shall be fined not more than $1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Tennessee Human Rights Commission, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Tennessee Human Rights Commission pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(7) The Tennessee Human Right Commission Attorney shall conduct all litigation in which the Tennessee Human Rights Commission participates as a party or as amicus pursuant to this chapter. (Ord. of Aug. 1995)

20-812. <u>Enforcement by private persons</u>. (1) The rights granted by §§ 20-803, 20-804, 20-805, and 20-806 may be enforced by civil actions in state or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: Provided, however, that the court shall continue such civil case brought to this section or § 20-810(4) From time to time before bringing it to trial or renting dwellings; or

(2) Any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from:

(a) Participating, without discrimination on account of race, color, religion or national origin, in any of the activities, services, organizations or facilities; or

(b) Affording another person or class of persons opportunity or protection so to participate, or

(3) Any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the activities, services, organizations or facilities, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be fined not more than $1,000, or imprisoned not more than one year, or both; and, if bodily injury results, shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death

results, shall be subject to imprisonment for any term of years or for life. (Ord. of Aug. 1995)

CHAPTER 9

ALARM SYSTEM REGULATIONS

SECTION

20-901. Title.
20-902. Definitions.
20-903. Automatic telephone dialing alarm system.
20-904. Permit issuance and renewal.
20-905. Application requirements for an alarm permit.
20-906. Items required for an alarm system to qualify for an alarm permit.
20-907. False alarms.
20-908. Fee assessment.
20-909. Disconnection.

20-901. Title. This chapter shall be known as the "alarm ordinance".

20-902. Definitions. Unless it is apparent from the context that another meaning is intended, the following words when used in this chapter shall have the meaning herein:

(1) "Alarm system" means any assembly of equipment, mechanical or electrical, arranged to signal the police and/or fire department that an emergency exists or that the services of either or both those departments are needed. "Alarm systems" shall also mean any alarm device which automatically emits an audible, visual, or other response upon the occurrence of any hazard or emergency and is intended to alert persons outside the building to the existence of said hazard or emergency.

(2) "Alarm user" means the person, firm, partnership, association, corporation, company, or organization of any kind in control of any building, structure, or facility or portion thereof wherein an alarm system is maintained.

(3) "Alarm business" means the business of any individual, partnership, corporation, or other entity engaged in selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing any alarm system or in causing any alarm system to be sold, leased, maintained, serviced, repaired, altered, replaced, moved, or installed in or on any building, structure, or facility.

(4) "Automatic telephone dialing alarm system" means any alarm system which is a device which automatically or electronically transmits by telephone or telephone line connected to the central dispatch facility a recorded message or code signal indicating a need for emergency response; or a system which, upon activation, connects to an answering service whose function it is to transmit to the police and/or fire department a need for emergency response.

(5) "False alarm" means an alarm signal eliciting a response by the police and/or fire department when a situation requiring a response by the police

and/or fire department does not in fact exist; but, this definition does not include an alarm signal caused by unusual conditions of nature nor does it include other extraordinary circumstances not reasonably subject to control by the alarm user. Also this definition does not include an alarm signal caused by situation that may have brought under control prior to the arrival of the responding police and/or fire department, that otherwise would have required a response.

(6) "Central dispatch facility" means the central communications center designated by the city council to receive, route, and otherwise handle all incoming police, fire or other emergency service communication traffic.

(7) "Answering service" refers to a telephone answering service providing among its services the receiving on a continuous basis emergency signals from alarm systems and thereafter relaying the message to the central dispatch facility.

(8) "Permit year" means the portion of the calendar year remaining after the date of issuance of a permit and all subsequent calendar years thereafter that such permit may remain in effect.

20-903. Automatic telephone dialing alarm system. (1) It shall be unlawful for any person, natural or corporate, to sell, offer for sale, install, maintain, lease, operate, or assist in the operation of an automatic telephone dialing alarm system over any telephone lines exclusively used by the public to directly request emergency service from the fire and/or police department. This provision does not prohibit an audible alarm, or an alarm answered by an alarm answering service which then contacts the city's central dispatch facility. All alarms must meet the requirements of § 20-906.

(2) The electrical inspector, when he as knowledge of the unlawful maintenance of an automatic telephone dialing alarm system installed or operating in violation of this chapter shall, in writing, order the owner, operator, or lessee to disconnect and cease operation of the system within 72 hours of receipt of the order.

(3) Any automatic telephone dialing system installed unlawfully, as set forth in this section, prior to the effective date of this chapter shall be removed within 30 days.

20-904. Permit issuance and renewal. (1) The electrical inspector is hereby authorized to grant a revocable alarm users permit to any alarm user located in the city to operate, maintain, install, or modify a place or fire alarm device, and no such device shall be operated unless such permit shall have first been issued.

(2) A permit issued pursuant to this chapter may be revoked at any time by the electrical inspector upon the giving of ten (10) days notice in writing by registered mail, to the permittee, sent to the address shown on the permit. Violation of this chapter, following conviction thereof, shall constitute grounds for revocation of the permit. The failure of the electrical inspector to revoke the

permit following the finding of the city court that there has been a violation of this chapter, shall not be deemed a waiver of the right to revoke the permit.

(3) The electrical inspector shall charge a fee for the issuance of any such permit, said fee being set and published from time to time as circumstances require by resolution of the city council.

20-905. Application requirements for an alarm permit.

(1) Application for an alarm permit shall be made on forms[1] provided by the electrical inspector, and shall be accompanied by the fee as stipulated by the city council. Forms shall include the following:

(a) The type of alarm system.

(b) The name, address, and telephone number of the applicant's property to be serviced by the alarm, and the name, address and telephone number of applicant's residence if different. If the applicant's alarm is serviced by an alarm company, then the applicant shall also include the name, address, and telephone number of that company.

(c) An emergency telephone number of the users and two representatives to permit prompt notification of alarm calls and to assist police and/or fire personnel in the inspection of the property.

(2) It is the applicant's responsibility to immediately notify the electrical inspector in writing of any and all changes in the information on file with the city regarding such permits. (as amended by Ord. of July 8, 1996)

20-906. Items required for an alarm system to qualify for an alarm permit. (1) All alarm systems shall have a backup power supply that will become effective in the event of a power failure or outage in the source of electricity.

(2) All alarm systems will have an automatic reset which silences the annunciator within thirty (30) minutes after activation.

(3) Any system installed on or after the effective date of this chapter must comply with the requirements stipulated in this section. Preexisting installations must comply with this section within six (6) months of the effective date of this chapter. (as amended by Ord. of July 8, 1996)

20-907. False alarms. (1) Whenever a false alarm is activated in the city, thereby requiring an emergency response to the location by police and/or fire personnel, a police and/or fire officer on the scene of the activated alarm shall determine whether the emergency response was in fact required as indicated by the alarm system or whether in some way the alarm system malfunctioned and thereby activated a false alarm.

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[1]These forms are of record in the city clerk's office.

(2) If the police or fire officer at the scene of the activated alarm system determines the alarm to be false and no emergency seems necessary, then said officer shall submit a report of the false alarm to the electrical inspector, or his designee. A written notification of emergency response and determination of the response shall be mailed or delivered to the alarm user at the address noted on the permit or location where alarm was activated. The permit holder upon receipt of the notification shall be entitled to a hearing before the electrical inspector or his designee and permit holder desiring a hearing shall request said hearing within ten (10) days of date of notification.

(3) The electrical inspector shall have the right to inspect any alarm system on the premises to which response has been made and he may cause an inspection of such system to be made at any reasonable time thereafter to determine whether it is being used in conformity with the terms of this chapter.

(4) It shall be a violation of this chapter to intentionally cause a false alarm, and any person who intentionally causes a false alarm shall be subject to the penalty provisions hereof.

(5) There shall be provided to the alarm user, a ten-day grace period during the initial installation of the alarm system.

(6) It shall be required and provided that any alarm business testing or servicing any alarm system notify the police and/or fire departments and instruct said departments of the location and times of said testing and servicing. This section shall apply to any testing period after the initial installation period has ceased. This section will not apply to the alarm user if prior notice of said testing has been made to the respective departments as outlined in this section. Any violation of this section herein will be assessed under the provisions outlined in this chapter.

20-908. Fee assessment. It is hereby found and determined that more than three (3) false alarms within a permit year are excessive and constitute a public nuisance. Upon the activation of a fourth false alarm within a permit year, the chief of police and the fire chief, or their designees, shall personally meet with the alarm owner and encourage repair or replacement in order to correct the problem. They shall also notify the owner that should the false alarms continue, the matter will be referred to the city council for action.

The police chief and fire chief shall refer to the city manager the name of any alarm owner who has had ten (10) false alarms in a permit year. The city manager shall schedule a public hearing before the city council where both the alarm owner and city officials can present information on why the problem is continuing. Upon hearing all the information, and obtaining other information as it deems appropriate, the city council may take whatever lawful action it deems appropriate, up to fines and penalties or disconnection of the alarm, within the limits imposed by state law.

The city clerk shall not bill or collect for any false alarm charge or fee under the previous false alarm ordinance after December 31, 1997. Henceforth,

the city clerk shall bill only for charges stemming from the decisions of the city council following a public hearing when ten (10) or more false alarms have occurred in a permit year. (as amended by Ord. of July 8, 1996, and replaced by Ord. of 3/23/98)

20-909. Disconnection. In the event that an alarm system emitting an audible, visual, or other response which causes a disruption to neighbors cannot be reset following attempts to notify the owner, any alarm company servicing the premises, and both the individuals listed as capable of resetting the alarm, the city shall have the right to take such action as may be necessary to disconnect any such alarm. Any such disconnection shall require notification by the city personnel disconnecting the alarm to the alarm owner informing the owner of the reason for the disconnection. Said notice must be mailed by certified mail within twenty-four (24) hours of the actual disconnection being made. (as replaced by Ord. of July 8, 1996)

CHAPTER 10

DISPOSITION OF ABANDONED AND LOST PERSONAL PROPERTY

SECTION

20-1001. Disposition of abandoned or lost currency.
20-1002. Disposition of personal property other than currency.
20-1003. General provisions.

20-1001. Disposition of abandoned or lost currency. (1) If lost or abandoned currency comes into the possession of the City of Cleveland, the city shall hold the currency to allow the city to investigate and attempt to ascertain the lawful owner of the currency. If the lawful owner is identified, the currency shall be returned to the owner. If an investigation fails to determine the lawful owner of the currency, then the city shall comply with all requirements of state law and any regulations of the state treasurer. If the state treasurer declines in writing to accept such currency, then the city shall return the currency to the individual or entity that turned the currency over to the city. If no individual or entity turned the currency over to the city, or if such individual or entity cannot be identified, or if the lost or abandoned currency is found by an officer of the Cleveland Police Department while on duty, then the currency shall be disposed of like any other personal property as provided for in § 20-1002.

(2) As used in this chapter, the term "currency" includes all legal tender, cash, or coin.

(3) This chapter does not apply to currency seized or confiscated pursuant to any state criminal statute. Such currency shall be disposed of according to applicable state law. (as added by Ord. of Oct. 14, 1996)

20-1002. Disposition of personal property other than currency. Upon compliance with all requirements of the Office of the State Treasurer and all other applicable regulations, any personal property that is abandoned or lost shall be disposed of according to the following rules:

(1) Any property deemed by the city clerk to be of nominal value, twenty dollars ($20.00) or less, may be disposed of by the city clerk without the necessity of payment to the city. All such items of nominal value may be destroyed if not otherwise suitable for reuse. All items destroyed shall be accounted for by certified inventory to be done by the chief of police or his designee submitted to the city clerk. Said inventory shall be kept on record in the office of the city clerk for a period of not less than five (5) years.

(2) For items of nominal value or those items of less than $500.00 value, the city clerk, upon recommendation of the chief of police, may dispose of such property to the convenience of the city. This right includes, but is not limited to, donating such property to a non-profit organization for use in the community. The inventory list of such property shall be submitted to the city

clerk with written recommendation by the chief of police on an annual basis at the same time the city's annual report is sent to the state treasurer. The city clerk shall submit a detailed report of all such dispositions to the city council.

(3) All valuable personal property deemed by the city clerk in excess of $500 value which is abandoned or lost and in the possession of the city may, after having been held for a period of not less than ninety (90) days or as otherwise required by state law, be sold at public auction or by competitive sealed bids after having been advertised in a daily newspaper of general circulation in this city, and after an investigation has been made to attempt to ascertain the owner of the property. (as added by Ord. of Oct. 14, 1996)

20-1003. General provisions. (1) This chapter shall not apply to:

(a) property seized or confiscated in the enforcement of any tax lien;

(b) any weapon confiscated by city law enforcement officials, which shall be disposed of in accordance with Tennessee Code Annotated 39-17-1317.

(c) any motor vehicle that is subject to disposition under any applicable state law allowing forfeiture or seizure of such motor vehicle.

(2) Nothing in this chapter shall prohibit the City of Cleveland from instituting an action in the nature of an interpleader to allow the city to comply with the intent of this chapter and to avoid conflicting claims concerning the right to possession or ownership of any lost or abandoned personal property, including currency. (as added by Ord. of Oct. 14, 1996)

CHAPTER 11

OPEN BURNING

SECTION

20-1101. Definitions.
20-1102. Open burning prohibited.
20-1103. Exceptions to prohibition on open burning.
20-1104. Authority to permit or prohibit open burning.
20-1105. Liability for damages and costs.
20-1106. Violation and penalty.

20-1101. Definitions. (1) "Open burning" is the burning of any matter under such conditions that products of combustion are emitted directly into the open atmosphere without passing directly through a stack. Open burning includes, but is not limited to, fires located or burning in a pile on the ground, a barrel, a fire pit, or other semi-enclosure. The use of an air curtain destructor or air curtain incinerator is considered incineration and is not considered open burning.

(2) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, an agency, authority, commission, or department of the United States government, or of the State of Tennessee government; or any other legal entity, or their legal representative, agent, or assigns.

(3) "Wood waste" is defined as any product which has not lost its basic character as wood, such as bark, sawdust, chips and chemically untreated lumber whose "disposition" by open burning is to solely get rid of or destroy. Plant life of a herbaceous nature, such as leaves, whether attached, fallen, and/or collected, evergreen needles, and grasses, are not considered "wood waste". Additionally, manufactured lumber products, such as plywood, fiberboard, particle board, and paneling, are not considered "wood waste." Painted or artificially stained wood is not considered "wood waste." (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

20-1102. Open burning prohibited. No persons shall cause, suffer, allow or permit open burning within the city limits of the City of Cleveland, except as set out in § 20-1103 entitled "Exceptions to prohibition on open burning." (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

20-1103. Exceptions to prohibition on open burning. Open burning may be conducted under the following specified exceptions. This grant of exception shall in no way relieve the person responsible for such burning from the consequences, damages, injuries or claims resulting from such burning. Any

exception to the open burning prohibition granted by this section does not relieve any person of the responsibility to obtain a permit which may be required by any other federal or state agency, or of complying with other applicable legal requirements, ordinances, or legal restrictions. In addition, the open burning of tires and other rubber products, vinyl shingles and siding, other plastics, asphalt shingles and other asphalt roofing materials, and/or asbestos containing materials, is expressly prohibited and such materials shall not be included in any open burning conducted under this section.

(1) Non-commercial fires used for cooking of food or for ceremonial, recreational or comfort-heating purposes, including barbecues, campfires and outdoor fireplaces;

(2) Fires set by or at the direction of the Cleveland Fire Department solely for training purposes.

(3) Fires consisting solely of vegetation grown on the property of the burn site or fires disposing of "wood waste" solely for the disposition of such wood waste shall only be conducted as follows:

(a) At least one (1) person shall be constantly present at the burning during the entire time of the burn;

(b) Each burn shall not exceed forty-eight (48) hours in duration;

(c) Burning shall not occur more than twice in any thirty (30) day period; and

(d) The site of such burning is not nearer than one-half (½) mile to an airport, hospital, nursing home, school, federal or state highway, national reservation, national or state park, wildlife area, national or state forest, and/or occupied structures except such structures as may be located on the same property as the burning site.

(e) Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(4) In addition, such burning may require an "air curtain destructor," or other fire department approved device if deemed necessary by the fire chief.

(5) Fires set at the direction of law enforcement agencies or courts solely for the purpose of destruction of controlled substances and legend drugs seized as contraband. Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(6) Fires consisting solely of manufactured lumber products not chemically treated to prevent insect or rot damage, but subject to the following additional conditions:

(a) The site of such burning is not nearer than one-half (½) mile to an airport, hospital, nursing home, school, federal or state highway, national reservation, national or state park, wildlife area, national or state forest, and/or occupied structures except such structures as may be located on the same property as the burning site.

(b) Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(c) The person responsible for such burning must certify compliance with the distance requirements by written statement. The certification must include the types and amounts of materials projected to be burned, and must be delivered to the State of Tennessee, Department of Environment and Conservation/Division of Air Pollution Control at the appropriate regional Environmental Field Office at least ten (10) working days prior to commencing the burn.

(7) For any residential parcel of property located within the corporate limits of the City of Cleveland where the residential parcel is ten (10) acres or more in size and has a building located on the subject parcel with an appraised value for tax purposes of at least twenty-five thousand dollars ($25,000.00), fires consisting solely of vegetation grown on the property of the burn site or fires disposing of "wood waste" solely for the disposition of such wood waste may be conducted, but subject to all of the following limitations and conditions:

(a) At least one (1) person shall be constantly present at the burning during the entire time of the burn.

(b) No burning under this subsection shall occur before 8:00 A.M. and all fires must be completely extinguished by no later than one (1) hour before sunset.

(c) Burning under this subsection shall not occur more than twice in any thirty (30) day period.

(d) Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(e) Burning under this subsection shall be limited to no more than a three hundred (300) cubic foot pile of vegetation or wood waste, with the further limitation that the content of a burn pile should not consist of predominantly trees that were felled by mechanical means.

(f) Burning under this subsection is only allowed on those residential parcels of property that are ten (10) or more acres in size which have a building located on the subject parcel with an appraised value for tax purposes of at least twenty-five thousand dollars ($25,000.00).

(g) For any burning under this subsection, a permit shall be required from the fire department. All requests for fire department issued permits require a forty-eight (48) hour notice in advance prior to burning to allow ample time for inspection of the burning site. Burning permits issued under this subsection shall be revoked and/or will not be issued if the fire chief or his designee determines that the proposed burning is likely to cause a safety issue for the public. (as added by Ord. of 12/10/2001, replaced by Ord. #2007-46, Nov. 2007, amended by Ord. #2008-33, June 2008, and Ord. #2008-44, July 2008)

20-1104. Authority to permit or prohibit open burning. The fire chief or his designee has the authority to permit open burning where there is no other practical, safe, and/or lawful method of disposal. The fire chief reserves the right to require any person to cease or limit open burning if emissions from the fires are deemed by the fire chief or his designee as jeopardizing public health or welfare, creating a public nuisance or safety hazard, or likely to create a potential safety hazard. The fire chief or his designee shall otherwise have the authority to permit or prohibit open burning not specifically addressed in this chapter. (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

20-1105. Liability for damages and costs. If the Cleveland Fire Department responds to a fire caused by or that results from open burning and the city uses equipment and/or personnel from the city public works department and/or third parties to control and/or extinguish the fire, the person responsible for the fire shall be subject to a civil action brought by the city in circuit court to recover the city's damages and costs, including the cost of using city equipment, incurred by the city to control or extinguish the fire. This remedy is in addition to any civil penalty set forth in Section 20-1106. (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

20-1106. Violation and penalty. In addition to any liability for damages or costs set forth in § 20-1105, any person who violates this chapter shall be subject to a civil penalty in an amount not to exceed fifty dollars ($50.00) for each violation. (as added by Ord. of 12/10/2001, and replaced by Ord. #2007-46, Nov. 2007)

CHAPTER 12

WRECKERS AND TOWING SERVICES

SECTION

20-1201. Purposes.
20-1202. Scope of chapter.
20-1203. Definitions.
20-1204. Establishment of wrecker class system and criteria for each class.
20-1205. Wrecker board.
20-1206. Permit required.
20-1207. Application for permits.
20-1208. Application and permit fees, expiration date and renewal.
20-1209. Investigation of permit applicant and wreckers.
20-1210. Issuance or permits.
20-1211. Revocation of permit.
20-1212. Required equipment and standards for all wreckers.
20-1213. Required storage facilities and procedure for wreckers.
20-1214. Notification(s) given by wrecker permit holders.
20-1215. Insurance.
20-1216. Statement of charges for wreckers and written notice to vehicle owners and operators.
20-1217. Additional rules and regulations for wrecker permit holders.
20-1218. Vehicles to be towed to place designated by owner or operator of vehicle.
20-1219. Rotational call list - wreckers to go to scene of accident on call of dispatcher or owner/operator only.
20-1220. Emergency towing and storage.
20-1221. Severability.

20-1201. Purposes. The purposes of this chapter are:

(1) To establish rules, regulations, standards and procedures for wrecker operators who elect to apply to the City of Cleveland and receive a permit and who are placed on a rotational call list to remove wrecked, disabled or immobilized vehicles at the request or call of the city police department or other department of the city, and;

(2) To establish a wrecker board to administer the provisions of this chapter. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and added by Ord. #2006-38, Oct. 2006)

20-1202. Scope of chapter. The provisions of this chapter apply to all towing or wrecker services provided by permit holders within the corporate limits of the City of Cleveland when the wrecker is responding to calls for service while on the rotational call list described in this chapter.

The provisions of this chapter do not apply to wrecker or towing services provided to the City of Cleveland for the towing of city owned vehicles.

Nothing contained in this chapter is intended to require any wrecker operator who is otherwise lawfully doing business within the City of Cleveland to apply for a permit under the provisions of this chapter. Application to the city for a permit under this chapter by a wrecker operator is voluntary. However, no wrecker operator shall be issued a permit and placed on the rotational call list described under this chapter unless the wrecker operator applies to the city for a permit and agrees to be bound by and comply with the terms and conditions of this chapter. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and added by Ord. #2006-38, Oct. 2006)

20-1203. Definitions. For the purposes of this chapter the following words and phrases shall have the following meanings:

(1) "Inside storage." The storing of a motor vehicle within an enclosed building being used by the wrecker or towing operator as a place of business.

(2) "Normal business hours." The hours from 9:00 A.M. to 5:00 P.M. except Saturdays, Sundays, and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(3) "Outside storage." The storing of a motor vehicle within a lot or premises being used by the wrecker or towing operator as a place of business, but not inside storage as described above.

(4) "Wrecker board." The wrecker board created to administer this chapter.

(5) "Wrecker inspector." That officer or employee of the city designated by the city manager as the person responsible for receiving applications, conducting investigations of proposed wrecker operators, and making recommendations to the wrecker board.

(6) "Wrecker operator, permit holder or towing operator." Any person engaged in the business of, or offering the services of, a wrecker or towing service to remove wrecked or disabled vehicles under a rotational call system at the request or call of the city police department or any other department of the city, whereby motor vehicles (except those owned by the City of Cleveland) are or may be towed or otherwise removed from one place to another by the use of a motor vehicle adapted to and designed for that purpose.

Wrecker operator, permit holder, or towing operator includes all wrecker or towing operators and vehicles permitted by the city under this chapter who qualify to be placed on the rotation call list to respond to requests for towing of vehicles and who are responding under the rotational call list. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and added by Ord. #2006-38, Oct. 2006)

20-1204. Establishment of wrecker class system and criteria for each class. Four (4) distinct wrecker classes have been established. Each towing vehicle shall only be listed in one (1) class, and the following criteria must be met for each class for inclusion on the rotational call list:

(1) Class A. For towing passenger cars, pick-up trucks, small trailers, etc. This classification also includes "wheel lift" type vehicle transporters.

(a) The tow truck chassis shall have a minimum manufacturer's capacity of fourteen thousand pounds (14,000 lbs.) or GVWR;

(b) Individual boom capacity of not less than four (4) tons;

(c) Individual power winch pulling capacity of not less than four (4) tons;

(d) A minimum of one hundred feet (100') of three-eighths inch (3/8"), or larger, cable on each drum;

(e) Wheel lift capable of picking up a passenger car or pick-up truck;

(f) Belt-type cradle tow plate or tow sling to pick up vehicles, and cradle or tow plate to be equipped with safety chain;

(g) Dollies are suggested, but not required; and

(h) Wheel lift: wreckers possessing equipment capable of lifting the vehicle by the wheels only, with nothing touching the vehicle body.

(i) Wheel lift wreckers shall meet all Class A requirements, excluding the belt-type cradle tow plate or tow sling;

(ii) Safety restraint straps (nylon straps with ratchets or the equivalent), shall be provided to secure the towed vehicle's tires into the wheel lift forks.

(2) Class B. For towing medium size trucks, trailers, etc.

(a) The tow truck chassis shall have a minimum manufacturer's capacity of twenty-six thousand pounds (26,000 lbs.) or GVWR;

(b) Boom specifications:

(i) Double boom so constructed as to permit splitting; each boom to operate independently or jointly; individual boom capacity of no less than eight (8) tons and individual power winch pulling capacity of not less than eight (8) tons; or

(ii) Single boom with no less than a sixteen (16) ton capacity and a power winch pulling capacity of no less than sixteen (16) tons.

(c) Two hundred feet (200'), or more of seven-sixteenths inch (7/16"), or larger, cable on each drum;

(d) Cradle tow plate or tow sling to pick up vehicle; cradle or tow plate to be equipped with safety chain.

(3) Class C. For towing large trucks, road tractors and trailers.

(a) The tow truck chassis shall have a minimum manufacturers' capacity of not less than thirty-five thousand pounds (35,000 lbs.) or GVWR;

(b) Boom specifications:

(i) Double boom so constructed as to permit splitting; each boom to operate independently or jointly; individual boom capacity of no less than twelve and one-half (12 1/2) tons; or

(ii) Single boom with no less than a twenty-five (25) ton capacity and a power winch pulling capacity of no less than twenty-five (25) tons;

(iii) Two hundred feet (200') or more of nine-sixteenths inch (9/16"), or larger, cable on each drum;

(iv) Air brakes constructed so as to lock wheels automatically upon failure;

(v) Only tandem axle trucks with two (2) live drive axles will be accepted as Class C; and

(vi) An under-reach capable of towing an eighty thousand pound (80,000 lb.) tractor trailer combination.

(4) Class D. Vehicle transporters designed to tow or carry passenger cars, pick-up trucks, small trailers, etc. This classification includes "car carrier" or "rollback" type vehicle transporters.

(a) Car carrier vehicle transporters:

(i) The truck chassis shall have minimum manufacturer's capacity of fourteen thousand pounds (14,000 lbs.) or GVWR;

(ii) Lift cylinders:

(A) Two (2) with a minimum of three inch (3") bore each; or

(B) One (1) with a minimum of five and one-half inch (5 1/2") bore.

(iii) Individual power winch pulling capacity of not less than four (4) tons;

(iv) Fifty feet (50') or more of three-eights inch (3/8") or larger cable on winch drum;

(v) Two (2) safety chains for securing vehicle to carrier bed;

(vi) Carrier bed shall be a minimum of sixteen feet (16') in length and a minimum of eighty-four inches (84") in width inside side rails;

(vii) Cab protector, constructed of solid steel or aluminum, that extends to a height of four feet (4') above the floor or to a height at which it blocks the forward movement of the bumper of the vehicle being towed; and

(viii) Straps with ratcheting capability that provide for the transporting of motorcycles. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1205. Wrecker board. (1) Board established. There is hereby established a board of five (5) members to oversee and administer the terms of this chapter, which board shall be referred to as the "wrecker board." In addition to these five (5) members, the chief of police, or the chief's designee, shall serve as a non-voting member of the wrecker board to provide input and recommendations to the wrecker board from the police department. The chief of police, or the chief's designee, shall attend all wrecker board meetings and function as a liaison between the wrecker board and the Cleveland Police Department.

(2) Composition; terms; filling vacancies. The five (5) members of this board shall be appointed by the city council. The members who are first appointed shall be designated to serve for terms of one (1), two (2), three(3), four (4), and five (5) years, respectively. Thereafter, each member shall be appointed for a term of five (5) years. All members shall serve until their successor is appointed and all members shall serve at the pleasure of the city council. A member of the wrecker board may be removed from the board at any time by a majority vote of the city council when it is demonstrated that such board member has a pattern of repeated absences from board meetings, or when such board member exhibits disregard for controlling state and federal laws and local ordinances, or when such board member fails to declare a conflict of interest in a given case and votes on the case. In the event of a vacancy, the city council shall appoint a member to fill the unexpired term. The board members shall serve without compensation, but shall receive actual expenses incurred in attending meetings of the board and the performance of any duties as members of the wrecker board.

Two (2) alternate members shall be appointed to the wrecker board. One (1) shall be designated as the first alternate and the other as the second alternate. The alternate members shall be appointed for a term of five (5) years. In any meeting where both are present, but only one is necessary to constitute a five (5) member board, the alternate designated as the first alternate shall exercise a vote, while the second alternate will not.

(3) General duties of the wrecker board. The board shall have the following duties and powers in addition to any other duties or responsibilities conferred upon the board by this chapter.

(a) To recommend from time to time to the city council that it amend or modify the provisions of this chapter;

(b) To hold hearings relating to the suspension, revocation, or modification of a permit and issue appropriate orders relating thereto;

(c) To hold such other hearings as may be required in the administration of this chapter and to make such determinations and issue such orders as may be necessary to effectuate the purposes of this chapter;

(d) To request assistance from any officer, agent, or employee of the city and to obtain such information or other assistance as the wrecker board might need;

(e) The wrecker board, acting through its chairperson, shall have the power to issue subpoenas requiring attendance and testimony of witnesses and the production of documentary evidence relevant to any matter properly heard by the board; and

(f) The chairperson or vice-chairperson shall be authorized to administer oaths to those persons giving testimony before the board.

(4) Election of officers; meetings; and quorum. The following rules and procedures shall apply for the wrecker board. The board may adopt such other rules and procedures as the board deems appropriate provided that such rules are consistent with procedures described herein.

(a) Election of officers. The board shall elect from among its own members a chairperson, and a vice-chairperson who shall serve in that capacity for one year or until a successor shall be elected. Secretarial services shall be provided by the City of Cleveland in a manner to be prescribed by the city manager.

(b) Initial meeting. Within thirty (30) days of the initial appointment of the board members, the board shall hold an initial meeting. At the initial meeting the board will elect officers as provided by this chapter and review the general duties of the board. The first meeting in each calendar year shall also be called the organizational meeting, and the purpose of this meeting shall include the election and installation of officers, and such other business that may need to come before the meeting.

(c) Regular meetings. Regular meetings shall be held at a time and place chosen by the wrecker board. The board shall hold regular semi-annual meetings and such additional called meetings as the board may find necessary.

(d) Called meetings. The chairperson or vice-chairperson or any two members may schedule a called meeting of the wrecker board as deemed necessary provided that advance notice is given to each board member at least forty-eight (48) hours prior to the commencement of the called meeting and adequate public notice is given as required by law.

(e) Public notice of regular meetings. Public notice of regular meetings shall be by publication in a newspaper of general circulation at least five (5) days in advance of the meeting with a general description of the agenda.

(f) Open meetings. All meetings of the wrecker board shall be open to the public.

(g) Conduct of meetings. The board shall generally conduct meetings in accordance with Robert's Rules of Order.

(h) Quorum and voting. The presence of three (3) members of the wrecker board shall constitute a quorum. If the chairperson and vice-chairperson are absent from the meeting in which there is a quorum, the members present shall elect from among the board members present a chairperson of the meeting. If only three members are present and one cannot vote due to a conflict of interest on a particular item, the remaining two members shall constitute a quorum for the purpose of that item. In the event of a tie vote on any motion, the motion shall fail. A motion shall have passed upon the affirmative vote of a majority of the quorum of board members present and voting.

(i) Specific powers. The wrecker board shall have the authority to approve, revoke or suspend wrecker permits, and otherwise administer the provisions of this chapter. Before revoking or suspending a permit under this chapter, the wrecker board shall hold a public hearing after reasonable notice to the permit holder. The action of the wrecker board in granting or refusing a wrecker permit or in revoking or suspending a wrecker permit shall be final, except as it may be subject to review as provided by law. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, as amended by Ord. #2008-79, Jan. 2009, and Ord. #2009-81, Jan. 2010)

20-1206. Permit required. No person or entity shall be placed on the rotational call list established under this chapter and engage in the business of, or offer the services of, a wrecker under the terms of this chapter without first applying for and receiving a permit. Each permit holder meeting the requirements of this chapter shall receive one general permit for their wrecker business and a separate permit for each wrecker used by that business according to the class of wrecker set forth in § 20-1204. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006)

20-1207. Application for permits. Any person or entity desiring to obtain a wrecker permit under this chapter shall file with the wrecker inspector an application setting out, among other things, the following:

(1) Name and address of the person or entity desiring the permit.

(2) The location and full description of all property to be utilized in connection with the business, including tax parcel numbers and zoning of this property.

(3) The number of wreckers or towing vehicles owned or available for use by the applicant and a full description of the wreckers sufficient to determine a proper classification under § 20-1204.

(4) A statement that all wreckers are properly equipped for the applicable classification set forth in § 20-1204 and contain the required

equipment set out in § 20-1204, and that all wreckers meet applicable state and federal regulations.

(5) A statement that the wrecker or towing operator will accept responsibility for any and all personal property left in towed or stored vehicles.

(6) A statement setting forth and describing available space including inside storage, if available, for properly accommodating and protecting all disabled motor vehicles to be towed or otherwise removed from the place where they had been disabled.

(7) A statement that the applicant will provide twenty-four (24) hour service, including holidays, and that the applicant will have a qualified operator on duty at all times for each wrecker location permitted hereunder.

(8) A statement that the wrecker or towing operator will not release any vehicles impounded by the city without authorization by the police department, that a file will be maintained on all vehicle release forms and that this file will be made available for police inspection upon request.

(9) An assurance that the applicant will maintain a minimum of one (1) properly equipped and operable wrecker throughout the year for which application is being made.

(10) A statement that each wrecker sought to be permitted under this chapter has a current Level 1 Safety Inspection Sticker issued by the State of Tennessee Department of Safety (Tennessee Highway Patrol). No wrecker may be permitted under this chapter without having a current Level 1 Safety Inspection Sticker issued by the Tennessee Department of Safety (Tennessee Highway Patrol). (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1208. Application and permit fees, expiration date and renewal.

(1) Applicant fee. Any new applicant for a wrecker permit under this chapter shall be charged an application and investigation fee of two hundred dollars ($200.00) to cover the expense of investigating the new applicant, the applicant's place of business, and all wreckers and other equipment.

If an approved applicant changes the applicant's business location or adds or substitutes a new or different wrecker(s), there shall be a supplemental investigation fee of one hundred dollars ($100.00) to cover the expense of investigating the approved applicant's new business location or new or different wreckers.

These fees shall be in addition to the individual wrecker permit fee set forth in § 20-1208.

(2) Individual wrecker permit fee. No wrecker may be issued a permit under this chapter until it has already received a state certification sticker issued by the Tennessee Department of Safety (Tennessee Highway Patrol). Once a wrecker has received a state certification sticker issued by the Tennessee Department of Safety (Tennessee Highway Patrol), then the city will issue a

Department of Safety (Tennessee Highway Patrol), then the city will issue a wrecker permit to that wrecker at no cost, provided that the wrecker is brought to the city's fleet maintenance facility on Fulbright Road (or such other location as may be designated by the fleet manager) for inspection by the city. If the city goes to the wrecker operator's place of business to perform the annual wrecker inspection, there shall be an annual permit fee of twenty-five dollars ($25.00) per wrecker which shall be collected by the city at the time of the inspection and before granting an approved permit or renewal permit. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1209. Investigation of permit applicant and wreckers. The wrecker inspector shall investigate or cause to be investigated each applicant for a wrecker permit under this chapter to determine whether or not the applicant has the necessary equipment and facilities to qualify as a wrecker operator under this chapter, and, if the applicant is qualified.

The wrecker inspector shall make such inspection within fifteen (15) business days after the city receives the completed application including the applicable application fee. The wrecker inspector shall report the inspector's findings to the wrecker board after the inspection and make a recommendation regarding the issuance of a general wrecker permit to the applicant and permits for the wrecker(s) owned by the applicant. The wrecker board shall have the right to direct the wrecker inspector to make such further or additional investigation as it deems proper before issuing a permit. Once the wrecker board has received the recommendation of the wrecker inspector and the results of any additional investigation it deems necessary, it shall grant or refuse a permit. If a permit is refused, the wrecker board shall document its reasons for any refusal. If a permit application is denied, the city shall refund one-half (1/2) of the applicable application fee.

The wrecker inspector shall insure that an annual physical inspection of all permit holders' towing equipment and storage facilities has been conducted annually by the State of Tennessee Department of Safety (Tennessee Highway Patrol). Each year, after the permit holder has undergone their annual inspection by the state, the wrecker permit holder shall notify the wrecker inspector that said inspection has occurred and provide the wrecker inspector with a current and complete file showing all drivers, vehicles, insurance policies, and all other documents specified in this chapter. It is the responsibility of the wrecker permit holder to provide the wrecker inspector with this information. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1210. Issuance of permits. Every applicant and each wrecker of each permit applicant determined by the wrecker board to be qualified under this chapter to receive a permit shall be issued a permit by the city clerk's office.

board, which permit shall at all times be kept with each wrecker. Such permit shall have printed thereon the year for which it is valid. No applicant shall be considered qualified under this chapter until the applicant's vehicle(s) have been approved by a Level I inspection performed by the Tennessee Department of Safety (Tennessee Highway Patrol) or other governmental agency qualified to perform the Level I inspection. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, Ord. #2010-22, June 2010, and Ord. #2011-06, May 2011)

20-1211. Revocation of permit. (1) The wrecker board may suspend or revoke the permit of any permit holder or the permit issued to any wrecker on any of the following grounds:

(2) If a permit was procured by fraudulent conduct or false statement of a material fact or a material fact concerning the applicant which was not disclosed at the time of the application that would have constituted just cause for refusing to issue a permit; or

(3) Failure of a wrecker permit holder to have an operable and properly equipped wrecker and qualified operator on duty at all times or to promptly respond to police calls while on call; or

(4) If the wrecker permit holder overcharges in violation of written statement given to a vehicle owner or operator by the permit holder as required by § 20-1216; or

(5) A violation of any provision of this chapter; or

(6) If a wrecker does not meet all applicable state and federal regulations or any of the provisions of this chapter; or

(7) If the permit holder is removed from the State of Tennessee Department of Safety (Tennessee Highway Patrol) rotating schedule towing list; or

(8) The wrecker board may also suspend or revoke a permit in its discretion for any good cause not otherwise specified herein. Such suspension or revocation shall terminate all authority and permission granted by such permit to the permit holder. Any person whose general permit has been revoked shall not be eligible to again apply for a wrecker permit for a period of one (1) year from the date of such revocation. If a permit holder's permit is revoked and they apply again after one (1) year, they will be treated as a new applicant and must pay all fees applicable to new applicants as set forth in this chapter. The wrecker board may also suspend or revoke the permit issued for any wrecker vehicle that fails to comply with the terms and provisions of this chapter. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1212. Required equipment and standards for all wreckers. In addition to the equipment required under the applicable wrecker classifications

set forth in § 20-1204, all wreckers shall have and maintain additional equipment and standards as follows:

(1) The following additional equipment is required:

(a) At least one (1) heavy-duty push broom;

(b) Flood lights mounted at a height sufficient to illuminate the scene at night;

(c) One (1) shovel;

(d) A minimum of one (1) fully charged twenty pound (20 lb.), or two (2) fully charged ten pound (10 lb.) fire extinguisher(s) having an Underwriter's Laboratory rating of four (4) A:B:C: or more. The fire extinguisher(s) must be securely mounted on the towing vehicle;

(e) One (1) axe;

(f) One (1) set of bolt cutters;

(g) One (1) pinch bar, pry bar or crow bar;

(h) A minimum of one (1) fifty pound (50 lb.) bag of fluid absorption compound;

(i) Three (3) red emergency reflectors;

(j) One (1) light bar. The towed vehicle must be capable of displaying all lights on the rear of the vehicle, while in tow. When this is not possible, a light bar must be attached to the rear most vehicle while in tow. The bar must consist of two (2) tail lamps, two (2) stop lamps and two (2) turn signals. All lights on the light bar must be fully operational.

(2) The appearance of all wreckers shall be reasonably good with equipment painted.

(3) All wreckers shall display the firm's name, address and phone number. Such information shall be painted on or permanently affixed on both sides of the towing vehicle. Such lettering shall be at least three inches (3") high. Magnetic signs are not permitted as a substitute.

(4) In accordance with Tennessee Code Annotated, § 55-8-170(c), it is the responsibility of the wrecker operator to have equipment for removing glass and other debris from the accident scene and to remove such debris from the highway. The wrecker operator shall be responsible for removing all glass and other debris from the street or highway. Failure to do so may result in suspension or revocation of the wrecker operator's permit. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1213. Required storage facilities and procedures for wreckers. Permit holders must provide proper storage facilities and procedures as follows:

(1) Permit holders must be equipped to provide an adequate storage lot or building for proper, safe and secure storage of all vehicles towed.

(2) The permit holder shall provide a properly zoned (or lawful nonconforming use) fenced lot or building for proper and safe storage. Such lot for storage shall be located on the same property as the wrecker service or in

close proximity thereto. If the storage lot is not located on the same property as the wrecker operator's place of business, the towing company storage facility must be identified with a highly visible sign that has the towing company's name, address and phone number thereon.

(3) A storage lot fence shall be a minimum of six feet (6') high, constructed of chain-link security fencing, lumber, or other material which will serve as a significant deterrent to unauthorized entry. The fencing shall be equipped with gates capable of being locked, which shall be locked at all times when the storage facility is unattended. There shall be room to store at least ten (10) cars within the fenced lot. Class C operators shall additionally have room to store a minimum of one (1) tractor and trailer within the fenced lot.

(4) A wrecker permit holder shall be responsible for storing, safekeeping and preventing vandalism of all towed vehicles and their contents.

(5) The wrecker permit holder's place of business shall be staffed, between the hours of 8:00 A.M. and 5:00 P.M. Monday through Friday, excluding legal holidays. The wrecker permit holder's storage facility, if not located on the same property as the permit holder's place of business shall be readily available for access to customers and members of the Cleveland Police Department between the hours of 8:00 A.M. and 5:00 P.M. Monday through Friday, excluding legal holidays.

(6) Records of the vehicles towed and charges of tows from calls received from the city rotation list shall be maintained for at least two (2) years and shall be open for inspection by the city and the owner of any vehicle towed or his agent.

(7) The wrecker inspector may inspect any wrecker permit holder at any time during normal business hours.

(8) All vehicles towed under the rotation call list provided for by this chapter shall be stored inside a building or inside the fenced storage facility described above unless an authorization to do otherwise is obtained from the vehicle's owners.

(9) In accordance with any notice provisions applicable to wrecker operators as set out in state law, the wrecker service shall notify the registered owners and lien holders of the location of the stored vehicles and the costs of securing possession of the towed and stored vehicle. The City of Cleveland Police Department is hereby authorized, but is not required to, provide registration information to the wrecker permit holder to assist the permit holder in giving any required notice(s) under state law. Wrecker permit holders may also wish to contact the Bradley County Clerk's office to obtain registration information on vehicles. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1214. **<u>Notification(s) given by wrecker permit holders</u>**. State law imposes certain notice requirements on wrecker permit holders. All

wrecker permit holders on the rotational call list shall comply with all of these provisions. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1215. Insurance. (1) Each wrecker permit holder assumes the liability for personal injury or property damage resulting from a permit holder's or their employee's intentional or negligent act(s) from the time contact is made with any vehicle to be towed. Each wrecker permit holder assumes full liability for all items of value in the towed vehicle.

(2) Each wrecker permit holder shall maintain the following policies of insurance according to the minimum limits set forth in this section. Each policy shall be in the name of the wrecker permit holder and shall include coverage for towing and storage. The policy shall be effective for a minimum of a six (6) months period. It is not the intent of the City of Cleveland to limit the wrecker permit holder to the type and amount of insurance required herein. The wrecker permit holder may choose to purchase more or additional coverage than specified herein. The types of coverage and the limits set forth herein are the minimum limits necessary to be eligible to be placed on the city's rotational call list.

(a) Any wrecker service on the rotational call list utilized by the City of Cleveland shall be properly licensed and insured.

(b) Insurance must be sufficient to compensate for any loss of or damage to property entrusted to the wrecker company.

(c) A certificate of insurance shall be filed with the wrecker inspector before a towing company may be placed on the rotational call list. Certificates of insurance must be itemized to indicate amounts of liability, garage keepers, and on-hook coverage. The policy must also disclose all of the towing vehicles that are covered under this policy.

(d) For purposes of this section, the following definitions shall apply:

(i) Vehicle liability. Insurance that pays for damages due to bodily injury and property damage to others for which the towing company is responsible.

(ii) Garage keepers liability. Insurance that protects a garage keeper against liability for damage to vehicles in his/her care, custody, or control.

(iii) On-hook coverage. Insurance that will normally pay to repair or replace a vehicle that the towing company did not own if it is damaged by a collision, fire, theft, explosion or vandalism while it is being towed or hauled.

(5) Liability coverage must be equal to the minimum amounts specified in this section. Insurance coverage may be provided in a single policy or separate

split policies. Regardless of the type of policy or policies, the total amount of coverage must equal those amounts listed below, per incident.

(a) Minimum vehicle liability amounts:

(i)	Class A and D	$300,000.00
(ii)	Class B	$500,000.00
(iii)	Class C	$750,000.00

(b) Minimum garage keepers liability policy:

(i)	Class A and D	$ 75,000.00
(ii)	Class B	$150,000.00
(iii)	Class C	$200,000.00

(c) Minimum "on-hook" coverage:

(i)	Class A and D	$ 75,000.00
(ii)	Class B	$150,000.00
(iii)	Class C	$200,000.00

(d) Wrecker companies "on-hook" coverage may be included in the garage keepers liability policy. It may also be provided as a separate policy, dependent upon the underwriter. In any event, both garage keeper's liability and "on-hook" insurance coverage must be carried by the wrecker permit holder. The minimum rates established by this section are in no way intended to limit the amount of coverage deemed appropriate by a wrecker permit holder.

(6) Renewal certificates of insurance must be submitted to the wrecker inspector ten (10) days prior to the expiration date of the current certificates of insurance.

(7) Wrecker permit holders shall notify the City of Cleveland immediately in writing if a policy is canceled or non-renewed. This written notice shall be sent within forty-eight (48) hours of the time and date that the wrecker permit holder is notified that a policy will be canceled or non-renewed.

(8) The wrecker permit holder shall also notify the City of Cleveland in writing of any other changes in insurance coverage (i.e., changing companies, vehicles, etc.). This notice shall be sent at least ten (10) days prior to any change.

(9) All wrecker and storage facilities shall be inspected by the City of Cleveland and a certificate of insurance filed with the City of Cleveland before a wrecker permit holder is placed on the rotational call list. This certificate of insurance shall include an endorsement providing a minimum of thirty (30) working days' notice to the City of Cleveland in the event of a cancellation or non-renewal of a policy.

(10) Violation of any of the above insurance requirements or regulations shall be cause for suspension or removal from the rotational call list. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1216. <u>Statement of charges for wreckers and written notice to vehicle owners and operators</u>. (1) Nothing contained herein is intended to

set the price for any wrecker service provided by a permit holder under the terms of this chapter. However, all permit holders and wrecker operators shall be subject to all of the requirements set forth herein as to charges for any call from the police department or the city referred to the wrecker operator under the city's call rotation system established herein. In addition, all permit holders and wrecker operators shall be subject to disclosure requirements as to charges for any call from the police department or the city referred to the wrecker operator under the city's call rotation system established herein.

(2) Current tow and storage rates shall be posted in a conspicuous place at the wrecker permit holder's business office. In addition, the wrecker permit holder shall file a copy of the company's current tow and storage rates with the wrecker inspector.

(3) A chronological record of towed vehicles and the charges billed as a result of services provided by a wrecker company pursuant to calls on the rotational call list shall be maintained and available for inspection by the wrecker inspector upon request. These records will be kept for at least a two (2) year period.

(4) All permit holders and wrecker operators shall have preprinted statements with the name, address and telephone number of the permit holder's place of business printed thereon.

(5) Before towing a disabled vehicle away from a scene, the wrecker operator shall present a statement in duplicate, a copy of which shall be given to the owner or operator of the disabled vehicle or his authorized representative, unless the owner or operator is under arrest or incapacitated. If the owner or operator is under arrest, the copy shall be given to the police officer in charge who shall file the copy along with the arrested person's other personal effects. This statement may be prepared on a pre-printed form which shall contain, at a minimum, the following information:

(a) The name and address of the owner or operator of the vehicle being towed.

(b) The state and license number of the vehicle.

(c) Storage rates per day or part thereof.

(d) A schedule of charges for towing and all other services that may be provided by the wrecker operator. The wrecker operator may elect to use a preprinted schedule.

(e) The name of the wrecker operator.

(f) The following language must be contained on the statement: "The charges set forth herein are determined by the wrecker company and not the City of Cleveland."

The original or a duplicate copy of the statement shall be retained by the permit holder for a period of two (2) years and shall be subject to inspection by the city's wrecker inspector or his duly authorized representative at any time during regular business hours.

(6) Storage rates begin twenty-four (24) hours after a vehicle is towed.

(7) There will be no charge for "hook-up."

(8) There shall be no charge for normal street or highway cleanup. A normal cleanup includes, but is not limited to, removal of glass, vehicle body parts, vehicle fluids, etc. Cleanups requiring additional/specialized equipment and/or resources, such as diesel spills, Haz-mat, etc., will result in additional charges being levied against the liable party(s) by the towing companies and/or other state or local regulatory or governmental agencies.

(9) There shall be no charge for certain types of equipment, e.g., dollies and fire extinguishers.

(10) If the off-loading of cargo is required, each towing company providing these services shall list the names, addresses and telephone numbers of each person hired to off-load cargo. This list shall be given to the wrecker inspector upon request.

(11) An itemized invoice shall be prepared and given to each owner or designee and a copy shall be kept on file with the wrecker permit holder's other business records. These invoices shall be available for inspection by the wrecker inspector at all times during normal business hours. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1217. <u>Additional rules and regulations for wrecker permit holders</u>. (1) All operators shall respond to a wreck within a reasonable time after being called, and except for exigent or unusual circumstances a response must be made within thirty (30) minutes after the dispatch request is made to the wrecker operator. If the wrecker is engaged elsewhere or for any reason the wrecker operator cannot reasonably expect to respond within thirty (30) minutes, it shall be the duty of the wrecker operator to so advise the police department and decline to accept the call whereupon the next wrecker operator on rotation shall be called. Class C wreckers and recovery class wreckers shall be granted an additional fifteen (15) minutes to respond to a tow for a large truck, road tractor and trailers.

(2) No wrecker operator shall refer or delegate police calls to other wrecker companies.

(3) No answering service, paging service or similar service or procedure may be used to forward a call to an owner or employee of the wrecker service between the hours of 8:00 A.M. to 5:00 P.M. on Monday through Friday, excluding legal holidays. The wrecker permit holder may provide for an after-hours number which shall be provided to the wrecker inspector.

(4) The first wrecker operator at the scene shall tow the vehicle causing the greatest hazard as directed by the investigating police officer.

(5) A wrecker operator may accept a dispatch of more than one (1) wrecker only if qualified wreckers and operators are available within the time limits specified above.

(6) All permit holders shall file with the wrecker inspector a photocopy of a current operator's license for each employee authorized to operate a wrecker

for the permit holder. The photocopy of any new operator's license shall be filed within ten (10) days following employment or renewal of the operator's license.

(7) All permit holders shall immediately notify the wrecker inspector, in writing, of any driver's license changes or any actions committed by a driver which would cause that operator's driver's license to be suspended, revoked or canceled. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006, and Ord. #2010-22, June 2010)

20-1218. Vehicles to be towed to place designated by owner or operator of vehicle. The wrecker operator may tow the wrecked or disabled vehicle to the operator's place of business; provided, if the owner or agent of the wrecked or disabled vehicle pays or secures the towing charges, then the wrecker operator shall pull the vehicle to any place designated by such owner or agent. It shall be unlawful for the wrecker owner, or an agent, employee or representative of the wrecker owner to high-pressure or otherwise coerce any owner of a wrecked or disabled vehicle to sign a work order or agreement at the scene of an accident for any repairs to be made on such wrecked or disabled vehicle. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and added by Ord. #2006-38, Oct. 2006)

20-1219. Rotational call list - wreckers to go to scene of accident on call of dispatcher or owner/operator only. When a member of the Cleveland Police Department is dispatched to an accident, or is involved in other matters which may require wrecker assistance, the investigating officer, after making a determination of the need for a wrecker, shall then call the dispatcher. The dispatcher will notify the next scheduled wrecker to respond, provided that the owner/operator of the vehicle has not chosen to request his own service directly from a wrecker company of their choice. The dispatcher will notify the next scheduled wrecker on the rotational call list to respond.

The investigating officer will normally follow the set rotational list except in situations where the wrecker on the rotational call list indicates an inability to respond in a timely manner or other weather or emergency situations which the officer deems it necessary to dispatch the closest available wrecker or if a specialized service is deemed to be needed, or if the wrecker on the rotational call list cannot be reached for some reason.

It shall be unlawful for any wrecker operator, or his agent or representative, to go to any place where an accident has occurred unless called by the dispatcher or unless called directly by the owner or operator of a motor vehicle. Under either circumstance, the wrecker operator shall clear with the dispatcher before going to the accident scene. It shall be unlawful for the owner of any wrecker, or his agent or representative, to go to the place of a wreck by reason of information received by shortwave radio, police radio or scanner.

A wrecker operator operating under this chapter shall not proceed to the scene of a disabled motor vehicle without having been requested or notified to

do so, as provided in this section. Responding to a call upon notice from gas station attendants, taxicab drivers or other unauthorized persons shall be considered a violation of this chapter. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006)

20-1220. Emergency towing and storage. Whenever any police officer finds a vehicle standing upon any street or highway and the vehicle constitutes a hazard to the safe movement of traffic along such street, or when the towing of such vehicle is otherwise permitted by the Cleveland Municipal Code or other applicable law, the officer shall:

(1) Notify the police dispatcher, who shall call the wrecker having the class of wrecker necessary.

(2) The wrecker shall tow the wrecker or disabled motor vehicle in the manner and procedures as provided in this chapter; and

(3) The wrecker shall be entitled to recover any unpaid charges for towing and storage in accordance with title 55, chapter 16, Tennessee Code Annotated, "Unclaimed or Abandoned Vehicles." (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006)

20-1221. Severability. If any provision of this chapter is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this article. Failure to enforce any provision of this chapter does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this article at any time. (as added by Ord. #2006-23, July 2006, repealed by Ord. #2006-37, Oct. 2006, and replaced by Ord. #2006-38, Oct. 2006)

CHAPTER 13

CODE OF ETHICS

SECTION

20-1301. Applicability.
20-1302. Definition of "personal interest."
20-1303. Disclosure of personal interest by official with vote.
20-1304. Disclosure of personal interest in non-voting matters.
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20-1301. 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. #2006-49, March 2007)

20-1302. Definition of "personal interest." (1) For purposes of § 20-1303 and 20-1304, "personal interest" means:

(a) Any financial, ownership, or employment interest in the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests; or

(b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or

(c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s), step-parent(s), grandparent(s), sibling(s), child(ren), or 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. #2006-49, March 2007)

20-1303. 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. #2006-49, March 2007)

20-1304. 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 city clerk. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself or herself from the exercise of discretion in the matter. (as added by Ord. #2006-49, March 2007)

20-1305. Acceptance of gratuities, etc. An official or employee may not accept, directly or indirectly, any money, gift, gratuity, brother 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 or she 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 or her action, or reward him or her for past action, in executing municipal business. (as added by Ord. #2006-49, March 2007)

20-1306. Use of information. (1) An official or employee may not disclose any information obtained in his or her 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 or her official capacity or position of employment with the intent to result in financial gain for himself or herself or any other person or entity. (as added by Ord. #2006-49, March 2007)

20-1307. 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 or herself.

(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. #2006-49, March 2007)

20-1308. 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 or her position to secure any privilege or exemption for himself or herself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. (as added by Ord. #2006-49, March 2007)

20-1309. 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. #2006-49, March 2007)

20-1310. 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 chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.

(2) (a) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his or her own initiative when he or she 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 that the governing body hire another attorney, individual, or entity to act as ethics officer when he or she has or will have a conflict of interests in a particular matter.

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

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

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel provisions rather than as a violation of this code of ethics. (as added by Ord. #2006-49, March 2007)

20-1311. Violation. 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. #2006-49, March 2007)

APPENDIX A

CABLE TELEVISION FRANCHISE ORDINANCE[1]

AN ORDINANCE GRANTING A FRANCHISE TO TELECABLE OF CLEVELAND, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE, MAINTAIN, AND CARRY ON THE BUSINESS OF TRANSMITTING TELEVISION, VIDEO, AND/OR AUDIO SIGNALS TO PERSONS, ASSOCIATIONS, PARTNERSHIPS, AND CORPORATIONS IN THE CITY OF CLEVELAND, TENNESSEE:

BE IT ORDAINED BY THE BOARD OF MAYOR AND COMMISSIONERS OF THE CITY OF CLEVELAND AS FOLLOWS:

Section1. Definitions.

For the purpose of this Franchise, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

a. "State" is the State of Tennessee.

b. "City" is the City of Cleveland, Tennessee.

c. "Company" is TeleCable of Cleveland, Inc., a Tennessee Corporation.

d. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

e. "Cable Communications System," "Cable Televison System" or "CATV System," shall mean a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronic or electrical signals, located in the City.

f. "Gross receipts" means all receipts received directly or indirectly by Grantee derived from the operation of the Cable System to

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[1]This ordinance was passed by the city council on January 19, 1990.

provide Cable Services (as defined in 47 U.S.C. 522(6)). Gross Receipts shall specifically include any receipts derived from the operation of the Cable System to provide Cable Services received by Grantee's affiliates, subsidiaries, parents, or any person or entity in which Grantee has financial interest, including any receipts which have the effect of avoiding the payment of compensation that would otherwise be payable as a percentage of Gross Receipts to the City for the Franchise granted herein. Gross Receipts shall include franchise fees collected from subscribers.

Gross receipts shall not include receipts received from the provision of Internet Service over the cable system until such time as the FCC rules that such service shall be designated a Cable Service and included in Gross Receipts for the purpose of calculating franchise fees. Further, Gross Receipts shall not include:

(1) Any taxes, fees or assessment collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC User Fee;

(2) Un-recovered bad debt; and

(3) Any PEG or li-Net amounts recovered from Subscribers.

On or before April 30th of each year of this agreement, Company shall provide City with a detailed summary of gross receipts, by item and type, subject to inclusion in the calculation of franchise fees received during the preceding year, certified by an officer of the Company. The Franchise Fee shall be payable in accordance with the ordinance.

g. "Effective Date" shall mean the day and year of final passage.

h. "Basic Cable Services" shall mean the lowest priced level of service offered by the Company that includes local broadcast stations. (as amended by Ord. of 1/13/03)

Section 2. Grant of Authority.

There is hereby granted by the City to the Company, which is within the power to the City to grant, the non-exclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, City easements and right-of-ways, easements or right-of-ways dedicated for use compatible with cable system operations, public ways and public places now laid out or dedicated, utility easements, maintenance easements, sewage and water easements, ingress and egress easements and all extensions thereof and additions thereto in the City, wires, poles, cables, underground conduits, conductors, and fixtures necessary for the maintenance and operation in the City of a Cable Communications System. The Company

shall have the right in the operation of the system to make attachments to City-owned property at such reasonable rates and upon such terms and conditions as shall from time to time be determined by the City. The rights herein granted shall extend to any area hereafter annexed to the City and Company shall be bound by the same rules and regulations as to such area as are otherwise herein or hereafter provided.

Section 3. Compliance with Laws, Regulations, Ordinances and Practices.

The Company shall, at all times during the life of this Franchise Agreement, be subject to the lawful exercise of the police power of the City and to such reasonable regulations no inconsistent herewith, as the City has or shall hereafter by resolution or ordinance provide. The construction, operation and maintenance of the system by the Company shall be in accord with good engineering practices and shall be in full compliance with the National Electrical Safety Code and applicable laws.

Section 4. Company Liability and Indemnification.

a. Company shall save City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand, including costs and attorneys fees, whatsoever, arising out of the negligence of the Company in the construction, operation and maintenance of its system. The Company agrees to maintain and keep in full force and effect at all times during the term of this Franchise Agreement sufficient property damage and personal injury and public liability insurance coverage to protect the City and the Company against any such claims, suits, judgments, executions or demands in a sum of not less than One Million and no/100 Dollars ($1,000,000.00) per person for any one claim, One Million and no/100 Dollars ($1,000,000.00) for any one accident or occurrence, and not less than One Million and no/100 Dollars ($1,000,000.00) for property damage as to any one accident or occurrence. The City shall be named as an additional insured in said policy.

b. Company shall carry Comprehensive Automobile Liability insurance to protect against bodily injury in the amount of One Million and no/100 Dollars ($1,000,000.00) for any one person and One Million and no/100 Dollars ($1,000,000.00) for any one occurrence and One Million and no/100 Dollars ($1,000,000.00) for property damage as to any one accident or occurrence.

c. The Company shall also maintain in full force and effect throughout the duration of this Franchise Agreement sufficient Worker's

Compensation Insurance Coverage to protect adequately and fully its agents and employees as required by law.

d. All Insurance policies and bonds as are required of the Company in this Franchise Agreement shall be written by a company or companies authorized and qualified to do business in the State of Tennessee. Certificates of all coverage required hereunder shall be promptly filed by the Company with the City in the office of the City Clerk and shall be filed within thirty (30) days of the effective date of this Franchise.

Section 5. Conditions of Street Occupancy and System Construction.

a. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the reasonable convenience of property owners who adjoin any of said streets, alley or other public ways or places.

b. In the case of any disturbance of pavement, sidewalks, driveways, or other surfacing, the Company shall, at its own expense and in a manner required by the City, properly replace and/or restore such places so disturbed.

c. In the event that at any time during the period of this Franchise Agreement the City shall lawfully elect to alter or change the location or grade of any street, alley, or other public way, the Company upon reasonable notice by the City shall remove, relay, and relocate its equipment at is own expense.

d. The Company shall not place any fixtures or equipment, and the location by the Company of its lines and equipment shall be in such a manner as to not interfere with the usual travel on said streets, alleys and public ways and the use of the same by gas, electric, telephone, water lines and other public utilities, fixtures and equipment.

e. The Company shall, on the request of the City, temporarily raise or lower its wires to permit the moving of buildings.

f. Nothing in the Franchise Agreement shall grant to the Company any right to City-owned property, nor shall the City be compelled to maintain any of its property any longer than, or in any

fashion other than , in the City's judgment, its own business or needs may require.

g. The City shall not be required to assume any responsibility for the securing of any rights of way or easements, nor shall the City be responsible for securing any permits or agreements with other persons or utilities.

h. Where underground service shall be required for electric power and telephone services, the City may require that underground service be provided by the Company.

Section 6. Franchise Consideration.

The Company shall pay to the City each year a franchise fee sum equal to five percent (5%) of the annual gross receipts up to Two Hundred Thousand Dollars ($200,000.00) per year and five percent (5%) of annual gross receipts in excess of Two Hundred Thousand Dollars ($200,000.00). Franchise fees shall be paid quarterly within 30 days following the end of the calendar quarter. (as amended by Ord. of 1/13/03)

Section 7. Service Standards.

a. The Company shall maintain and operate the system so that there will be no interference with television reception, radio reception, telephone communications ro other installations which are now or may hereafter be installed and in use by the City or any persons in the City, and in such a manner as to prevent radiation from its facilities in excess of the limits specified in applicable rules and regulations of the Federal Communications Commission.

b. The Company shall take all necessary steps so that the system shall maintain at all times:

(1) Use of all-band distribution plan equipment capable of passing the entire VHF television and FM radio spectrum.

(2) Equipment that passes standard color television signals without material degradation and with no appreciable effect on color fidelity and intelligence.

(3) A minimum level of one thousand (1,000) micro-volts at the input terminals of each TV receiver on one line.

(4) A system and all equipment designed and rated for 24-hour per day continuous operation.

(5) A signal-to-noise ratio of not less than forty decibels for broadcast signals received within the station's grade B contour.

(6) A television signal with a hum modulation less than five (5) percent.

(7) Components that have voltage standing wave ratio of 1.4 or less.

(8) An inter-modulation distortion not to exceed minus forty-six decibels.

(9) A plot of gain versus frequency across any six megacycle channel of a flat plus or minus two decibels.

Section 8. Rights of Individuals.

The Company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage. This shall not prohibit the Company from offering promotional discounts and specials from time to time or offering bulk billing discounts to commercial accounts.

Section 9. Local Office.

During the term of this Franchise and any renewal thereof, the Company shall maintain a local (available by phone without long distance charges) business office for the purpose of handling customer inquiries regarding the ordering of service, equipment malfunctions, billing questions and similar matters.

Section 10. Company Rules.

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business and shall be reasonable necessary to enable the Company to exercise its rights and to perform its obligations under this Franchise Agreement and to assure an uninterrupted service to each and all its customers; provided, however that such

rules, regulations, terms and conditions shall not be in conflict with the provisions hereof.

Section 11. Service to City.

The Company, at its own expense, shall provide and maintain one connection to existing City office buildings, police stations, fire stations, libraries, public schools, and any other public facilities as designated by the City; provided, that the Company shall not be responsible for providing the distribution system within any of such places. Further, no monthly customer service fees shall be charged for one connection of basic service to such places. Such connection shall be provided where service can be provided from the Company's existing distribution plant.

Section 12. Construction Plans.

All new plant extensions and cable plant rebuild shall be constructed for a fifty-four (54) channel capacity.

Section 13. New Developments.

It shall be the policy of the City to reasonably amend this Franchise Agreement upon application of the Company when necessary to enable the Company to take advantage of any developments in the field of transmission of television, radio signals and cable television, and to take advantage of any changes in the Federal Laws or Regulations relating to cable television.

Section 14. Service Area.

The Company shall serve any area within the City where the housing density is twenty-five (25) housing units or more per mile of contiguous cable plant. The Company may enter into cost sharing arrangements to extend cable service to those areas that do not meet the density standard. Areas annexed to the City which meet the density standard shall be served within one (1) year from the date of annexation unless it is not technically feasible.

Section 15. Separability.

In the event any section or part of this Franchise Agreement shall be held invalid, such invalidity shall not affect the remaining sections or portions of this Franchise Agreement. If the terms of this Franchise Agreement should conflict with any laws or regulations now in effect or hereafter adopted by the Federal Communications Commission (or any other governmental agency now existing or to be formed issuing rules and regulations affecting telecommunications), the

State or the United States government, compliance by the Company with such rules shall not cause a forfeiture of this Franchise Agreement.

Section 16. Term.

This Franchise Agreement shall supersede all previous agreements or grants of authority by ordinance, and shall have a term commencing as of the effective date of this Franchise Agreement and ending twenty (20) years from August 19, 1993.

Section 17. Rates.

(1) If during the term of this franchise the Cable Communications Policy Act of 1984 should be amended to permit municipal regulation of basic cable service rates, the City shall have the option, upon proper notice to the Company and an opportunity for the Company to comment, to regulate basic cable service rates.

(2) Between January 1 and February 28 of each year the City Council may determine whether it will assume basic cable service rate regulation authority. If the City Council takes no action to assume rate regulation authority, then basic cable service rates may be changed by the Company by filing with the City a schedule of new basic cable service rates and by notifying its subscribers prior to the rate change.

(3) If the City assumes rate regulation of basic cable service rates then for the remainder of that calendar year basic cable service rates may be changed subject to the following provisions:

(a) Upon a written request by the Company to increase basic cable service rates, the City shall have 60 days within which to render a decision approving, or disapproving the rate change. If such decision is not rendered by a majority vote of the City Council within 60 days of the initial request, such request will be deemed approved.

(b) Further, it will not be necessary for the Company to seek approval of the City to the extent that the basic cable service rate is not increased more than one time in any 12-month period the greater of five percent (5%) or the cumulative increase (calculated from the date of the last basic rate increase) in the Consumer Price Index for All Urban Consumers--the Unites States Average (CPI) published by the Bureau of Labor Statistics of the United States Department of Labor.

(c) Notice of any rate increase made pursuant to paragraph (b) of this section shall be filed with the City Clerk thirty or more days prior to implementation of the rate increase together with all supporting data to justify such an increase.

Section 18. Binding Effect.

This Franchise Agreement is binding on and inures to the benefit of the parties hereto, their successors and assigns, forever.

Section 19. Effective Date.

This Ordinance shall be in force and take effect as provided by law.

APPENDIX B

ORDINANCE NO. 2004-05

GAS FRANCHISE[1]

AN ORDINANCE GRANTING UNTO CHATTANOOGA GAS COMPANY, A SUBSIDIARY OF AGL RESOURCES, INC., A FRANCHISE FOR THE PURPOSE OF OPERATING A SYSTEM OF GAS DISTRIBUTION AND SERVICE WITHIN THE CITY OF CLEVELAND SO AS TO FURNISH GAS SERVICE WITHIN THE CITY TO ITS INHABITANTS FOR DOMESTIC, COMMERCIAL, INDUSTRIAL AND MUNICIPAL GENERAL USE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEVELAND, TENNESSEE:

Section 1. This Ordinance shall be know as the "Chattanooga Gas Company Franchise Ordinance."

Section 2. For purposes of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

a. City - City of Cleveland, Tennessee.
b. City Manager - The City Manager of the City of Cleveland, Tennessee.
c. Company - Chattanooga Gas Company, a subsidiary of AGL Resources, Inc., a Georgia corporation, the Grantee of rights under this franchise and its lawful successors or assigns.
d. Construction - The installation, re-installation, laying, erection, digging, renewal, repair, replacement, extension and removal of the gas system, or any activity that may be necessary to maintain and operate a gas system.
e. Council - The City Council of the City of Cleveland, Tennessee.
f. Gas System - Any pipe, pipeline, tube, main, duct, conduit, service, fitting, feeder, trap, vent, vault, manhole, meter, gauge, regulator, valve, appliance, attachment, appurtenance, and any other

[1]This ordinance was accepted by Chattanooga Gas Company on April 2, 2004.

personal property constructed, maintained, or operated by Chattanooga Gas Company as may be necessary to import, transport, distribute and sell gas.

g. Streets - The public streets, highways, avenues, roads, courts, alleys, lanes, ways, bridges, utility easements, sidewalks, parkways, public rights-of-way, or other public places or grounds in the City as they now exist or they may be established at any time during the term of this franchise in the City.

Section 3. That there is hereby granted to the Company a franchise to construct, reconstruct, maintain and operate gas system in, upon, along, and under the streets within the City and to carry on, operate, enlarge and continue the same in said City as the same is now or may hereafter exist, for the purposes of furnishing gas service.

The Company shall also have the right and privilege within the City to manufacture, sell and distribute natural gas and all other products and services, including appliances, which are related thereto. Neither the enactment of this Ordinance nor anything contained herein shall constitute any repeal or modification, expressed or implied, of any other ordinance of the City now in effect, whether codified or not, and the City expressly reserves the right to enact any and all such ordinances respecting the Company and its business as may be authorized by law, provided that any such ordinances shall not abridge the rights and privileges granted to the Company hereunder.

Section 4. That this franchise shall inure to the benefit of the Company, its successors and assigns, and shall exist and remain in effect for a period of twenty (20) years from and after passage of this Ordinance on final reading.

Section 5. That the Company shall not at any time charge in excess of such lawful rates as from time to time may be fixed by the Tennessee Regulatory Authority, or such other duly constituted body as may have power and authority in such matter. That the Company shall comply with all lawful orders of the Tennessee Regulatory Authority, or any other duly constituted body as may have power and authority in such matters respecting rates, the quality of gas, pressure, health measures and other conditions of service.

Section 6. That the Company in constructing or continuing a gas system along, across, under or through any City street, shall comply with all Ordinances of the City and shall take care not to obstruct or injure unnecessarily any such streets, and shall with reasonable diligence restore such streets to as good state of repair and condition as the same were before disturbed by said Company. The Company shall in all respects fully indemnify and save harmless the City from and against all damages, costs, attorneys fees, or other expenses which the City

may incur by reason of such construction. The obligation of indemnity set forth in this section shall also extend to any construction in any street or right-of-way of the City by any property owner pursuant to any contract between said property owner and the Company authorizing the property owner to construct a service line or other gas line from any main of the Company to such property owner's property.

Section 7. That the Company, its successors, or assigns, by the exercise of this franchise, agrees to hold harmless the City on account of any loss, expense, damage, cost, attorneys fees, litigation expenses, or liabilities that may result from Company's operation of its gas system unless such loss, expense, damage, cost, attorneys fees, litigation expenses or liabilities are attributable in whole or part to the negligence of the City, its agents, servants or employees. This right of indemnification shall include all expenses reasonably incurred by the City in defending any claim arising from the Company's operation of its gas system, whether or not the claim has merit.

The company hereby agrees, upon official request of the City, to furnish the City evidence of insurance in such an amount as may be reasonably necessary to protect the City.

Section 8. That the Company shall maintain all service lines to its customers up to and including the meters and shall, when necessary, repair, renew or replace service lines which are the property of the Company.

The Company shall provide service personnel and equipment based in Cleveland and/or Bradley County, Tennessee to respond to customer service calls from locations within the City, and shall provide the local public service agencies, including the City police department, the City fire department, and the 911 Center with the Company's toll-free emergency telephone number and a listing of direct local telephone and pager numbers of local Company agents to contact in the event of an emergency. Company shall have trained personnel available 24 hours a day, 365 days per year, who will promptly respond to emergency calls.

The Company shall make every reasonable effort to furnish an ample and uninterrupted supply of gas to all customers throughout its entire gas system within the City and on any enlargements and extensions thereof within the City. At the time each and every annexation ordinance of the City becomes operative the City shall provide the Company with a copy of its ordinance and its accompanying map precisely describing the annexed territory. The Company shall not unreasonably or arbitrarily refuse to make and extension for the purpose of giving gas service to the City, its inhabitants, institutions and businesses.

Section 9. City and the undersigned warrant and represent that, with the exception of the franchise granted to Company by a previously passed ordinance, which franchise was accepted by Company and City, there is no franchise granted by the City in force or effect, to any other person, firm or corporation, for the distribution and selling of gas, and that, during the term of this Agreement, the City will not enter into any other agreements or grant any other franchise for the distribution and selling of gas. The City reserves the right to grant a similar use of said streets to any person or corporation at any time during the period of this franchise so long as such right is not for the business of conveying and selling gas to others as a public utility. Nothing contained within this Ordinance will prevent the City from exercising its legal rights of eminent domain or from operating its own gas system within the City of Cleveland.

Section 10. That in consideration of the grant of this franchise, the Company shall pay as a franchise fee a sum equivalent to 5% of the gross receipts received from sales of any type of gas to the Company's customers within the environs of the City of Cleveland, which sum shall, in accordance with prevailing state law and the Company's rate tariffs be approved by the Tennessee Regulatory Authority, be directly added to the gas bills of, and collected from, those customers of the Company located within the City of Cleveland. Said fee shall be in addition to any sums due to the City from the Company as an ad valorem tax.

The amount of the franchise fee billed by the Company each quarter shall be paid to the City on or before the 15th day of the month following the end of each quarter. If the Company shall fail to pay the amount due, then the City reserves the right to revoke this franchise if said amount that is due and payable is not paid within a period of sixty (60) days after written notice of such delinquency to the Company.

The City shall have access at all reasonable times to the books of the Company for the purpose of ascertaining and/or auditing the amount of fees due the City. The Company shall furnish the City with an annual report showing the amount of gross revenues from its sale of gas within the City. The franchise fee imposed herein shall be effective from and after the adoption of this Ordinance and acceptance by the Company.

Other than as set forth herein, the Company shall not be required to pay any other fee or compensation of any kind in respect of the subject matter of this Ordinance. Provided, however, that the Company shall be required to pay any pavement permit fees in connection with cutting the City streets.

Section 11. If the Company desires to sell the assets of its gas system located within the City of Cleveland as a stand-alone transaction and not as a sale of its larger gas system, then the Company must offer the City the opportunity to buy those assets located and situated in the City of Cleveland on the same terms as being offered to some other party. The City will have forty-five (45) days to accept the offer and an additional ninety (90) days to close said transaction in the event the City elects to exercise the option to purchase.

In the event the City chooses not to exercise the option to purchase, the City shall continue to have the right to approve any sale, assignment, or transfer that Company may desire and this franchise cannot be sold, assigned, or transferred without the express written consent of the City Council, provided, however, that such consent shall not be reasonably withheld.

In any negotiations between the City and the Company for the purchase of the Company's property by the City, no value shall be placed upon this franchise in arriving at the purchase price to be paid by the City.

Section 12. Any flagrant or continuing violation of the provisions of this Franchise Ordinance by the Company or its successors shall be cause for forfeiture of this franchise agreement, provided that the City shall have given the Company written notification of such violation and allow the Company a reasonable and appropriate time as determined by the City Manager to correct the cited violations.

Section 13. In the event it becomes necessary or expedient for the City to change the course or grade of any highway, street, avenue, road, alley, way, parkway or other public ground in which the Company is maintaining its gas system, then, upon the written request of the City, the Company will remove or change the location or depth of such gas system to conform to the proposed street alteration. It is agreed that Company will, at its own expense, within sixty (60) days after written notice from the City Manager, Company's receipt of final plan approval, and notice to proceed, begin the work of completing any and all things necessary to effect such change in position or location in conformity with such written instruction. Provided, however, that if such request is to accommodate any development by and person or entity other than the City or another governmental body, then the person or entity responsible for such development shall reimburse Company its expenses for such removal or change.

Section 14. After adoption of this Ordinance, should any section, subsection, sentence, provision, clause or phrase of this Ordinance be declared invalid by a court of competent jurisdiction or appropriate regulatory authority, such declaration shall not affect the validity of this Ordinance as a whole or any part

thereof other than the part so declared to be invalid or unconstitutional, it being the intent in adopting this Ordinance that no portion thereof or provision or regulation contained therein shall become inoperative or fail by reason of the unconstitutionality or invalidity of any other portion or provision or regulation.

Section 15. That this Ordinance shall not be operative, as distinguished from its effectiveness, until is has been accepted by the Company. The Company shall have thirty (30) days from the date of the final passage of this Ordinance to file with the City Clerk its unconditional acceptance of the terms and conditions of this Ordinance. The Company shall also furnish the City with a copy of the written approval of the Tennessee Regulatory Authority which shall be filed with this Franchise Ordinance.

Section 16. All rights herein granted and/or authorized shall be subject to and governed by this Ordinance, provided, however, the City Council expressly reserves unto itself all its police power to adopt general ordinances and to take other action necessary to protect and promote the safety and welfare of the general public in relation to the rights now reserved to or in the City of Cleveland under its Charter and to all such rights as are now provided by general law.

Section 17. All ordinances, and parts of ordinances in conflict with this ordinance are hereby repealed.

Section 18. This ordinance shall take effect from and after its passage on final reading, the public welfare requiring it.

APPROVED AS TO FORM:

s/L. Harlen Painter
L. Harlen Painter, City Attorney

s/Tom Rowland
Tom Rowland, Mayor

s/Janice S. Casteel
Janice Casteel, City Clerk

ACCEPTANCE

The within Franchise and its terms and conditions are hereby accepted by Chattanooga Gas Company, a subsidiary of AGL Resources, Inc., on this 2nd day of April, 2004.

CHATTANOOGA GAS COMPANY, A SUBSIDIARY OF AGL RESOURCES, INC.

_____

Title:

Attested:

_____

Change 14, October 10, 2011

APPENDIX C

ZONING ORDINANCE

Cleveland, Tennessee

ZONING AND LAND USE CONTROL

Recommendations

of the

Land Use Select Implementation Committee

and the

Cleveland Municipal Planning Commission

to the

Cleveland City Council

May 1996

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1.0 GENERAL PROVISIONS.

1.1 PURPOSES AND INTENT.

The zoning regulations and districts herein set forth have been made in accordance with a comprehensive plan and to provide for the public health, safety, convenience and general welfare by:

A. Encouraging the most appropriate use of land;

B. Preventing the overcrowding of land;

C. Conserving the value of land and buildings;

D. Minimizing traffic hazards and congestion;

E. Preventing undue concentration of population;

F. Providing for adequate light, air, privacy, and sanitation;

G. Reducing hazards from fire, flood, and other dangers;

H. Assisting in the economic provision, utilization and expansion of all services provided by the public, including but not limited to roads, water, sewer, recreation, schools and emergency services, including fire protection;

I. Enhancing the natural and man-made amenities of the City of Cleveland, Tennessee.

1.2 Applicability and Compliance.

No building shall hereafter be used and no building or part thereof shall be erected, moved, or altered unless for a use expressly permitted by and in conformity with the regulations herein specified for the district in which it is located, except as hereafter provided. No land or lot area shall be reduced or diminished that the yard or open spaces shall be smaller than prescribed herein, nor shall the lot area per family be reduced in any manner except in conformity with the regulations hereby established for the district in which such building is located. No yard or open space provided about any building for the purpose of complying with these regulations shall be considered as providing a yard or other open space for any other building.

1.3 Authorization/legal basis.

This ordinance is established, pursuant to the authority granted by Tennessee Code Annotated, §§ 13-7-201 through 13-7-210, to provide for the establishment of districts within the corporate limits of Cleveland, Tennessee; to regulate within such districts the location, height, bulk, number or stories and size of buildings and structures, the percentage of lot occupancy, the required open spaces, the density of population and the uses of land, buildings, and structures; to provide methods of administration of this ordinance and to prescribe penalties for the violation thereof.

1.4 Interpretations.

In Interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of the public health, safety, morals and general welfare of the community. It is not intended by this ordinance to interfere with, abrogate or annul any easement, covenant or other agreement between parties. However, where this ordinance imposes a greater restriction upon the use of buildings or premises, or upon the height of buildings, or requires larger open spaces, than are imposed or required by other ordinances, rules, regulations, easements, covenants or agreements, the provisions of this ordinance shall control. If, because of error or omission in the zoning map, any property in the city is not shown as being in a zoning district, the classification of such property shall be R-1 Single-Family, unless changed by an amendment to this article.

1.4.1. Boundaries.

Interpretations regarding boundaries of land use districts shall be made in accordance with the following:

A. Boundaries shown as following or approximately following any street shall be construed as following the centerline of the street.

B. Boundaries shown as following or approximately following any platted lot line or other property line shall be construed as following such line.

C. Boundaries shown as following or approximately following section lines, half-section lines, or quarter-section lines shall be construed as following such lines.

D. Boundaries shown as following or approximately following natural features shall be construed as following such features.

E. When the application of the aforementioned rules leaves a reasonable doubt as to the boundaries between two districts, the regulations of the more restrictive district shall govern the entire parcel in question, unless otherwise determined by the board of zoning appeals.

1.4.2 Code Provisions.

In the event that any question arises concerning the application of this ordinance, the planning director shall be responsible for interpretation. Responsibility for interpretation shall be limited to standards, regulations, and requirements of this ordinance, but shall not be construed to include interpretation of any technical codes adopted by reference in this ordinance, nor shall it be construed as overriding the responsibilities given to any commission, board, or official designated in other sections or article of this ordinance.

1.4.3 Conflicts.

Whenever this ordinance, or development plans approved in conformance with this ordinance, are in conflict with other local ordinances, regulations, or laws, the more restrictive ordinance, regulations, or law shall govern and shall be enforced by appropriate local agencies. When plans, approved by the planning commission, contain setback or other features in excess of the minimum zoning ordinance requirements, such features as shown on the approved plan shall govern.

1.4.4 Separability.

Should any section or provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

1.5 Lots of Record.

A Lot of record is defined as any lot or parcel of land in any district which was lawfully formed and confirmed to the lot area and lot width requirements at the time of formation, not adjoining undeveloped land under the same ownership. The deed to the lot must have been recorded at the time of the adoption of this ordinance. A lot of record in an annexed area is a platted lot on the effective date of the annexation. For a lot of record in an area annexed by the City of Cleveland, prevailing deed restrictions shall apply on minor streets only.

A lot of record may be used as a building site even though such lot or parcel fails to meet the minimum requirements for lot area, lot width or both, providing the

development of such lots shall adhere to the requirements of the district in which they are located as closely as possible. Where two or more lots of record with a continuous frontage are under the same ownership, or where a substandard lot of record has continuous frontage with a larger tract under the same ownership, such lots shall be combined to form one or more buildings sites meeting the minimum requirements of the district in which they are located.

1.6 Definitions.

To carry out the provisions of this ordinance, certain words, terms and phrases are to be used and interpreted as defined hereinafter:

A. Words used in the present tense shall include the future tense.

B. Words in the singular shall include the plural, unless the context clearly indicates otherwise.

C. The word "person" includes a firm, partnership or corporation as well as an individual.

D. The term "shall" is always mandatory and not discretionary; the word "may" is permissive.

E. The word "used" or "occupied" as applied to land or a building shall be construed to include the words "intended," "arranged," "designed to be used or occupied."

F. Words and terms not defined herein shall be interpreted in accordance with their normal dictionary meaning and customary usage.

G. Words implying the masculine gender shall also include the feminine and neuter.

1.6.0 Terms.

1.6.1 Alley. A Service way providing a secondary means of public access to abutting property and not intended for general traffic circulation.

1.6.1.A "Bed and Breakfast" shall mean a "bed and breakfast" establishment or "bed and breakfast homestay" as defined in the Bed and Breakfast Establishment Inspection Act of 1990[1], and regulated by the

[1]State law reference

(continued...)

Tennessee Department of Health as provided in the aforementioned statute. The terms "boarding home," "guest home," and "tourist home" as used within the zoning ordinance shall have the same meaning as "bed and breakfast." (as added by Ord. #9, Nov. 2000)

1.6.2 Billboard. See Sign, Billboard.

1.6.3 Buffer/buffer strip. A strip of land, usually in permanent vegetation, used to visibly separate one use from another or to shield or block noise, light, or any other nuisance.

1.6.4 Building. Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.

1.6.5 Structure, Accessory. A Subordinate structure on the same lot as the principal or main building or use occupied or devoted to a use incidental to the principal use.

1.6.6 Building Height. The vertical distance of a building measured from the average elevation of the finished grade to the highest point of the roof.

1.6.7 Building Line. A line parallel to the street line at a distance therefrom equal to the depth of the front yard required for the zoning district in which the lot is located.

1.6.8 Building Permit. Written permission issued by the proper municipal authority for the construction, repair, alteration or addition to a structure.

1.6.9 Building, Principal. A building in which is conducted the principal use of the lot on which it is located.

1.6.9.A "Car wash" shall mean a building, site, or portion thereof used for washing and cleaning of passenger vehicles, recreational vehicles, and other light duty equipment on a commercial basis. This definition is not intended to include vehicle washing that is incidental to the primary business activity on the site, such as a car dealer's cleaning of vehicles offered for sale. (as added by Ord. #23, Sept. 2002)

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[1](...continued)
Tennessee Code Annotated, title 68, chapter 14, part 5.

1.6.9.B[1] Church means a building maintained or controlled by a religious body primarily for public worship. It includes ancillary uses necessary or closely associated with the primary activity such as religious education classrooms, offices, libraries, nurseries, kitchens, assembly halls, recreational facilities, and similar facilities designed for use by the church's members or attendees. The term church includes similar uses or facilities regardless of religious affiliation, e.g. temple, synagogue, mosque, etc. The term does not include daycare, pre-school, primary school, secondary school, or other uses unless specified by the zoning district description. (as added by Ord. #14, March 2001)

1.6.10 City Engineer. The Cleveland City Engineer or his duly authorized representative.

1.6.11 Conditional Use. A use permitted in a particular zoning district only upon the developer or other applicant showing the board of zoning appeals that such use in a specified location will comply with all the conditions and standards for the location or operation of such use as specified in a zoning ordinance and such use is authorized by the board of zoning appeals. (as amended by Ord. #2005-20, June 2005)

1.6.12 Corner Lot. See Lot, Corner.

1.6.13 The number of families, individuals, dwelling units, or housing structures per unit of land.

1.6.14 Duplex. A structure on a single lot containing two dwelling units.

1.6.15 Dwelling. A structure or portion thereof which is used exclusively for human habitation.

1.6.16 Dwelling, attached. A one-family dwelling attached to one or more one-family dwellings by common vertical walls.

1.6.17 Dwelling, detached. A dwelling which is not attached to any other dwelling by any means.

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[1]The codifier renumbered 1.6.9.B (added by Ord. #14, March 2001 as 1.6.9.A) to maintain alphabetization as terms are added.

1.6.18 Dwelling, manufactured house. A single detached dwelling as defined under the Tennessee Modular Building Act, Tennessee Code Annotated, §§ 68-126-301 et seq., as amended.

1.6.19 Dwelling, multi-family. A building containing more than two dwelling units.

1.6.20 Dwelling, single-family. A building containing one dwelling unit.

1.6.21 Dwelling, townhouse. A one-family dwelling in a row of at least three (3) such units, or two (2) units for an infill lot, in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire rated walls, and each unit is located on a fee simple, platted lot.

1.6.22 Dwelling, two-family. See Duplex.

1.6.23 Dwelling unit. One or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of the household.

1.6.24 Flood/flooding. All flood-related terms are as defined in the Cleveland Flood Damage Prevention Reduction Ordinance.

1.6.24A Green space. Land with ground cover consisting of primarily of living vegetative matter such as grass, trees, bushes, shrubs or other living vegetation. Any manmade products within green space, surface or subsurface, shall be ancillary to the vegetation and not substantially interfere with the capacity of the green space to absorb and treat stormwater and to provide other environmental benefits. (as added by Ord. #2009-49, June 2009

1.6.25 Home occupation. Any activity carried out for gain by a resident conducted as an accessory use in the resident's dwelling unit.

1.6.26 Impervious surface. Any material which substantially reduces and/or prevents absorption of stormwater into the ground.

1.6.27 "Junkyard" shall mean any area, lot, land, parcel, building, structure or part thereof used for the storage, collection, processing, purchase, sale, or abandonment of wastepaper, rags, scrap metal or other scrap or discarded goods, materials, machinery, or inoperable vehicles as

defined in title 13 chapter 2 of the Cleveland Municipal Code, subject to certain exceptions enumerated herein. "Junkyard" shall not include a "recycling center" as defined in Tennessee Code Annotated, title 54, chapter 20, part 1, section 103. "Junkyard" shall not include solid waste disposal facilities registered under Tennessee Code Annotated, title 68, chapter 211, part 1, section 106; except however, "junkyard" shall include the dumping, or filling of land with, dead trees or other vegetative debris, construction or demolition debris, or other waste material without required permits or otherwise in violation of city ordinances. "Junkyard" shall not include materials stored and used as part of a manufacturing process conducted on the same site in a lawful place and manner. Inoperable vehicles as defined in title 13 chapter 2 of the Cleveland Municipal Code shall not, apart from the existence of other junkyard conditions, constitute a junkyard if the inoperable vehicles are stored in compliance with the exceptions described in § 13-204 of the aforementioned title 13. (as amended by Ord. #19, March 2002)

1.6.28 Loading space. An off-street space or berth used for the loading or unloading of commercial vehicles.

1.6.29 Lot. A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed or built upon as a unit.

1.6.30 Lot area. The total area within the lot lines of a lot, excluding any street rights-of-way. (See Figure 1)

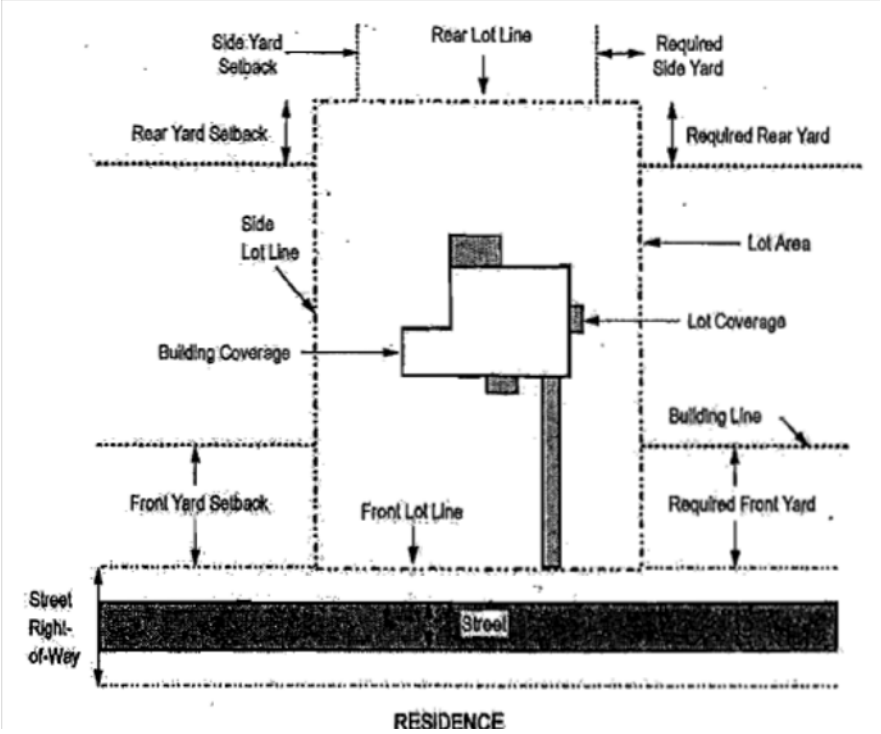
1.6.31 Lot, corner. A lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees. Also corner lot. (See Figure 2)

1.6.32 Lot coverage. That portion of the lot that is covered by buildings and structures, or other impervious surfaces. (See Figure 1)

1.6.33 Lot depth. The distance measured from the front lot line to the rear lot line. (See Figure 2)

FIGURE 1

Setbacks, Lot Lines and Coverage



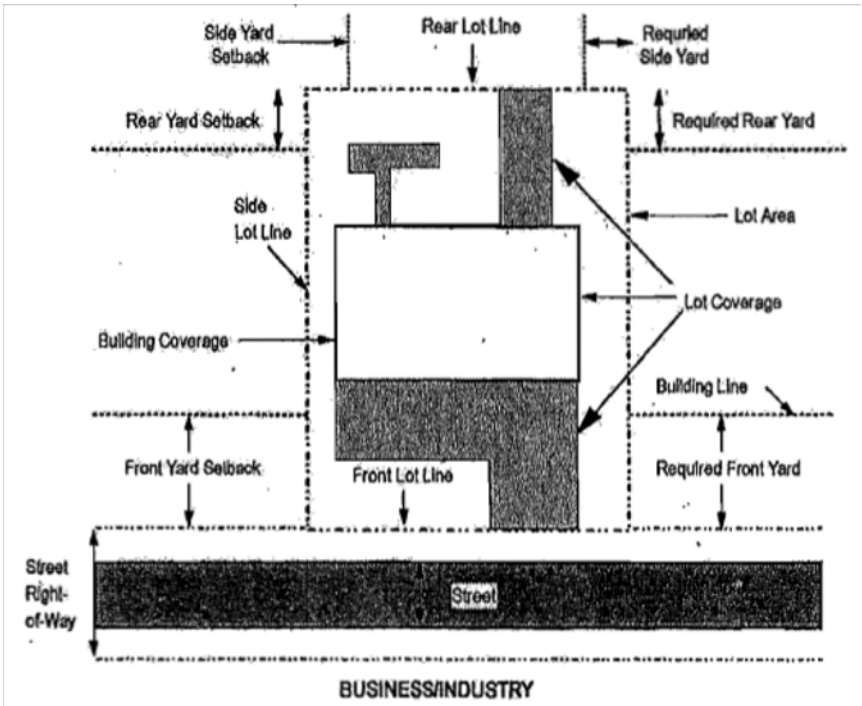
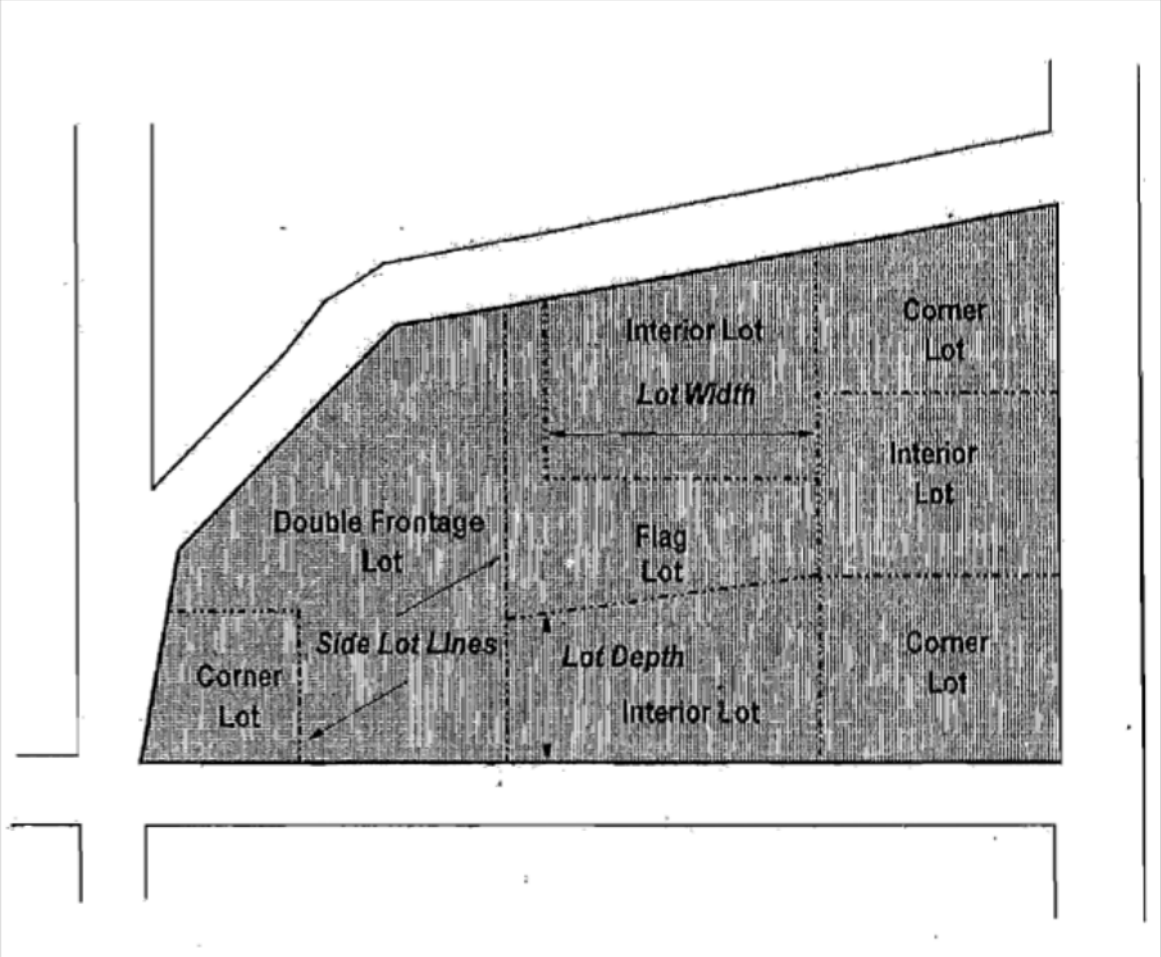


FIGURE 2

Types of Lots



1.6.34 Lot, double frontage. A lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot. (See Figure 2)

1.6.35 Lot, flag. A lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way owned in fee simple. (See Figure 2)

1.6.36 Lot, frontage. The length of the front lot line measured at the street right-of-way line. (See Figure 1)

1.6.37 Lot line, front. The lot line separating a lot from a street right-of-way. (See Figure 1)

1.6.38 Lot line, rear. The lot line opposite and more distant from the front lot line; or in the case of a triangular or otherwise irregularly shaped lots, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line. (See Figure 1)

1.6.39 Lot line, side. Any lot line other than a front or rear lot line. (See Figure 1)

1.6.40 Lot, minimum area of. The smallest lot area established by the zoning ordinance on which a use or structure may be located in a particular district.

1.6.41 Lot width. The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line. (See Figure 2)

1.6.41.A "Mini-warehouse" a building(s) divided into separate storage units or bays that are individually leased to persons or organizations for the small-scale storage of personal property, excluding hazardous materials stored in an unsafe manner, such as the household goods of a family. The individual storage units may be climate controlled. Warehouse facilities designed to accommodate large-scale shipping and receiving of goods and materials are not included in this definition. (as added by Ord. #13, March 2001)

1.6.42 Net area of lot (net acreage). The area of the lot excluding those features or areas which the ordinance excludes from the calculation.

1.6.43 Nonconforming lot. A lot, the area, dimensions or location of which was lawful prior to the adoption, revision or amendment of the zoning ordinance, but which fails by reason of such adoption, revision or amendment to conform to the present requirements of the zoning district.

1.6.44 Nonconforming structure or building. A structure or building the size, dimensions or location of which was lawful prior to the adoption, revision or amendment of the zoning ordinance, but which fails by reason of such adoption, revision or amendment to conform to the present requirements of the zoning district.

1.6.45 Nonconforming use. A use or activity which was lawful prior to the adoption, revision or amendment of the zoning ordinance, but which fails by reason of such adoption, revision or amendment to conform to the present requirements of the zoning district.

1.6.45.A "Oil change facilities" shall mean a building, site, or portion thereof used for the checking, changing, and adding of motor oil and other vehicle fluids. Other minor vehicle maintenance services may also be provided including lubrication, tire rotation, tire inflation, and installation of wiper blades and air filters. This definition is not intended to include businesses providing other more extensive vehicle repairs and maintenance. (as added by Ord. #23, Sept. 2002)

1.6.46 Owner Is a person who is the owner of property or agent in charge or control of the property.

1.6.47 Permitted use. Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

1.6.48 Person is any individual, partnership, firm, association, joint venture, public or private corporation, commission, board, public or private institution, or any other legal entity.

1.6.48A Porous paving material. Any commonly recognized surface treatment, which allows storm water to pass through, including modular grid pavements, permeable interlocking concrete pavement, porous concrete and asphalt, pavers, or cobbles. This definition is intended to encompass such "green infrastructure" surface treatments as may be allowed or required by the Tennessee Department of Environment and Conservation for purposes of stormwater treatment. (as added by Ord. #2009-49, June 2009)

1.6.48.B Portable Storage Unit. A portable storage unit shall mean a fully enclosed box-like storage container that is constructed primarily of metal, that is without wheels or axles, that is transported to a location by truck and set in placed by a hydraulic lift or similar device, and that is used for temporary storage. (as added by Ord. #2008-02, June 2008, and amended by Ord. #2008-50, Aug. 2008)

1.6.49 Principal use. The primary or predominant use of any lot.

1.6.50 Quadruplex. A structure on a single lot containing four dwelling units.

1.6.51 Reserve strip. A strip of land located adjacent to a roadway right-of-way that a developer retains title to in order to prevent neighboring owners from obtaining access to the roadway.

1.6.52 Right-of-way. (1) A strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer and other similar uses; (2) generally, the right of one to pass over the property of another.

1.6.53 Setback. The Distance between the street right-of-way line and the front line of a building or any projection thereof, excluding uncovered steps.

1.6.54 Setback Line. That line that is the required minimum distance from the street right-of-way or any other lot line that established the area within which the principal structure must be erected or placed.

1.6.54.A.

(1) Hardcore Sex Media shall mean media that is characterized or distinguished by specified sexual activities as described herein.

(2) Mini-sex Media Exhibition Outlet shall mean a sex media exhibition outlet wherein customers, members or patrons view sex media in booths, stalls, rooms, or other viewing areas that have a seating capacity of less than fifty (50) people.

(3) Sex Accessories shall mean instruments, devices, or paraphernalia designed as representatives of human genital organs or female breasts, or designed and marketed primarily for use in stimulating human genital organs; or lingerie, leather goods, and/or other items marketed or presented in a context to suggest their use in sadomasochistic practices characterized by flagellation, torture, and/or physical restraint.

(4) Sex Accessories Outlet shall mean an establishment displaying and/or offering for sale sex accessories.

(5) Sex Entertainment Outlet shall mean an establishment offering live performances of nude dancing or other live displays of specified anatomical areas, whether viewed in person or through electronic transmission, and any establishment that would be an "adult cabaret" as defined Tennessee Code Annotated, § 7-51-102.

(6) Sex Outlet shall mean any "sex media outlet," "sex media exhibition outlet," "sex entertainment outlet," "sex service outlet," or "sex accessories outlet" as defined herein.

(7) Sex Media shall mean any print or electronic media (including but not limited to books, magazines, photographs, films, videocassettes, compact discs, DVD, etc.) that is characterized or distinguished by an emphasis on matter depicting "specified sexual activities" or "specified anatomical areas."

(8) Sex Media Exhibition Outlet shall mean an establishment exhibiting media that is characterized or distinguished by an emphasis on specified sexual activities or specified anatomical areas where such exhibition is primarily for on-site enjoyment by customers, members, or patrons.

(9) Sex Media Outlet shall mean an establishment having as a substantial portion of its stock and trade (substantial portion meaning over 20% of floor area, or over 20% of inventory by units or value, or over 20% of revenues, or an inventory of 200 or more units of sex media, or any amount of hardcore sex media) in sex media, where the sex media is for use off-premises.

(10) Sex Service Outlet shall mean an establishment offering through its employees or otherwise for any consideration, on-premises or off-premises, to privately perform or participate in specified sexual activities, whether actual or simulated; to privately model or display specified anatomical areas; or to provide any sort of intense physical contact such as wrestling or tumbling between persons of the opposite sex, or between persons of the same sex if at least one of the persons is displaying his or her specified anatomical areas as described herein; or to provide massage (except by state licensed massage therapists in accordance with state licensing standards); or body painting; or lap dancing; or any "adult-oriented establishment" as defined in Tennessee Code Annotated, § 7-51-1102, where such establishment is not encompassed in Tennessee Code Annotated, § 7-51-1102, definitions of "adult bookstore," "adult cabaret," "adult-entertainment," "adult mini-motion picture theater," or "adult motion picture theater."

(11) Specified Anatomical Areas shall include less than completely and opaquely covered human genitals, pubic region, buttocks, female breasts below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state even if completely and opaquely covered.

(12) Specified Sexual Activities shall mean human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, contact between the mouth of one person and the genitals of another, sodomy, or bestiality; or penetration of body orifices or stimulation of a genital organ by a sex accessory as defined herein; or fondling or erotic touching of human genitals, pubic region, buttock, or female breasts. (as added by Ord. #2004-02, March 2004)

1.6.55 Sign. Any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to a object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.

1.6.56 Sign, billboard. A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

1.6.57 Sign, portable. A sign that is not permanent, affixed to a building, structure, or the ground.

1.6.58 Slope is the inclination of ground surface which is expressed as a ratio of horizontal to vertical distance, sometimes also expressed as a percent or degree.

1.6.59 Snack shop. A limited menu restaurant serving primarily pre-packaged items and items prepared off-site and being without restaurant cooking equipment (commercial range, ovens, fryers, etc.) and having seating for the lesser of 20 patrons or 1 seat per available customer parking space and with no drive-through window service. (as added by Ord. #2010-19, June 2010)

1.6.60 Story. That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it and including those basements used for principal use.

1.6.61 Story, Half. A space under a sloping roof which has the line of intersection of the roof and wall face not more than three feet (3') above the floor level, and in which space the possible floor area with head room of five feet (5') or less occupies at least 40 percent of the total floor area of the story directly beneath.

1.6.62 Street, collector. A street which collects traffic from local streets and connects with minor and major arterials.

1.6.63 Street, cul-de-sac. A street with a single common ingress and egress and with a turnaround at the end.

1.6.64 Street, dead end. A street with a single common ingress and egress.

1.6.65 Street, local. A street designed to provide vehicular access to abutting property and to discourage through traffic.

1.6.66 Street, major arterial. A street with access control, channelized intersections, restricted parking, and which collects and distributes traffic to and from minor arterials.

1.6.67 Street, minor arterial. A street with signals at important intersections and stop signs on the side streets, and which collects and distributes traffic to and from collector streets.

1.6.68 Structure. A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

1.6.69 Triplex. A structure on a single lot containing three (3) dwelling units.

1.6.70 Yard. An open space that lies between the principal or accessory building or buildings and the nearest lot line. Such yard is unoccupied and unobstructed from the ground upward except as may be specifically provided in the zoning ordinance.

1.6.71 Yard depth. The shortest distance between a lot line and a yard line.

1.6.72 Yard, front. A space extending the full width of the lot between any building and the front lot line, and measured perpendicular to the building at the closest point to the front lot line. Such front yard is unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in the ordinance.

1.6.73 Yard line. A line drawn parallel to a lot line at a distance therefrom equal to the depth of the required yard.

1.6.74 Yard, rear. A space extending across the full width of the lot between the principal building and the rear lot line, and measured perpendicular to the building to the closest point of the rear lot line. Such rear yard is unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in the ordinance.

1.6.75 Yard, required. The open space between a lot line and the buildable area within which no structure shall be located except as provided in the zoning ordinance.

1.6.76 Yard, side. A space extending from the front yard to the rear yard between the principal building and the side lot line measured perpendicular from the side lot line to the closest point of the principal building. Such side yard is unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in the ordinance.

1.7 CONDITIONAL USE REVIEW

1.7.1 General

Conditional uses must be listed as a conditional use in the zoning district and they require approval of the Board of Zoning Appeals. This section establishes a process for the review of conditional use requests. The applicant for a conditional use shall supply information adequate for a review and decision regarding the proposed conditional use. The information to be supplied by the applicant is to include a survey and site plan identifying existing and/or proposed property boundaries, adjacent roads and properties including the buildings and uses thereon, the proposed building footprint and site features, proposed indoor and outdoor uses on the property, proposed landscaping and buffering, proposed outdoor lighting, proposed parking and traffic circulation including site ingress and egress, proposed areas for shipping and receiving and waste disposal, proposed hours of operation including shipping and receiving, proposed special conditions for truck routing, and descriptions of any local, state and federal permits required for the proposed use and location. The Planning Director (Community Development Director) shall prepare a staff report addressing the considerations described below. The review of these considerations shall be used to identify any concerns with the particular conditional use proposal. Pursuant to any identified concerns, possible mitigating conditions or limitations in the approval of the conditional use shall be discussed. The Board of Zoning Appeals shall approve or deny the conditional use request based upon its findings in the review process described herein. The approval of a conditional use request shall include any conditions or limitations of the approval based upon the review. Operation and maintenance of a conditional use in violation of any conditions or limitations stipulated for its approval is unlawful and a violation of the zoning regulations.

1.7.2 Considerations

The considerations in reviewing a conditional use permit applications include the following: What is the size and configuration of the proposed site and how is it situated relative to surrounding properties? Does the size of the proposed site present any concerns in terms of its ability to accommodate parking, expansion of the proposed use, or needed buffering? What is the classification of the street(s) by which the site is accessed? Will the proposed use have traffic impacts on residential streets? Does the proposed use generate traffic, noise, light, glare, vibrations, odors, fumes, or hazards that are not in keeping with the character of the zone? Does the proposed use fit relatively well within the neighborhood or district in terms of scale, appearance, pedestrian circulation, etc.? Does the proposed use present any particular problems if the site and/or any structures thereon do not conform to the requirements of the zoning

ordinance in terms of size, setbacks, impervious area, etc.? Does the existing or proposed site design present a particular problem if the conditional use was approved (e.g. a driveway location with poor visibility)? Would the proposed conditional use impact historic resources or other environmental concerns to a significantly greater extent than if the site were developed with a principally permitted use? Will the proposed conditional use experience significant negative impacts from the surrounding uses in the zoning district? (as added by Ord. #15, April 2001, and replaced by Ord. #2005-20, June 2005)

2.0 ZONING DISTRICTS.

2.1 General Provisions.

No Building or land shall hereafter be used and no building or part thereof shall be erected, moved, or altered unless for a use expressly permitted in the district in which it is located, except as hereafter provided. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in area so that yards, lot area, lot width, building area, or other requirements of this ordinance are not maintained. This section shall not apply when a portion of a lot is acquired for a public purpose.

2.1.1 Districts Established.

To classify and regulate the uses of land and buildings, the height and bulk of buildings, the area and other open spaces about buildings, and the intensity of land use, the city is hereby divided into sixteen (16) zoning districts to be known as follows:

(1) RA esidential Agricultural District;

(2) R-1 Single-Family Residential Dwelling District;

(3) R-2 Low Density Single and Multi-family Dwelling District;

(4) R-3 High Density Single and Multi-family Dwelling District;

(5) R-4 Mobile Home Parks District;

(6) R-5 High Rise Residential District;

(7) CN Commercial/Neighborhood District;

(8) PI Professional and Institutional District;

(9) CG General Commercial District;

(10) CH Highway Commercial District;

(11) CBD Central Business District;

(12) MU Mixed Use District;

(13) IL Light Industry District;

(14) IH Heavy Industry District.

(15) UC University Campus District;

(16) B Buffer (as amended by Ord. #8, Aug. 2000, and Ord. #2003-22, Aug. 2003)

Table 1 Summarizes uses by district.

2.1.2 Uses Prohibited.

Uses which are not specified as allowed, or conditional, including uses substantially similar to named uses, are prohibited. The sale, distribution, and manufacture of fireworks is prohibited in all zoning districts. (as amended Ord. #2003-38, Dec. 2003)

2.1.3 Accessory Structures and Uses.

Subject to the regulations governing accessory structures in Section 3.8, customary and incidental accessory structures are allowed in any zoning district except CBD. Accessory structures are to be for uses that are incidental to and in support of an otherwise lawful principal use of the lot such as those examples given in Table 1. In no case shall an accessory structure be used for a use that is not lawful in the zoning district.

Table 1
USES AND ZONING DISTRICTS[1]

USES	RA	R-1	R-2	R-3	R-4	R-5	B	CN	PI	CG	CH	CBD	MU	IL	IH	UC
Accessory structures such as a tool shed, garden shed, workshop, detached garage or carport, gazebo, pool house and the like may be located in conjunction with residential uses. Accessory structures associated with non-residential uses could include the foregoing types of uses as well as signs and other structures that support the principal use of the property.	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x
Agricultural accessory, customary	x															
Agricultural uses	x															
Amusement facility										x	x	x	x	c	c	
Bed and breakfast								c	x	x	x	x	x	c	c	
Billboards							c									
Building supply										x	x	x	x	c	c	
Cellular communication towers							c									
Cemetery							x		x	x	x	x	x	c	c	
Church	c		c	c	c	c		x	x	x	x	x	x	x	x	c
College or other higher education institution[2]									x	x	x	x	x	c	c	x
Commercial, region-serving											c					
Community center and the like										x	x	x	x	c	c	
Day care	c		c	c	c	c		c	x	x	x	x	x	c	c	c
Dry cleaners, one drive-up window								x		x	x	x	x	c	c	
Dry cleaners, with or without drive-up window										x	x	x	x	c	c	
Dwelling, duplex			x	x	x											x
Dwelling, high rise residential						x										

[1]x = use by right
c = conditional use

[2]Includes usual and customary uses associated with a college or university as described in section 2.17.

USES	RA	R-1	R-2	R-3	R-4	R-5	B	CN	PI	CG	CH	CBD	MU	IL	IH	UC
Dwelling, mobile home, in mobile home park					x											
Dwelling, multi-family				x	x				x	x	x	x	x	x	x	x
Dwelling, quadruplex			x	x	x											x
Dwelling, residential, above first floor												x				
Dwelling, single family detached		x	x	x	x								x			x
Dwelling, triplex			x	x	x								x			x
Emergency services facility and/or dispatch center										x	x	x	c	x	x	
Entertainment facility										x	x	x	x	c	c	
Farm and garden										x	x	x	x	c	c	
Financial institution with any number of drive-up lanes									x	x	x	x	x	x	x	
Financial institution, with up to 3 drive-in lanes								x	x	x	x	x	x	x	x	
Flea market or similar indoor/outdoor sale complex											x		c			
Forests, other natural vegetative growth, landscaping, berms, fences, and/or walls							x									
Foster home									x	x	x	x	x	c	c	
Fraternal lodge and the like										x	x	x	x	c	c	
Funeral home, mortuary, and like									x	x	x	x	x	c	c	
Gasoline sales and/or service, including combined with food mart								x		x	x		c			
Golf course	c	c	c	c	c		x									
Government office									x	x	x	x	x	c	c	
Home occupation, subject to 3.10	x	x	x	x	x	x						x	x			x
Hospital									x	x	x	x	x	c	c	
Hotel										x	x	x	x	c	c	
Junkyard															x	
Library, public								x	x	x	x	x	x	c	c	
Living facility, congregate and/or residential care									x	x	x	x	x	c	c	x
Maintenance facility															x	
Mall, regional										c						
Manufacturing business															x	
Manufacturing, light, within a building														x	x	
Medical office or clinic									x	x	x	x	x	c	c	

USES	RA	R-1	R-2	R-3	R-4	R-5	B	CN	PI	CG	CH	CBD	MU	IL	IH	UC
Motel										x	x	x	x	c	c	
Office park, region-serving											c					
Outdoor arena, rodeo grounds, race track, firing range, or similar facility													c			
Ornamental and vegetable gardens							x									
Park	c	c	c	x	x							x				
Parking lots							c									
Passive parks, playgrounds, fitness trails, picnic areas and picnic shelters, swimming pools, outdoor sports courts, fields, or grounds primarily for recreational use other than league or tournament play, and greenways							x									
Professional office						c			x	x	x	x	x	c	c	
Public utilities							x									
Recreation, commercial										x	x	x	x	c	c	
Recreation/utility/other necessary building for mobile home park					c											
Recycling center															x	
Restaurant, with drive-up facility										x	x		c			
Restaurant, without drive-up facility								x		x	x	x	x	c	c	
Salvage yard															x	
School, preschool, primary or secondary, public or private	c		c	c	c	c		c	x	x	x	x	x	c	c	c
School, commercial or trade									x	x	x	x	x	c	c	
Service business, personal						c		x	x	x	x	x	x	c	c	
Service business									x	x	x	x	x	c	c	
Shopping center, not a regional mall										x	x	x	x	c	c	
Single-family homes in single-family house structures built or located on the same site prior to 2008									x							
Snack shop									c							
Storage yard															x	
Store, department										x	x	x	x	c	c	
Store, retail										x	x	x	x	c	c	
Store, convenience								x		x	x	x	x	c	c	

USES	RA	R-1	R-2	R-3	R-4	R-5	B	CN	PI	CG	CH	CBD	MU	IL	IH	UC
Store, discount, large scale, freestanding											x		c			
Store, freestanding neighborhood								x		x	x	x	x	c	c	
Streets, driveways, bridges, walkways, bikepaths							x									
Supermarket										x	x	x	x	c	c	
Tourist, guest or boarding home				c	c			c	x	x	x	x	x	c	c	
Tower, any type									c	c	x	x	x	x	x	
Tower, utility	c	c	c	c	c			c								
Townhomes			x	x		x			x	x	x		x	x	x	x
Upper-story residences									c							
Utility facility														x	x	
Vegetated riparian buffers							x									
Vehicle parts and accessories, not including vehicle repair or sales										x	x	x	x	c	c	
Vehicle sales, rental, and/or repair											x		c			
Veterinary office or clinic, without kennels and runs									x	x	x	x	x	c	c	
Veterinary office or clinic, with or without kennels and runs											x		c	c	c	
Wetland mitigation areas, stormwater detention or retention areas, water courses or bodies of water, slope easements for construction projects or slope preservation areas							x									
Wholesale business, storage and distribution													c	x	x	

(as amended by Ord. #8, Aug. 2000, Ord. #23, Sept. 2002, Ord. #2003-22, Aug. 2003, Ord. #2007-02, Jan. 2007, Ord. #2007-05, March 2007, Ord. #2007-30, Sept. 2007, Ord. #2007-34, Sept. 2007, Ord. #2007-42, Nov. 2007, Ord. #2008-02, Jan. 2008, Ord. #2010-18, June 2010, Ord. #2010-19, June 2010, Ord. #2010-38, Oct. 2010, and Ord. #2011-04, May 2011)

2.1.4 Zoning Map Adoption.

The boundaries of the zoning districts established by this ordinance are hereby established as shown on the "Official Zoning Map of Cleveland, Tennessee," July 2006 which is on file in the city planning department. The Official Zoning Map of Cleveland, Tennessee, July 2006, and all notations, references and other information shown thereon are as much a part of this article as if the information set forth thereon was all fully described and set out in this section. Any amendments and revisions of the official zoning map heretofore or hereafter

enacted by the Cleveland City Council are also made a part of this article. (as amended by Ord. #2006-22, Aug. 2006)

2.1.5 Rooming Houses

2.1.5.A Purpose and intent. The residential zoning districts are established with the intention that a dwelling unit would be occupied by a single family or household. Occupancy of a dwelling unit by several unrelated individuals can negatively impact the quality of the residential environment for other dwelling units in the neighborhood through increased traffic, parking demand, noise, litter, property that is poorly maintained, etc. These problems can arise since the unrelated occupants may lack a shared since of common household responsibility toward the general upkeep of the property and the owners of such property may be induced to minimize maintenance investment where occupancy is somewhat transitory and the expectations of the occupants regarding property conditions are relatively low. Likewise the unrelated occupants may lack the personal interest in neighborhood environmental quality held by those whose concerns for such quality extend beyond themselves to fellow members of their households. Such occupancy of a dwelling unit by several unrelated individuals is the primary characteristic of a rooming house as hereinafter defined. This ordinance is intended to provide for the public health, safety, convenience and general welfare by furthering the purposes and intent described in the general provisions of the zoning ordinance and by mitigating the aforementioned negative impacts while providing for the establishment of rooming houses in certain residential districts.

2.1.5.B Rooming house definition. Subject to exceptions specifically described herein, a rooming house is defined as a singular dwelling unit in a structure containing one or more dwelling units that is occupied by more than four (4) unrelated persons, or a dwelling unit that is not a single-family dwelling where there are more than two (2) unrelated occupants of legal driving age and where there are not at least two (2) paved on-site parking spaces outside driveway travel lanes for each bedroom or sleeping area in all the dwelling units on the site. For purposes of this definition, occupancy by more than four (4) unrelated persons means that each of the occupants is not in a qualifying relationship to all of the other occupants by birth, marriage, or adoption. A qualifying relationship is that of a spouse, parent, child, direct descendent such as a grandchild, direct ancestor such as a grandparent, step-child or step-parent, or sibling or step-sibling. Exceptions to this rooming house definition shall include: a lawfully

operating bed and breakfast, motel, or hotel; group homes for the disabled with not more than two (2) live-in caregivers; dwelling units with not more than two (2) persons per bedroom and with not more than two (2) occupants who are not in a qualifying relationship with each of the remaining occupants; dwelling units in structures with two (2) or more dwelling units that were lawfully constructed prior to November 1, 2002 and that are occupied by not more than two (2) person per bedroom; and dwelling units other than single-family dwellings where occupancy does not exceed two (2) persons per bedroom and where there are at least two (2) paved on-site parking spaces excluding driveway travel lanes for each bedroom on the site. It is not the intention of this ordinance to determine that a qualifying relationship does not exist between any two (2) persons who declare themselves to be in a domestic partnership that they consider as equivalent to marriage and where the physical, emotional, and financial relationships correspond to marriage. It is not the intention of this ordinance to prohibit such occasional and transitory occupancy by houseguests as might be normal within the community.

2.1.5.C Special criteria for rooming houses. In addition to site design criteria and conditional use requirements stipulated elsewhere in the zoning ordinance, rooming houses must comply with special criteria described below. Special criteria applicable to rooming houses may exceed requirements otherwise applicable to buildings and sites employed in other uses but nothing herein is intended to allow rooming houses to violate other ordinance provisions. Special criterion: rooming house shall have a minimum of one bedroom for every two (2) occupants. Special criterion: rooming houses shall provide at least two (2) paved on-site parking spaces per bedroom plus one paved on-site space for each additional room (excepting rooms used exclusively as bathrooms, laundry rooms, kitchens, hallways or storage space) and the parking shall be configured such that double-parking and backing into a public street is not promoted. Special criterion: on-street parking for rooming houses shall be prohibited where the street width is substandard or where undesirable traffic conditions would result. Special criterion: each rooming house site shall contain at least seven thousand five hundred (7,500) square feet of land area per dwelling unit plus two thousand five hundred (2,500) square feet for each bedroom over two (2). Special criterion: occupancy of a rooming house shall require a minimum living area of three hundred (300) square feet per occupant and otherwise meet requirements of the adopted building codes. Special criterion: each rooming house shall have garbage containers with snug-fitting attached lids and a minimum capacity of thirty (30) gallons each (one can per bedroom but not less

than three cans) unless alternative containers of equal or greater capacity are allowed or required by the code enforcement officer. Special criterion: the owner shall keep the rooming house and its grounds in a good repair at all times and shall otherwise keep the property in compliance with city ordinances. Special criterion: after 10:00 P.M. and before 7:00 A.M. noise emanating from the rooming house or its grounds shall not be perceptibly louder at the property lines of the rooming house property than noise from residential property located wholly or in part within three hundred (300) feet of the rooming house property in any direction. Special criterion: the owner of property used as a rooming house shall maintain on file with the city clerk the current owners name, correct mailing address and correct phone number as well as the name, correct address, and correct phone number of the local agent responsible for the management of the property. Special criterion: conditional use approval for rooming houses shall be for a period of four (4) years from the date of the approval and continuation of the rooming house shall require review and re-approval of the conditional use by the Board of Zoning Appeals every four (4) years thereafter at which time a record of complaints against the rooming house the previous period may be considered. (as amended by Ord. #2011-07, June 2011)

2.1.5.D Rooming house violations. It shall be unlawful and a violation of the zoning ordinance to occupy as a rooming house any dwelling unit that is the property of another, or suffer such occupancy of a dwelling unit that is one's own property, contrary to any provisions of this ordinance including also the aforementioned special criteria for rooming houses and any conditions imposed in the conditional use approval. Violations are subject to enforcement and remedies permitted in Tennessee Code Annotated, § 13-7-208, and the zoning ordinance and other applicable City of Cleveland ordinances. (as added by Ord. #22, Sept. 2002, and amended by Ord. #25, Dec. 2002, and Ord. #2011-07, June 2011)

2.2 RA DISTRICT (Residential Agricultural).

2.2.1 Uses allowed. The RA, Residential District, allows the following uses:

A. Uses Allowed by right in the R-1 District;

B. Agricultural uses including farmland, cropland, pastureland, silviculture, floriculture, sale of farm produce, and other agricultural uses, subject to the health codes of the City of Cleveland, Tennessee;

C. Customary agricultural accessories such as barns, corrals, pens, and the like which are normally required in the operation of agricultural uses.

2.2.2 Conditional Uses. The Following uses may be allowed:

A. Conditional uses allowed in the R-1 District and subject to any minimum requirements as may be established for the review of a given conditional use in the R-1 district. (as amended by Ord. #14, March 2001, and Ord. #2007-34, Sept. 2007).

2.3 R-1 DISTRICT (Single-Family Residential).

2.3.1 Uses allowed. The R-1, Single-Family Residential, District allows the following uses:

A. Single-Family Detached Dwellings;

B, Home Occupations, subject to 3.10.

2.3.2 Conditional Uses. The following uses may be allowed:

A. Parks;

B. Utility Towers.

C. Churches with or without daycare, pre-school, primary school, or secondary school. Conditions for approval include location on and access from an arterial or collector street and compliance with the applicable site planning requirements in sections 3.0 and 6.2. Conditions for approval would be directed toward mitigating impacts on homes and residential streets from noise, traffic, parking demand, and other effects of the church development however, proposed new church sites shall not be considered for a conditional use review unless they contain at least two (2) acres and are located on an arterial or collector street.

D. Golf courses and ancillary facilities such as clubhouses, parking, cart sheds and the like. (as amended by Ord. #14, March 2001, and Ord. #2007-05, March 2007)

2.4 R-2 DISTRICT (Low Density Single- and Multi-Family Residential

2.4.1 Uses allowed. The R-2, Low Density Residential, District Allows the following uses:

A. Uses allowed by right in R-1;

B. Duplexes, triplexes, and quadraplexes.

C. Townhomes, provided that the townhomes are built in compliance with the townhome subdivision regulations of the Cleveland Municipal Planning Commission including but not limited to such provisions of those subdivision regulations that modify lot width and setbacks within the underlying zoning district. (as amended by Ord. #2007-30, Sept. 2007)

2.4.2 Conditional uses. The following uses may be allowed:

A. Uses allowed as conditional uses in the R-1 District;

B. Churches with or without day care, preschool, primary, or secondary schools; however, proposed new church sites shall not be considered for conditional use review unless they are located on an arterial or collector street;

C. Day-care, preschool, primary or secondary schools, public or private;

D. Golf courses. (as amended by Ord. #14, March 2001)

2.5 R-3 District (Multi-family Residential).

2.5.1 Uses allowed. The R-3, Multi-family Residential, District allows the following uses:

A. Uses Allowed by right in the R-2 District;

B. Multi-family Dwellings with three (3) or more units per structure (whether designed as an apartment, condominium, or townhouse);

C. Parks.

D. Townhomes, provided that the townhomes are built in compliance with the townhome subdivision regulations of the Cleveland Municipal Planning Commission including but not limited to such provisions of those subdivision regulations that modify lot width and

setbacks within the underlying zoning district. (as amended by Ord. #2007-30, Sept. 2007)

2.5.2 Conditional uses. The following uses may be allowed:

A. Except as otherwise allowed by right in the R3 district, conditional uses allowed in the R2 district subject to any minimum requirements that may be established for the review of a given conditional use in the R2 district.

B. Tourist, guest, or boarding homes. (as amended by Ord. #14, March 2001)

2.6 R-4 District (Mobile Home Parks).

2.6.1 Uses allowed. The R-4, mobile home park, district allows the following uses:

A. Uses allowed by right in the R-3 District;

B. Mobile homes or manufactured housing in mobile home or manufactured home parks or mobile home or manufactured home developments.

2.6.2 Conditional Uses. The Following uses may be allowed:

A. Conditional uses allowed in the R3 district subject to any minimum requirements that may be established for a given conditional use in the R3 district.;

B. Recreational, utility, and other necessary accessory buildings and uses in mobile home parks for the exclusive use of mobile home park residents. (as amended by Ord. #14, March 2001)

2.7 R-5 District (High Rise Residential).

2.7.1 Uses allowed. The R-5, High Rise Residential, District allows the following uses:

A. Residential structures over three stories in height with necessary resident services, such as utility rooms;

B. Home occupations, subject to 3.10.

2.7.2 Conditional uses. The following uses may be allowed:

A. Professional offices;

B. Personal service businesses, such as barbers, beauty salons, nail salons, photography studios and the like;

C. Churches with or without day care, preschool, primary, or secondary schools.

2.8 CN District (Neighborhood Commercial).

2.8.1 Neighborhood Commercial District.

A. Neighborhood Commercial District Created. There is hereby created a neighborhood commercial district nc which is designed to provide Convenient retail and professional services facilities in proximity to populated residential areas without imposing incompatible uses or undesirable impacts upon a residential area.

B. Uses permitted. Professional-institutional district uses permitted as prescribed in chapter six, section 10-602 of this title; barber shop, beauty shop, restaurants but excluding a restaurant establishment that is defined as a fast-food or drive-in restaurant, dry cleaning, excluding drive-in window service and coin-operated laundry, hardware store, drug store, grocery store, nursery or garden store, bakery, shoe repair, apparel shops, self-service gasoline station limited to three (3) pumps per district and excluding auto repair, branch banks with drive-in window service, residential district uses. (Ord. Of 11-27-78)

C. Uses prohibited.

Any use not specifically permitted or permitted on appeal. (Ord. Of 11-27-78)

D. Uses permitted on appeal. Government offices, tailoring or dressmaking shops, appliance or television repair.

E. Required lot size.

A minimum lot size of one (1) acre (43,500 square feet) is required with a maximum lot size of three (3) acres. A minimum lot width of one hundred (100) feet measured at the front building setback line is

required. The structure must be situated on the lot to front on a street.

F. Minimum building setbacks.

Front-50 feet; rear-20 feet; side-15 feet. On a corner lot that adjoins intersecting streets, the front of the building must be determined and the fifty (50) foot setback maintained. The side setback from the other intersecting street shall be increased to a minimum of thirty (30) feet. (Ord. Of 11-27-78)

G. Maximum building area.

The maximum building area for all buildings including accessory buildings shall not exceed forty percent (40%) of the total lot area. No individual establishment shall occupy more than three thousand) 3,000 square feet. The maximum building height shall be two (2) stories or thirty (30) feet measured from the highest point of the structure.

H. Minimum off-street parking and loading.

All parking facilities shall be off-street and be provided at a rate of ten (10) spaces for each establishment. Each parking space shall be a minimum of twenty (20) feet in length and ten (10) feet in width.

All loading and unloading facilities can be located either in the rear or in specifically designated spaces in the front.

No customer or employee parking is allowed in the rear or side yard setbacks unless the required setback distances are increased sufficient to accommodate parked vehicles. (Ord. Of 11-27-78)

I. Landscaping, buffers and appearance.

(a) Landscaping and buffers. On land to be used for neighborhood commercial uses that adjoins any residential property the following minimum landscaping requirements apply:

(1) Planted areas shall be provided and maintained at the side and rear property lines that adjoin residential property. The planted area shall be 3-10 feet in width and consist of a vegetation that will provide screening protection for the

residences or an attractive wall or fence may be provided that is a minimum of eight (8) feet in height.

(2) At streets entrances and exits to a neighborhood commercial district, planted areas shall be provided that enhance appearance but doesn't obstruct traffic visibility or create a hazard for pedestrians.

(3) Areas for refuse and trash collection shall be so designated and the containers kept in an enclosed area that will allow adequate trash storage yet prohibit the viewing of the trash collected from adjoining properties.

(4) Lighting. No lighting may be directed in a manner that will illuminate adjacent residential properties.

(5) Signs. All signs erected on the structure itself must be mounted flat against the structure and may be no more than ten (10) square feet in size. Each establishment located in a neighborhood commercial developments is permitted one (1) such sign.

In Addition, one (1) sign may be constructed that identifies the establishments located in the neighborhood commercial development provided its arrangement doesn't obstruct traffic visibility and doesn't exceed one hundred (100) square feet in size. No sign may be mounted above or beyond the wall of the building.

(B) Appearance. The exterior of the building must be of materials that will conform to adjacent residential neighborhoods. The purpose of this is to promote compatibility with the surroundings in residential areas. This section doesn't apply to neighborhood commercial districts if the location is in a district other than residential. (Ord. Of 11-27-78)

J. Hours of operation.

No establishment, except for emergency services of physicians or dentist, shall be open for business between the hours of 10:00 P.M. and 7:00 A.M. (Ord. Of 11-27-78)

K. Special provisions.

(a) No Sales or services shall be conducted on the outside grounds of the neighborhood commercial district.

(b) No public address systems or any other means of amplification shall be used outside the buildings in a neighborhood commercial district.

(c) No neighborhood commercial district shall be permitted within three thousand feet (3,000') of a district where similar facilities are permitted. The measurement of distance will be taken along the center line of streets providing the most direct route and will measure from the nearest corner lot line of each facility in question.

(d) The requirements as stated in this chapter apply only to neighborhood commercial developments in residential and professional-institutional zoning districts as shown on the City of Cleveland Official Zoning Map. (Ord. Of 11-27-78)

L. Site plan requirements.

A site plan containing the following information must be submitted and approved by the Cleveland Municipal Planning Commission.

(a) A Legal description of the total site and a statement of present and/or proposed ownership.

(b) The Location and floor area size of the proposed building, accessory structures, or other improvements, including lot lines, building setbacks, building height, adjacent properties by use and ownership, open spaces, parking spaces, streets and utilities.

(c) The location and dimensions of all point of vehicular and pedestrian access, exits and circulation.

(d) Specify the material proposed for the exterior walls of the building.

(e) Identify the location, intensity and direction of all lighting.

(f) Specify the location of planted areas and type of vegetation or fencing planned for landscaping and buffers. (Ord. Of 11-27-78)

2.8.2 Conditional uses. The following uses may be allowed:

A. Tourist, guest, boarding homes, or bed and breakfast establishments;

B. Day-care;

C. Utility towers.

2.9 PI District (Professional Institutional).

2.9.1 Uses allowed. The PI District includes the following uses.

A. Single-family homes in single-family house structures built or located on the same site prior to 2008. (as deleted by Ord. #2007-42, Nov. 2007, and replaced by Ord. #2010-38, Oct. 2010)

B. Professional offices;

C. Government offices;

D. Service businesses such as catering, dry cleaners, interior decorating services, printing, tailoring, travel agencies, upholstery;

E. Financial institutions with any number of drive-up lanes;

F. Colleges and other higher education institutions;

G. Commercial or trade schools, such as dance studios, martial arts studios, etc.

H. Personal service businesses, such as barbers, beauty salons, nail salons, photography studios and the like;

I. Cemeteries with or without funeral homes;

J. Funeral homes, mortuaries and the like;

K. Tourist, guest, boarding homes, or bed and breakfast establishments;

L. Congregate living facilities, residential care facilities, foster homes and the like;

M. Churches with or without day care, preschool, primary, or secondary schools;

N. Public libraries;

O. Veterinary offices and clinics, without outside kennels or runs;

P. Medical offices or clinics;

Q. Hospitals. (as amended by Ord. #2, Sept. 1998)

2.9.2 Conditional uses. The following use may be allowed:

A. Transmission towers, microwave towers, water towers, and the like.

B. Upper-story residences; snack shops. (as added by Ord. #2010-18, June 2010, and Ord. #2010-19, June 2010)

2.10 CG District (General Commercial).

2.10.1 Uses allowed. The CG (General Commercial) District, includes the following uses.

A. All uses allowed by right in the CN and PI districts and multi-family dwellings allowed by right in the R-3 District;

B. Commercial recreation, entertainment and amusement facilities;

C. Department stores and retail stores;

D. Dry cleaners with or without drive-up windows;

E. Shopping centers, but not regional malls;

F. Building supply, farm and garden, vehicle parts and accessories, but not including repair or vehicle sales;

G. Supermarkets;

H. Hotels and motels;

I. Restaurants with or without drive-up facilities; (as amended by Ord. #2011-04, May 2011)

J. Convenience stores with or without gasoline pumps;

K. Community centers, fraternal lodges and the like.

2.10.2 Conditional uses.

A. Transmission towers, microwave towers, water towers, and the like.

B. Car wash.

C. Oil change facilities. (as amended by Ord. #23, Sept. 2002)

2.11 CH District (Highway Commercial).

2.11.1 Uses allowed. The CH District includes the following uses:

A. All Uses allowed by right in the CG District and multi-family dwellings allowed by right in the R-3 District;

B. Vehicle sales, rental, service and repair, including truck stops, body shops, road services, car wash facilities, including new or used automobiles, boats, buses, farm equipment, motorcycles, trucks, recreational vehicles and mobile homes;

C. Gasoline sales and service, combination gasoline sale and food marts, and similar facilities;

D. [Deleted];

E. Flea markets or similar outdoor or outdoor/indoor sales complexes;

F. Restaurants with or without drive-up facilities;

G. Large-scale, free-standing, discount stores (often called "big-box retailers");

H. Emergency service facilities such as buildings, garages and/or dispatch centers for ambulances, fire, police and rescue;

I. Veterinary offices and clinics, with or without outside kennels or runs;

J. Transmission towers, microwave towers, water towers, and the like. (as amended by Ord. #20, March 2002)

2.11.2 Conditional uses. The following uses may be allowed:

A. Region-serving commercial, including regional malls;

B. Region-serving office parks.

C. Mini-warehouse to the conditional uses in the CH zoning district.

D. Outdoor arenas, rodeo grounds, race tracks, firing ranges, campgrounds, and other outdoor sports and recreation facilities is added so as to make such facilities conditional uses in the CH zone.

E. Car wash.

F. Oil change facilities. (as amended by Ord. #11, March 2001, Ord. #20, March 2002, and Ord. #23, Sept. 2002)

2.12 CBD District (Central Business District).

2.12.1 Uses allowed. The CBD includes the following uses:

A. All uses allowed by right in CN, PI, and CG Districts, except veterinary offices and clinics with outside kennels or runs;

B. Multi-family dwellings allowed by right in the R-3 District;

C. Residential uses located above the first floor;

D. Home occupations, subject to 3.10.

2.12.2 Conditional uses.

A. There are no conditional uses in the CBD District.

2.13 MU District (Mixed Use).

2.13.1 Uses allowed. The MU (Mixed Use) District includes the following uses:

A. All Uses Allowed by Right in the R-1, R-2, R-3, R-5, CN, PI, and CG Districts.

2.13.2 Conditional uses.

A. All uses allowed by right in the CH and IL Districts which are not otherwise allowed by right in the MU District.

2.14 IL District (Light Industry).

2.14.1 The IL (Light Industry) District, includes the following uses:

A. Expansion of existing multi-family developments on existing sites subject to the section 3.0 Site Design Standards for multi-family development in the R3 zone.

B. Churches with or without day care, preschool, primary, or secondary schools;

C. Wholesale businesses for storing and/or distribution of goods;

D. Light manufacturing which is conducted entirely within a building;

E. Emergency service facilities such as buildings, garages and/or dispatch centers for ambulances, fire, police and rescue;

F. Transmission towers, microwave towers, water towers, and the like;

G. Utility facilities, such as water plants, wastewater treatment plants, electricity substations;

H. Financial institutions with any number of drive-up facilities.

I. Vehicle repair but not including the storage of junk vehicles in the manner of a junkyard as defined in the zoning ordinance; transportation facilities including garages, terminals, transfer facilities, fuel facilities (including fleet fuel facilities and gas stations with or without convenience stores) and the like; and outdoor storage of vehicles, construction materials, and other materials incidental to the operation of a business otherwise allowed in the zone except where such storage would constitute a junkyard. (as amended by Ord. #11, March 2001, and Ord. #26, March 2003)

2.14.1.1 Mini-warehouse to the principally permitted uses in the IL zoning district. (as added by Ord. #12, March 2001)

2.14.2 Conditional uses.

A. All uses, allowed by right in the CN, PI, and CG districts and multi-family housing allowed by right in the R-3 district, which are not otherwise allowed by right in IL. (as amended by Ord. #2011-07, June 2011)

B. Outdoor arenas, rodeo grounds, race tracks, firing ranges, campgrounds, and other outdoor sports and recreation facilities are added so as to make such facilities conditional uses in the IL zone.

C. LP gas storage and/or distribution.

D. Car wash.

E. Oil change facilities. (as amended by Ord. #11, March 2001, Ord. #16, June 2001, Ord. #20, March 2002, Ord. #21, May 2002, and Ord. #23, Sept. 2002)

F. Vehicle sales. (as added by Ord. #2011-07, June 2011)

2.15 IH District (Heavy Industry).

2.15.1 The IH (Heavy Industry) District includes the following uses:

A. All uses allowed by right in the IL zoning district including expansion of existing multi-family developments on existing sites subject to the same conditions as in the IL zoning district.

B. Manufacturing businesses, junkyards and salvage yards;

C. Maintenance facilities and storage yards for schools, government agencies and telephone and cable companies;

D. Recycling centers and the like;

E. Financial institutions with any number of drive-up facilities.

F. Mini-warehouse to the principally permitted uses in the IH zoning district.

G. Vehicle sales, rental, and repair. (as amended by Ord. #2, Sept. 1998, Ord. #11, March 2001, Ord. #12, March 2001, Ord. #21, May 2002, and Ord. #2003-40, Jan. 2004)

2.15.2 Conditional uses.

A. Conditional uses allowed in the IL zoning district subject to any restrictions or conditions identified for such conditional use in the IL zoning district. (as amended by Ord. #11, March 2001)

B. Junkyards and salvage yards. (as added by Ord. #2, Sept. 1998)

2.16 Temporary uses

The regulations contained in this section are necessary to govern the operation of certain transitory or seasonal uses, non-permanent in nature.

A. Application for a temporary use permit shall be made to the building inspector and shall contain the following information:

(1) A description of the property to be used, rented, or leased for a temporary use, shall include all information to accurately portray the property including address, zoning district, surrounding uses, and any other information deemed necessary by the building inspector.

(2) A sketch plan or map showing the location of the temporary use and surrounding properties.

(3) A description of the proposed activity or use(s), including anticipated attendance.

(4) Availability of parking spaces to service the anticipated use.

B. The following uses are deemed to be temporary uses and shall also be subject to the specific regulations and time limits for use, and to the regulations of any district in which the use is located:

(1) Carnival or circus.

In any nonresidential district, a temporary use permit may be issued for a carnival or circus, but such permit shall be issued for a period of not longer than fifteen (15) days. Such uses shall be located a minimum of one hundred (100) feet from any residential district.

(2) Real estate sales office.

In any district, a temporary use permit may be issued for a temporary real estate office. Such office shall contain no sleeping or cooking accommodations. Such permit shall be valid for not more than six months, but may be renewed. Such Office or shed shall be removed upon completion of the

development project or upon expiration of the temporary use permit, whichever occurs first.

(3) Religious tent meeting.

In any non-residential district or on the property of a church in a residential district, a temporary use permit may be issued for a maximum of thirty (30) days for a tent or other temporary structure to house religious meetings.

C. It shall be unlawful to place or use any portable storage unit on any tract, lot, or parcel in any RA, R1, R2, or R3 zoning district where one or more homes have been constructed except in compliance with this ordinance. Only one portable storage unit shall be allowed per lot, tract, or parcel and none are allowed on a vacant tract, lot, or parcel. No portable storage unit shall be placed so as to interfere with the vision of motorists, or so as to interfere with any utility or drainage. No portable storage unit shall be placed within any public right of way or within15 feet of the travelway of any street, nor shall any portable storage unit be located in front of a house. Portable storage units shall meet or exceed the setback requirements for accessory structures in side and rear yards, as the case may be. No portable storage unit shall be placed in a manner that violates any building code, fire or life safety code, or otherwise block building egress or access for fire and emergency services on the site or adjacent properties. No portable storage unit shall be placed in a floodway. Portable storage units shall be used only for the storage of household goods belonging to persons living on the property. The portable storage unit is for temporary storage only, for a period not exceeding 90 days, and not for more than one such 90 day period during any 12 month period. A sign shall be on the portable storage unit identifying its owner and giving a contact telephone number. A property owner placing a portable storage unit on his/her property shall promptly notify the Community Development Department in writing as to the address and date of placement; where there is no such notification and a complaint is received or the unit is observed by City staff, no action will be taken for one week but if the required notice is not received during that week enforcement will begin with the presumption that the unit has been in place for 45 days for purposes of the 90 limit. No tractor-trailer type trailer (Federal Highway Administration Vehicle Classification Class 8 or above) shall be used for temporary storage in lieu of a portable storage unit in the aforementioned residential zoning districts. Nothing herein is intended to prohibit the construction trailers of contractors engaged in work on the site or to

prohibit commercial vehicles that are otherwise specifically allowed to be parked on the residential property by another ordinance. (as amended by Ord. #2008-50, Aug. 2008)

2.17 UC DISTRICT (University Campus)

2.17.1 The UC University Campus zoning district includes the following uses:

A. All uses allowed by right in the R3 district.

B. Usual and customary uses associated with a college or university are characterized by serving primarily the mission or purposes of the college or university and by a physical and/or organizational integration into the campus life of the institution. Such usual and customary uses include but are not necessarily limited to the following: dormitories; academic buildings; research facilities; libraries; student centers; conference facilities; athletic facilities; operational and administrative facilities (physical plant, fleet facilities, central supply facilities, central computer facilities, administrative offices, etc.); food service facilities; facilities for the arts; book stores, commissaries; churches or houses of worship; campus affiliated organizations facilities (fraternal, social, professional, and public service organizations); schools and pre-schools; daycare facilities; student health care facilities; and parking areas.

2.17.2 Conditional Uses

A. All uses identified as conditional uses for the R3 district and not otherwise included as a usual and customary use associated with a college or university as described above in 2.17.1. (as added by Ord. #8, Aug. 2000)

2.18 **B District (Buffer)**

2.18.1 The B-Buffer zoning district includes the following uses as uses by right when developed such that impervious areas apart from swimming pools does not exceed 20% of the lot area; no principal structure is located within 50 feet of another zoning district; and the area within 20 feet of an adjoining residentially zoned or developed lot or parcel that is completely outside the B-Buffer zoning district must be developed and maintained in perpetuity as a buffer as described in

2.18.1.A below and in accordance with a plan approved by the Planning Director;

A. Buffering between land uses consisting of forests and other natural vegetative growth, landscaping, berms, fences, and/or walls.

B. Passive parks, playgrounds, fitness trails, picnic areas and picnic shelters, swimming pools, outdoor sports courts, fields, or grounds, primarily for recreational use rather than for league or tournament play, greenways, golf courses.

C. Ornamental and vegetable gardens for use of property owners but not commercial agriculture.

D. Cemeteries, memorial gardens, and the like but not funeral homes, mortuaries, or cremation facilities.

E. Vegetated riparian buffers, wetland mitigation areas, stormwater detention or retention areas, water courses or bodies of water; slope easements for construction projects or slope preservation areas.

F. Public or private streets or driveways, bridges, walkways, bikepaths; public utilities including but not limited to drainage facilities, utility substations, water tanks, and the like.

G. Accessory structures such as a tool shed, garden shed, workshop, detached garage or carport, gazebo, pool house and the like.

2.18.2 Conditional use. (as replaced by Ord. #2011-07, June 2011)

A. Billboards subject to the requirements in Section 5.0.

B. Cellular communication towers subject to the requirements in section 3.13.

C. Parking lots. (as added by Ord. #2003-22, Aug. 2003)

2.19 **Sex Outlets**

A. For the purposes of this ordinance, sex outlets and the various types of sex outlets (sex media outlet, sex media exhibition outlet, mini-sex media exhibition outlet, sex entertainment outlet, sex service outlet, and sex accessories outlet) are defined in Section 1.6 Definitions.

B. Sex outlets of any type are not allowed in any zone except as expressly provided herein. Sex outlets that are not in compliance with any other applicable law or ordinance, including any permit or licensing requirement, are not allowed in any zone. Violations of this ordinance are unlawful and subject to penalties provided for in Title 14 Chapter 2 of the Cleveland Municipal Code.

C. No sex outlet of any type shall be located within 750 feet of any of the following protected land uses: any church or house of worship or religious institution such as a seminary or denominational agency except when located in a rented storefront or office suite; public or private licensed daycare or child care center, pre-school, kindergarten, elementary school, middle school or junior high school, or high school; residence or residential zoning district; public park, playground, greenway, recreation center, community center, or public library; private or semi-private recreational facility such as a YMCA, miniature golf course, video arcade, movie theatre, or any other type of recreational use for which at least one-third of the users are persons under age 18 with at least 100 user visits per mouth. No sex outlet of any type shall be located within 1500 feet of another sex outlet; however, this restriction is not intended to prohibit the co-location of more than one type of sex outlet within a common interior space where the requirements of this ordinance are otherwise met. No sex outlet of any type shall be located within 2000 feet of the Interstate 75 right-of-way or within 1000 feet of the intersection of U.S. Highway 64 or Waterlevel Highway and APD-40.

D. For purposes of measuring the required 1500 foot distance between any two sex outlets, the measurement shall he a straight line distance between the front doors of the existing and/or proposed buildings that contain or will contain the sex outlet. For purposes of measuring the required 750 foot distance between a sex outlet and any protected land use, the measurement shall be the straight line distance between the front door of the sex outlet and the nearest entrance of the building occupied by the protected use. However, in the case of a protected land use that is not primarily contained within a building, e.g. residential zoning district, park, miniature golf course, etc., the measurement shall be the straight line distance from the front door of the sex outlet to the nearest property line of the protected use. With respect to sex outlets and protected land uses that lie within unincorporated Bradley County where a sex outlet is proposed to be located in the City of Cleveland, the separation requirements shall he applied in the same manner as if all of the property were in the city except that a zoning district within unincorporated Bradley County shall not be considered

as a protected land use. In the case of a protected land use in a structure that is vacant but not in such a condition that it is or could be condemned for demolition, the distance requirement shall apply if the structure was built or remodeled by more than 50% of its value to serve a protected use.

E. Except as provided herein, no sex outlet of any type shall be located except on property that fronts on specified roadways (specified roadways include APD-40 or a principal arterial street as identified in the subdivision regulations or Wildwood Avenue, or Dalton Pike, or Blue Springs Road, or Old Tasso Road, or Stuart Road) with a minimum lot frontage of at least 100 feet on the specified roadway. Sex outlets on sites of at least two acres in an IL-Industrial Light zone or in an IH-Industrial Heavy zone are exempt from the requirement for frontage on a specified roadway provided that the sex outlet is the only development on the site and the site is not reduced below two acres in size. Nothing herein shall be construed to require the approval of access to specified roadways in a manner inconsistent with any applicable law, regulation, ordinance, policy, or standard.

F. No sex outlet of any type shall be located on a flag lot, in a rear building, in a rear suite, in an upstairs suite, in a basement, facing a side lot line, or in any other manner except a ground floor location that is not obscured from view from the roadway traffic traveling in either direction. Customers shall enter and exit only through a well-lighted and unobscured entrance at the front of the building. Parking areas serving any sex outlet shall be well lighted and shall be arranged such that parked vehicles are clearly visible from the roadway on which the sex outlet is located. No sex outlets of any type shall be located on property having fencing, vegetation above two feet in height, or screening of any type except within three feet of the side or rear property lines but not closer to the front property line than the front entrance.

G. Sex service outlets and Mini-sex media exhibition outlets, including video booths or similar facilities located as an accessory use, are not allowed in any zoning district as either a principally permitted use or as a conditional use. Sex media outlets and sex accessories outlets are principally permitted uses in the CH-Commercial Highway, IL-Industrial Light, and IH-Industrial Heavy zoning districts subject to all requirements of the zoning ordinance. Sex media exhibition outlets are allowed as a principally permitted use in the IL and IH zones. Sex entertainment outlets are principally permitted uses in the IL and IH zones provided that they comply with all applicable laws

that prohibit indecent exposure in public, that prohibit performing or offering to perform any sexual activity for any consideration, that prohibit performing any actual or simulated sexual activity in any establishment serving food or beer, or that establish any other requirements such as those in Title 11 Chapter 5 of the Cleveland Municipal Code. No sex outlet of any type is allowed as a conditional use or any accessory use in any zoning district. (as added by Ord. #2004-02, March 2004)

3.0 **Site Design Standards**.

3.1 Lot Area and Dimensions and Maximum Allowable Density.

3.1.A. Table 2 below sets forth the minimum lot area and minimum lot width for uses in zoning districts, except PUD districts numbered PUD1 and higher where development standards are determined by the PUD ordinance.

Table 2
Lot Area & Width Requirements

Zoning District		**Lot Area$_2$ (Square Feet)**	**Lot Width (Feet) at the Building Setback Line**
R-A	Residential Agriculture	7,500 sf	75 feet
R-I	Single-family Residential	7,500 sf	75 feet
R-2	Low Density Single and Multi-family Residential	5,000 sf (single family) 7,500 sf (duplex) 10,000 sf (triplex) 12,500 sf (quadruplex)	50 feet 75 feet 75 feet 75 feet
R-3	Multi-family Residential	7,500 sf for the first unit + 2,500 sf for each additional unit	75 feet
R-4	Mobile Home Parks	Section 2.6.4	Section 2.6.4

Zoning District		Lot Area$_2$ (Square Feet)	Lot Width (Feet) at the Building Setback Line
R-5	High Rise Residential	7,500 sf with additional area requirements per unit: 1 bedroom: 570 sf 2 bedrooms: 750 sf 3 or more Bedrooms: 930 sf	75 feet
CN	Neighborhood Commercial	7,500 Sf 15,000 - corner Lots	50 feet 100 feet - corner lots
PI	Professional and Institutional	7,500 sf	75 feet
CG	General Commercial	7,500 sf 9,250 sf - corner lot	75 feet 100 feet - corner lot
Zoning District		**Lot Area$_2$ (Square Feet)**	**Lot Width (Feet) at the Building Setback Line**
CH	Highway Commercial	7,500 sf	100 feet
CBD	Central Business District	None	None
MU	Mixed use	7,500 sf	75 feet
IL	Light Industry	7,500 sf 15,000 sf - corner lot	75 feet
HI	Heavy Industry	10,000 sf	100 feet
B	Buffer	7,500 sf	

Zoning District		Lot Area[2] (Square Feet)	Lot Width (Feet) at the Building Setback Line
UC	University Campus	R2 or R3 requirements except for dormitory dwelling units where an alternative design may be approved, including alternatives for parking, greenspace (R3 minimum), etc. that are demonstrated to be adequately met off-site consistent with a master plan. Campus oriented apartment housing may also submit an alternative design for consideration.	25 feet (front yard), making the side yard 10 ft for the first story plus 2 ft for each additional story for principal structures and 5 ft for accessory structures, making the rear yard 20 ft for principal structures and 5 ft for accessory structures, making the maximum building height 5 stories or 55 ft., and making the maximum impervious surface area 65%
[2]A lot of record may be a minimum of 3,000 square feet for a residential use.			

(as replaced by Ord. #2009-49, June 2009)

3.1.B. Maximum Allowable Density

Where requirements are otherwise met, this ordinance generally allows for the development of multiple structures on a common site. For multiple buildings on a common site or for a subdivision of two or more lots, the maximum allowable density is a function of the required minimum lot size. R1 and RA land cannot exceed a maximum of 1 residential unit per 7500 square feet, including any common open space if developed as a cluster subdivision. R2 land, or land in any other zoning district where allowed to be developed residentially at R2 standards cannot exceed one (1) unit per five thousand (5,000) square feet for single family, or two (2) units per seven thousand five hundred (7,500) square feet for duplex structures, or three (3) units per ten thousand (10,000) square feet for triplex structures, or four (4) units

per twelve thousand five hundred (12,500) for quadruplex structures, including any common open space if developed as a cluster subdivision, townhouse subdivision, or other type of development. R3 land, or land in any other zoning district where allowed to be developed residentially at R3 standards, requires seven thousand five hundred (7,500) square feet for the first unit and two thousand five hundred (2,500) feet for each additional unit on the same lot or parcel regardless of structure type, adjusted for any common open space if developed as a cluster subdivision, townhouse subdivision, or other type of development. As an alternative where a lot otherwise allowed to be developed residential at R3 standards is less than 1 acre that and is not a flag lot, if designed to include a minimum 5 foot greenspace buffer area along the lot's street frontage except for not more than 2 driveways not exceeding 24 feet in width for both driveways, and otherwise meeting the landscaping and buffering requirements of zoning and stormwater ordinances, can be designed to the R2 density standard. R4 residential development density is regulated by the standards for mobile home parks and subdivisions. R5 residential development must provide adequate parking and otherwise conform to the requirements of the R5 district. Density for residential development in the UC zone is to be guided by Table 2. Residential development in mixed use development projects, such as with ground floor commercial with residential above, shall provide adequate parking and otherwise be governed by the height, lot coverage, and setback requirements of the zoning district in which they are located. Non-residential development does not have a density limit, but the intensity of the use in terms of its overall developed floor area is restricted by height, setback, lot coverage, greenspace, parking requirements, and other requirements of the zoning and stormwater ordinances. (as added by Ord. #2009-49, June 2009)

3.2 Setbacks, building heights and lot coverage standards.

A. The Table below shows site design requirements for each zoning district. Shown are maximum building heights, minimum building setbacks, and maximum impervious surface coverage.

Table 3
Building Setbacks, Heights, and Impervious Surfaces

Zoning District	Minimum Setbacks (feet)			Maximum Building Height	Minimum Green Space	Maximum Impervious Surface
	Front Yard	*Side Yard*	*Rear Yard*			
R-A	30 ft	10 ft for the 1st story + 2 ft for each additional story (principal) 5 ft (accessory)	30 ft (principal) 15 ft (accessory)	35 feet	0.70	0.30
R-1	30 ft	10 ft for the 1st story + 2 ft for each additional story (principal) 5 ft (accessory)	30 ft (principal) 10 ft (accessory)	35 feet	0.65	0.35
R-2	25 ft	10 ft for the 1st story + 2 ft for each additional story (principal) 5 ft (accessory)	25 ft (principal) 5 ft (accessory)	35 feet	0.55	0.45
R-4	Sec 4.6	Section 4.6	Section 4.6	Section 4.6	Section 4.6	Section 4.6

Zoning District	Minimum Setbacks (feet)			Maximum Building Height	Minimum Green Space	Maximum Impervious Surface
	Front Yard	*Side Yard*	*Rear Yard*			
R-5	35 ft.	15 ft for the first two stories + 2 ft for each additional story	15 ft	85 ft.	0.50	0.50
B[1]	25 ft.	10 ft for the 1st story + 2 ft for each additional story (principal) 5 ft (accessory)	20 ft (principal) 5 ft (accessory)	35 ft.	0.80	0.20
CN	15 ft.	10 ft.	10 ft.	25 ft.	0.25	0.75
PI	30 ft for single story build-ings less than 20 feet tall, and 20 ft plus 3 ft for each 10 ft, or fraction thereof, of build-ing height above the first 10 ft	10 ft plus 3 ft for each 10 ft, or fraction thereof, of building height over the first 10 feet (principal); 5 ft (accessory)	10 ft plus 3 ft for each 10 ft, or fraction thereof, of building height over the first 10 ft (principal); 5 ft (accessory)	70 ft.	0.25	0.75
CBD	None	None	None	55 ft.	None	None

Zoning District	Minimum Setbacks (feet)			Maximum Building Height	Minimum Green Space	Maximum Impervious Surface
	Front Yard	*Side Yard*	*Rear Yard*			
CH	50 ft.	20 ft (principal); 5 ft (accessory)	20 ft (principal); 5 ft (accessory)	50 ft.	0.25	0.75
MU	30 ft.	15 ft. (principal); 5 ft (accessory)	15 ft. (principal); 5 ft (accessory)	65 ft.	0.25	0.75
IL	30 ft.	20 ft. (principal); 5 ft (accessory)	20 ft. (principal); 5 ft (accessory)	50 ft.	0.10	0.90
IH	40 ft.	25 ft. (principal); 5 ft (accessory)	25 ft. (principal); 5 ft (accessory)	50 ft.	0.10	0.90
UC	25 ft.	10 ft for the 1st story + 2 ft for each additional story (principal)5 ft (accessory)	20 ft (principal) 5 ft (accessory)	55 ft.	0.35	0.65

[1]All site design requirements are subject to all requirements in Section 2.18 of this Zoning Code. (as amended by Ord. #3, Nov. 1998, Ord. #13, March 2001, Ord. #2003-22, Aug. 2003, and, 2005-04, March 2005, Ord. #2007-02, Jan. 2007, and Ord. #2008-02, Jan. 2008, and replaced by Ord. #2009-49, June 2009)

B. Exceptions to height requirements.

The height limitations do not apply to spires, belfries, cupolas, water tanks, ventilators, chimneys, or other similar appurtenances usually required to be placed above the roof level and not intended for human occupancy.

C. Additional yard requirements.

(1) In computing the depth of a rear yard for any building where such yard opens onto an alley, one-half of such alley may be assumed to be a portion of the rear yard.

(2) Each part of a required yard shall be open and unobstructed from the lowest point to the sky, except for the ordinary projection of sills, belt courses, cornices, buttresses, ornamental features and eaves. However, none of such projections shall project into a yard more than thirty six (36) inches.

D. Requirements for corner lots.

(1) A development proposed on a corner lot shall designate which street frontage shall be the front orientation.

(2) The required lot width shall be measured along the building setback for the frontage designated as the front of the lot. In no case shall a street frontage be designated as the front where the lot width would be nonconforming and where the other street frontage conforms to the lot width requirement.

(3) It is intended that the front yard setback be applied to both street frontages subject to the exceptions described herein. It is not intended that the application of any rule or exception regarding corner lots would result in a setback on an arterial or collector street that is less than 30 feet. In residential zoning districts where the lot width is less than 75 feet for most of the lots depth or length, the setback on the side with the longest street frontage is reduced to 15 feet for one- and two-family structures. On the side of a corner lot that would otherwise require a front setback but which has not been designated as the front of the lot, a front setback shall not be required where the right-of-way width of the adjoining street is less than 20 feet.

(4) Accessory structures shall not be located between the building and the streets, except one garage or carport not exceeding 24 feet in width when located so as to conform with the required street-side setback for the principal structure. (as amended by Ord. #2007-51, Dec. 2007)

E. Multiple Residential Structures on Common Sites and Residential in Commercial Zones (CH and CG).

This subsection addresses development of multiple residential structures on a common site where the underlying land is to remain under the ownership of one person or entity. It also addresses the case of one or more residential structures built on a site in a commercial zoning district (CH and CG). In these cases, the requirements of Table 2 "LOT AREA & WIDTH REQUIREMENTS" and Table 3 "SETBACKS, BUILDING HEIGHTS & LOT COVERAGE STANDARDS" are to be interpreted differently than in the case of a single building on a single lot with respect to residential density, building footprint area, setbacks and spacing between buildings, and ancillary buildings and uses. In residential zoning districts where more than one structure is to be built on a single lot or site, the minimum lot area requirements need to be interpreted as the maximum allowable density for residential uses. The R1 district allows only single-family structures at unit per 7,500 square feet. The R2 district allows 1 unit per 5,000 square feet for single family, two units per 7,500 square feet for duplex structures, 3 units per 10,000 square feet for triplex structures, and four units per 12,500 for quadruplex structures. The R3 district requires 7,500 square feet for the first unit and 2,500 feet for each additional unit regardless of structure type. Where residential uses are otherwise allowed to be built in commercial zoning districts (CH or CG), the density requirement shall be that which is applicable in the R3 district but the setback and impervious area requirements shall be those otherwise applicable in the commercial zoning district (nothing herein shall be construed to reduce other site design requirements for parking, etc.). Height restrictions and other requirements with City ordinances will limit the total floor area that can be developed within a given site. Separation between buildings within the development is not addressed by the setback requirements of the zoning districts but the separation shall meet the requirements of the building code and otherwise conform to requirements of the site plan review process. The setbacks otherwise required by the zoning district will be maintained along all public streets and, together with any required buffer area, along property lines external to the development. (as amended by Ord. #2007-48, Jan. 2008)

F. Limitation on Location of Accessory Structures

Accessory structures shall in no way be located on any property so as to obstruct any utility or drainage easement, or so as to impair site distances for traffic ingress or egress on the same property or adjoining property as determined by the City's traffic engineer or director of public works.

G.[1] Where a property owner and/or developer can demonstrate that no other applicable code is violated, including but not limited to site planning standards in Section 3.0 of the zoning regulations and the provisions of this section, certain minor encroachments into required yards or setbacks, enumerated below, are permitted. It is not intended that such minor encroachments into required yards or setbacks be allowed where the result would be to diminish the quality of what would otherwise be provided in the development of the site in terms of traffic circulation, parking, public safety, drainage, landscaping, and provision of utilities and other services. In order that it may be determined by the Planning Director (Community Development Director), in consultation with the site plan review team, whether a proposed minor encroachment into a required yard or setback is of the type permitted by this section, the property owner and/or developer shall provide a survey of the property indicating property lines, the location of all proposed buildings and drives, adjacent streets and their geometry, building lines on adjacent developed properties, and the location of utilities and drainage structures on and within 200 feet of the subject property. The Planning Director may require any such additional building plans or elevations as he or she deems necessary in order to reach a decision. A fee of one-hundred dollars ($100) shall be assessed for the review of a proposed minor encroachment into a required yard or setback under this section, except as otherwise noted below. The Planning Director shall produce a written record documenting the determination made and the reasons for the determination in each case submitted under this section. Where a determination is made that the minor encroachment is permitted under this section, the specific area of the permitted minor encroachment is to be documented. Determinations of the Planning Director under this section are subject to appeal to the Board of Zoning Appeals in the same manner as other administrative decisions made under this ordinance. The provisions of this section apply to the following types of minor encroachments into required yards or setbacks, except as provided below:

(1) Awnings and canopies extending into required front, side, or rear yards or setbacks are allowed provided that these do not exceed 20 feet in height, provided that they are open from the ground up except where connected to the building

[1]This subsection was designated in Ord. #2005-15 as "F" however; Ord. #2005-04 added subsection F and the compiler changed this subsection to "G."

for at least 75% of their height and 90% of their length provided that their total length does not exceed 30 feet, provided that they do not extend into any easement or within 5 feet of any side or rear property line or within 10 feet of any front property line, and provided that they otherwise comply with the requirements of this section.

(2) Where a required yard abuts a public greenway, or a controlled access highway in an area where it cannot be accessed, or an area zoned B-Buffer, encroachments of up to 50% of the required setback is permitted provided that such encroachments otherwise comply with the requirements of this section.

(3) Where the perimeter of a building footprint (including the building with awnings, canopies, porches, decks, patios, and heating/air conditioning equipment pads) is within the building envelope formed by the required yard or setback lines for 75% of its length, an encroachment is approved not exceeding 20% of the required setback but not to within nine (9) feet of any property line, provided that such encroachments otherwise comply with the requirements of this section.

(4) Roof overhangs of two (2) feet or less; the width brick or other siding material when installed in the customary manner; and protrusions including chimneys, bay windows, heating and air conditioning units, window boxes, ornamental balconies, "bump outs" and the like not exceeding a combined footprint of 30 square feet of encroachment in any required yard; and pedestrian bridges, conveyor systems, and the like connecting buildings on adjoining properties when otherwise built in compliance with applicable codes and site planning requirements, shall not be considered to violate setbacks and are permitted. Encroachments permitted under this subsection (4), when consisting entirely of roof overhangs of two (2) feet or less and/or the width of brick or other siding material as customarily installed, and/or heating and air conditioning units do not require the submission of a survey or the payment of the one hundred ($100) fee for review.

H. In order to maintain the appearance of existing residential subdivisions that are annexed into the City of Cleveland, residential

development on subdivision lots that were platted prior to annexation into the City Of Cleveland will be allowed to have a setback with respect to a local street that is the setback found on the plat or the typical prevailing setback among nearby residences but not less than 20 feet for a front setback. The same rule shall apply also to resubdivisions of existing lots in such subdivisions.

I. Application of Setback, Minimum Green Space and Maximum Impervious Surface Requirements in Table 3 (Table 3 requirements apply unless otherwise stated below, or otherwise modified in a manner provided for in the zoning ordinance):

An R2-zoned residential lot under 1 acre that is not a flag lot, if designed to include a minimum 5 foot greenspace buffer area along the lot's street frontage except for not more than 2 driveways not exceeding 24 feet in width for both driveways, and otherwise meeting the landscaping and buffering requirements of zoning and stormwater ordinances, can be designed to 65% impervious area and 35% greenspace, the Table 3 limits notwithstanding.

Where there are multiple RA, R1, R2, or R3 lots, each under 1 acre, to be developed on an existing or proposed local street, alternative setbacks, greenspace and impervious requirements may be granted in a design plan approved by the Cleveland Municipal Planning Commission based upon innovative design elements such as shared driveways, rear parking, pedestrian street amenities, zero lot-line designs; accommodation of site constraints (slopes, wetlands, unusual easements, buffering needs, etc.). This provision may be used in conjunction with conventional subdivisions or with alternatives (cluster, townhome) but nothing herein is intended to change the density limitation within the zoning district. The reductions in setbacks or greenspace will be proportional to the benefits of the design innovations for the development and the surrounding community. Porous paving materials and other innovative drainage and stormwater treatment features and additional landscaping and buffering and the like can be considered in the design.

For development on an RA, R1, R2, or R3 lot under one acre that is not part of a special development (a cluster subdivision, townhome subdivision, PUD, infill development or other alternative design plan approved by the Planning Commission) the Community Development Director, in consultation with the Public Works Director, may approve a setback, greenspace, or impervious area limit deviation of up to one-half of the amount otherwise required if it is necessary to improve

the design of the development to account for contingencies such as an oddly shaped lot, slopes, improved building orientation on the site, privacy and buffering, tree preservation, parking needs, better handicapped accessibility, consideration of cost constraints for low- and moderate-income affordable housing, protection of views, access protection, protection of streams, wetlands, etc. It is intended that a reasonable justification for the deviation is to be documented and that the deviation would be the minimum necessary to overcome the particular conditions described. It is further intended that the proposed design demonstrate some accommodation to the site conditions to reach a reasonable solution that balances design constraints with the amount of deviation allowed. Where the lot falls within one of the aforementioned special development categories, the same process may be followed except that the deviation is limited to one-third of the amount of setback, greenspace, or impervious area limit otherwise required. In evaluating the extent of deviation(s) to be approved, proposed conditions may also be approved that would include innovations such as the use of porous paving materials, other innovative drainage and stormwater treatment features, additional landscaping and/or buffering, and the like. (as amended by Ord. #17, Oct. 2001, Ord. #2005-04, March 2005, Ord. #2005-15, May 2005, Ord. #2005-41, Nov. 2005, Ord. #2008-01, Jan. 2008, and Ord. #2009-49, June 2009)

3.3 LANDSCAPING, BUFFERING AND TREE PRESERVATION REQUIREMENTS

A. Landscaping

The following requirements shall apply to all multi-family residential uses, mobile home parks, commercial and office developments:

(1) Landscaping shall be integrated into building arrangements, topography, parking and buffering requirements. Landscaping shall include trees, shrubs, ground cover, perennials, annuals, art, and the use of building and construction materials in a manner that respects the natural topographic features, natural resources of the site, and existing vegetation to the greatest extent practicable. The use of existing native species of plant material is strongly encouraged in landscaping and buffers. Existing natural ground cover and trees should be retained where possible by avoiding scraping, grading and sodding within the landscaped buffer. Where additional trees or

shrubs are required in an existing natural area, it should be done in a manner which minimizes the disturbances to native species.

(2) A detailed landscape plan shall be submitted with the site plan when requesting a building permit.

(3) Landscaping shall be integrated into parking areas, buffer areas and open spaces. The design shall maximize the visual effect to motorists and adjacent properties.

(4) Landscaping in parking lots and perimeter planting areas shall meet the requirements of the City of Cleveland's Section 18-307 stormwater regulations as to types of plants, numbers of plants, planting location and density, size and spacing of landscape areas, and irrigation and maintenance of landscaping. Developments that are less than one acre and which are not considered to be part of a larger common plan of development under the stormwater regulations Section 18-304, are also exempt from these zoning requirements for landscaping except that the buffer requirements below must be met. Landscape plantings used to meet buffering requirements may count toward the landscape requirements for perimeter and/or parking lot to the extent that these requirements are met by the buffer landscaping.

B. Buffers

It is the intention of this ordinance that land uses of lesser intensity shall be buffered from land uses of higher intensity, that the amount of the required buffering shall be determined in consideration of the difference in the intensity of the two adjoining uses, and that some options shall be provided to developers in determining how to meet buffer requirements in view of site conditions. Specifically, these regulations are intended to mitigate the impacts of noise, dust, debris, light, etc., where such impacts arise due to differences in neighboring land uses. The terms "use" or "uses" in this section refer to types of land uses (residential, commercial, etc.) that are proposed or which exist or which are allowed in a particular zoning district.

(1) For purposes of this buffering section the intensity of uses is determined as follows: Negligible (N) includes single-family residential dwellings; Low (L) includes

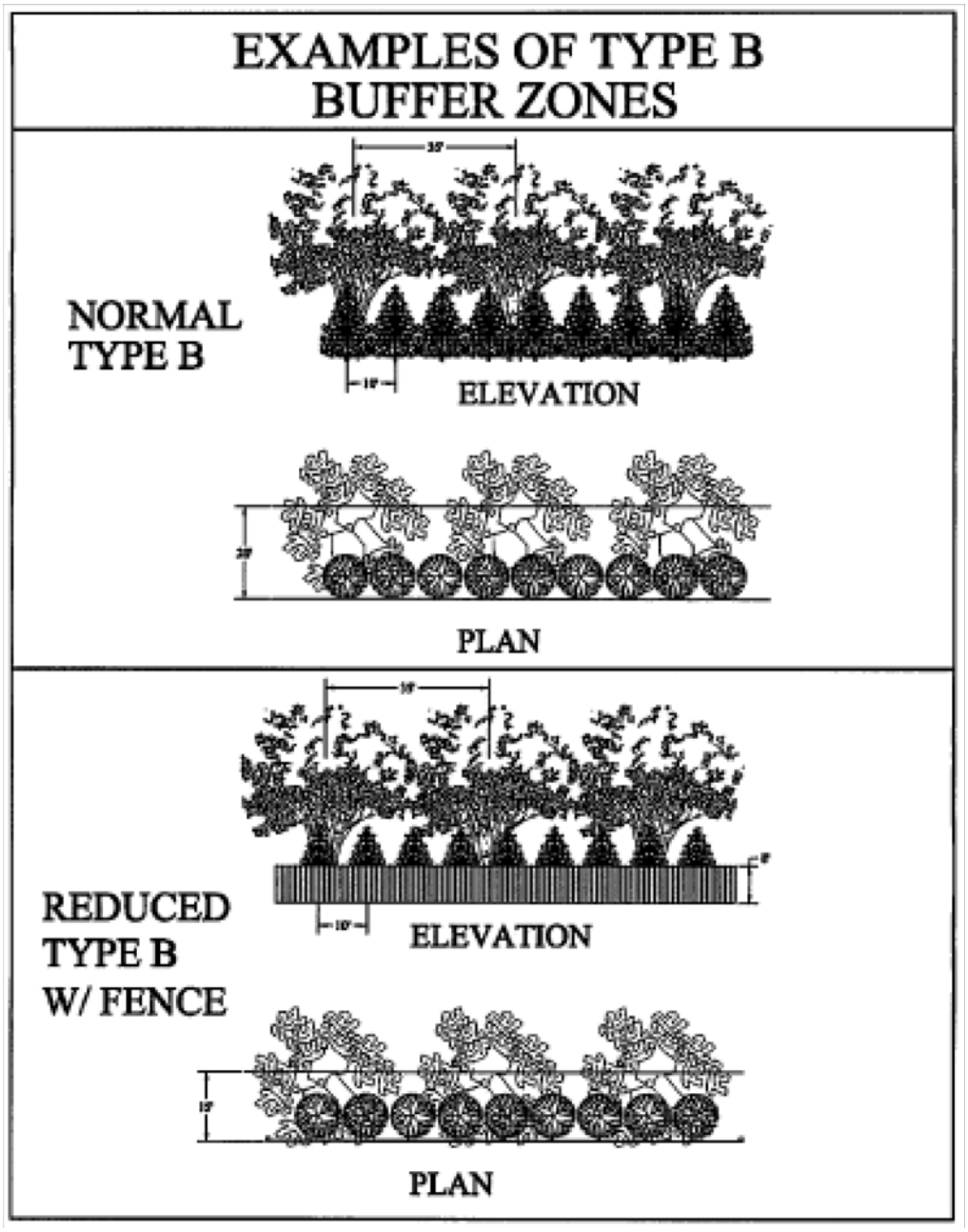
two-family residential dwellings and uses lawful in the PI zoning district except any use with a drive-through service and not including any PI development requiring 100 or more parking spaces; Medium (M) includes other residential uses not otherwise classified, other uses allowed in the PI, UC, or R3 district not otherwise classified, and commercial (CN, CG, or CH) development excluding automotive repair and outdoor recreation, and excluding any such commercial use requiring more than 100 parking spaces; Heavy (H) includes commercial (CN, CG or CH) not otherwise classified, and IL uses; and Very Heavy (V) includes IH uses.

(2) Buffers are of the following types: Type A is a heavily wooded area of natural vegetation at least 50 feet in width that is approved by the Urban Forester as being generally free of invasive exotic plants and fulfilling the equivalent buffering function of another buffer type that is acceptable between the two uses (may also be approved with supplemental fence and/or plantings as approved by the Urban Forester with or without a possible reduction in width to not less than 25 feet); Type B is a 20 foot buffer with one row of evergreen trees on 10 foot centers and shade trees on 35 foot centers (buffer width may reduced to 15 feet with the addition of a 8 foot solid wood fence) , but for existing lots of record created prior to final passage of this landscape buffer ordinance the Type B buffer is reduced to 15 feet without the fence or 10 feet with a 6 foot fence if a side or rear lot line(s) of the property is less than 225 feet; Type C is a 25 foot buffer with one row of evergreen trees on 10 foot centers and shade trees on 35 foot centers and a row of evergreen shrubs on 5 foot centers (buffer width may reduced to 20 feet with the addition of a 8 foot solid fence or a second row of evergreen trees staggered with the first row), but for existing lots of record created prior to final passage of this landscape buffer ordinance the Type C buffer is reduced to 20 feet without the fence or 15 feet with a 6 foot fence if a side or rear lot line(s) of the property is less than 225 feet; Type D is a 30 foot buffer with a row of shade trees on 35 foot centers, two staggered rows of evergreen trees on 12 foot centers, and a row of evergreen shrubs on 5 foot centers with an 8 foot solid fence; and a Type E is a 40 foot buffer with two staggered rows of shade trees on 35 foot centers, two staggered rows of evergreen trees on 10 foot centers and a row of evergreen shrubs on five foot centers

and an 8 foot solid wooden fence. The Urban Forester may approve an additional reduction of up to 5 feet in any Type A, B, C, D buffer where a masonry wall 6 to 8 feet in height (faced with stone, brick, or cut faced block) is used in lieu of a solid wooden fence or where a planting berm at least 4 feet high is incorporated into the design. The Urban Forester may approve an alternative design that incorporates a stormwater detention facility, wetland, required stream buffer, or utility or pipeline easement or right-of-way, in an area affected by such a feature provided that the quality of the buffering effect is maintained. Where a B-Buffer zone is implemented between two adjoining zoning districts or uses, it is intended that such B zone be at least as wide as the buffer otherwise required by this ordinance and that it provide the same buffering features in the same amounts that are otherwise required (plantings, fences, berms, walls), however the Urban Forester may approve an alternative design where such B zone is wider than the buffer that is otherwise required. Where a solid wood fence is included as part of a buffer it shall be constructed in a sturdy and workman -like manner using pressure treated wood designed for the construction of privacy fences with tightly spaced vertical slats of 8 inches or less in width. The specifications for plant materials to be used in buffers are a minimum 1.5" diameter dbh for shade trees, minimum 6' tall for evergreen trees, and 7 gallon size for shrubs with a minimum height of 24' to 30"; all plant materials are to be healthy and properly planted, watered and otherwise maintained to ensure survival and growth. The requirements for each buffer type are summarized in the table below and illustrations of possible buffers meeting the B,C, D, and E requirements follow:

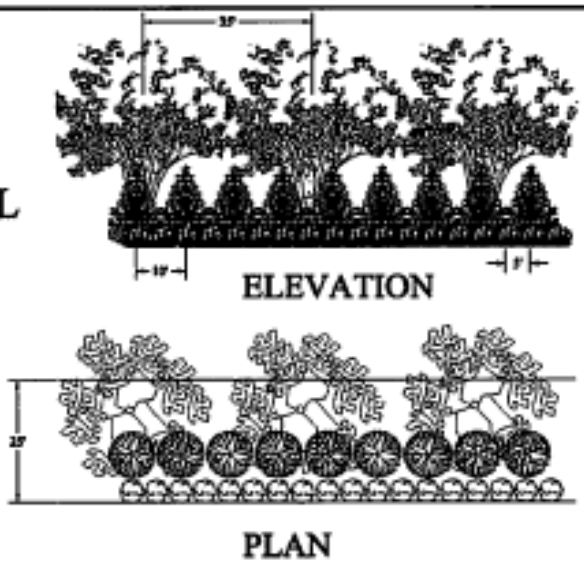
BUFFER TYPE DESCRIPTION TABLE						
	BUFFER WIDTH AND CONTENT	NORMAL WIDTH	CONTENT FOR NORMAL WIDTH	REDUCED WIDTH	CONTENT FOR REDUCED WIDTH	BONUS WIDTH REDUCTION
BUFFER TYPE						
A		50'	Heavy natural woods, free of pest plants, equivalent to B or C depending on requirement for property. Requires Urban Forester approval	As low as 25' depending on Urban Forester review	Supplemental plantings and/or fence. More supplement required to get higher reduction in width. Requires Urban Forester approval	Additional 5' with construction of 6' to 8' masonry wall in lieu of fence (must be cut block, brick, or stone on face or a 4' planting berm
B		20' but for existing lots of record created prior to final passage of this landscape buffer ordinance 15' if side or rear lot line is less than 225'	1 row evergreen trees on 10' centers, shade trees on 35' centers	15' but for existing lots of record created prior to final passage of this landscape buffer ordinance 10' if side or rear lot line is less than 225'	Normal content plus 8' solid wood fence but for existing lots of record created prior to final passage of this landscape buffer ordinance fence may be 6' high if side or rear lot line is less than 225'	Same as A
C		25' but for existing lots of record created prior to final passage of this landscape buffer ordinance 20' if side or rear lot line is less than 225	1 row evergreen trees on 10' centers, shade trees on 35' centers, and 1 row evergreen shrubs on 5' centers	20' but for existing lots of record created prior to final passage of this landscape buffer ordinance 15' if side or rear lot line is less than 225'	Normal content plus a 8' solid wood fence (but for existing lots of record created prior to final passage of this landscape buffer ordinance fence may be 6' high if side or rear lot line is less than 225') or a second row of evergreen trees staggered with the first row	Same as A

BUFFER TYPE DESCRIPTION TABLE						
	BUFFER WIDTH AND CONTENT	NORMAL WIDTH	CONTENT FOR NORMAL WIDTH	REDUCED WIDTH	CONTENT FOR REDUCED WIDTH	BONUS WIDTH REDUCTION
BUFFER TYPE						
D		30'	A row of shade trees on 35' centers, 2 staggered rows of evergreen trees on 10' centers, and a row of evergreen shrubs on 5' centers, and an 8' solid fence	NA	NA	Same as A
E		40	2 staggered rows of shade trees on 35' centers, 2 staggered rows of evergreen trees on 10' centers, and a row of evergreen shrubs on 5' centers, and an 8' solid fence	NA	NA	NONE

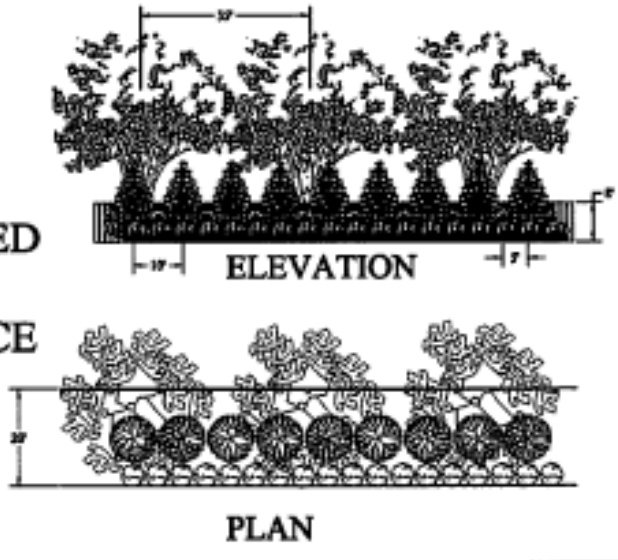

EXAMPLES OF TYPE B
BUFFER ZONES
NORMAL
TYPE B
ELEVATION
PLAN
REDUCED
TYPE B
W/ FENCE
ELEVATION
PLAN

EXAMPLES OF TYPE C BUFFER ZONES

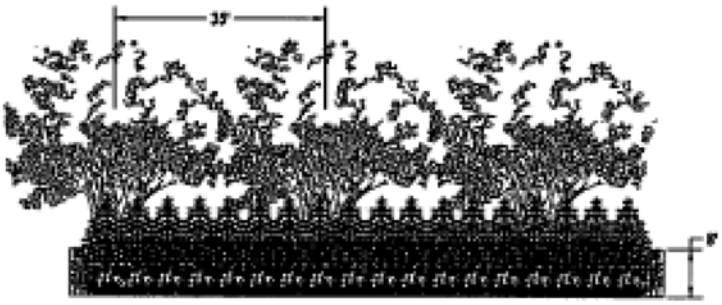
NORMAL TYPE C



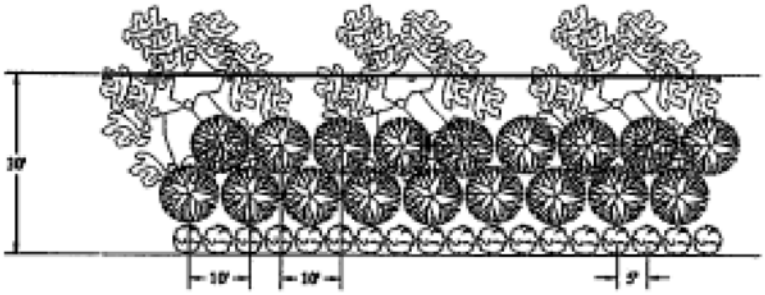
REDUCED TYPE C W/ FENCE



EXAMPLE OF TYPE D BUFFER ZONE



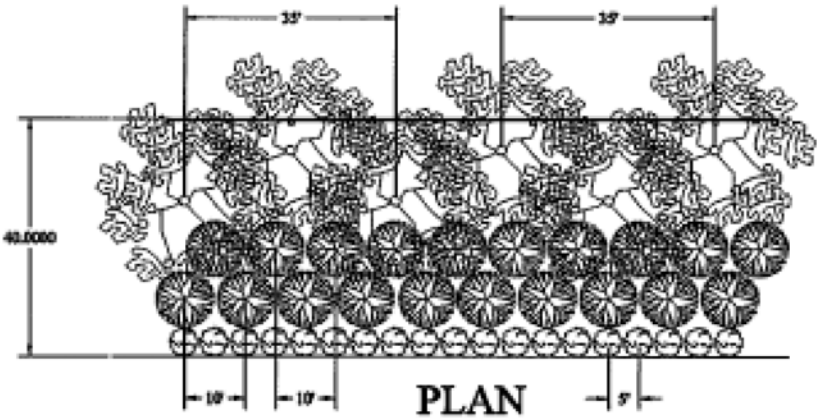
ELEVATION



PLAN

EXAMPLES OF TYPE E BUFFER ZONE

ELEVATION



PLAN

(3) The minimum required buffer shall be determined according to the table below. In the interest of preserving the quality of development in the City of Cleveland, proposed development with an intensity of (N) must provide a Type A or Type B buffer when locating adjacent to property that is (H) or (V), and proposed development that has an intensity of (L) must provide a Type A or Type B buffer when locating next to property that is (V). The other cases represented in the table below are of proposed development areas that are more intensive than the adjacent areas and therefore have to provide a buffer.

(4) Proposed residential uses with an intensity of (N) or (L), when developed adjacent to a highway require a buffer between the proposed residential use and the highway as described herein. Residential development with an intensity of (N) shall provide a Type A or Type B buffer along its borders with principal arterial streets, Interstate highways, and other freeways. Residential development with an intensity of (L) shall provide a Type A or Type B buffer along its borders with Interstate highways and other freeways. Where a buffer is required by this paragraph, it may be interrupted for the purpose of installing driveways, access roads, signage, and the like where these are otherwise permitted, and where accessory structures serving the residential development are located so as to buffer the residences.

(5) On sites abutting a street classified as arterial or above and which are wooded, meaning that tree canopy covers at least 50% of the site, reduction of the tree canopy to less than 20% without commencing development on an approved site plan or subdivision (not minor subdivision) within one year of the canopy reduction shall require the planting of a Type B buffer within 20 feet of adjoining properties or the maintenance of a Type A buffer within 50 feet of adjoining properties. The planting and maintenance of this buffer on the undeveloped property shall not eliminate the requirement to otherwise fully comply with the buffering requirements of this ordinance when the property is developed.

(6) For purposes of this section on landscape buffers, the term "shade tree" shall mean large trees from the Urban

Forester's recommended tree list, or other species specifically approved by the Urban Forester. For purposes of this section on landscape buffers, the term "evergreen tree" shall mean large or medium evergreen trees from the Urban Forester's recommended tree list. These recommended tree lists are reproduced here below for the sake of convenience:

Recommended Deciduous Tree List **Large Trees** **(mature height >50')**			
Common Name	**Scientific Name**	**Common Name**	**Scientific Name**
English Oak	Quercus robur	Red maple	Acer rubrum
Sawtooth Oak	Quercus acutissima	Sugar maple	Acer saccharum
Willow Oak	Quercus phellos	River Birch	Betula nigra
White Oak	Quercus alba	American Beech	Fagus grandifolia
Water Oak	Quercus nigra	White Ash	Fraxinus pennsylvanica
Pin Oak	Quercus palustris	Green Ash	Fraxinus americana
Shumard Oak	Quercus shumardii	Ginkgo*	Gingko biloba
Scarlett Oak	Quercus coccinea	Kentucky Coffee Tree*	Gymnocladus dioicus
Red Oak	Quercus rubra	Tulip tree	Liriodendron tulipifera
Black Oak	Quercus velutina	Silver Linden	Tilia tomentosa
Northern Red Oak	Quercus borealis	Japanese Pagodatree	Sophora japonica
Southern Red Oak	Quercus falcata	Southern Magnolia	Magnolia grandifolia

Common Name	**Scientific Name**	**Common Name**	**Scientific Name**
American Linden	Tilia Americana	Bald Cypress	Taxodium distichum
Littleleaf Linden	Tilia cordata	Honey Locust	Gleditsia triacanthos
American Sycamore	Platanus occidentalis	Sweetgum	Liquidambar styraciflua
Blackgum	Nyssa sylvatica	Japanese Zelkova	Zelkova serrata
Dawn Redwood	Metasequoia glyptostroboides	London Planetree	Platanus acerifolia
Chinese Elm	Ulmus parvifolia		

*Note: Only male of these species shall be planted

Recommended Evergreen Trees			
Medium Size Trees (mature height >25', <50')		**Large Trees (mature height >50')**	
Common Name	**Scientific Name**	**Common Name**	**Scientific Name**
Foster Holly	Ilex x'Fosteri' cultivars	Atlas Blue Cedar	Cedrus atlantica glauca
Yaupon Holly	Ilex vomitoria cultivars	Deodar Cedar	Cedrus deodara
English Holly	Ilex aquifolium cultivars	Eastern White Pine	Pinus strobes
American Holly	Ilex opaca cultivar	Loblolly Pine	Pinus taeda
Cherry Laurel	Prunus caroliniana	Canadian Hemlock	Tsuga Canadensis
Norway spruce	Picea abies		

REQUIRED BUFFER TABLE						
	ADJACENT USE INTENSITY	N	L	M	H	V
PROPOSED USE INTENSITY						
N		NONE	NONE	NONE	A or B	A or B
L		A or B	NONE	NONE	NONE	A or B
M		A or C	A or B	NONE	NONE	NONE
H		D	A or C	A or B	NONE	NONE
V		E	D	A or C	A or B	NONE

C. Tree Preservation

It is the purpose and intent of this section of the zoning regulations to promote the preservation of trees on private property, or the replacement of such trees where preservation is ineffective, in order to improve the quality of development and to provide environmental and aesthetic benefits and to buffer or otherwise mitigate the affects of urbanization.

On any tract, lot, or parcel of land, or portion thereof, lying in the City of Cleveland, Tennessee that is 1 acre or more in size or on any such tract, lot, or parcel less than 1 acre that contains no building with a tax appraisal of $25,000 or more, it shall be unlawful and a zoning violation in any zoning district to remove any trees with a trunk diameter greater than 6 inches or any trees designated for preservation in an approved Tree Removal, Replacement, and Preservation Plan (TRRPP), except in compliance with the following requirements (trees that are dead, that are severely diseased or severely and unintentionally damaged, or that are in a utility easement or right-of-way, or that are physically damaging or endangering existing structures, utilities, transportation, or communication systems, e.g. root damage to pipes or the blocking of satellite reception and the like---these are subject to coverage by a

general City Of Cleveland permit but the owner of any tree or trees removed pursuant to these exceptions is responsible to maintain specific documentation of the existence of such exception conditions in order to sustain coverage by the aforementioned general permit):

1. A tree removal permit is obtained from the Department of Community Development based upon a Tree Removal, Replacement, and Preservation Plan (TRRPP) approved by the Urban Forester. A tree removal permit would not authorize grading of a site or any other land disturbing activity requiring a land disturbance permit under the City's stormwater ordinance but it would authorize tree removal in conjunction with these activities once they are properly permitted. A tree removal permit would authorize tree removal by cutting in the absence of a land disturbing activity. A tree removal permit would authorize only such tree removal as is consistent with the approved TRRPP. Removing or endangering (failing to follow the Urban Forester's guidelines for preserving trees) trees that are to be preserved under the TRRPP would be a violation of the tree removal permit.

2. The TRRPP is to include the general location of forested areas on the site and available aerial photography. The TRRPP is to identify general areas on the site within 50 feet of property lines where tree preservation could occur (where the required tree preservation is not feasible within 50 feet of property lines alternative areas of the site may be designated). The TRRPP is to identify how any trees and their associated understory will be preserved on the site (pre-development, during development, and post-development) consistent with guidelines provided by the Urban Forester. The TRRPP should result in a practical and sustainable preservation of trees that will provide benefits to the development and the community consistent with the purpose and intent of this ordinance. Trees that are preserved should be incorporated into any required buffering for the site or into site landscaping and trees that are preserved are intended to be counted toward the fulfillment of any requirements for buffering (if in the buffer area) or landscaping. Shielding of residential areas from roadways and other uses is an important consideration. Preserving of the largest tree or trees is not necessarily paramount but consideration should be given to size, species characteristics, potential positive and negative impacts of the particular trees in their location in light of the development plan, and long term survival of the trees. The TRRPP is to achieve a target of preserving 10 trees with a trunk diameter of 6 inches per acre, or a canopy coverage from trees with a 6 inch trunk diameter that is equal to 10% of the site acreage. Trees

preserved are to be from species approved by the Urban Forester and are to consist of at least 50% shade trees, by number of trees or percentage of canopy. The TRRPP is to identify the location, species, common name, and diameter at breast height (dbh) of the tree to be preserved and this same information is to be provided for any tree that exceeds 20 inches dbh not to exceed 20 trees per site (priorities for inclusion are the largest trees, hardwood shade trees not otherwise listed among the exceptions for preservation, and trees within 50 feet of a property line). Where a large tree of 20 inches or more dbh is included in the TRRPP to be preserved, it will count as two trees if the required minimum is to be met by preserving 10 trees per acre.

3. The TRRPP is a part of and a condition of any tree removal permit, site plan approval, land disturbance permit, and/or building permit issued for development on the site. The property owner is responsible to maintain the property perpetually in compliance with the approved TRRPP. Modifications to the plan that are necessitated by the final site design are to be approved by the Urban Forester. In the event that a preserved tree in the TRRPP dies or must be removed for some other reason, the Urban Forester may approve a modification to the TRRPP that includes replacement of the tree. Replacement will be with one or two trees that have a minimum combined dbh of at least 6 inches at the time of planting. The TRRPP is to be submitted to and approved by the Urban Forester prior to the issuance of a tree removal permit. A TRRPP review fee of twenty-five dollars shall be submitted with each TRRPP and with each TRRPP revision that is initiated by the property owner.

On any tract, lot, or parcel of land, or portion thereof, lying in the City of Cleveland, Tennessee that is less than 1 acre and that contains a building with a tax appraisal of $25,000 or more, it shall be unlawful and a zoning violation in any zoning district to remove any tree(s) with a trunk diameter greater than 28 inches diameter at breast height (dbh) without a Limited Tree Removal Permit approved by the Urban Forester (trees that are dead, that are severely diseased or severely and unintentionally damaged, or that are in a utility easement or right-of-way, or that are physically damaging or endangering existing structures, utilities, transportation, or communication systems, e.g. root damage to pipes or the blocking of satellite reception and the like---these are subject to coverage by a general City Of Cleveland permit but the owner of any tree or trees removed pursuant to these exceptions is responsible to maintain specific documentation of the existence of such exception conditions in order to sustain coverage by the aforementioned general permit). If

there would be fewer than five trees of 6 inches or more dbh remaining on the site after the removal of the tree(s) that are the subject of the Limited Tree Removal Permit, then each tree removed shall be replaced by a shade tree from the Urban Forester's approved list. The replacement shall be on-site or, if approved on appeal to the Urban Forester, on a public property or alternative site protected by a conservation easement. The total number of trees removed pursuant to one or more Limited Tree Removal Permits on a given property shall not exceed four. The Limited Tree Removal Permit fee of ten dollars shall be submitted prior to approval of the permit. (as amended by Ord. #2008-10, April 2008, Ord. # 2008-11, April 2008, and Ord. #2009-57, June 2009)

3.4 Access, parking and loading.

A. General access requirements.

(1) Each lot shall have access to it that is sufficient to afford a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property.

(2) A Point of access (driveway, curb cut, entrance or exit point) shall not exceed twenty-five (25) feet in width on lots for residential uses, and forty (40) feet in width for nonresidential uses, provided that the point of access does not exceed fifty (50) percent of the lot frontage.

(3) In zoning district, other than residential, lots less than one hundred fifty (150) feet in width shall have only one (1) point of access to any public street; lots less than two hundred fifty (250) feet in width shall have no more than two (2) points of access on through streets.

(4) The distance between any two (2) points of access shall be at least twenty-five (25) feet measured from edge of pavement to edge of pavement at the right-of-way line.

(5) An access point shall be located at least twenty-five (25) feet from any street intersection measured from the curb radius tangent point or property line radius point.

(6) Where access to a state or federal highway is controlled by regulations other than those stated herein, the most restrictive regulations shall prevail.

B. Driveway locations.

All driveway entrances and other openings onto streets shall be constructed so that:

(1) Vehicles can safely enter and exit; specifically, that it is not necessary for vehicles to exit by backing onto collector streets and above; and

(2) The Location of the driveway does not interfere with traffic.

C. Streets, cul-de-sacs and alleys.

(1) Design standards for streets.

This section establishes minimum requirements applicable to the access and circulation system, including public and private streets, and access control to and from public streets. The standards in this section are intended to minimize the traffic impacts of development, to assure that all developments adequately and safely provide for the storage and movement of vehicles consistent with good engineering and development design practices.

a) The arrangement, character, extent, width, grade and location of all streets shall conform to the street and highway plans of the Tennessee department of transportation and the City of Cleveland, and shall be considered in their relation to existing and planned streets, to topographical conditions and to public convenience and safety. Streets shall be considered in their appropriate relation to the proposed uses of the land to be served by such streets and the most advantageous development of the surrounding area.

b) Where streets are not shown in any street or highway plan, their arrangement shall either provide for the continuation of appropriate projections of existing principal streets in surrounding areas; or conform to a plan for the neighborhood, Approved or adopted by the Cleveland Planning Commission, to meet a particular situation where

natural conditions make continuance or conformity to existing streets impractical.

c) Local streets shall be so laid out and arranged as to discourage their use by through traffic.

d) Where a development abuts or contains an existing or proposed arterial street, the planning commission may require marginal access streets, reverse frontage with screen planting contained in a non-access reservation along the rear property line, deep lots with rear service alleys or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

e) Where a development borders on or contains a right-of-way, expressway, drainage canal or waterway, the planning commission may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land. Such distances shall also be determined with due regard for the requirements of approach grades for future bridge or grade separations.

f) Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed in the city under conditions approved by the planning commission.

g) Half or partial streets shall not be permitted except where essential to the reasonable subdivision of a tract in conformity with the standards of this ordinance and where, in addition, satisfactory assurance for dedication of the remaining part of the street is provided. Wherever a tract to be subdivided borders on an existing half or partial street, the other part of the street shall be dedicated within such tract.

h) Dead-end streets are prohibited except those designed to be so permanently. Permanent dead-end streets must have the approval of the planning commission.

(2) Design standards for cul-de-sacs.

a) A cul-de-sac is measured from its dead-end or vehicular turnaround back to its intersection with another street or cul-de-sac. A "Y" shaped road leaving the highway would have two (2) Cul-de-sacs: the two (2) branches of the "Y." The base of the "Y" would not be considered a part of the cul-de-sac.

b) Normal cul-de-sac length shall be limited to the length required to generate an average daily traffic (ADT) of two hundred fifty (250) vehicles per day based upon an estimate of ten (10) average daily trips per single family unit, or one thousand (1,000) feet, whichever is shorter.

c) Normal cul-de-sacs shall have a minimum forty (40) foot right-of-way and a minimum twenty-two (22) foot wide paved surface. At the closed end (cul-de-sac) they shall be provided with a turnaround having an outside roadway diameter of at least sixty (60) feet and a street property line diameter of at least eighty (80) feet. No sidewalk is required.

d) Extended cul-de-sac lengths shall be limited to the length required to generate a maximum ADT of five hundred (500) vehicles per day or one thousand five hundred (1,500) feet, whichever is shorter.

e) Extended cul-de-sacs shall have a minimum of fifty (50) foot right-of-way, a twenty-four (24) foot paved street, and a sidewalk on at least one side.

f) A cul-de-sac that is an extension of a local street shall have a right-of-way width of fifty (50) feet, a twenty-four (24) foot wide paved street, and a sidewalk on at least one (1) side regardless of length. If the combined length of the local street and the cul-de-sac extension exceeds two thousand five hundred (2,500) feet from the end of the cul-de-sac paved surface to the centerline of the collector street or arterial to which it connects, the turnaround shall have an outside roadway diameter of at least ninety (90) feet, and a street property line diameter of at least one hundred ten (110) feet to accommodate school buses.

(3) Design standards for alleys.

a) The width of an alley shall be twenty (20) feet or more.

b) Changes in the alignment of alleys shall be made on a centerline radius of not less than seventy-five (75) feet.

c) Dead-end alleys shall be avoided where possible, but if they are unavoidable, they shall be provided with adequate turnaround facilities for service trucks at the dead end, with a minimum external diameter of ninety (90) feet, or as determined to be adequate by the transportation engineer.

(4) Design standards for intersections.

a) Streets shall be laid out to intersect as nearly as possible at right angles. No street shall intersect another at an angle of less than seventy-five (75) degrees, except at a "Y" intersection of two (2) minor streets.

b) Multiple intersections involving junctions of more than two (2) streets are prohibited, except where they are found to be unavoidable by the Cleveland Planning Commission.

c) "T" intersections of minor and collector streets are to be encouraged.

d) As far as possible, intersections on arterial streets shall be located not less than eight hundred (800) feet apart measured from the centerline.

e) Property line radii at street intersections shall be twenty-five (25) feet for minor streets. Where the angle of intersection is less than seventy-five (75) degrees, a greater radii may be determined by the transportation engineer and approved by the Cleveland Planning Commission.

f) Curb return radii at local streets intersecting local streets shall be a minimum of fifteen (15) feet, and shall be a minimum of twenty-five (25) feet where local streets intersect collectors or arterials. Curb returns at collector and/or arterial intersections shall be as determined by the city transportation director.

3.4.1 Drives, driveways and sidewalks.

A. No sidewalk, driveway or other means of entrance to any lot, regardless of the district in which the said lot is located, shall be constructed without the written approval of the city public works director.

(1) Adjacent commercial or office properties which are major traffic generators (such as shopping centers and office parks) shall provide a cross access drive and pedestrian access to allow circulation between sites. A major traffic generator is defined as a generator that is responsible for initiating over five hundred (500) trips per day.

(2) Joint use driveways and cross access easements shall be established wherever feasible along arterial streets and major collector streets. A unified access and circulation system plan that includes coordinated or shared parking areas is encouraged wherever feasible.

(3) The city may reduce required separation distances of access points provided that joint access driveways and cross access easements are provided as described in this section.

(4) Driveways shall be located and constructed in the City of Cleveland according to the urban standards outlined in the latest edition of the Tennessee Department of Transportation guidelines entitled "Rules and Regulations for Constructing Driveways on State Highway Rights-of-way."

B. Sidewalk locations.

(1) Where a proposed development includes improvements or new construction of collector or arterial facilities, facility designs shall include provision for sidewalks within the right-of-way on both sides of the street.

(2) Residential projects within two thousand (2,000) feet of an activity center comprised of commercial, office, service, recreation activities, or public primary and secondary schools shall provide sidewalks on both sides of the street, except that cul-de-sacs with less than two hundred fifty (250) adt or less than one thousand (1,000) feet in length

shall not require sidewalks. All other residential streets shall have a sidewalk on at least one side.

(3) Pedestrian-ways or crosswalks, not less than ten (10) feet wide with a sidewalk meeting the requirements of this ordinance, may be required to be placed in the center of blocks more than eight hundred (800) feet long where deemed necessary to provide circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities.

3.4.2 [Reserved.]

3.4.3 Rights-of-way

A. Right-of-way widths.

(1) Unless otherwise required by the Tennessee department of transportation or the city street plan, right-of-way requirements shall be as shown in the following table. Rights-of-way are measured from lot line to lot line.

Table 4
Right-of-way Widths

Street Classification	**Average Daily Traffic (ADT) Vehicles per Day (VPD)**	**Right-of-Way Width (Feet)**
Major Arterial	5,000 or more vpd	120 cb
Minor Arterial	2,000 - 5,000 vpd	80 feet
Major Collector	1,000 - 2,000 vpd	70 feet
Minor Collector	500 - 1,000 vpd	60 feet
Local Street	250 - 500 vpd	50 feet
Cul-de-sac or Loop	1-250 vpd	40 feet
Alley	less than 250 vpd	20 feet (residential) 30 feet (commercial)

(2) Additional right-of-way width may be required to promote public safety and convenience, or to ensure adequate access, circulation and parking in high density residential areas, commercial areas and industrial areas.

B. Protection and use of rights-of-way.

(1) No encroachment shall be permitted into existing rights-of-way, except for temporary use authorized by the city.

(2) Use of the right-of-way for public or private utilities, including, but not limited to sanitary sewer, potable water, telephone wires, cable television wires, gas lines, or electricity transmission, shall be allowed subject to the approval of the city engineer and city transportation director.

(3) Sidewalks shall be placed within the right-of-way or dedicated easement.

C. Dedication of rights-of-way.

All rights-of-way shall be designed and constructed to city specifications and may be dedicated to the city after the city engineer has approved the construction. A surety must be provided by the developer for one (1) year after construction is completed to ensure proper maintenance.

3.4.4 Off-street parking.

A. Off-street parking facilities shall be provided for all development within the city pursuant to the requirements of this section. The facilities shall be maintained as long as the use exists that the facilities were designed to serve.

B. The following table indicates the minimum number of required parking spaces.

Table 5 Minimum Parking Spaces	
Land Use Category	**Minimum Number of Spaces**
Residential, Single-family	2 for the first br + .5 for each additional br
Residential, multi-family[1] 1 br and efficiency unit 2 br unit 3+ br unit	 2/unit 2.25/unit 2.5/unit
Mobile Home Parks	2.0/unit
Institutional Church School Living and Nursing Facilities Other	 1/3 seats 1/classroom + 1/250 sq ft of office .5/sleeping unit + 1/employee on largest shift 1/250 sq ft
Outdoor Recreation	1/3 patrons plus 1/employee on largest shift
Personal Service Barber/beauty Salons All Other	 3/station 1/250 sq ft
General Office	1/400 sq ft
Medical Office	1/150 sq ft
Neighborhood Commercial	1/250 sq ft
General Commercial Theaters/Auditoriums, Places of Assembly Commercial Recreation Facilities Funeral Homes Hospitals Hotels and Motels Restaurants All Other	 1/3 Seats 1/3 patrons + 1/250 sq ft office space 1/3 seats in chapel + 1/250 sq ft office space 1/bed + 1/250 sq ft office space 1/lodging room + 1/100 sq ft restaurant 1/100 sq ft 1/200 sq ft

[1]Ord. #25, Dec. 2002 provides that parking requirements for rooming houses and dwelling units other than single-family dwellings that were constructed after November 1, 2002 with more than two unrelated occupants of legal driving age, be established as two spaces per bedroom. Furthermore, the parking design requirements of this ordinance shall be in addition to the requirements of section 3.4.4.

Land Use Category	Minimum Number of Spaces
High Intensity Commercial Vehicles Sales, Rentals, Etc. Body Shops Gasoline Stations, Convenience Stores Outdoor Arenas	 1/500 sq ft building 1/3 bays 1/250 sq ft + 1/3 bays 1/3 patrons
Public Service	1/employee + 1/250 sq ft office space
Industrial	1/employee + 1/250 sq ft office space

C. Computation.

(1) When determination of the number of off-street spaces required by this section results in a fractional space, the fraction of one-half or less may be disregarded, a fraction in excess of one-half shall be counted as one parking space. Any factional space may be disregarded when it is documented that the dimensions of the site would render the construction of the additional space impractical.

(2) In stadiums, sports arenas, churches and other places of assembly in which those in attendance occupy benches, pews or other similar seating facilities, or which contains an open assembly area, the occupancy shall be based on the maximum occupancy rating given the building by the adopted building code.

(3) Gross floor area shall be the sum of the gross horizontal area of all floors of a building measured from the exterior faces of the exterior walls. (as replaced by Ord. #2010-27, July 2010)

D. On-street parking.

Approved on-street spaces which abut the property may be counted as a portion of the required parking spaces.

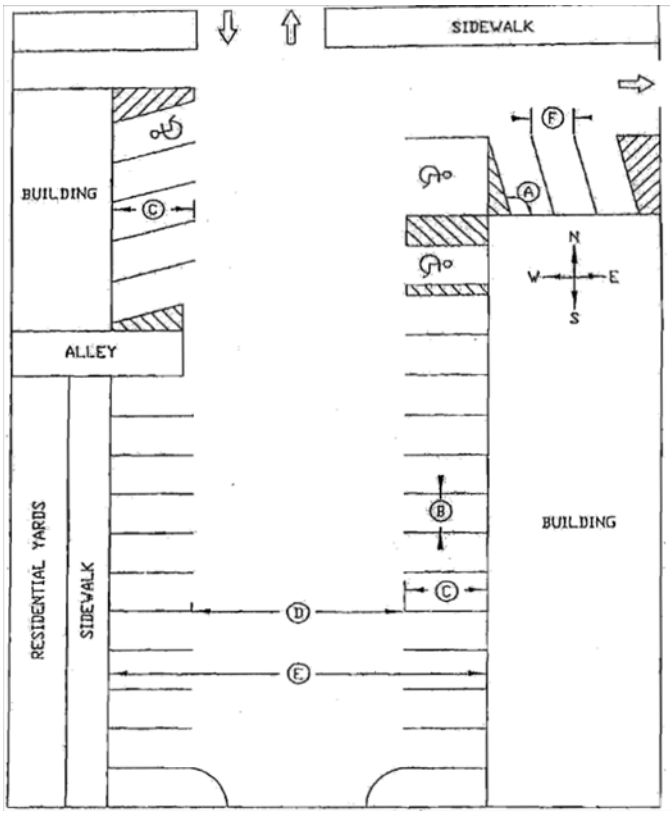
E. Design requirements.

(1) Minimum parking dimensions for standard vehicles shall be according to the following table:

Table 6 Minimum Parking Dimensions (Standard Vehicles)						
A		B	C	D	E	F
Parking Angle (Degrees)	Parking Direction	Stall Width	Stall Depth Perpendicular to Aisle[3]	Width of Aisle	Width of Aisle plus Two Stalls	Stall Width Parallel to Aisle
45	Drive	9 ft	15 ft	12 ft	42 ft	12.7 ft
60	Drive	9 ft	17 ft	16 ft	50 ft	10.4 ft
75	Drive	9 ft	18 ft	18 ft	54 ft	9.3 ft
90	Drive	9 ft	18.0 ft	20 ft	56 ft	9.0 ft
[3]Stall depth to be measured at front of vehicle or curb.						

FIGURE 3

Typical parking lot layout



(2) Except as provided in this section, all required off-street parking spaces and the use they are intended to serve shall be located on the same parcel.

(3) Unless no other practicable alternative is available, vehicle accommodation areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street. This requirement does not apply to parking areas consisting of driveways that serve one (1) or two (2) dwelling units, although backing onto arterial streets is discouraged. No other uses shall provide parking that requires backing onto a public street.

(4) Every vehicle parking space shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties or public rights-of-way. Such areas shall also be designed so that vehicles do not extend over sidewalks or tend to bump against or damage any wall, vegetation, or other obstruction.

(5) Telephone poles and other obstructions shall be protected from damage by a landscape island or other protective device.

(6) The building official with the concurrence of the city transportation director may approve off-site parking facilities if the location of the off-site parking spaces will adequately serve the use for which it is intended and the location will not create unreasonable hazards to pedestrians and other traffic. The following factors shall be considered:

a. Proximity of the off-site spaces to the use that they will serve. Off-street parking shall be provided within four hundred (400) feet of the principal entrances thereto, measured along the most direct pedestrian walkway.

b. Ease of pedestrian access to the off-site parking spaces.

c. Whether or not off-site parking spaces are compatible with the use intended to be served, e.g., off-site

parking is not ordinarily compatible with high turnover uses such as retail.

d. The developer supplies a written agreement, approved in form by the city attorney, assuring the continued availability of the off-site parking facilities for the use they are intended to serve. The city shall be a party to the agreement with enforcement authority. The agreement shall contain covenants running with the lands of both the dominant and subservient parcels.

(7) Distances shall be measured from a dwelling unit's entry to the parking space. Where a stairway or elevator provides access to dwelling units, the stairway or elevator shall be considered to be the entrance to the dwelling units. Loading areas shall have direct access to a public street or alley and include sufficient off-street maneuvering space so that no vehicular backing onto or from a public street is required.

(8) The size and layout of parking spaces shall conform to the engineering design and construction standards of the City of Cleveland.

(9) Pedestrian circulation facilities, roadways, driveways, and off-street parking and loading areas shall be designed to be safe and convenient.

(10) Parking and loading areas, aisles, pedestrian walks, landscaping, and open space shall be designed as integral parts of an overall development plan and shall be properly related to existing and proposed buildings.

(11) Buildings, parking and loading areas, landscaping and open spaces shall be designed so that pedestrians moving from parking areas to buildings and between buildings are not unreasonably exposed to vehicular traffic.

(12) Landscaped, paved, and gradually inclined or flat pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas, and adjacent buildings. Pedestrian walks should be designed to discourage incursions into landscaped areas except at designated crossings.

(13) Aisles and driveways shall not be used for parking vehicles, except that the driveway of a single-family or two-family residence shall be counted as a parking space for the dwelling unit, or as a number of parking spaces as determined by the building official with the concurrence of the city transportation director based on the size and accessibility of the driveway.

(14) The design shall be based on a definite and logical system of drive lanes to serve the parking and loading spaces. A physical separation or barrier, such as vertical curbs, may be required to separate parking spaces from travel lanes.

(15) Parking spaces for all uses, except single-family and two-family residences, shall be designed to permit entry and exit without moving any other motor vehicle.

(16) No Parking space shall be located so as to block access by emergency vehicles.

(17) Compact car spaces should be located no more and no less conveniently than full size car spaces and shall be grouped in identifiable clusters.

F. Handicap access and parking.

Any parking area to be used by the general public shall provide suitable, marked parking spaces for handicapped persons. The number, design, and location of these spaces shall be consistent with the requirements of applicable state and federal laws. All spaces for the handicapped shall be paved.

G. Landscape requirements for parking lots.

Landscaping requirements which apply to all multi-family residential uses of five (5) units or greater, mobile home parks, commercial, office and industrial developments are provided in section 3.3. Specific requirements for parking lots in all districts are as follows:

(1) Parking lot perimeters, terminal islands, interior islands, and dividers shall be landscaped with deciduous shade trees and natural plant materials. The latter at maturity shall not exceed thirty (30) inches in height. The use of existing native species of plant material is strongly encouraged.

(2) Maintenance of all islands, parking spaces and ways, landscaping, and traffic control devices within the parking area is the responsibility of the property owner. All elements shown on the site plan are to be maintained on a regular schedule.

H. Parking deferral.

(1) To avoid requiring more parking spaces than actually needed to serve a development, upon application and upon the recommendation of the city transportation director, the board of zoning appeals may defer the provision of some portion of the off-street parking spaces required by this section if the conditions and requirements of this section are satisfied.

(2) At the direction of the city transportation director, a parking study shall be prepared and submitted which demonstrates the following:

a. Different parking ratios are appropriate based upon estimates of parking requirements and recommendations in studies such as those from Urban Land Institute (ULI), Institute Traffic Engineers (ITE), or the traffic institute, and based on data collected from uses or combinations of uses which are the same or comparable to the proposed use. Comparability shall be determined by density, scale, bulk, area, type of activity, and location. The study shall document the source of data used to develop recommendations.

b. The Percentage of parking spaces sought to be deferred corresponds to the percentage of residents, employees, and customers who regularly walk, use bicycles and other non-motorized forms of transportation, or use mass transportation to come to the facility. Documentation of the source of this data must be provided.

I. Historic preservation exemption.

The preservation of any property that has been placed on the local register of historic places, or that is located in a historic district and

contributes to the historic character of the district, may be grounds for a reduction in, or complete exemption from, the parking requirements in this section. The reduction or exemption needed to allow a viable use of the historic structure shall be granted unless a severe parking shortage or severe traffic congestion will result.

J. Increase or decrease in requirements.

The Number of required parking spaces may be increased by the building official, with the concurrence of the city transportation director, if a parking study demonstrates that the proposed use would have a parking demand in excess of the requirements in this section. The building official may require the developer to provide a parking study, as described in section 3.4.4.h(2) when the city transportation director indicates that an increase or decrease in the number of parking spaces may be warranted.

3.4.5 Alternative parking requirements.

A. Shared parking.

Upon the recommendation of the city transportation director, the board of zoning appeals may authorize a reduction in the total number of required parking spaces for two (2) or more uses jointly providing off-street parking when their respective hours of need of maximum parking do not normally overlap. Reduction of parking requirements because of joint use shall be approved if the following conditions are met:

(1) The developer submits sufficient data to demonstrate the hours of maximum demand for parking and the respective uses do not normally overlap.

(2) The developer submits a written agreement, to which the city shall be a party with enforcement authority, approved by the city attorney, guaranteeing the joint use of the off-street parking spaces signed by all property owners involved as long as the uses requiring parking are in existence and there is not a conflict of traffic between the uses that would result in a violation of the minimum standards of this article or until the required parking is provided elsewhere in accordance with the provisions of this subdivision. The agreement shall include provisions for maintenance of the parking facility. The agreement shall contain covenants

running with the lands of both the dominant and subordinate parcels.

B. Reduction for low percentage of leasable space.

The requirements of this section assume an average percentage of gross leasable building to total gross building area (approximately 85%). If a use has a much lower percentage of leasable space because of cafeterias, athletic or covered patios; multiple stairways and elevator shafts; atriums; conversion of historic residential structures to commercial use; or for other reasons, the building official, with the concurrence of the city transportation director, may reduce the parking requirements if the following conditions are met:

(1) The developer submits a detailed floor plan describing how all of the floor area in the building will be used.

(2) The developer agrees in writing that the usage of the square footage identified as not leasable shall remain as identified, unless and until additional parking is provided to conform fully with this section.

3.4.6 Off-street loading/unloading.

Spaces to accommodate off-street loading or business vehicles shall be provided as required in this section.

A. <u>Spaces required</u>.

(1) Schools, hospitals, nursing homes and other institutional uses and mid- and high-rise residential uses shall provide one loading space or bay for the first one hundred thousand (100,000) square feet of gross floor area or fraction thereof, and one space for each additional one hundred thousand (100,000) square feet or fraction thereof.

(2) Auditoriums, gymnasiums, stadiums, theaters, convention centers and other buildings for public assembly shall provide one space for the first twenty thousand (20,000) square feet of gross floor area or fraction thereof, and one space for each additional ten thousand (10,000) square feet.

(3) Offices and financial institutions shall provide one space for the first seventy-five thousand (75,000) square feet of gross

floor area or fraction thereof, and one space for each additional twenty-five thousand (25,000) square feet.

(4) Retail commercial, service, road service and commercial entertainment uses shall provide one space for the first ten thousand (10,000) square feet of gross floor area, and one space for each additional twenty thousand (20,000) square feet.

(5) Industrial users shall provide one space for every ten thousand (10,000) square feet of gross floor area.

B. The building official may, upon the recommendation of the transportation engineer, require that a study be done to determine the actual number of loading spaces needed for a proposed use. The transportation engineer shall recommend the need for a study when it appears that the characteristics of the proposed use require a greater or lesser number of loading spaces than that required or proposed.

3.4.7. Parking and storage of non-residential vehicles and equipment

It is the intention of this ordinance to limit the regular parking or storage of commercial and industrial vehicles and equipment within the RA, R1, R2, R3, R4, and R5 residential zoning districts. This section is intended to restrict the use of residentially developed properties in the aforementioned zones for the parking or storage of commercial or industrial vehicles or equipment that is picked up by an employee or contractor who comes to the property from off-site to pick up the vehicle or equipment for a business use taking place off-site. This section is intended to restrict the size and types and numbers of vehicles and equipment that can be parked or stored on a residentially developed property in the aforementioned zones. This section applies to commercial or industrial vehicles not typically used as personal transportation or in non-business-related applications and to business-related equipment that is on wheels or transported on trailers, and which is used in some application typically taking place outdoors (e.g. commercial lawn mowers, sweepers, cement mixers, grading equipment, tractors, semi-trucks and trailers, car hauling trailers for multiple vehicles, brush and stump grinding equipment, tandem wheel trucks other than pick-up trucks, vehicles with more than two axles, passenger vehicles with seating for more than 15 persons, and the like). Cars, light trucks (pick-up trucks), vans or mini-vans, sport utility vehicles, station wagons, and the like that are of a type commonly used for personal transportation and which are ordinarily driven by the occupants of a residential property are allowed in the residential zone when otherwise lawfully parked. Recreational vehicles and watercraft intended for the

use of residents of a residential property are allowed in the residential zone when otherwise lawfully parked. Apart from the aforementioned personal transportation-type vehicles, not more than one truck or van with not more than two axles and not more than one open or enclosed trailer not exceeding 25 feet in length, are allowed to be parked or stored overnight on each residentially developed lot or parcel in a residential zoning district. Not more than one passenger vehicle with seating for 15 or more persons but with not more than two axles (e.g. a school bus) is allowed to be parked or stored overnight on each residentially developed lot or parcel. For purposes of this ordinance, the phrase "parked or stored overnight" shall mean parked or stored for a period of three or more hours between 7:00 p.m. and 7:00 a.m. This regulation is not intended to prohibit occasional overnight parking of vehicles on a residentially zoned property by a contractor or service business for the purpose of construction, renovation, repair, or maintenance of the property excluding routine, periodic, or predictably re-occurring activities such as lawn mowing. This ordinance is not intended to permit the parking or storage of any junk vehicle on any residential property in a manner otherwise proscribed by ordinance. It shall be unlawful and a violation of the zoning regulations to park or store vehicles on residentially zoned property in a manner contrary to this ordinance. (as added by Ord. #2007-36, Sept. 2007, and amended by Ord. #2007-41, Nov. 2007)

3.5 Exterior lighting.

All lights located within twenty (20) feet of residentially used or residentially zoned property shall meet the following requirements:

A. Lights shall have a pole height, excluding the globe, no greater than twelve (12) feet above grade.

B. Lights shall be shielded to the extent necessary to prevent illumination of the adjacent, surrounding, or nearby residentially used or residentially zoned properties.

C. Lights shall be non-glare.

3.6 Solid Waste Management.

A. Where required by city code all multi-family residential and all non-residential development shall provide an on-site dumpster or an alternative solid-waste collection arrangement approved by the city.

B. All areas designated for dumpsters of solid waste collection shall be accessible to the garbage truck which must be able to enter in a forward motion. All maneuvering must be completely on-site to

approach the dumpster or other facility, pick up the solid waste, and exit the site in a forward motion. The site shall be designed so that the truck is not required to back onto the site or off of the site, except that an alley may be used for maneuvering.

C. All dumpster areas shall have an enclosure with a double gate with a minimum height of six (6) feet. The enclosure shall be made of opaque material.

D. All restaurants shall provide a used grease storage area separate from the dumpster enclosure which shall be located in an enclosed gated area.

E. Title 17, Cleveland Municipal Code, Refuse and Trash Disposal, as amended, is incorporated by reference for the purpose of solid waste management policy.

3.7 Standards for Facilities with Drive thru Service.

All facilities providing drive-up or drive-through service shall provide on-site stacking lanes in accordance with the following standards:

A. Standards.

(1) The facilities and stacking lanes shall be located and designed to minimize turning movements in relation to the driveway access to streets and intersection.

(2) The facilities and stacking lanes shall be located and designed to minimize or avoid conflicts between vehicular traffic and pedestrian areas such as sidewalks, crosswalks, or other pedestrian access ways.

(3) A by-pass lane shall be provided.

(4) Stacking lane distance shall be measured from the service window to the property line bordering the furthest street providing access to the facility.

(5) Minimum stacking lane distance shall be as follows:

a. Financial institutions shall have a minimum distance of two hundred (200) feet. Two (2) or

more stacking lanes may be provided which together total two hundred (200) feet.

b. All other uses shall have a minimum distance of one hundred and twenty (120) feet.

(6) Alleys or driveways in or abutting areas designed, approved, or developed for residential use shall not be used for circulation of traffic for drive-up facilities.

(7) Where turns are required in the exit lane, the minimum distance from any drive-up station to the beginning point of the curve shall be thirty-four (34) feet. The minimum inside turning radius shall be twenty-five (25) feet.

3.8. Accessory Structures

A. Accessory structures may be located on any parcel which has a permitted principal structure or development located in full compliance with the standards of this Ordinance, but this paragraph is not intended to prohibit otherwise lawful structures not ordinarily intended for human occupancy or the storage of goods (e.g. utility equipment buildings, fences, signs, and the like). The total area covered by accessory structures on any lot or parcel shall not exceed 10% of the total lot area. No accessory structure shall be placed on a lot so as to cause the total amount of impervious area on the lot to be increased beyond the maximum that is allowed for the zoning district. No accessory structure of any type shall be located in a manner such that it interferes with a utility or utility easement or such that it presents a public safety problem, e.g. interfering with motorists' view of oncoming traffic, as determined by the Director of Public Works.

B. Accessory Buildings

(1) Accessory buildings shall be located in a manner that meets all site design requirements. Generally speaking, accessory buildings are allowed only in side and rear yards and not within front yards. Accessory buildings shall in no case be located between the required front yard setback line and the front property line. Accessory buildings shall be located behind the front of the principal structure on site, except that one detached garage or carport not exceeding 24 feet in width may be located to the front of the principal structure

but behind the required front yard setback for the principal structure. An accessory building located behind an otherwise lawful privacy fence and behind the front of the principal structure on the site, will be deemed to comply with the requirements of this paragraph.

(2) Accessory buildings shall be limited to two (2) stories in height.

C. Fences

(1) Reserved

(2) The word "fence" as used in this section is intended to include fences and walls that extend substantially above grade on both sides of the fence or wall, but this section is not intended to govern the placement of retaining walls.

(3) On any residentially zoned or residentially used property, no fence shall be constructed within 15 feet of any public street with a right-of-way more than 20 feet wide, except the following:

a) Brick or stone columns, preferably not larger than two feet by two feet by four feet, with chain, pipe, open wrought iron or split rails, pipes or chains between the vertical columns;

b) Open wrought iron fencing four feet in height, with a minimum of 50 percent open area;

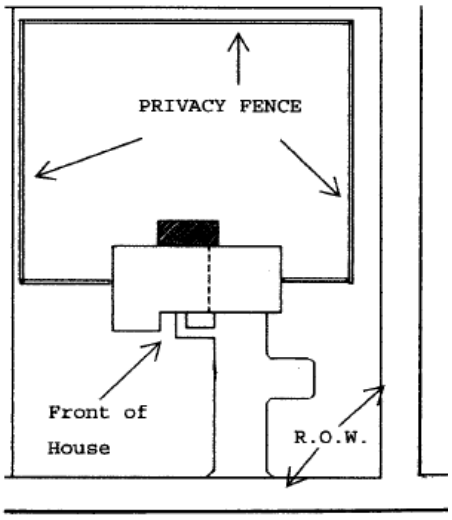
c) Split rail fencing not exceeding four feet in height, with not more than four horizontal rails between the vertical posts; or

d) Open chain link fencing, not exceeding four feet in height.

e) Masonry fencing, with a maximum height of two feet, six inches.

f) A wood, simulated wood, or masonry privacy fence not exceeding 8 feet in height is allowed on residentially zoned or residentially used property but

any installation within 15 feet of a public street requires approval by the Public Works Director who will consider the impact on traffic safety, utilities, and utility easements when evaluating the proposed fence. Any such privacy fence must be located behind the front of the principal structure (see illustration). Where an historic preservation zoning district is in effect, no privacy fence shall be allowed except in compliance with the requirements of that historic preservation zoning district.



(4) There is no maximum height for fences in commercial and industrial districts.

(5) Electrical fences are not permitted.

D. Awnings

With the exception of the CBD district, the following shall apply.

(1) All awnings attached to a building shall be set back at least four feet from any property line.

(2) No pole or other obstruction attached to the awning for the support thereof shall be closer than ten feet from the front property line.

(3) Awnings shall not be less than eight feet above the ground. (as amended by Ord. #5, April 1999, Ord. #2008-02, Jan. 2008, and Ord. #2008-34, July 2008)

3.9 Special Site Conditions.

3.9.1 Steep Slopes.

A. The maximum slope allowed for development shall be twenty-five (25) percent, unless there shall be no feasible alternative for development of the land.

B. Street and private access ways grades shall conform as closely as possible to natural topography, but shall not exceed fifteen (15) percent, except when a variance is requested and is approved by the planning commission upon the recommendation of the city engineer.

C. Street grades exceeding twelve (12) percent shall have a maximum length of six hundred (600) feet.

D. Vertical curbs shall be required on the downhill side of streets having grades of six (6) percent or greater; concrete u or v gutter may be installed in lieu of conventional rolled or vertical curb elsewhere.

E. Maximum driveway grades shall not exceed twenty (20) percent.

3.9.2 Water Bodies.

A. Lakes, creeks and ponds shall be protected during periods of construction to prevent debris, silt, and concrete or concrete by-products from entering the water body.

B. A riparian buffer zone which retains the natural landscape shall be maintained within twenty-five (25) feet of any water body. Exceptions may be granted by the planning commission when acceptable plans are presented which details how the soil will be protected from erosion, and how the filtering capacity of the vegetation will be maintained.

3.10 Regulations for Home Occupations.

A. Conditions under which such occupations may be permitted:

(1) No more than one person other than members of the family residing on the premises shall be engaged in such occupation.

(2) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.

(3) There shall be no change in the outside appearance of the building or premises, nor outdoor storage of any type, nor other visible evidence of the conduct of such home occupation other than one sign not exceeding four (4) square feet in area and non-illuminated.

(4) No home occupation shall occupy more than one-thousand (1000) square feet of any accessory building, and such use shall not conflict with any applicable fire code, building code, or other code.

(5) There shall be no sales in connection with such home occupation other than sales of the following types: sales of services produced on the premises; or sales of products that are shipped from other off-premise locations directly to customers without coming to the site of the home occupation; or sales of small, non-hazardous items delivered off-site by the business owner where there is a minor storage of inventory (e.g. in the corner of a garage) that does not affect the residential appearance or functioning of the property (in no case should the area of the residence devoted to the business including such inventory exceed twenty-five percent (25%) of the home or otherwise be in violation of any applicable fire code, building code, or other code).

(6) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be offstreet in other than the required front yard. This

paragraph is not intended to prohibit home occupations that would generate minor amounts of traffic that is not out of character with a residential neighborhood such as a one-chair hair salon, in-home teaching of piano lessons or similar instruction in other subject areas, in-home photography, or book keeping, typing, or similar services where customers or clients may come to the home in small numbers throughout the workday but not in sufficient concentration to be disruptive to the neighborhood and its traffic and parking pattern.

(7) No equipment or process shall be used in such home occupation which increases noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single family residence, or outside the dwelling unit if conducted in other than a single family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in the line voltage off the premises. The home occupation shall not increase the type or volume of solid waste for at-curb disposal beyond that which is otherwise allowed by ordinance. The home occupation shall not introduce any wastes into the sanitary sewer system in any type, manner, or amount not permitted by Cleveland Utilities. The home occupation shall be conducted in compliance with all applicable stormwater regulations.

(8) The parking of vehicles used in a resident's line of work (a school bus, a heavy truck, etc.) when such vehicles are parked at home for the resident's convenience and when such vehicles are parked in a paved or gravel parking area that otherwise complies with applicable codes, are not considered a violation of this section. However, this section does not permit the storage of junk vehicles, repossessed or impounded vehicles, or vehicles for sale by a licensed dealer.

B. The following uses are specifically prohibited as home occupations:

(1) Tea rooms, restaurants, and the like

(2) Real estate offices

(3) Convalescent home

(4) Daycare for more than four adults or children

(5) Funeral or mortuary establishments

(6) Animal hospitals

(7) Repair shops

C. The conduct of a home occupation shall require a home occupation permit to be issued by the Community Development Director or the Director's designee. A change in ownership or tenant at the residence shall void the permit. The Director may void the permit, or take intermediate steps such as placing the permit in probationary status for a period of time, if it is determined by the Director that the home occupation is being conducted in a manner that is contrary to this ordinance. Violations of this ordinance are hereby declared unlawful and subject to penalties prescribed for the violation of the zoning ordinance. Conduct of a home occupation without a valid permit is a violation of this ordinance.

D. The Community Development Director shall develop and implement uniform procedures for the issuance of home occupation permits, including the application of this ordinance and the disposition of complaints concerning alleged violations of this ordinance. (as amended by Ord. #2006-11, May 2006, and Ord. #2007-41, Nov. 2007)

3.11 Supplemental standards for townhouse development.

[Reserved.]

3.12 MS4 Phase II Stormwater Management Program.

All construction, development, and redevelopment resulting in land disturbance activity shall conform to the requirements of the "MS4 Phase II Stormwater Management Program" requirements as codified in Cleveland Municipal Code Title 18, Chapter 3 Sections 18-301 thorough 18-312. (as amended by Ord. #2005-21, June 2005)

3.13 Minimum standards for siting cellular communication towers.

A. PURPOSE. Establish minimum standards and location requirements for siting wireless communication (cellular) towers and antennas

within the corporate limits of the City of Cleveland, Tennessee in order to protect the public health and safety.

B. DEFINITION. For the purpose of this ordinance, the word "tower" shall be defined as "any outdoor structure designed and constructed to support one (1) or more transmitting or receiving devises for telephone, radio or any similar wireless communication facilities, with the following exceptions:"

(1) Any citizens band or amateur radio station antenna;

(2) A ground or building mounted citizens band radio antenna less than forty feet (40') in height or an amateur radio antenna not more than seventy-five feet (75') in height, provided there is adequate clearance with adjacent structures; an antenna in this category that exceeds seventy-five feet (75') in height must be reviewed and approved by the Cleveland Municipal Planning Commission;

(3) Satellite dish type antenna or a conventional type television antenna for the exclusive use of a residential occupancy;

(4) Mobile news or public information service antennas;

(5) Hand-held communication devices such as walkie-talkies, cell phones and similar type devices;

(6) Antennas owned by public agency or its members and used for emergency services, public utilities, operation or maintenance services.

C. Permit application requirements

(1) The applicant for a permit to locate a tower is responsible for providing the following information to the chief building official.

(a) A site plan drawn to scale that shows the property lines of the site, the location of the tower in relation to the property lines, adjoining property within three hundred feet (300') of the site by owner and use; distances from the base of the tower to adjoining property lines and the nearest habitable structure, proposed easement(s) by location and type and, the location of any accessory buildings proposed to be located on the site

include building setbacks from the property lines.

(b) A grading and drainage plan that indicates the existing and proposed elevation of the site and methods proposed to manage and control erosion during construction as well as permanent drainage methods and/or facilities.

(c) Proof of ownership or legal interest in the property.

(d) Engineering drawings that describe the design and structural integrity of the tower, its supports and attachments.

(e) A statement describing the general capability of the tower to serve more than one (1) user and whether space will be available for lease to additional users.

(2) Permit application review shall be coordinated by the planning director or a designee and conducted in the same procedure as subdivision plat review.

D. Co-location: Towers shall be required to accommodate the maximum number of transmitting facilities subject to the design capacity of the tower for the purpose of reducing the number of potential tower locations within the corporate limits. Applicants for a tower permit are required to provide a statement that documents their efforts to secure a co-location on an existing tower.

E. Permitted locations, by zoning district: Tower shall be permitted in a Local Highway Business, Professional or Manufacturing zoning district within the corporate limits. A tower, without exception, is not permitted in a Residential (R-1,2, 3, 4, 5 or A) zoning district, the Floodway district or the Central Business District (CBD).

F. Separation of tower to off-site uses: Tower separation shall be measured in straight line distance from the base of the tower structure to nearest zoning district boundary line. The tower location shall, without exception, maintain a minimum distance of two hundred feet (200') or three hundred percent (300%) of the height of the tower; whichever is greater, from any adjoining district where a

tower is not a permitted use. Accessory uses shall maintain building setbacks as prescribed by the applicable zoning district.

(1) If the adjoining district is a district where a tower is permitted, the building setbacks applicable to the zoning district wherein the tower is located shall apply.

G. Security fencing: The area surrounding the tower location, but not necessarily the entire lot, shall be enclosed with fencing adequate to secure the tower under normal circumstances.

H. Landscaping and aesthetics: Plant materials suitable to screen the tower location shall be incorporated into the design of the facility. As a general criteria, plant species that are native or commonly utilized in the area shall be considered in order to maintain compatibility with adjoining property. A general landscape plan shall be submitted concurrent with the site plan and is subject to the review of the Cleveland Urban Forester.

I. Tower prohibited in airport approach zone: No tower shall be located within the Cleveland Municipal Airport approach surface zone, the horizontal surface zone, conical surface zone or transitional zone as shown on the Airport Zoning Map, dated October 7, 1959, as amended.

J. Abandoned tower policy: In the event a tower becomes obsolete or is out of service for any reason for six (6) consecutive months, the owner or record shall cause the tower to be dismantled and removed from site and disposed of in the manner appropriate for disposal or re-use of the tower materials. A time period of one (1) year shall be provided from the time the tower is deemed to be out of service for the owner to either activate the tower or remove it from the site.

(1) Failure to comply with the terms of this section concerning removal of abandoned towers shall be subject to penalties as provided by the Cleveland Municipal Code. (as added by Ord. #7, Aug. 1998)

4.0 Alternative Development Standards.

The purpose of this section is to describe certain overlay zones used to allow certain types of development.

4.1 Planned Unit Development.

4.1.1 Purpose.

A. It is the purpose of the PUD Planned Unit Development District to provide flexible land use and design regulations and to permit planned diversification and integration of uses and structures, while retaining in the City Council the absolute authority to establish limitations and regulations thereon for the benefit of the public health, welfare and safety. These provisions are designed to:

(1) Promote more efficient and economic residential and non-residential uses of land, and encourage appropriate mixed use development.

(2) Lower development and building costs by permitting smaller networks of utilities and streets and the use of more economical building types and shared facilities.

(3) Provide for open spaces and common areas and provide usable and suitably located recreational facilities within the development.

(4) Allow the controlled development of land uses most suitable to the proposed site and surrounding neighborhoods.

(5) Provide design and location criteria to encourage innovative development.

(6) Encourage small area planning, beneficial coordination in private and public investment, and site assembly for planned development.

B. The PUD District designation is a two-step process consisting of a PUD Conceptual Plan and a PUD Development Plan. The PUD Conceptual Plan is intended to communicate a proposed development concept for a project area greater than three (3) acres that may or may not be under unified ownership and/or control (a PUD with only residential uses may be as small as 1 acre). PUD Conceptual Plan approval would not constitute a change in the zoning map or otherwise alter the existing development rights of property in the affected area. The PUD Conceptual Plan approval process would identify desirable parameters for future development pursuant to a PUD Development Plan. The PUD Conceptual Plan and the PUD

Development Plan may be approved concurrently if all necessary conditions PUD Development Plan are met. Approval of a PUD Development Plan shall be through the rezoning process, requiring a recommendation from the Planning Commission and approval by the City Council. PUD Development Plan approval shall be done by ordinance specifying uses, development standards, conditions, and limitations; and amending the official zoning map designating the area affected as a distinctly numbered PUD District. (as amended by Ord. #10, Jan. 2001, and Ord. #2008-21, June 2008)

4.1.2 PUD Process.

4.1.2.A PUD Conceptual Plan Process

The PUD Conceptual Plan process consists of the completion of an application and a conceptual plan by the applicant, a review and recommendation regarding the proposed conceptual plan by staff, and approval or denial by the Planning Commission.

(1) PUD Conceptual Plan Application. The City of Cleveland or an owner of property within an area where the PUD is proposed to be applied may make application for the PUD Conceptual Plan approval. The area to which the PUD Conceptual Plan is to be applied shall be at least three (3) acres in size, or at least one (1) acre for a residential -only PUD. The application must contain a statement of justification based upon the purposes of the PUD as described above. The application must show the boundaries of the proposed PUD area on a tax map. The application must also identify for each parcel to be included: the property owner(s); current zoning; current use of the property. The application must include any existing deed restrictions or covenants affecting the proposed PUD area. The application must contain a PUD Conceptual Plan drawn by a professional engineer at a legible scale. The application must identify the proposed uses and locations of those uses; the uses may be a range of possible uses and they should be identified according to the classification contained in the North American Industrial Classification System (NAICS) for non-residential uses. Residential uses should be identified by density and a description of the housing units (number of units, number of units per building, size of units, number of bedrooms, ownership structure [apartments, fee-simple townhome subdivision,

condominium, etc.] along with any common amenity features to be shared by residents.

(2) PUD Conceptual Plan Content. The conceptual plan must show proposed property lines, proposed rights of way, proposed easements, proposed utilities and other infrastructure including the approximate size and location of anticipated site features such as stormwater treatment facilities, decorative outdoor plazas or entranceways, parking lots, landscape buffer areas, etc. The conceptual plan must contain the most recent Bradley County Property Appraiser's aerial photograph with the boundaries of the proposed PUD area drawn in. Existing topography of the site must be provided. Any floodway or floodplain areas within the proposed PUD area must be shown in the conceptual plan with reference to the appropriate Flood Insurance Rate Map panel. Existing right-of-way improvements, traffic control devices, driveway connections, utilities, fire hydrants, and drainage systems on-site and within two hundred (200) feet of the proposed PUD area are to be shown in the conceptual plan. At a minimum the conceptual plan must identify general appearance standards that would be adhered to in the development for building facades, exterior lighting, landscaping, etc. The conceptual plan must show building areas and locations, building heights, and parking lots and other impervious area features. The conceptual plan must show all internal traffic circulation, including pedestrian, and connections to the existing street and sidewalk systems. The conceptual plan must indicate all buffering at the project boundaries to include landscaping, walls, fences, berms, water features, etc. (where site constraints limit the width of such buffering, parking lots and minor accessory structures may be located so as to lessen impacts on adjoining property). The conceptual plan must show the proposed setbacks from internal and external property lines and building separation. It is understood that the foregoing conceptual plan contents describing future improvements are illustrative and that these may change as the project design advances, but the representations made in the conceptual plan should fairly depict the proposed project in terms of location, type, scale, orientation, quality, and performance. Additional information will be required for the conceptual plan review if warranted by the circumstances of the

proposed development: if the project is located on an arterial street and exceeds five acres or if the project is located on other than arterial street and it generates more than two hundred (200) vehicle trips in the peak hour a traffic impact study is to be provided; if the project site contains or is adjacent to any documented historical or archaeological resources, protected species or habitats, or wetlands such resources are to be described along with the potential project impacts, proposed mitigation, and compliance with any applicable laws; and if the proposed project involves heavy industrial or other processes that could be anticipated to have off-site impacts in terms of noise, vibrations, odors, or hazards (thermal, explosive, chemical), those impacts and their mitigation are to be described in accordance with professional standards. At the applicant's option, the conceptual plan may also include supplementary information such as architectural elevations, perspective drawings, proposed improvements in public spaces such as streetscapes, etc.

(3) PUD Conceptual Plan Approval. The conceptual plan is to be submitted to the planning director for review. The planning director will have the conceptual plan reviewed by the site plan review team and plat review teams as established by the zoning ordinance and subdivision regulations. After staff review, the planning director shall schedule the conceptual development plan for review by the Planning Commission. The Planning Commission will hear public comment and make a determination regarding the approval of the PUD Conceptual Plan. The Planning Commission may deny approval to the PUD Conceptual Plan, approve it subject to conditions, or approve it as submitted. Approval by the Planning Commission shall be specific as to the required content of the PUD Conceptual Plan including the area of the proposed PUD, the land uses allowed, the setbacks required, building height limitations, buffering and landscaping requirements, and any required performance standards deemed necessary (e.g. noise, light, odors, truck traffic restrictions, hours of operation, outdoor storage restrictions, etc.).

(4) Effect of Approving PUD Conceptual Plan. In no way would such approval by the Planning Commission exempt any eventual development from compliance with site plan,

building permit, soil erosion, and flood protection requirements nor would it obligate the City of Cleveland to construct any public improvements in support of the proposed development. Such approval does not change the underlying zoning of the property affected or otherwise place additional development rights or restrictions on the property. Such approval does not alter the rights of any owners or tenants of affected property as these may pertain to the use, sale, or subdivision of the property. Such approval does not authorize the eminent domain purchase of property by the City of Cleveland. Such approval does not obligate the City of Cleveland to approve a PUD Development Plan without any further stipulations or changes beyond those established in the PUD Conceptual Plan approval. Such approval does not constitute a reservation of capacity in public facilities or infrastructure. Such approval does authorize the property owners in the affected area, or a developer acting on their behalf, to pursue approval of a PUD Final Plan through the Planning Commission and the City Council. Approval of the PUD Conceptual Plan does result in an informational resource that may be used by City Council in planning, budgeting, and constructing public improvements, or in carrying out other planning activities. The PUD Conceptual Plan approval shall be in effect for a period of five (5) years after Planning Commission approval after which time it shall automatically sunset unless continued by the Planning Commission.

4.1.2.B PUD Development Plan Process

(1) Content and Effect of the PUD Development Plan. The PUD Development Plan is the means by which new zoning and other land development controls are enacted for an area where a PUD Conceptual Plan has been approved. The ordinance implementing the PUD will constitute the zoning classification of the area affected by the PUD. The PUD Development Plan may also encompass a subdivision of land and commitments by the owner(s) and developer(s) to construct various public infrastructure improvements. The PUD Development Plan is to be a recorded legal instrument, adopted by ordinance of the City Council, and binding upon the property owner(s), developer(s), heirs, and assigns. The PUD Development Plan will include information describing

the permitted uses, buffering and screening requirements, building setbacks, any necessary performance related standards (noise, lighting, hours of operation, etc.) any necessary monitoring, and reporting requirements (landscape maintenance, litter control, stormwater treatment maintenance, etc.), any necessary phasing schedule, any necessary public improvements to be installed by the developer, an acknowledgment that the owner is responsible to obtain and comply with all applicable federal, state, and local permits, and an expiration date after which the PUD Development Plan may expire. The PUD Development Plan would also include a master site plan, and subdivision plan if applicable, with all of the normal requirements for site plans and plats except as altered by the PUD. An approved PUD Development Plan does not constitute a reservation of public facility or infrastructure capacity.

(2) PUD Expiration, Phasing, Deviations, and Amendments. A PUD Development Plan may be allowed to expire after the expiration date if City Council determines that substantial progress has not been made, or is unlikely to be made, and that the public interest would be better served by reverting to the previous zoning. Prior to a City Council determination regarding such expiration, the matter is to be reviewed by the Planning Commission following the procedures for a rezoning. An existing PUD would not expire without an ordinance to that effect and City Council may extend the stated expiration date of a PUD by amending the ordinance. The PUD Development Plan maybe structured in one or more phases with appropriate engineering, architectural, and other drawings and documents to be submitted at the appropriate time before the construction of each phase. However, the PUD Development Plan shall control future phases and any substantial deviations will require amending the PUD Development Plan ordinance. Proposed changes in permitted uses, proposed decreases in approved setbacks by more than twenty percent (20%), proposed increases in approved building heights by more than twenty percent (20%),significant relocation or redesign of proposed public rights-of-way, significant stormwater management changes, and changes deemed to be substantial deviations by the Planning Commission will require an amendment to the

PUD Development Plan to be approved by the City Council after a review and recommendation by the Planning Commission. Changes to the PUD Development Plan that are not substantial deviations can be approved by the Planning Commission. The PUD Development Plan shall be advertised, posted, and heard by the Planning Commission and the City Council in the same manner as are zoning, and any amendment to an approved PUD Development Plan shall be processed in the same manner. (as amended by Ord. # 10, Jan. 2001, and Ord. #2008-21, June 2008)

4.2 Flood area overlay.

A. There is hereby created a flood area overlay zone. The extent of this zone shall be as defined in the Cleveland Flood Damage Prevention Ordinance.

B. All construction and development shall conform to the requirements of the Cleveland Flood Damage Prevention Ordinance.

4.3 Greenway overlay. [Reserved.]

4.4 Airport overlay. [Reserved.]

4.5 Infill development.

4.5.1 Purpose.

A. The infill development overlay district provides a means of varying site design requirements on smaller sites. Infill development is that development which occurs on scattered, non-contiguous sites where surrounding properties have been developed under site design standards which have been replaced by the current ordinance. These sites often have development problems through the inability of the site to meet current minimum requirements for lot area, lot width, building placement in conformance with setbacks or buffer requirements, or other standards. The purpose of infill development standards is to provide a means to vary site design requirements from current ordinance requirements and maintain compatibility with the development style and patterns of the surround area.

B. Designation of an infill development district shall not be a rezoning.

4.5.2 Site design requirements.

A. The maximum size to be considered for infill development shall be 1.99 acres.

B. The following site design standards may be varied.

(1) Lot width;

(2) Lot area;

(3) Front, side, and rear setbacks;

(4) Building orientation.

C. Each of the site design features in 4.5.2.b may be varied from the requirements for the zoning district. The new infill development standard shall be the average of the actual dimension for all abutting lots.

(1) Actual setbacks, lot dimensions, and lot areas shall be determined for each lot which abuts the proposed infill development lot for purposes of calculating an average (mean) for each standard to be imposed.

(2) These average standards shall be the minimum standards required for proposed development.

(3) Where there is any uncertainty on an applicable standard, the decision shall be in favor of the stricter standard.

(4) Building orientation shall conform to that for the streetscape where the proposed infill development is located.

D. An infill development shall be compatible with adjacent and surrounding uses. A compatibility analysis shall be provided which demonstrates that the project does not create a greater impact on adjacent and surrounding properties than other uses in the same zoning district. Compatibility shall be measured according to scale of development (setbacks, building widths and heights), building orientation, building style and design, outdoor lighting, off-street parking, and normal hours of operation. The compatibility analysis shall demonstrate that the proposed infill development use can exist

in harmony with the neighborhood through a positive finding on each component of measurement.

4.6 Mobile homes and mobile home parks.

A. Definitions:

Except as specifically defined herein, all words used have their customary dictionary definitions where not inconsistent with the context. For this purpose certain words or terms are defined as follows:

1. Buffer strip shall mean an evergreen buffer which shall consist of a greenbelt planted strip not less than ten (10) feet in width. Such a greenbelt shall be composed of one row of evergreen trees, spaced not more than forty (40) feet apart and not less than two (2) rows of shrubs or hedge, spaced not more than five (5) feet apart and which grow to a height of five (5) feet or more after one full growing season and which shrubs will eventually grow to not less than ten (10) feet.

2. Lot of record is a lot the boundaries of which are filed as a legal record in the Bradley County Register of Deeds office prior to the effective date of this ordinance.

3. Mobile home (trailer) shall mean a detached single-family dwelling unit with any or all of the following characteristics:

   a. Is not self-propelled, but is transportable on its own or detachable wheels, or on a flat bedded or other trailer, in one or more sections which in the traveling mode is eight (8) body feet or more in width, or thirty-five (35) feet or more in length, or when erected on site is three hundred twenty (320) feet or more square feet;

   b. A single, self-contained unit that is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities;

   c. Includes the plumbing, heating, air conditioning, and electrical systems contained therein; and

d. Includes any units which meet the definition of a mobile home as defined by National Codes, Federal Legislation, or Tennessee Code Annotated.

Except that such terms shall also include any structure which meets all of the requirements of this section, except the size requirements, provided the manufacturer complies with the standards established under Tennessee State Law.

4. Mobile home park is an area of land used by the landowner for the accommodation of three (3) or more mobile homes to be used for dwelling or sleeping purposes.

5. Mobile home space is an area of land used or intended for the use of one mobile home.

6. Mobile home subdivision is a subdivision of land specifically created to accommodate mobile homes on individual lots which are sold in fee simple.

7. Non-conforming use is a mobile home that is not located either on a single lot of record as the principal structure or in an approved mobile home park prior to the effective date of this ordinance.

8. Principal structure is the mobile home used as the main residential structure on the lot.

9. Skirting is the permanent enclosure of the space between the ground and the floor of the mobile home unit with weather resistant, compatible materials.

B. Plan R-4 zoning, permits required. A process is required for mobile home parks and travel parks. Fees charged under the permit requirement are for inspection and the administration. Property must be zoned R-4 and a mobile home park plan approved by the Cleveland Municipal Planning Commission prior to the issuance of a permit.

C. Location of mobile homes restricted. The location of a mobile home is allowed inside the Cleveland Corporate Limits only in either of the following situations:

1. An existing mobile home, located on a single lot as the principal structure and serviced by public utilities on the effective date of this ordinance; or

2. An approved mobile home park.

D. Upgrade of substandard or single lot mobile home. A single mobile home, located on a lot of record as the principal structure on the effective date of this ordinance, may be upgraded by replacement under the following conditions:

1. The replacement mobile home unit is five (5) years old or less on the date the unit is placed on the lot;

2. Complete skirting of the replacement unit, using weather resistant materials that are similar to the new mobile home.

E. Non-conforming use--remedy. The owner or occupant of any non-conforming mobile home already placed on a lot, on or before _____ will be permitted to reside at the present location. However, if at any time the ownership or occupancy of either the lot or mobile home shall change or if such mobile home owner shall change, the owner shall be given a period not to exceed thirty (30) days in which to remove such mobile home and to comply with all provisions of this chapter.

F. Administration and enforcement. It shall be the duty of the city building inspector to administer and enforce the provisions of this chapter. The city building inspector is hereby authorized and directed to make inspections to determine the condition of mobile home parks. The city building inspector shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this ordinance.

G. Compliance. To insure compliance with the provisions of the mobile home ordinance, utility services will be connected only when the mobile home has been found by the chief building inspector to meet applicable code requirements and the chief building inspector has issued the appropriate permit(s).

Cleveland Utilities, Electric and Water Division, shall be presented with a copy of the mobile home permit, signed by the chief building inspector, as part of the owner(s) application for utility services. Should the owner or applicant fail to provide a signed copy of the

permit, Cleveland Utilities shall deny service until the proper procedure to acquire permit(s) is completed.

H. AUTHORIZATION. The chief building inspector is authorized to suspend or revoke a mobile home or mobile home park permit in cases where the owner(s) failure to comply with the provisions of this ordinance or other applicable city code has resulted in a threat to the public health, safety or welfare.

I. MINIMUM SIZE. The tract of land for the mobile home park shall comprise an area of not less than one and one-half (1 ½) acres. The tract of land shall consist of a single plot so dimensioned and related as to facilitate efficient design and management.

J. MINIMUM NUMBER OF SPACES. Minimum number of spaces completed and ready for occupancy before first occupancy is three (3).

K. MOBILE HOME PARK DESIGN STANDARDS.

1. SITE REQUIREMENTS. Each mobile home park shall be located outside of flood hazard areas on a well-drained site.

2. MINIMUM MOBILE HOME PARK SIZE. One and one-half (1 ½) acres.

3. SIZE OF MOBILE HOME SPACES. Each mobile home space shall be at least four thousand (4,000) square feet, including parking area, with a minimum width of forty (40) feet. Each mobile home located in a mobile home park shall be situated such that there is at least:

a. Ten (10) feet from the mobile home to any adjacent property line;

b. Twenty-five (25) feet from the mobile home to any public street right-of-way;

c. Ten (10) feet from the mobile home to any private roads or access drives within the mobile home park;

d. Ten (10) feet of clear and open space between the mobile home and any adjacent mobile home and its attachments, and between the mobile home and any other buildings;

4. Applications for a mobile home park shall be filed with and issued by the city building inspector subject to the planning commission's approval of the mobile home park plan. Applications shall be in writing and signed by the applicant and shall be accompanied with an approved plan of the proposed mobile home park. The plan shall contain the following information and conform to the following requirements:

   a. The plan shall be clearly and legibly drawn at a scale not smaller than one hundred (100) feet to one inch;

   b. Name and address of owner of record;

   c. Proposed name of park;

   d. North point and graphic scale and date;

   e. Vicinity map showing location and acreage of the mobile home park;

   f. Exact boundary lines of the tract by bearing and distance;

   g. Names of owners of record of adjoining land;

   h. Existing streets, utilities, easements, and watercourses on and adjacent to the tract;

   i. Proposed design including streets, proposed street names, lot lines with approximate dimensions, easements, land to be reserved or dedicated for public uses, and any land to be used for purposes other than mobile home spaces;

   j. Provisions for water supply, sewerage and drainage;

   k. Such information as may be required by such city to enable it to determine if the proposed park will comply with legal requirements;

   l. The applications and all accompanying plans and specifications shall be filed in triplicate.

5. Certificates that shall be required are:

a. Owners certification;

b. Planning commission's approval signed by the chairman; and

c. Any other certification deemed necessary by the planning commission.

L. STREET CONSTRUCTION STANDARDS. Same as city minimum construction standards for acceptance of streets dedicated to the city for use and maintenance of public ways.

M. APPEALS. Any party aggrieved because of an alleged error in any order, requirement, decision or determination made by the building inspector in the enforcement of this ordinance may appeal for and receive a hearing by the Cleveland Board on Zoning Appeals (BZA), (advised by the city attorney) for an interpretation of pertinent chapter provisions. In exercising this power of interpretation of the chapter, the Cleveland Board on Zoning Appeals, with advice from the city attorney, may, in conformity with the provisions of this ordinance, reverse or affirm any order, requirement, decision or determination made by the building inspector.

Any person aggrieved by any decision of the BZA may seek review by a court of records of such decision in the manner provided by the laws of the state.

N. MOBILE HOMES OR PARKS IN ANNEXED AREAS. A mobile home or mobile home park that is annexed into the Cleveland corporate limits and is found to be of substandard condition or not in conformity with the provisions of this ordinance and/or the Standard Housing Code, Southern Building Code Congress International, as amended shall be provided a period of not to exceed two (2) years from the effective date of annexation to comply with applicable law. Should the owner(s) fail to comply within the time provided, the unit(s) shall be declared as a non-conforming use by the chief building inspector or housing official, as appropriate, and the provisions of the Cleveland Municipal Zoning Ordinance, § 10-206, non-conforming uses shall apply to remedy the non-conforming use.

O. CHARGES. Fees shall be charged as follows for mobile home park permits:

1. PERMIT FEE. A fee of twenty-five dollars ($25.00) per mobile home unit space in addition to the basic permits as provided by city law as amended.

2. ANNUAL OPERATING FEE. An annual fee of ten dollars ($10.00) per mobile home unit space, payable by June 30 of each year is required to operate a mobile home park inside the city limits.

4.6.1 Animal hospitals, sound transmission class.

"Animal hospitals, as permitted see Table 1, provided that the finished structure attain a Sound Transmission Class rating of a minimum of 50 db, except for areas designed for office, administrative or other areas where animals are not treated or boarded...sanitary facilities design to aid in cleansing, and maintaining the building's interior shall be incorporated into the materials used to construct the building."

4.7 NONCONFORMING USES AND DEVELOPMENT.

Any lawful use of building or land existing at the time of the enactment of this ordinance, or whenever a district is changed by an amendment thereafter, may be continued although such use does not conform with the provisions of this ordinance, with the following limitations:

4.7.1 Continuation of nonconforming use. No building or land containing a nonconforming use, except commercial and industrial uses as provided by Tennessee Code Annotated, § 13-7-208, shall hereafter be extended unless such extension shall conform with the provisions of this ordinance for the district in which it is located; provided, however, that a nonconforming use may be extended throughout those parts of a building which were manifestly designed for such use prior to the time of enactment of this ordinance;

4.7.2 Rebuilding of nonconforming use. Any nonconforming building which has been damaged by fire or other cause may be reconstructed and used as before unless the building inspector determines that the building is damaged to the extent of more than fifty (50) percent of its appraised value for tax purposes, in which case any repair or reconstruction shall be in conformity with the provisions of this ordinance;

4.7.3 Cessation of nonconforming use. When a nonconforming use of any building or land has ceased for a period of one year, it shall not be

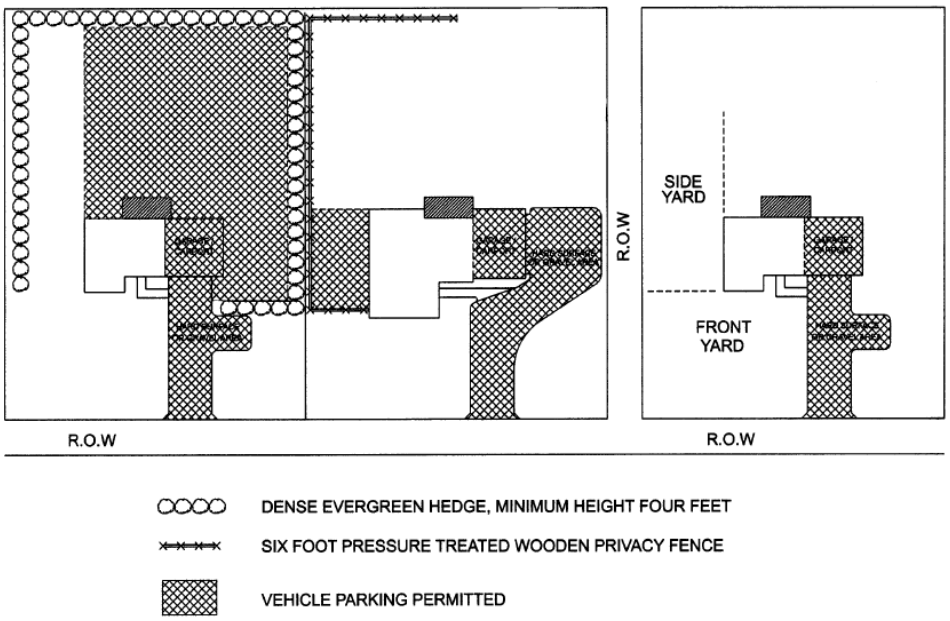
reestablished or changed to any use not in conformity with the provisions of this ordinance.

4.8 YARD PARKING OVERLAY

Based upon a petition from property owners within a defined neighborhood area and the advice of the Cleveland Municipal Planning Commission, the City Council may amend the official zoning map, following proper procedures for such an amendment, to apply the Yard Parking Overlay district described herein. It is the intent of this district to protect the public welfare by mitigating the effects of heavy parking use in historically single-family neighborhoods by controlling parking in street-side yard areas and limiting the conversion of yard areas into gravel or hard surface parking areas so as to protect neighborhood aesthetics and environmental quality.

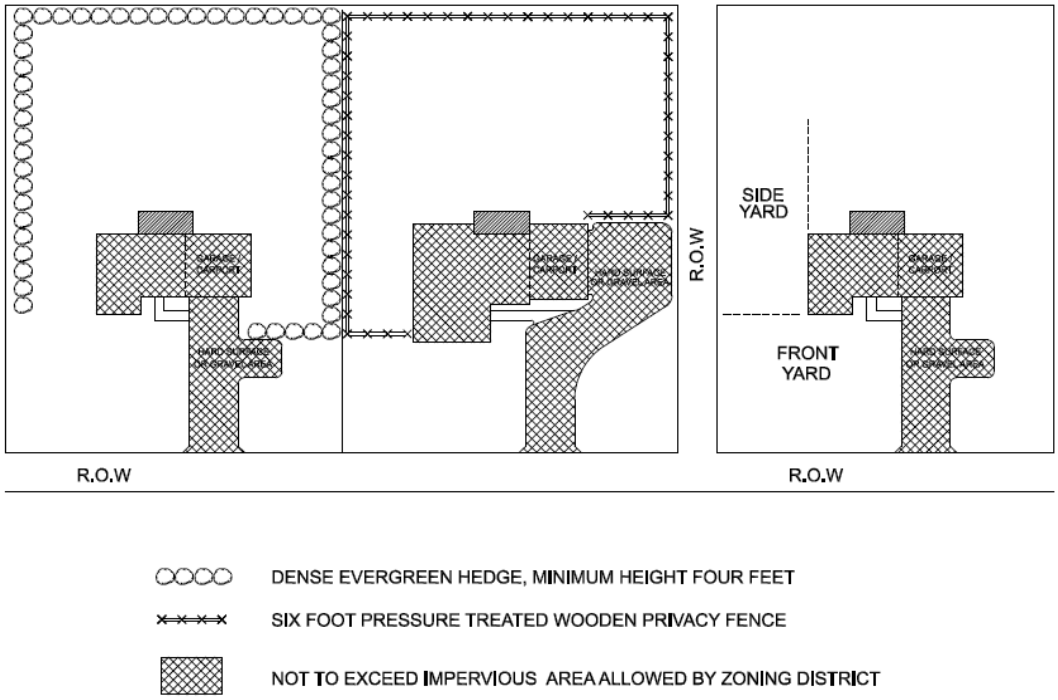
A. Vehicle parking in front or side yard areas of a lot or parcel lying between a single-family residential structure and a property line that adjoins a public right-of-way shall be limited to the area of the hard-surface or gravel driveway unless such parking occurs within a garage or under a carport. Vehicle parking in side yards not adjoining public rights-of-way or in rear yards shall be screened by means of a hedge or privacy fence. Nothing herein shall be construed as allowing the location of a garage or carport or fence except where otherwise allowed by the zoning ordinance.

WHERE VEHICLE PARKING IS ALLOWED IN YARD PARKING OVERLAY DISTRICT



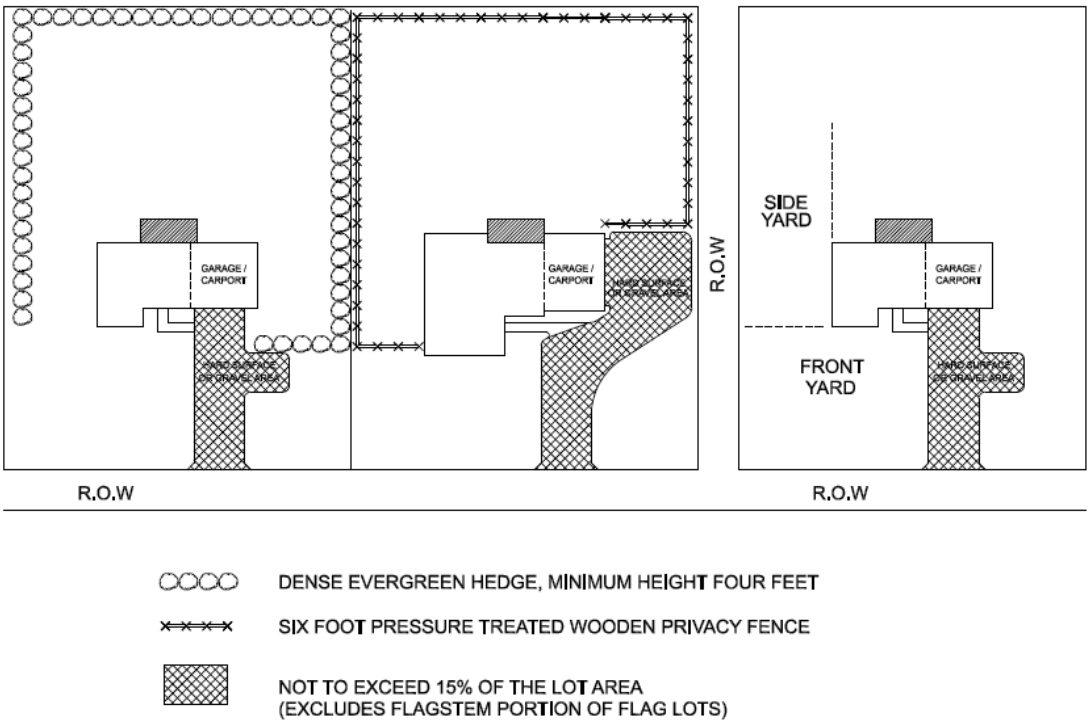
B. Hard-surface or gravel driveway or parking areas shall not be constructed such that these cause the lot or parcel to be in violation of the zoning ordinance requirements related to impervious or pervious surfaces or green space.

IMPERVIOUS AREA NOT TO EXCEED MAXIMUM ALLOWED BY ZONING DISTRICT



C. The total of hard-surface or gravel driveway or parking areas on the lot or parcel with a single-family home shall not exceed 15% of the lot area, excluding any area in the "flag stem" of a flag stem lot and any area underneath the roof of a permanently constructed garage or carport. The area of the house, excluding the garage or carport, shall not be counted toward the 15% of the lot area for purposes of this paragraph.

HARD SURFACE PARKING AREA NOT TO EXCEED 15% OF LOT AREA



(as added by Ord. #2008-12, April 2008)

5.0 SIGN REGULATIONS.

5.1. Purpose and Intent of the Sign Regulations

The purpose and intent of these regulations is to provide for the public health, safety, convenience, and general welfare through the regulation of signs within the City of Cleveland, Tennessee. Among the specific intentions are to limit visibility hazards along and adjacent to roadways, to protect utilities and drainage structures from encroachment and damage from sign installation, to protect the community and its roadway corridors from visual clutter, and to protect the community and its environment from discarded, damaged, or improperly installed signs. It is not the purpose of these sign regulations to regulate speech.

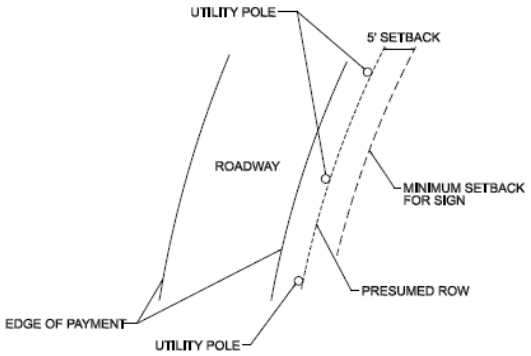
5.2. Sign Standards

Section 5.2.1 below presents general standards for all signs and standards for specific types of signs under various circumstances. These general standards are each denoted by an alphabetic character and are shown in bold type. Text beneath each general standard provides guidance for implementing the standard. Critical to understanding the application of these standards in particular circumstances are the administration and definitions sections found further below.

5.2.1. General Sign Standards

5.2.1.A. No part of any sign shall be located within 5 feet of any public right-of-way except as expressly provided herein.

No part of any sign that is regulated by this ordinance shall be located in any public right-of-way or within 5 feet of any public right-of-way (actual or presumed right-of-way location as described herein). In the absence of survey information to establish the actual right-of-way location, the presumed location of the right-of-way (see drawing below) will be determined by a line, curve, or series of line segments that approximately parallels the roadway edge of pavement and is tangent to the inside (opposite the roadway) of public utility poles on either side of the existing or proposed sign location. If the presumed right-of-way location can not be determined in the previously described manner due to unusually complicating factors, the presumed right-of-way will be assumed to be not less than 10 feet from the existing edge of pavement of the adjacent roadway. The presumed right-of-way method may be used to determine the proper location of portable signs and other signs except ground signs that require building permits and engineered plans. Ground signs requiring building permits and engineered plans shall require a survey meeting the requirements of this ordinance.



5.2.1.B. No sign shall be located so as to impede the travel of pedestrians.

No sign shall be located so as to impede the travel of pedestrians, including those in wheelchairs and motorized chairs, who are traveling in public sidewalks, or so as to force pedestrians to detour around the sign by using a travel or turning lane of a public street where there is no adjacent public sidewalk.

5.2.1.C. No sign shall be produced or built or erected or installed or located in a manner that violates any applicable building, electrical, fire, or life safety code.

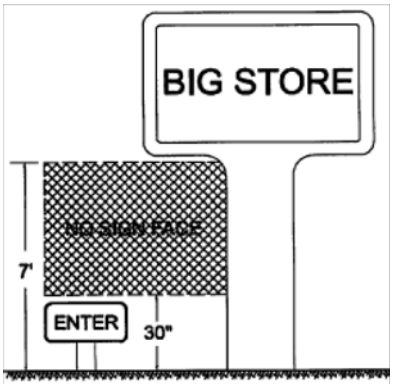
Where required by any applicable building, electrical, fire, or life safety code, any mandatory plan review, permit, or approval shall be obtained prior to the installation of a sign. Any sign requiring a building permit shall also require a sign permit.

5.2.1.D. No sign shall be located in a manner that would interfere with the safe and convenient operation and maintenance of a utility.

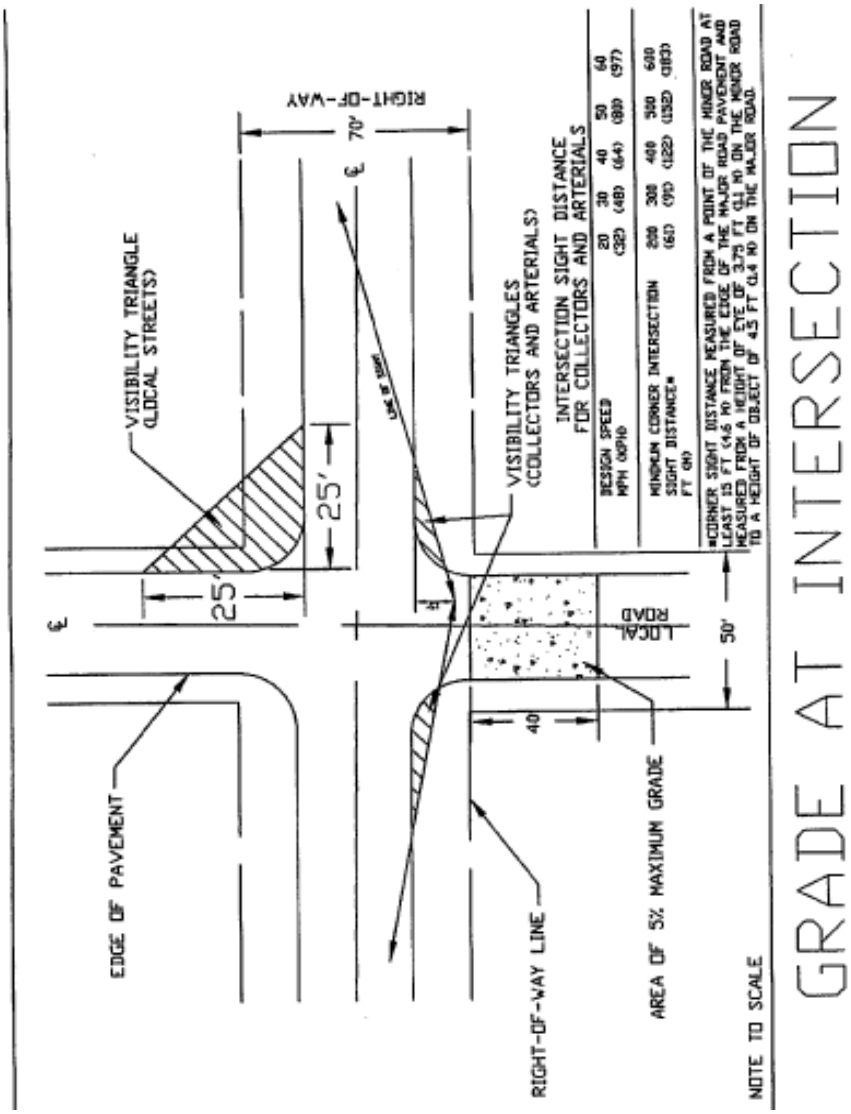
Compliance with this standard with respect to electrical facilities shall be determined by the application of clearance standards found in the 2007 National Electric Safety Code. Any sign installation which would otherwise be required to go through the Tennessee One Call system for the protection of underground utilities must go through that process for underground utility location. In the absence of stricter conditions of any utility easement or applicable code, no part of any sign structure may be located within 4 feet of any above-ground or underground utility facility or any public or privately maintained drainage structure, unless specifically approved in writing by the affected utility and the City Engineer (the foregoing prohibition does not affect the separation of portable signs from above ground drainage facilities and utility facilities except energized above-ground electrical facilities).

5.2.1.E. No sign shall be located so as to impede visibility by turning motorists.

Observance of required setbacks is important to maintaining visibility but the topography and other features near a sign may also affect where it is possible to safely locate the sign. At an exit drive where the view of oncoming traffic or a conflicting turn movement could be obscured by the location of a sign, the sign face is to be located not higher than 30 inches from the ground or not lower than 7 feet from the ground.



Visibility triangles on adjacent streets are to be preserved in accordance with the drawing below:



5.2.1.F. No sign shall be an animated sign as defined herein.

This prohibition includes, but is not limited to, flashing lights and strobe lights inside building windows that are visible from the public right-of-way. Also prohibited are sign designs that incorporate motion through mechanical, electrical, wind-activated, water-activated, or similar means. These prohibitions apply to billboards and all other types of signs visible from the public right-of-way except as otherwise provided herein.

5.2.1.G. No sign of any type that is situated on private property and visible from a public right-of-way shall be made to resemble a traffic control device.

Traffic control devices are described in the Uniform Manual of Traffic Control Devices (can be viewed in the City Engineer's office). What is prohibited here is the use of devices like stop signs or traffic signals as a sign to attract attention to a business, property, product, or service rather than for their proper use in traffic control. This is not intended to preclude the placement of appropriate signage for the purpose of traffic control on private driveways (e.g. "stop", "yield to pedestrians", etc.), including in those areas near the intersection of such private driveways with public rights-of-way.

5.2.1.H. No sign of any type shall be allowed to be situated on any property except as allowed by this ordinance.

This ordinance regulates signs that are intended by their size, placement, or other characteristics to be read from the public right-of-way or to attract the attention of persons in the public right-of-way. This rule is not intended to prohibit signs that otherwise comply with this ordinance where their visibility from the public right-of-way is merely incidental and it is evident from the size and placement of the sign and/or the size of the sign copy that it is intended exclusively for persons on the property where it is located.

5.2.1.I. Signs shall be kept in good repair, or replaced or removed.

No part of the sign copy, sign backing, or sign structure shall be allowed to remain in place if it is bent, torn, ripped, tattered, frayed, broken, cracked, faded, dirty, rusted, rotted, warped, or with blistered or peeling paint, or otherwise visibly damaged or damaged in any other way. This rule is not intended to create an unreasonable requirement that signs be kept in a pristine state but it is intended to

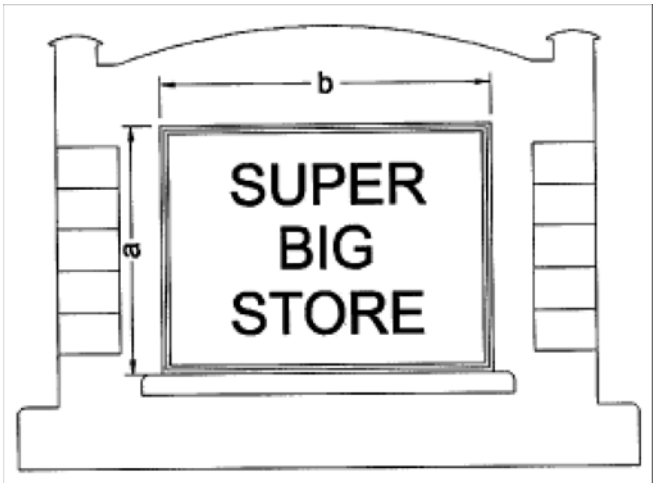
require that they remain safe, functional, and reasonably well-maintained so as to not become a hazard or a blighting influence. If a sign is bent over, illegible due to fading, in danger of falling, unsafe in its electrical connections, full of holes, blowing loose, or otherwise showing clear signs of a lack of reasonable maintenance, it must be repaired, replaced, or removed.

5.2.1.J Sign display area for a given sign shall not exceed the maximum allowed by this ordinance.

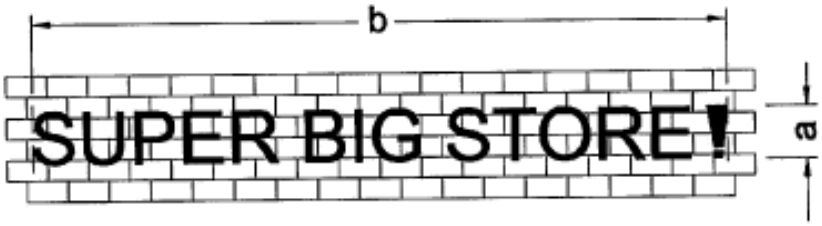
The maximum allowable area in square feet is given for the sign display area or sign backing for each sign types in the rules specific to each sign type. A procedure for measurement is described below.

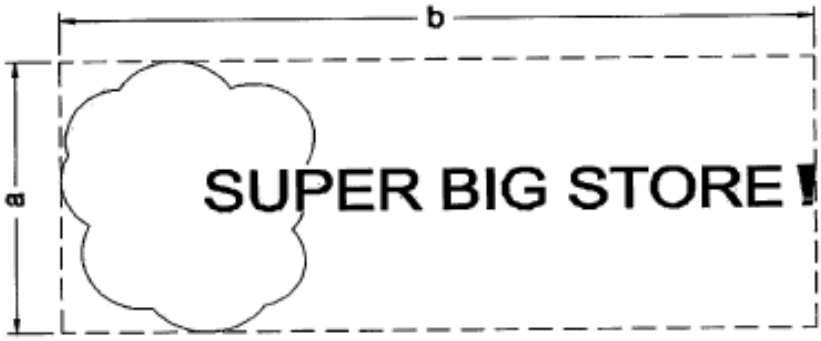
Sign display area shall be measured according to the procedures outlined herein. (In the several illustrations that follow, height is denoted by a and length is denoted by b, with a times b being the formula for a rectangle used to calculate the sign display area.) In cases where a permit is required the applicant must submit an elevation drawing of the proposed sign with the necessary dimensions and calculation of the sign display area. Where a permit is not required, the Building Official may perform a courtesy check of the proposed sign display area if a drawing with the appropriate information is supplied (signs are not allowed to exceed the maximum allowable size regardless of whether a permit is required).

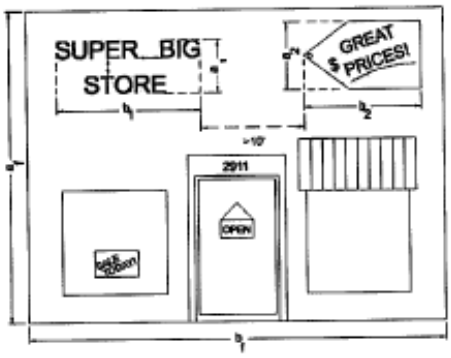
(1) Where there is a discernable sign display area that is distinguished from other parts of the sign structure by a frame or border, or by a variation in color, texture, or material so that the sign display area can be distinguished as a polygon from the rest of the sign structure, draw the smallest rectangle that will fit around the polygon [see below for specific instructions on sign cabinets]. Where one or more frames or borders are used to form the polygon, the measurement shall be from the inside edge of outermost frame or border. Within a single sign structure, there may be more than one such polygon, i.e. more than one discernable sign display area, and the total of the areas for the rectangles drawn around these polygons will be the sign display area. When calculating the sign display area, subtract any overlapping area between two or more of the rectangles.



(2) Where there is no discernable sign display area and sign copy is painted on or affixed to a surface such as a wall or monument sign structure, the sign area measurement shall be done through the grouping of individual elements of the sign copy. Symbols and drawings, and text and numeric sign copy, including any words, letters, numerals, and punctuation, that can be connected by line segments of 10 feet or less in length will be grouped together and the smallest rectangle that will fit around this grouping will be drawn. Beginning with the symbol, drawing, word, letter, numeral, or punctuation closest to the upper left edge of the sign structure, work downward and to the right drawing connecting line segments of not more than ten feet in length between any two symbols, drawings, words, letters, numerals and punctuation that can be connected in this manner to form a sign copy grouping. This sign copy grouping is to be enclosed in the smallest possible rectangle. Continue this process until rectangles have been formed around all words, letters, numerals, and punctuation on the sign structure. The combined area of the rectangles drawn for all sign copy groupings on a sign structure is the sign display area. When calculating the sign display area, subtract any overlapping area between two or more of the rectangles.







LEGEND

FACADE AREA = a_f x b_f

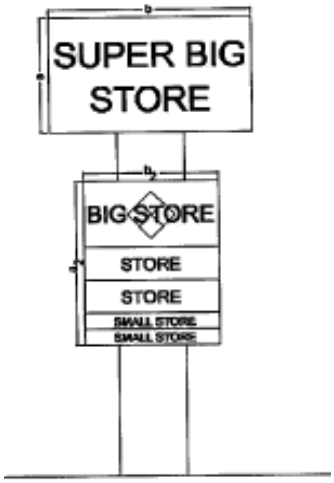
WALL SIGN 1, PAINTED LETTERS ON A WALL, NO DISCERNABLE SIGN DISPLAY AREA
— LESS THAN 10'

SIGN DISPLAY AREA ▭
EQUALS a_1 x b_1

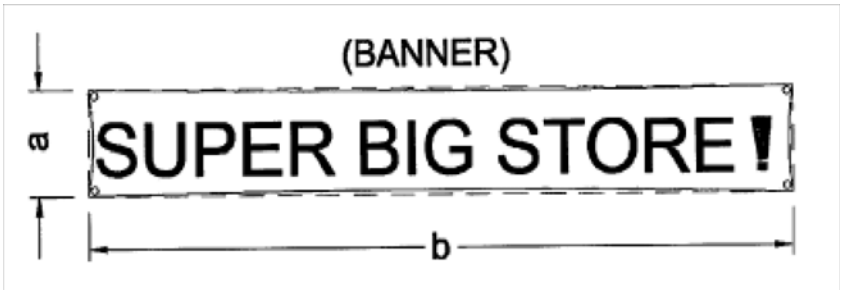
WALL SIGN 2, PAINTED PRICE TAG DESIGN, DISCERNABLE SIGN DISPLAY AREA
– – – – – MORE THAN 10'

SIGN DISPLAY AREA ▭
EQUALS a_2 x b_2

(3) Sign display areas may exist on more than one sign face on a single sign structure; this is particularly the case with ground signs, canopy signs, and projecting signs but could also exist with other sign types. Sign display area should be calculated for all sign faces to determine the total sign display area for a given sign but where two sign faces overlap such that they are back-to-back or separated by an interior angle of 30 degrees or less the total sign display area should be adjusted to count the sign display area on only one of these sign faces in the overlapping area.

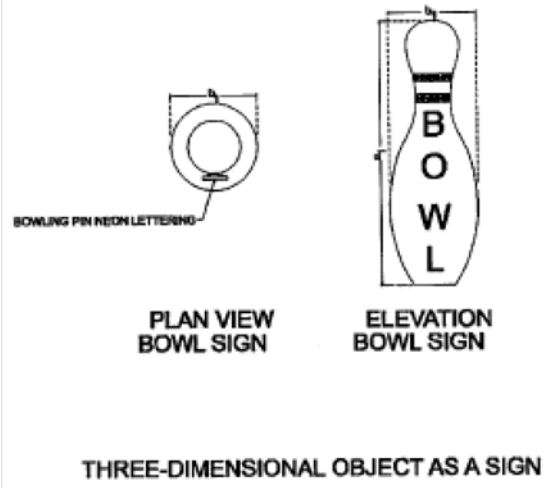


(4) In the case of a banner sign, the sign display area is the smallest rectangle into which the banner will fit when pulled taut.



(5) In the case of signs with sign cabinets with interior lighting or backlighting, e.g. most Type C portable signs, the method described above for a discernable sign display area shall be followed for calculating the sign display area except that the polygon will be determined by the interior dimensions of the sign display cabinet.

(6) Where sign copy is to be located on a curved or other irregular surface, the dimensions of the sign display area are to be measured as if a flexible measuring tape were stretched across the surface and these dimensions are to be transferred to a single plane and enclosed by the smallest rectangle that will include them, otherwise following the procedures described above for signs with or without a discernable sign display area, as the case may be.



5.2.1.K. Lighting of signs shall not be such that it causes discomfort or distraction for passing motorists and pedestrians or such that it otherwise violates this ordinance or other applicable law.

Lighting of signs, whether internally or externally lighted, and lighted copy signs are subjects of these sign regulations. Brightness of the illumination of signs shall not be such that it causes discomfort or distraction for passing motorists and pedestrians, and LED (light emitting diode) and similar electronic signs shall be deemed to be causing discomfort and distraction if they fail to meet the guidelines described herein. Electronic reader boards, electronic message centers, LED (light emitting diode) signs and the like shall be equipped with and operated with automatic dimming devices that reduce the brightness of the display during cloudy or dark conditions. It is intended that such LED signs and similar signs be no brighter than is necessary to be visible and legible to motorists and pedestrians in the immediate vicinity during daylight or dark conditions and it is not intended that such signs would be substantially more visible and legible from a greater distance than traditional on-site signs with back-lighting. [Guidelines for LED and similar technology: maximum brightness for signs using LED (light-emitting diode) or other lighting technology where the light source is used to compose the sign copy should not exceed 3500 nits under nighttime conditions. A nit equals Candelas per meter squared (cd/m2). A Candela is the amount of luminous flux (total luminous power emitted from a source and expressed in Lumens) per unit solid angle in a given direction. A Lumen is the luminous flux emitted per unit solid angle from a uniform point source whose luminous intensity is 1 Candela. Definitions from Marktech Optoelectronics www.marktechopto.com/Engineering-Services.] Electronic reader boards, electronic message centers, LED (light emitting diode) signs, and the like shall have a sign display area of no more than 50 square feet. Lighting of signs shall not be done in a manner so as to produce motion or animation as defined herein; however, this is not intended to prohibit the scrolling of an image onto a sign face provided that the entirety of the sign copy remains stationary for a period of at least six seconds. The lighting of the sign shall be sustained and not flashing or blinking or pulsing. The focus of external lighting shall be on the sign backing and shall be shielded so as to prevent glare onto an adjacent public right-of-way or into the eyes of motorists or onto adjacent property. Where external lights are mounted below a sign, at or near ground level, they shall be shielded by landscaping on the side opposite the sign. Monument signs, pole signs, wall signs, canopy signs, awning signs, roof signs, and Type C portable signs are allowed

to be internally or externally illuminated except where otherwise prohibited by this ordinance.

5.2.1.L. No sign that is regulated by this ordinance and which is an off-premise sign with a sign display area greater than 32 square feet is allowed unless it conforms to the regulations in this ordinance for billboards.

5.2.2. Specific Standards by Sign Type

5.2.2.A. Ground Signs (not Portable)

(1) Sign permits are required.

(2) Building permits shall be obtained for ground signs where required by the Building Code. The Building Official may require plans sealed and signed by a Tennessee-registered professional engineer (criteria for determining whether engineered plans are required are if the sign display area exceeds 100 square feet, or if the sign will be over 20 feet tall, or if engineered plans are otherwise required by the Building Code or by Tennessee's Board of Architectural and Engineering Examiners). Ground signs requiring building permits and engineered plans shall require a survey of the property frontage along which the sign is to be located showing the center line of the roadway, the existing edge of pavement, any utilities and utility easements, any drainage structures, any driveways and sidewalks, and any other permanent structures, signs and traffic control devices. The survey shall identify the location of the proposed sign and cover the property to a depth of at least 5 feet behind all parts of the proposed sign along the entire width of the property frontage. In the case of a corner lot, the foregoing survey information shall be provided for both frontages.

(3) Sign structures exceeding 15 feet in height from the ground shall not have a width as measured horizontally in an exterior elevation view at any point above the ground, exclusive of any sign display area or sign backing, which is more than 50% of the sign's height.

(4) Developments with residential or non-residential uses may have monument or pole signs subject to the provisions of this ordinance (mixed uses that are 25% or more residential

by land area or floor area are treated as non-residential development for ground signage calculation). Each development is entitled to at least one monument or pole sign along its primary street frontage, with the maximum sign display area of said sign to be determined by the table below, provided that the building(s) is at least 10 feet behind the public right-of-way along that frontage. The limits on the number and size of allowable ground signs are determined by considering the rules in this section governing ground signs in conjunction with the following table:

Allowable Ground Sign(s)	Development Type	Development Size	Adjacent Roadway Frontage(s)
2 (but zero if fewer than 10 dwelling units or residential lots). Sign display area 32 sq. ft. or less per sign	Residential subdivision or multi-unit residential development	10 or more dwelling units or residential lots	NA
1 per adjoining 2-lane street with at least 100 feet of frontage. Sign display area not to exceed 100 sq. ft.	Non-residential	Less than 3 ac or less than 100,000 under single roof	2 travel lanes
1 per adjoining 4-lane street with at least 100 feet of frontage. Sign display area not to exceed 150 sq. ft.	Non-residential	Less than 3 ac or less than 100,000 sq. ft. under single roof	4 or more travel lanes
1 per adjoining street with at least 100 feet of frontage. Sign display area not to exceed 300 sq. ft. in 1 ground sign and not more than 150 sq. ft. in other ground sign(s).	Non-residential	3 ac or more or at least 100,000 sq. ft. under a single roof	NA

(5) Where there is a non-residential land use tract, parcel, or lot with non-residential zoning that is within 1000 feet of an I-75 interchange, it is entitled to 1 interstate-oriented sign that is at least 75 feet high with not more than 350 square feet in sign display area. This sign is in addition to other ground sign(s) that may be located on the property. However, this provision allowing an additional interstate-oriented sign shall not apply if any other sign on the property exceeds 60 feet in height. No sign installed pursuant to this paragraph shall be an off-premise sign.

5.2.2.B. Wall Signs, Canopy Signs, and Awning Signs

(1) The signable square footage for all wall signs, canopy signs, and awning signs, individually or in combination, shall not exceed 40% of the area of the facade on which they are located. The signable square footage may be allocated over the façade in one or more sign display areas. The sign backing for any portable signs (e.g. banners) displayed as wall signs would count toward the 40%. The sign display area of any mansard sign and/or roof sign shall be counted against the maximum allowable wall signage.

(2) No sign backing or sign structure for a wall sign, canopy sign, or awning sign shall be located so as prevent a door or window from operating as designed, or in a manner which blocks any fire escape, building drainage, ventilation, or any required clearance for any mechanical equipment, or any utility connection or fire department connection.

(3) Building permits shall be obtained for wall signs, canopy signs, and awning signs where required by the Building Code. The sign installer or property owner will be required to demonstrate that the existing and proposed wall signage do not exceed the maximum allowable wall signage. An engineered plan will be required by the Building Official if an engineered plan is otherwise required by the Building Code or the requirements of Tennessee's Board of Architectural and Engineering Examiners.

(4) Wall signs, canopy signs, and awning signs in R1, R2, R3, R4, and RA zoning districts are not allowed on residential structures containing fewer than five dwelling units and are not allowed to be internally or externally lighted.

5.2.2.C. Portable Signs

Characteristics of Portable Sign Types			
	Size	**Lighting**	**Electronics**
Type A	4 square feet or less	Not Allowed	Not Allowed
Type B	More than 4 sq. ft. but not more than 32 sq. ft.	Not Allowed	Not Allowed
Type C	32 sq. ft. or less	Allowed	Allowed

For purposes of this ordinance, all portable signs which have four square feet or less of sign backing and which are not designed to incorporate lighting or other electronics shall be classified as Type A portable signs; portable signs which have more than four square feet of sign backing and which are not designed to incorporate lighting or other electronics shall be classified as Type B portable signs; and portable signs which are designed to incorporate lighting or other electronics shall be classified as Type C portable signs.

(1) No portable sign of any type shall have a sign display area greater than 32 square feet.

(2) All Type C portable signs shall be legibly marked with the name, address, and telephone number of the sign owner.

(3) No flashing or intermittent lights shall be activated on or within a Type C portable sign. Type A and Type B signs shall not be lighted or illuminated in any way except through incidental ambient light in the sign location.

(4) No part of any portable sign shall be at a height of greater than 10 feet from the ground except within five feet of a building or building canopy.

(5) No part of any portable sign shall be within 10 feet of a driveway entrance to a public street.

(6) Type B and Type C portable signs shall be configured and installed so as not to present a hazard during wind events. Type B portable signs with a sign backing of more than 16

square feet must utilize a lightweight sign backing and avoid heavy, dense material such as plywood. Type C portable signs must be installed according to the instructions of the manufacturer so as to avoid being blown over or torn down in a 80 mph wind event, or installed so as to turn over once and then remain in place in such a wind event (in such case, installation shall allow a clear area equal to the height of the sign on either side of it).

(7) The sign backing of portable signs that are displayed as wall signs will be counted in determining whether the sign display area for wall signs is being exceeded.

(8) Type A, Type B, and Type C portable signs do not require building permits or sign permits but they must otherwise comply with the requirements of this ordinance.

(9) No portable sign of any type shall be located on any property without the express permission of the owner of that property.

(10) This paragraph addresses standards for portable signs of all types. Unless otherwise stated, or unless modified by a zoning overlay district, the sign standards stated for each land use type shall apply in all zoning districts. No portable sign of any type that is on a lot, tract, or parcel developed with only residential use(s) shall be more than 4 feet in height.. The table below gives the number of portable signs of each type that are allowed on a tract, lot, or parcel of a given size and a given land use (for purposes of this table home occupations do count as non-residential uses):

	Type A	Type B	Type C
0.49 ac. Or less	4 if residential land use; 5 if non-residential land use; 1 if vacant land	0 if residential land use or vacant land; 1 if non-residential land use	0 if residential land use or vacant land; 1 if non-residential land use
0.5 to 0.99 ac.	5 if residential land use; 6 if non-residential land use; 2 if vacant land	1 if residential land use or vacant land; 2 if non-residential land use	0 if residential land use or vacant land; 1 if non-residential land use

	Type A	Type B	Type C
1.0 to 2.99 ac.	6 if residential land use; 8 if non-residential land use; 3 if vacant land	1 if residential land use or vacant land; 3 if non-residential land use	0 if residential land use or vacant land; 2 if non-residential land use
3.0 ac. or more	7 if residential land use; 12 if non-residential land use; 4 if vacant land	2 if residential land use or vacant land; 4 if non-residential land use	0 if residential land use or vacant land; 3 if non-residential land use

5.2.2.D. Projecting signs

(1) Projecting signs shall not extend outward from the building, canopy, or awning to which they are attached by a distance of more than two feet.

(2) The lowest portion of any projecting sign over a public or private sidewalk shall not be lower than eight feet and shall not extend lower than the opening of a door if said sign is located above a door.

(3) Projecting signs shall not extend into an area that is above or below overhead electric lines unless approved by the utility.

(4) Building permits shall be obtained if required by the Building Code. Engineered plans will be required by the Building Official if the sign display area exceeds 10 square feet or if engineered plans are otherwise required by the Building Code or by the Tennessee Board of Architectural and Engineering Examiners.

(5) The maximum sign display area for a projecting sign is 50 square feet. Projecting signs are not allowed in the R1, R2, R3, R4, and RA zoning districts.

5.2.2.E. Roof Signs and Mansard Signs

(1) Building permits are required for roof signs and mansard signs and these permits shall require plans by a Tennessee-licensed professional engineer. The plans must demonstrate that the roof or mansard is capable of

supporting the proposed sign and that other building code requirements are met.

(2) Neither a roof sign nor a mansard sign shall exceed 150 square feet in sign display area.

(3) Roof signs and mansard signs are not allowed in the R1, R2, R3, R4, R5, and RA zoning districts.

(4) The sign display area of any roof and/or mansard sign shall be counted against the maximum allowable sign display area for the façade that is visible in the same elevation as the roof and/or mansard sign.

5.2.2.F. Window Signs

There is no limit on the size or number of window signs as defined by this ordinance. Window signs are subject to general standards of this ordinance. In the case of window sign that requires building or electrical permits by an applicable building or electrical code, those permits shall be obtained. If the code requiring a building or electrical permit also requires an engineered plan or if such plan is required by the Tennessee Board of Architectural and Engineering Examiners, then an engineered plan will be required.

5.2.2.G. Incidental Signs

Incidental signs as defined in this ordinance are allowed and they are not counted toward any other limits imposed by this ordinance in terms of the total number of signs or total amount of sign display area. Incidental signs shall otherwise conform to the general sign standards of this ordinance.

5.2.2.H. Entrance/Exit Signs

One of these signs may be located on each side of each driveway serving a non-residential land use or multi-family residential development. These signs cannot exceed 30 inches in height or 2 square feet in sign display area. If illuminated, they must be internally illuminated and only bright enough to be seen by vehicles in the immediate vicinity. A permit is required unless the property owner installs a two-square-foot Type A portable sign to serve as an entrance/exit sign (such a portable sign would not be counted against the limits on the numbers of portable signs). These signs may be

located within 5 feet of the right-of-way or presumed right-of-way but not within such right-of-way.

5.3. Wall Murals

Wall murals are allowed in non-residential zoning districts but not in any historic zoning overlay district or PUD unless specifically authorized by the City Council. Wall murals are not allowed in the R1, R2, R3, R4, R5, and RA zoning districts. No permit is required to install a wall mural. Any wall mural that is installed must be kept in good repair, including the removal of graffiti and the repair of peeling, damaged, and defaced areas. Wall murals that are not kept in good repair must be removed or repaired.

5.4. Bench Signs, Bus Shelter Signs, and Street Furniture Signs

Bench signs, bus shelter signs, and street furniture signs are prohibited in public right-of-ways and within public parks and greenways except as part of a signage plan or streetscape plan or transit stop plan approved by the City Council, including any lawful revenues to the City of Cleveland and/or its transit operator through the lease of advertising space in such venues or lawful public/private ventures to provide such benches, bus shelters, or other street furniture.

5.5. Kiosks

Kiosks are not to be located within 10 feet of a public right-of-way without review and approval of an engineered site plan by the City's Site Plan Review Committee. Kiosks shall be designed and constructed to meet an 80 mph wind load and other requirements of the applicable building codes. A building permit is required for the construction of a kiosk. Except as modified by this section, kiosks shall conform to the general standards of the sign regulations as these concern location, protection of utilities, maintenance of the kiosk in good repair, and visibility for motorists. The owner of the kiosk shall ensure that the messages posted on it are removed every 30 days to maintain the appearance of the kiosk and to prevent litter. The sign display area within a kiosk shall not exceed 40 square feet. Animation and animated sign copy shall not be allowed within a kiosk, except a single-screen display not exceeding 20 square inches.

5.6. Billboards

Billboards are allowed in the CH, IL, and IH zoning districts as principally permitted uses. Billboards are allowed as principally permitted uses in those portions of the CG and PI zoning districts which are within 200 feet of the Interstate 75 right-of-way, and in that portion of the CG zoning district within 1200 feet of the Interstate 75 right-of-way where there is frontage on a street with four or more lanes if the aforesaid street directly connects with an I-75 interchange. Billboards are allowed as a conditional use in the B zone. Billboards can be allowed in a PUD district if specified as a permitted use. Though not considered an accessory use, they may be co-located with other uses on the same site. The following rules are specific to billboards:

5.6.1. Billboards must be spaced a minimum of five hundred (500) feet apart measured in a straight line distance on the same side of a street and a minimum of four hundred (400) feet apart measured from a radius of each billboard location. In applying this rule "same side of a street" shall mean the primary public street toward which a sign display area or sign face of a billboard is oriented and from which it is intended to be observed by passing motorists, and the intent is that any part of any two billboards along the same side of such street would be at least 500 feet apart. Likewise it is intended that no part of any billboard shall be within a 400 foot radius of any part of another billboard.

5.6.2. No part of any billboard shall be located within three hundred feet (300) feet of any R1, R2, R3, R4, or R5 zoning district. No part of any billboard shall be located within five hundred (500) feet of any historic site listed on the National Register of Historic Places or within five hundred (500) feet of any historic preservation zoning district.

5.6.3. No part of any billboard shall overhang or be within 5 feet of the public right-of-way and no part of any billboard shall overhang or be within any utility easement.

5.6.4. No sign display area on a billboard sign face shall be greater than three hundred (300) square feet. However, where billboards are permitted within 660 feet of I-75 the maximum size of the total sign display area shall be the maximum size for billboards set forth in the State of Tennessee Department of Transportation Rules and Regulations for the Control of Outdoor Advertising.

5.6.5. The maximum height shall be thirty-five (35) feet measured from the ground level, except in a location where permitted within 660 feet of I-75 where the height shall be the same as those set forth in the State of Tennessee Department of Transportation Rules and Regulations for the Control of Outdoor Advertising. In no case shall the bottom of the sign display area be less than 18 feet from the ground.

5.6.6. Billboards shall be constructed in accordance with the Building Code; however, wood structures are prohibited. Billboards shall not be built, installed or displayed except as free-standing structures. Billboards shall not be built, installed, or displayed as wall signs, awning signs, or roof signs.

5.6.7. A building permit and a sign permit are required to install a billboard. Billboards must be installed by properly licensed contractors and permits will be issued by the Building Official only to such contractors. Permits require a set of plans drawn by a Tennessee licensed professional engineer. Plans will include electrical and lighting details, as well as details on the foundation, the billboard structure, fastening, and windload. The Building Official may require additional information, such as soils testing, as he or she deems necessary.

5.6.8. Billboards are subject to inspection by the Building Official. Billboard owners shall correct, with maintenance and/or repair or removal or replacement of the billboard, problems found during an inspection.

5.6.9. Billboards shall not be constructed so as to have two or more sign display areas stacked vertically with one on top of the other, or located side by side, or otherwise located on the same supporting structure except as provided herein. A "V" shaped billboard is allowed with not more than one (1) sign face on each side of the "V" and where the interior angle of the "V" is not more than 35 degrees. Notwithstanding the description of a "V" shape, it is not intended to preclude the back-to-back location of two sign faces in a billboard as opposed to the "V" design.

5.6.10. The use of LEDs or other types of lights to produce sign copy on billboards is prohibited, except for a message display that does not exceed 50 square feet and such display is subject to the regulations of this ordinance on non-billboard LED signs. Billboards may be internally or externally lighted. The lighting of billboards shall not produce glare or excessive light on adjacent properties or public rights-of-way or interfere with motorists' vision. No flashing or

intermittent light source shall be used on a billboard, and neither shall any lighting that creates the appearance or motion. Billboards are allowed to incorporate changeable copy through mechanical means.

5.6.11. No billboard shall incorporate any sign copy that has been determined by a court of competent jurisdiction to be obscene under the laws of Tennessee. (as replaced by Ord. #2009-39, May 2009)

5.7. Administration of Sign Regulations

5.7.1 The allowable number, size, and other characteristics for signs of a given type shall be as described in the sign standards of this ordinance.

5.7.2. Exclusions

5.7.2.A. Nothing in these sign regulations is intended to encourage the use of the United States flag or the Tennessee flag as advertising devices or to prohibit the display of the United States flag or the Tennessee flag, however such flags shall not be located so as to impair visibility by motorists or so as to create any hazards or impairments with respect to public utilities.

5.7.2.B. Travel signs as defined herein are not intended to be regulated by this ordinance.

5.7.2.C. Gravestones and historical markers and historic monuments are not intended to be regulated by this ordinance.

5.7.2.D. Horticultural displays which may be configured so as to convey messages or images in living plant material are not intended to be regulated by this ordinance.

5.7.2.E. Specialized seasonal decorative banners that are displayed for a limited time on certain utility poles in a manner pre-approved by Cleveland Utilities and the City Council in a program coordinated by the Cleveland-Bradley County Chamber of Commerce (Ordinance 2005-48) are not intended to be regulated by this ordinance.

5.7.2.F. Signs located in the interior of buildings and which are sized, located, and displayed such that they are not visible from public rights-of-way through ordinary observation are not intended to be regulated by this ordinance.

5.7.2.G. It is not the intention of this ordinance to prohibit the display of any free-standing, traditionally recognized religious symbol on private property by counting such display in any limitation on the square footage and number of signs that may be displayed on such property; however, other restrictions pertaining to the safety of signs and structures would apply. Such restrictions include, but are not necessarily limited to, compliance with applicable sections of the building code, separation from public utilities, utility easements, and rights-of-way, and protection of visibility and access for motorists and pedestrians. However, religious symbols that are incorporated into the sign copy within a sign face would be counted as part of the sign display area.

5.7.2.H. It is not the intention of this ordinance to prohibit the display of any outdoor decoration that does not contain more than very brief, non-commercial and context-related sign copy (e.g. red, white, and blue balloons with "Happy July 4th"; a shamrock with "Happy St. Patrick's Day"; or an earth globe with "Protect the Environment"; or baby shoes with "Choose Life", etc.) on private property by counting such decoration in any limitation on the square footage and number of signs that may be displayed on such property; however, other restrictions pertaining to the safety of signs and structures shall apply. Such restrictions include, but are not necessarily limited to, compliance with applicable sections of the building code, separation from public utilities, utility easements, and rights-of-way, and protection of visibility and access for motorists and pedestrians.

5.7.2.I. It is not the intention of this ordinance to prohibit the use of lights, flashing or otherwise, on private property when these are activated as part of an emergency alarm system, an alerting system on residential property occupied by a hearing impaired person, or a hazard warning system mandated by law or recommended in writing by an authorized government emergency response official acting in his or her official capacity.

5.7.2.J. It is not the intent of this ordinance to prohibit the use of architectural details in otherwise lawful buildings where these architectural details are representative of the goods or services offered on-premises or of some other theme (e.g. the doghouse motif around the City's animal shelter entrance).

5.7.2.K. Faux painting of architectural details such as columns to create the illusion of depth on an otherwise generally flat surface, and the use of

a coordinated scheme of different wall and trim colors are not considered a mural and are not regulated by this ordinance.

5.7.3. Violations of Sign Regulations and Appeals

5.7.3.A. Violations Unlawful

It shall be unlawful to install, erect, display, expand, or maintain a sign in the City of Cleveland, Tennessee except in compliance with this ordinance. Violations of this ordinance are subject to any and all penalties prescribed in the Cleveland Municipal Code and the zoning regulations and as allowed by State law.

5.7.3.B. Non-conforming Signs

Nothing herein is to be interpreted so as to conflict with the pre-existing non-conforming use provisions of the City's zoning regulations. Signs that are not lawful pre-existing non-conforming uses, and which are either not included in the signs allowed by this ordinance or which are otherwise not in conformance with the requirements of this ordinance, are unlawful.

5.7.3.C. Penalties

Any person or entity who violates any provision of these sign regulations, or any person who fails or refuses to comply with any notice to abate a violation or other notice issued by the Building Official or code enforcement officer within the time specified by such notice, shall be subject to a civil penalty of up to $50 per violation. Each day of such violation or failure or refusal to comply shall be deemed a separate offense and punishable accordingly by a civil penalty of $50 per day per violation.

5.7.3.D. Nuisance

In addition to the foregoing civil penalties, the maintenance of any sign and/or its supporting structure or any violation of the provisions of these sign regulations by any person or entity is declared to be a public nuisance dangerous to the public safety and may be abated as set forth in herein.

5.7.3.E. Notice to Abate

If the Building Official or a code enforcement officer determines that any sign is in violation of any provision of these sign regulations, a

Building Official or a code enforcement officer shall, consistent with the nature and seriousness of the violation, notify the offender, or his agent, and the owner, or his agent, or the occupant(s) of the property where the sign is located, by giving notice to abate the violation.

5.7.3.F. Removal Without Notice

Nothing contained herein shall require the City to give notice of a violation prior to removal of any sign located on public property or which otherwise constitutes a safety hazard.

5.7.3.G. Content of Notice

Any written notice given shall describe the conditions or violations constituting a nuisance under these sign regulations, and state that the nuisance may be abated by the City at the expense of the offender, and/or the owner, and/or the occupant of the property after the expiration of not less than fifteen (15) days nor more than thirty (30) days from the date of such notice if such condition is not corrected or in the process of being corrected (with substantial progress being made) by the offender, or the owner, or the occupant, or the person in control of the property by the time specified in the notice.

5.7.3.H. Correction or Abatement by City Of Cleveland

If, after the expiration of the time given to abate the nuisance the condition constituting a nuisance has not been corrected or abated, then such condition may be corrected or the nuisance abated by the City at the expense of the offender and/or the owner and/or the occupant of the premises under the directions of the Building Official or code enforcement officer.

5.7.3.I. Appeals to the Board of Zoning Appeals

Because many types of signs that are governed by these regulations do not require the issuance of permits, appeals may arise for sign regulation enforcement decisions that do not involve the denial or revocation of a permit. Persons properly entitled to seek relief from the decision of the Building Official or code enforcement officer carrying out or enforcing the provisions of these sign regulations that are zoning regulations, may appeal to the Board of Zoning Appeals as provided in Section 6.1.2. of the zoning regulations. Appeals involving the denial or revocation of a permit are addressed in Section 5.7.5 of the sign regulations.

5.7.4. Sign Regulations in Zoning Districts and Special Areas

These sign regulations shall be generally applicable within all Cleveland zoning districts. For Planned Unit Development zoning districts (PUD1, PUD2, and so forth) with an effective ordinance prior to the effective date of this ordinance it is not intended that these regulations should contravene any sign regulation specific to the PUD in terms of the number, type, size, or location of signs allowed, but that these regulations would be applicable as to definitions and permit requirements and procedures. For PUD zoning districts established after the effective date of this ordinance, it is intended that these sign regulations apply except as specifically altered by the ordinance establishing the PUD. From time to time the City may establish special districts for various purposes and these districts may include special regulations concerning signs. The City has established a historic preservation zoning district and any signs, except temporary signs, that are erected within this district are subject to review and approval by the City's Historic Preservation Commission. The City has also established a special sign control district along Paul Huff Parkway generally between Keith Street/ North Lee Highway to South Mouse Creek (Cleveland Municipal Code Title 14 Chapter 5). Where the provisions of the aforementioned special sign control district directly address a matter, those provisions will control; otherwise, signs in that district are governed by this ordinance. Upon review and recommendation by the Cleveland Municipal Planning Commission, the City Council may adopt plans for one or more special streetscape districts which may include one or more design elements within the public right-of-way and on adjoining private property, such as signs, landscaping, lighting, street furniture, etc., where there can be a cooperative public and private effort to create more attractive and vibrant commercial areas. It is anticipated that these sign regulations could be modified by such a streetscape district plan.

5.7.5. Building Permits, Sign Permits, and Appeals of Permit Denials

5.7.5.1. The following types of signs require a building permit prior to construction: Ground signs (not portable); wall signs, canopy signs and awning signs, unless otherwise exempted under the sign regulations; Projecting signs; Roof signs; Mansard signs; Kiosks; Entrance/Exit signs; and Billboards.

5.7.5.2. Building permits shall be issued in accordance with the provisions of the applicable building code adopted by the City of Cleveland, which is currently the Building Code. For those signs that require a building

permit, the applicant shall pay the fees applicable to such building permit.

5.7.5.3. A separate sign permit is required under these sign regulations for those signs for which a building permit is required by the applicable building code(s). If no building permit is required, then a separate sign permit shall not be required. There is no additional fee charged to the applicant for any required sign permit. A sign permit shall be subject to revocation by the Building Official if at any time any conditions required by this ordinance for the issuance of the sign permit or any conditions necessary for the compliance of the sign with the requirements of this ordinance, are determined not to be met.

5.7.5.4. Prior to the issuance of a building permit, the Building Official shall determine that the proposed sign complies with the sign regulations. If the Building Official determines that the sign complies with the sign regulations, then the Building Official shall issue a sign permit.

5.7.5.5. If the Building Official determines that the sign does not qualify for a building permit under the applicable building code(s), the Building Official shall advise the applicant in writing of the reason(s) for the denial for the building permit as well as the applicant's right to appeal the denial of the building permit to the Building Board of Adjustment and Appeals.

5.7.5.6. If the Building Official determines that the sign does not qualify for a sign permit under these sign regulations or that a sign permit must be revoked, the Building Official shall advise the applicant in writing of the reason(s) for the denial or revocation of the sign permit as well as the applicant's right to appeal the denial or revocation of the sign permit to the Board of Zoning Appeals.

5.7.5.7. In the event a building permit is denied by the Building Official for any sign required to have a building permit under the applicable building code, then the applicant shall be entitled to appeal that denial to the Building Board of Adjustment and Appeals in accordance with the appeals provisions set forth in the Building Code or the applicable building code in effect at the time of the permit denial. Copies of the applicable building code(s) are on file in the City Clerk's office.

5.7.5.8. If an applicant for a building permit is denied a sign permit due to a determination by the Building Official that the sign does not meet the requirements of these sign regulations, then the applicant shall be

entitled to appeal that determination by the Building Official to the Board of Zoning Appeals, which shall hear the appeal and determine whether the applicant should be granted a sign permit.

5.7.5.9. In the event the Board of Zoning Appeals upholds the Building Official's determination that the proposed sign does not comply with the provisions of the City's sign regulations, then the applicant may file a petition for a writ of certiorari with a court of competent jurisdiction to review the determination of the Board of Zoning Appeals.

5.7.5.10. In conducting a review of an appeal of the denial of a sign permit by the Building Official, the Board of Zoning Appeals shall follow the procedures set forth in Cleveland Municipal Code, Title 14, Chapter 2, Sections 6.1.2 et seq, as well as Tennessee Code Annotated Title 13, Chapter 7, Part 2.

5.7.5.11. An appeal to the Board of Zoning Appeals from a denial of a sign permit by the Building Official must be filed in writing in accordance with the procedures established in Cleveland Municipal Code, Title 14, Chapter 2, Sections 6.1.2 et seq, as well as Tennessee Code Annotated Title 13, Chapter 7, Part 2.

5.8. Definitions

The definitions in this section are applicable to the interpretation of the sign regulations. Words used within the sign regulations that are not otherwise defined herein should be interpreted according to their ordinary meaning, informed by Webster's Ninth New Collegiate Dictionary: A Merriam-Webster (Merriam-Webster, Inc., Springfield, MA, publisher, 1987) and the context of their usage. The definitions are as follows:

Advertising device shall mean any physical object or device or light source designed principally as a means of attracting attention through visual means and but which may or may not convey a written message through words, letters, numbers, or other symbols. Examples would include, but are not limited to, balloons, flags, streamers, pennants, devices that spin in the wind, large stationary or moving objects inflated by forced air, strobe lights, etc. This definition does not include such objects, devices, or light sources that are inside buildings and not noticeable from a public right-of-way.

Animation or animated shall mean the movement or the optical illusion of movement of any part of a sign or advertising device, including the movement of any illumination or the flashing or varying of light intensity or the automatic changing of all or any part of the facing of a sign.

Awning shall mean a cloth, plastic, or other nonstructural covering that either is permanently attached to a building or can be raised or retracted to a position. Typically, an awning is for the purpose of providing shade or shelter for a door, window, porch, patio, or entryway.

Balloon sign shall mean any sign painted onto or otherwise attached to or suspended from a balloon, whether such balloon is anchored or affixed to a building or any other portion of the premises or tethered to and floating above any portion of the premises.

Banner sign shall mean a sign made of cloth, canvas, plastic sheeting or any other flexible material, which is not rigidly and permanently attached to a building or the ground through a permanent support structure. A banner sign could be tied or otherwise affixed at one end, in the manner of a flag, or from more than one location on the banner.

Bench sign shall mean a sign incorporated into the seating area or back-support area of an outdoor bench.

Billboard shall mean an off-premise sign with a sign structure that is permanently attached or anchored to the ground or another permanent structure.

Building shall mean a structure having a roof supported by columns or walls. A building may contain one or more units or tenant spaces that could be addressed separately and could have separate utility services but which would share common exterior walls and/or a roof.

Building Code shall mean the building code(s) that have been adopted by the City of Cleveland, Tennessee and which are currently in force at the time of permitting.

Bus shelter sign shall mean a sign displayed on the sides or roof of a bus shelter designated as a bus stop by a public transit provider.

Canopy shall mean a marquee or permanent roof-like structure providing protection against the weather, whether attached to or detached from a building, but excluding any column, pole or other supporting structure to which the canopy may be attached.

Commercial sign copy shall mean sign copy that specifies a particular business, industry, or trade association or which specifies products, goods, commodities, or services that are available for sale on-site or off-site, regardless of whether or not a seller's or agent's name, location, and contact information is provided.

Development shall mean a building or buildings on one or more lots or parcels together with associated common site development or subdivisions attributes such as parking, internal streets or drives, landscaping and site amenities, and drainage and utility features.

Exterior elevation drawing shall mean a drawing showing the visible exterior vertical elements of a building or structure projected directly to a vertical plane.

Entrance/Exit sign shall mean a ground sign located at the driveway(s) of a premises and bearing one or more of the words "entrance", "enter", "exit", or "only" as the most prominent sign copy.

Externally lighted sign shall mean a sign that is illuminated by an external artificial light source that is focused on the sign backing or sign copy from a location to the bottom, sides, or top of the sign backing.

Façade shall mean the side of a building below the eaves, and that portion of a building's side that would extend above a portion of the roof, as with a parapet wall or gable-end design, and any mansard on the same building side. A façade shall include the total external surface area of a vertical side of a building, canopy, awning or mechanical equipment used to dispense a product outside a building. A

facade shall include that area of a building that would be visible in a single exterior elevation drawing, regardless of any curved surfaces or angles that would be apparent in its exterior walls or other predominantly vertical elements when seen from above in a plan view or in a perspective drawing. The term façade is intended to encompass any windows, doors, awning, canopy, mansard, or other building features visible in the same elevation view.

Ground sign shall mean a sign supported by one or more uprights, posts, or bases placed upon or affixed in the ground and not attached to any part of a building. However, this definition encompasses signs attached to a decorative wing wall, or retaining wall, or similar projection that is not underneath the building roof and that does not enclose an interior space, when such walls or projections are attached to a building. Monument signs and pole signs are types of ground signs.

Incidental sign shall mean an on-premise sign, emblem or decal mounted flush with the facade to which it is attached and not exceeding two (2) square feet in sign area informing the public of goods, facilities or services available on the premises (e.g., a credit card sign, ice machine sign, vending machine sign or a sign indicating hours of business) or an on-premise sign which is affixed to mechanical equipment used to dispense a product and which is less than two (2) square feet in sign area.

Internally lighted sign shall mean a sign wherein the sign backing or sign copy is illuminated by an artificial light source behind it or within an enclosed sign cabinet containing the sign copy, or wherein the sign copy consists of neon tubes or similar material that would cause the sign copy to appear to glow from an internal source.

Kiosk shall mean a message board or message center designed for posting and up-close viewing of messages at eye level by pedestrians who would be within five feet of the posted message.

Land use shall mean three broad categories of land use referred to in this ordinance: residential; non-residential; and vacant. Residential land use refers to developments

wherein the land uses consist exclusively of dwelling units (exclusive of bed and breakfast facilities, boarding homes, and various forms of transient lodging regulated by the State of Tennessee) and ancillary amenities such as tennis courts, golf courses, club houses, etc. that are integrated within the residential development. Non-residential land use refers to developments wherein the land uses consist of commercial, industrial, or institutional land uses or one or more of these with or without residential land uses (e.g. upper story loft apartments over ground floor retail). Vacant land consists of lots, parcels, or tracts that are unimproved land or land which may have been cleared, graded, or served with roads or utilities, but on which there are no permanent buildings exclusive of barns, sheds, or similar outbuildings or utility structures such as water tanks or communication towers.

Lighted copy sign shall mean a sign wherein the light source or series of light sources [e.g. light-emitting diode (LED), neon, etc.] are used to form letters or other images in sign copy.

Mansard shall mean the lower portion of a roof with two pitches, including a flat-top roof with a mansard portion.

Mansard sign shall mean any sign attached to the mansard portion of a roof.

Monument sign shall mean ground sign permanently affixed to the ground at its base, supported entirely by a base structure, and not mounted on a pole. Typically, the base of the monument sign is a decorative feature of brick, wood, metal or other material, which is intended to serve as an entry feature or focal point.

Movement shall mean physical movement or revolution up or down, around, or sideways that completes a cycle of change at intervals of less than six (6) seconds, or irregular motion of a physical object such as fluttering or spinning in response to wind or other energy source. Movement shall not include incidental swaying in response to wind loads or other natural conditions that is necessary to support the sign.

Non-commercial sign copy shall mean sign copy that is not commercial sign copy.

Non-residential zoning district shall mean any zoning district where the principally permitted and conditional uses allowed by the zoning ordinance are not primarily residential dwelling units. The zoning districts that are primarily residential are R1, R2, R3, R4, R5, and RA so these would not be non-residential zoning districts.

Off-premise sign shall mean any sign that is not an on-premise sign.

On-premise sign shall mean any sign whose content relates to the premises on which it is located, referring exclusively to the name, location, products, persons, accommodations, services or activities conducted on or offered from or on those premises, or the sale, lease or construction of those premises.

Pole sign shall mean a ground sign that is permanently supported in a fixed location from the ground by a structure of poles, uprights, braces, or other structure not as wide as the sign backing. A pole sign is not supported by a building or a wall-like base structure that is at least as wide as the sign backing.

Portable sign shall mean any sign which is placed on or affixed to real property in such a manner that its removal would not cause damage to the property or the sign backing or the sign structure. Portable signs are designed to be readily removed or relocated. A portable sign has no mounting hardware that attaches to the building or other portion of the property in a permanent fashion. Examples of portable signs include, but are not limited to, single or multi-faced sandwich boards, wheel-mounted mobile signs, sidewalk and curb signs, banners, balloon signs, yard signs on stakes or rigid wire. For purposes of this ordinance, all portable signs which have four square feet or less of sign backing and which are not designed to incorporate lighting or other electronics shall be classified as Type A portable signs; portable signs which have more than four square feet of sign backing and which are not designed to incorporate lighting or other electronics shall be classified as Type B

portable signs; and portable signs which are designed to incorporate lighting or other electronics shall be classified as Type C portable signs.

Premise or premises shall mean all contiguous land in the same ownership and/or control which is not divided by any public highway, street or alley or right-of-way. As part of a dominant parcel of property, premises shall also include a permanent easement to the dominant parcel which (1) connects the dominant parcel to a public right-of-way, (2) is the sole means of ingress and egress to and from a public right-of-way for vehicular traffic to the dominant parcel, and (3) is regularly used for ingress and egress to the dominant parcel by vehicular traffic.

Primary street frontage shall mean the public street from which a residential development has its primary vehicular access by design as evidenced by the width of the entrance or other design features (for a residential subdivision this would be a street to which its internal street network is connected). For developments containing non-residential uses, the primary street frontage will be that street front toward which the front wall of the building(s) is oriented as evidenced by the placement of entryways and other features of the building façade. In most but not all cases for developments containing non-residential uses, the primary street frontage will also be on the street to which the development is addressed and the street from which the development has its primary vehicular access.

Projecting sign shall mean an on-premise sign attached to a building, canopy, awning or marquee.

Roof sign shall mean a sign erected over or on, and wholly or partially dependent upon, the roof of any building for support, or attached to the roof in any way.

Sign shall mean a lettered, numbered, symbolic, pictorial, or illuminated visual display designed to identify, announce, direct, or inform that is visible from a public right-of-way, and shall include advertising devices as defined herein.

Sign area measurement shall mean the calculated square footage of sign display area for a given sign where such

calculation is done according to the method prescribed by this ordinance.

Sign backing shall mean the rigid (wall, sign board, back-lit sign surface in a sign cabinet, etc.) or non-rigid (as in the case of a banner) material or surface on which the sign copy is displayed. The sign backing is considered to be part of the sign structure and it would be inclusive of the sign display area.

Sign copy shall mean the letters, numbers, symbols, pictures, drawings, logo, or other graphic information within signs.

Sign display area shall mean the area of the sign backing on which sign copy is displayed or could be displayed for a given sign.

Sign envelope shall mean the location within a development or on a lot, parcel, tract, or building(s), or portion of a building(s) over which an allowed number of signs and/or an allowed square foot area of signs of a given type can be allocated. The sign envelope is understood to be inclusive of any height restrictions, setback requirements, and other stated requirements of this ordinance that would affect the location of a given sign of a given type.

Sign face shall mean a sign display area visible in an external elevation drawing such that the sign copy would be in a plane perpendicular to plane of the viewer's line of sight, i.e. the sign display area is viewed straight-on and not at an angle such that copy on more than one side of the sign could be visible if not legible.

Sign structure shall mean the sign backing together with all framework, anchors, cords, chains, wires, poles, bases, foundations, brackets, lighting, electrical connections and apparatus, cabinets, carriage assembly (wheels, axles, etc.), and all other hardware necessary to move, attach, erect, secure, and otherwise display the sign as designed.

Signable square footage shall mean the maximum allowable value for the sign display area measurements of all signs of a given type allowed within a sign envelope.

Sign type shall mean any of the various categories and subcategories of signs that are defined in this ordinance.

Streetscape shall mean the visual aspects of what is contained in the public right-of-way and the immediately surrounding land to a depth of 20 feet from the right-of-way, and including elements such as landscaping, utilities, sidewalks, street furniture, and other functional and ornamental design elements within or immediately adjacent to the streetscape.

Street furniture sign shall mean any sign incorporated into or posted upon any street furnishing or fixture in any public right-of-way for motorized and non-motorized travel including streets, sidewalks, greenways, and areas within public parks. Examples of street furniture signs in public right-of-ways and public parks would include, but are not limited to, signs displayed in such areas on benches, shelters, trash receptacles, and fences.

Travel sign shall mean a sign placed within a public right-of-way or authorized to be placed within or within 5 feet of a public right by an official government agency charged with maintaining the aforesaid public right -of-way. Travel signs include signs described in the Uniform Manual of Traffic Control Devices and other signs primarily for traffic management and way-finding that influence the speed, direction, and travel path choice of motorists.

Wall mural shall mean a scene, figure or decorative design painted on a wall of a building so as to enhance the building architecture, and which does not include sign copy, and which is distinctly separated from any sign backing or sign copy by a monochromatic border at least 12 inches wide.

Wall sign shall mean a sign that is attached, painted, or displayed on a façade, including signs oriented so as to be viewed and interpreted with the façade. This definition would also include projecting signs and signs located on an awning, canopy, or mansard, when these contain sign structure or sign copy visible on the façade.

Window sign shall mean a sign located inside a building but mounted and oriented so as to so as to be visible from the

exterior of the building from a public right-of-way. (amended by Ord. of #7/8/85, Ord. #4, Jan. 1999, Ord. #6, April 2000, replaced by Ord. #2007-35, Sept. 2007, and amended by Ord. #2008-56, Sept. 2008)

6.0 ADMINISTRATIVE PROCEDURES.

6.0.1 Administration and enforcement. The provisions of this ordinance shall be administered and enforced by the building inspector(s). These officials shall have the right to enter upon any premises for the purpose of making inspections of buildings or premises necessary to carry out his duties in the enforcement of this ordinance.

6.0.2 Building permit. No land or structure shall be changed in use and no structure shall be erected, moved or altered until the chief building inspector has given written approval of same, and has issued a building permit certifying that the plans and intended use of land, buildings and structure are in conformity with this ordinance, and other valid ordinances of the City of Cleveland. Building permits shall be void after three (3) months from date of issue unless substantial progress has been made on the project by that time.

6.0.3 Certificate of occupancy. No land or structure hereafter erected, moved, or altered in its use shall be used until the chief building inspector shall have issued a certificate of occupancy stating that such land or structure is found to be in conformity with the provisions of all applicable ordinances. It is expressly provided that the moving or relocation of any trailer, prefabricated structure, or other structure to any premises shall require a building permit and certificate of occupancy.

6.0.4 Enforcement by city clerk. The provisions of this ordinance shall also be administered and enforced by the city clerk insofar as the same concerns the issuance of privilege licenses for businesses or occupations required to be licensed by the City of Cleveland, and no such license shall be issued by the clerk for the privilege of carrying on a business or occupation in violation of the provisions of this ordinance.

6.0.5 Penalties. Any person violating the provisions of this ordinance shall, upon conviction, be fined not less than two (2) nor more than fifty (50) dollars for each offense and court costs. Each day such violation continues shall constitute a separate offense. It is further provided that the foregoing penal provisions are not intended to be the

exclusive means of enforcing this ordinance, and violation of the provisions hereof is expressly declared to be a nuisance, and, in addition to the fines hereinabove provided, the nuisance shall be abatable in law or in equity as in the case of other nuisances.

6.0.6 Scheduling and postponement of zoning cases. For a rezoning on a planning commission agenda, the applicant may request a postponement until the next planning commission meeting or a future planning commission meeting on a specified date not later than the second month following the meeting date from which the item is to be postponed. The applicant may request and the planning commission may grant two (2) such postponements for a given requests during a one year period beginning with the date that the item is first on the planning commission agenda. Failure of the applicant to appear at the planning commission meeting without the approval of the planning commission chairman shall constitute a request for postponement by the applicant. In the case of a rezoning request recommended for denial by the planning commission, the same request shall not be heard again by the planning commission for a period of one year unless recommended by the planning director based upon a substantial change in the request. (as added by Ord. #18, Oct. 2001, and replaced by Ord. #2011-07, June 2011)

6.1 BOARD AND AGENCIES.

6.1.1 Planning commission.

Title 14, chapter 1 of the City Code of Cleveland, Tennessee, creates the Planning Commission, and establishes its membership; organization, rules and staff; and powers and duties.

6.1.2 Board of zoning appeals.

A. Establishment. A Board of Zoning Appeals, the "new board" for purposes of this paragraph, is hereby established in accordance with Section 13-7-205 of the Tennessee Code Annotated as amended. The membership, powers, and procedures of the new board shall be as described in this ordinance. The Board of Zoning Appeals in existence prior to this ordinance, the "old board" for purposes of this paragraph, shall be dissolved upon the initial appointment of the new board. The requirements of this ordinance notwithstanding, any appeals, variance requests, or other business or proceedings that may be before the old board at

the time of its dissolution shall be concluded by the new board in accordance with the requirements of the old board.

B. Membership. The Board of Zoning Appeals shall consist of five (5) members appointed subsequent to the adoption of this ordinance in the manner prescribed herein. Members are to be appointed by the City Council. Initial appointments are to be made for staggered terms as follows: two seats for a term of one year; two seats for a term of two years; and one seat for a term of three years. Subsequent appointments to each seat are to be for terms of four years. If a member leaves the board before his or her term is expired, he or she is to be replaced for the remainder of the term in the manner prescribed herein. Members of the board may be appointed from among the members of the Cleveland Municipal Planning Commission. Relevant abilities or expertise, commitment to public service, and community diversity are factors to be considered in making appointments, but none of these is to be a sole controlling factor for any particular appointment. A member of the board may be removed from the board at any time by a majority vote of the City Council when it is demonstrated that such board member has a pattern of repeated absences from board meetings, or when such board member exhibits disregard for controlling laws and ordinances or the purpose and intent of the zoning ordinance, or when such board member fails to declare a conflict of interest in a given case and votes on the case.

C. (1) Administrative Review. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, or refusal made by the Building Inspector(s) or other administrative official(s) in carrying out or enforcing of any provision of the zoning regulations as found in Title 14 Chapter 2 of the City of Cleveland, Tennessee Code of Ordinances, as amended.

(2) Special Exceptions (Conditional Uses). To hear and decide requests for special exceptions in accordance with the provisions of the paragraph. A special exception request is a request for approval of a Conditional Use as defined in Section 1.6 of the zoning regulations. The process for review and

approval or denial of conditional use requests shall be as described in Section 1.7 of the zoning regulations.

(3) Zoning District Boundary Disputes. The Board of Zoning Appeals is authorized to rule in cases where the Planning Director's determination of a zoning district boundary is disputed. Boundary determinations shall be made in accordance with the principles set forth in Section 1.4.1. of the zoning ordinance.

(4) Zoning Variance Requests. The Board of Zoning Appeals is authorized to grant variances from the strict application of zoning regulations that are dimensional, proportional, or quantitative in nature (e.g. distance, area, height, bulk, quantity, proportion, and the like) where the standards required by Tennessee Code Annotated, § 13-7-207(3) are met. By way of summary, these standards require: first, that application of the development standard present a substantial problem because of the narrowness, shallowness, shape, topography, or other exceptional condition of the property; second, that application of the development standard present exceptional practical difficulties or undue hardship on the property owner; and third, that the variance requested would not substantially harm the public good or the purpose and intent of the zoning ordinance. The applicant for a variance shall provide sufficient information for a staff review and review by the board, including but not limited to, a survey showing existing or proposed property lines, building footprints, and impervious surfaces.

(5) Right of Entry Upon Land. For purposes of carrying out the requirements of this ordinance, the Board and Zoning Appeals, its members and City of Cleveland, Tennessee employees or agents acting in support of the board shall have the right to enter upon any land within the City of Cleveland for the purposes of making examinations or surveys or for the purpose of posting or removing public notices if such are required by this ordinance.

(6) Right to Request Assistance. In the discharge of its responsibilities under this ordinance, the Board of Zoning Appeals shall have the right to request through the City Manager assistance from any City department.

(7) Public Notification--- Signage. A sign for the purpose of public notification shall be placed on the site affected by a conditional use or variance request scheduled to be heard by the Board of Zoning Appeals (BZA) at least 7 days before the hearing. (as added by Ord. #2011-16, Sept. 2011)

(8) Resubmission and Reconsideration. In the case of a conditional use or variance request that has been denied, no such request shall be resubmitted and considered again by the Board within six months of the Board's decision to deny the request, unless:

(a) Within 30 days after a denial, the Board votes to reconsider the matter, and the Board finds that there has been a substantial and material change in the request. Reconsideration under these circumstances requires that a Motion to reconsider be made by a member previously voting with the majority to deny the request. Before reconsidering any previous denial, the motion to reconsider must be approved by a majority of the Board members present and voting. If the Board votes to reconsider the matter, the Board shall also state upon the record the basis of the Board's finding that there has been a substantial and material change in the request.

(b) Resubmission and reconsideration occurs pursuant to court order. (as added by Ord. #2011-16, Sept. 2011)

D. Procedures. The following are rules and procedures for the Board of Zoning Appeals. The board may adopt such other rules and procedures for the conduct of business as the board deems appropriate provided that these are not in conflict with the rules and procedures described herein.

(1) Initial meeting. Within thirty (30) days of the initial appointment of the board, the board shall hold an initial meeting. At the initial meeting the board will elect officers as required by this ordinance; it will address any business that was before the former Board of Zoning Appeals; and it will address any new business that is to come before the board.

(2) Election of Officers. The board shall elect from among its own members a chairperson, and a vice-chairperson. Secretarial services shall be provided by the City of Cleveland, Tennessee in a manner to be prescribed by the City Manager.

(3) Regular Meetings. Regular meetings shall be held at a time and place chosen by the Board of Zoning Appeals. Regular meetings shall be held at least monthly following the initial meeting unless there is no business to be conducted apart from the approval of minutes in which case the meeting may be postponed until the next regular meeting or called meeting. Unless otherwise determined by the board, regular meetings shall be at noon on the second Tuesday of each month in the City Council Chambers. The chairperson or vice-chairperson may reschedule regular meetings as may be necessary from time to time.

(4) Called meetings. For meetings that meet the requirements of subsection 6.1.2.D(6) in which enough members cannot attend to form a quorum. The chairperson or vice-chairperson or any two members may schedule called meetings of the Board of Zoning Appeals as deemed necessary provided that notice is given to each board member at least forty-eight (48) hours in advance. For purposes of this ordinance, notice to board members include verbal notification or leaving written, audio or electronic messages at locations where the board member can usually be reached.

(5) Called meetings for any other reason. The chairperson or vice-chairperson or any two members may schedule called meetings of the Board of Zoning

Appeals as deemed necessary provided that the advertisement requirements of subsection 6.1.2.D(6) below are met.

(6) Notice of meetings. Notice of regular meetings shall be by publication of the meeting agenda in a newspaper of general circulation. Meetings wherein an administrative review, special exception, or variance is to be considered are to be advertised at least five days in advance of the meeting with a description of what is to be considered.

(7) Quorum and Voting. The presence of three members of the Board of Zoning Appeals shall constitute a quorum. If the chairperson and vice-chairperson are absent from the meeting in which there is a quorum, the members present shall elect from among themselves a chairperson of the meeting. If only three members are present and one cannot vote due to a conflict of interest on a particular item, the remaining two members shall constitute a quorum for the purpose of that item. In the event of a tie vote on any motion the motion shall fail. A motion shall have passed upon the affirmative vote of a majority of the quorum of board members present and voting.

(8) Open Meetings. All meetings of the board shall be open to the public.

(9) Conduct of Meetings. Unless otherwise specified by this ordinance or the specific determination of the board that does not conflict with this ordinance, conduct of meetings shall be generally in accordance with Roberts Rules of Order.

(10) Application. Appeals for administrative review, special exceptions, and variances shall be by written application from the property owner, or property buyer with agreement of the owner, or the City of Cleveland. The form and specific content of the application shall be as determined by the board as shall submittal deadlines, application sufficiency standards, and review procedures. Applications shall at a minimum contain all information necessary to

make determinations required by this ordinance. No applicant shall be guaranteed a review by staff in less than ten working days. Falsification, omission, or misrepresentation of a material fact shall be grounds for revocation of any appeal for administrative review, special exception or variance granted by the board.

(11) Oath of Office. Before beginning a term of service on the Board of Zoning Appeals, a member shall take the following oath of office:
"I do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution of the State of Tennessee, and that I will perform with fidelity the duties of the office to which I have been appointed and which I am about to assume."

E. Applicants for conditional uses, variances, or other hearings before the Board of Zoning Appeals shall submit a fee of one hundred fifty ($150.00) dollars for each item to be heard. (as amended by Ord. #2003-29, Nov. 2003, Ord. #2004-22, June 2004, Ord. #2005-20, June 2005, Ord. #2005-37. Sept. 2005)

6.1.3 Code enforcement board. [Reserved.]

6.2 SITE PLAN REVIEW PROCESS

In order to promote careful and systematic review of future development within the community, to ensure compliance with all applicable zoning requirements, 40 CFR 122.26 pursuant to the National Pollutant Discharge Elimination System permit issued to the City of Cleveland, other engineering and development related ordinances and standards, and to promote the general health, safety, and welfare of the community, the following site plan review process shall apply. It is the general purpose and intent of this section to require site plan review and approval for all new developments and redevelopments of commercial, industrial, public and institutional and multi-family residential uses with a building area of five thousand (5000) square feet or larger for all buildings contained within the site or for any use containing a drive-through service window or lane, or for land disturbance activities as defined by Title 18 Chapter 3 Section 18-304 (1) of the Cleveland Municipal Code, and to provide for the lessening of traffic congestion and the securing of adequate light, air,

and aesthetic conditions for residents of Cleveland. Unless otherwise stated herein the term "site plan" shall mean a final site plan, which requires approval prior to the issuance of a building permit.

6.2.1 Administrative Procedures. Site plans reviewed pursuant to this Subsection 6.2 shall be reviewed by a Site Plan Review Committee comprised of the Director of Community Development, the Building Official, the Traffic Engineer, the City Engineer, the Stormwater Engineer, the Urban Forester, and representatives of emergency services (Fire and Police) and the Public Works Director or his designee. The Site Plan Review Committee may seek input from other City departments and utility providers and governmental agencies, as it deems necessary. The Plan Review Committee shall review each month the site plans submitted by the last working day of the previous month. Six sets of the (one each for the city engineer, stormwater engineer, traffic engineer, building department/community development, fire department, urban forester) site plan are to be submitted for review to the Department of Community Development with a letter requesting site plan review. The Site Plan Review Committee will have thirty (30) days from the date of submittal to review each site plan submitted and provide comments. The Site Plan Review Committee will communicate the results of its review to the applicant in writing. The Director of Community Development shall be responsible for the day-to-day administration of the Site Plan Review Committees work. The site plan review will check for completeness according to the required site plan content in 6.2.3 below, for conformity with MS4 Phase I1 Stormwater requirements in conjunction with Title 18, Chapter 3, Sections 18-301 through 18-312, and for applicable planning, engineering, and safety standards, and for whether the site plan has fulfilled the purpose and intent of the site plan review process. Any site plan revisions required as a result of the site plan review must be addressed to the satisfaction of the Site Plan Review Committee prior to the issuance of a building permit. All revisions have a one (1) week (7- calendar days) review period from date of revision submission. In situations requiring site plan approval, developers are encouraged to submit preliminary site plans for comments by the Site Plan Review Committee. The Site Plan Review Committee will review the preliminary site plan within two weeks (14-calendar days) from the date of submittal and provide comments to the applicant.

6.2.2 Exemptions. Site plans for small additions to existing buildings may be exempted from review by the Site Plan Review Committee, by the Director of Community Development and the Public Works Director

(or their designees) , when they determine that the purpose and intent of these regulations would not be adversely affected. Considerations for making such a determination would include, but not necessarily be limited to the following: whether the total square footage increase would be less than ten percent (10%) of the existing floor area, whether any driveway redesign is contemplated, whether a significant increase in traffic generation is expected, whether any utilities easements are impacted, the use of the proposed expansion area, and whether the proposed site improvements would otherwise generally conform to the zoning ordinance and other applicable city ordinances.

6.2.3 Site Plan Requirements. Site plans (and preliminary site plans if submitted for review) shall be prepared by a licensed architect, engineer, or surveyor, but within the limits of professional licensure under Tennessee law. Preliminary site plans should be complete to a schematic design phase. Site plan minimum requirements include all existing and proposed conditions, which shall include but shall not be limited to: a tax map and parcel identification, a location map showing streets and street names, boundary survey data including bearings and distances for site boundaries, site attributes, the location of site features (existing structures, existing utilities, existing easements), the location of features adjacent to the site (building line of existing buildings on adjacent property if within required setback, existing streets, existing sidewalks, existing utilities, nearest, existing fire hydrant, existing rights-of-way, existing easements), any covenants affecting the site, a north arrow, site acreage, pervious and impervious area acreage (areas both pre and post development conditions), a graphic scale not less than 1" = 100' (one inch equals one hundred feet), topography of existing and finished grades at two-foot intervals based upon survey data, flood data (FEMA map and panel number and location of areas subject to flooding identified as the 100-year floodway, if applicable, and the 100-year floodplain), vehicular and pedestrian access and circulation (includes ingress, egress, frontage roads, parallel access streets, joint driveways, modifications or improvements to adjacent streets and traffic control devices), location of all proposed structure on site including signs, parking spaces and structures (include signing and marking detail for handicapped-accessible parking spaces), stormwater management plan, landscaping and open space plan satisfying the MS4 Phase II Stormwater Ordinance, proposed screening (walls, fences, berms, or other opaque barriers), and solid waste collection facilities including required screening. Based upon its professional judgment, the Site Plan Review Committee may require additional appropriate data such as traffic impact studies, environmental studies, parking studies, and

the like. Such additional data shall only be required were the proposed development can reasonably be anticipated to have significant or adverse impacts in terms of roadway capacity, roadway safety, flood hazard, public infrastructure, or an environmental resource regulated by the Tennessee Department of Environment and Conservation. Conformity with site design standards in Section 3.0 of the zoning ordinance is required. (as amended by Ord. #2005-21, June 2005)

6.2.4 Appeals. In the event that an applicant is aggrieved by the decision of the site plan review committee as it pertains to a particular site plan, the applicant may appeal the decision of the site plan review committee to the planning commission. The final appeal is to the city council. (as replaced by Ord. #7, Aug. 2000)

6.3 Council actions.

6.3.1 Adoption of the zoning ordinance.

This ordinance shall be in full force and effect from and after its adoption and effective date. All zoning ordinances heretofore adopted for the City of Cleveland, Tennessee, are hereby repealed upon adoption of this ordinance.

6.3.2 Amendment of the zoning ordinance.

A. Procedure. As provided in Tennessee Code Annotated, § 13-7-203, such regulations, restrictions, and boundaries of districts as provided for in this ordinance and/or as shown on the official zoning map may be amended, supplemented, changed, modified, or repealed by ordinance by the Cleveland City Council. All changes and amendments shall be effective only after official notice and a public hearing held by the council. At least fifteen (15) days notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the municipality.

B. APPROVAL BY THE PLANNING COMMISSION. As provided in Tennessee Code Annotated, §§ 13-7-203 and 13-7-204, no amendment shall become effective unless it is first submitted to and approved by the Cleveland Planning Commission; if disapproved by the planning commission, the amendment must receive a majority vote of the entire membership of the Cleveland City Council.

6.4 APPEALS.

6.4.1. Denial of permit of license. Any person or persons aggrieved by a decision of the chief building inspector denying a permit or certificate of occupancy or persons aggrieved by the act of the city clerk in denying a privilege license because of the violation of the provisions of this ordinance may within thirty (30) days after decision appeal said decision to the board of zoning appeals.

6.4.2 Granting of permit or license. Any person or persons aggrieved by a decision of the chief building inspector in granting a permit or certificate of occupancy may within thirty (30) days after visible commencement of construction, in the case of a building permit, and within thirty (30) days from visible occupation in the case of a certificate of occupancy, appeal said decision to the board of zoning appeals. Any person or persons aggrieved by the act of the city clerk in granting a privilege license in violation of the terms of this ordinance may within thirty (30) days after the visible commencement of exercising of the licensed privilege, appeal said decision to the board of zoning appeals.

6.4.3 Procedures. A written application for appeal must be provided by the applicant describing the specific reasons for appealing the granting or denial of a building permit, certificate of occupancy, or privilege license denied under this ordinance. A written appeal must be submitted in advance of a regularly scheduled or called meeting within a reasonable time established by the board of zoning appeals. Following receipt of a written appeal by the planning director, the board of zoning appeals shall schedule consideration of his appeal at a duly advertised public hearing. A written record of the decision of the board of zoning appeals shall be kept which includes the written application and any supporting documents, including maps, and the reasons for granting the appeal.

6.5 FEES.

Fees for requesting approvals, appeals (administrative review, special exceptions, variances) and applications for amendments (rezonings) to this ordinance shall be established by the planning commission and posted in the city planning department. Fees shall be payable upon application to the planning commission or to the board of zoning appeals.

6.6 Airport zoning.

6.6.1 Hardwick Field--- all airport zoning regulations and maps adopted prior to July 1, 2009 that are applicable to the environs of Hardwick Field shall remain in full force and effect until such time as the City Council of the City of Cleveland, Tennessee determines that Hardwick Field shall have ceased to be an airport requiring such airport zoning protection under laws and regulations applicable to airports in the State of Tennessee.

6.6.2 Definitions. As used in this ordinance, unless the context otherwise requires:

(1) AIRPORT --- the Cleveland Municipal Airport located, or to be located, in the vicinity of Dry Valley Road and Michigan Avenue Road in Bradley County, Tennessee.

(2) AIRPORT ELEVATION - 860 feet above mean sea level.

(3) APPROACH SURFACE - A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in below in this ordinance (see Section 6.6.4). In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.

(4) APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES - These zones are as set forth below in this ordinance (see Section 6.6.3).

(5) BOARD OF ZONING APPEALS - The City of Cleveland Board of Zoning Appeals established in Title 14 Chapter 2 Zoning Regulations of the Municipal Code of the City of Cleveland, Tennessee in accordance with the laws of the State of Tennessee.

(6) CONICAL SURFACE - A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

(7) HAZARD TO AIR NAVIGATION - An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

(8) HEIGHT - For the purpose of determining the height limits in all zones set forth in the Ordinance and shown on the airport zoning map adopted by the Ordinance; the datum shall be mean sea level elevation unless otherwise specified.

(9) HORIZONTAL SURFACE - A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

(10) LARGER THAN UTILITY RUNWAY - A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

(11) NONCONFORMING USE - Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.

(12) NONPRECISION INSTRUMENT RUNWAY - A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.

(13) OBSTRUCTION - Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in this ordinance (see Section 6.6.4).

(14) PERSON - An individual, firm, partnership, corporation, company, association, joint stock association, or government entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.

(15) PRECISION INSTRUMENT RUNWAY - A runway, having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

(16) PRIMARY SURFACE - A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of the runway; for military runways or when the surface has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in this ordinance under 6.6.3 Airport Zones and Airport Zoning Map. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

(17) RUNWAY - A defined area on an airport prepared for landing and take-off of aircraft along its length.

(18) STRUCTURE - An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestack, earth formation, and overhead transmission lines.

(19) TRANSITIONAL SURFACES - These surfaces extend outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90 degree angles to the extended runway centerline.

(20) TREE - Any object of natural growth.

(21) UTILITY RUNWAY - A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

(22) VISUAL RUNWAY - A runway intended solely for the operation of aircraft using visual approach procedures.

6.6.3 Airport Zones and Airport Zoning Map

In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to Cleveland Municipal Airport. Such zones are shown on Cleveland Municipal Airport Zoning Map consisting of one sheet, prepared by the Airport Authority, dated September 2006, which is attached this Ordinance and made a part hereof (see Appendix A to this ordinance which also contains an illustrative map highlighting the street network within the airport zoning area). An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The regulations prescribed herein shall apply only to those portions of zones which are located inside of the corporate limits of the City of Cleveland or which become located inside the corporate limits of the City of Cleveland due to annexation. The various zones are hereby established and defined as follows:

(1) Approach Zone - Runway Larger Than Utility With A Visibility Minimum Greater Than ¾ Mile Nonprecision Instrument Approach Zone. The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

(2) Transitional Zones - The transitional zones are the areas beneath the transitional surfaces.

(3) Horizontal Zone - The horizontal zone is established by swinging arcs of 10,000 feet from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

(4) Conical Zone - The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a horizontal distance of 4,000 feet.

6.6.4 Airport Zone Height Limitations

Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any airport approach surface zone, transitional surface zone, or horizontal surface zone to a height in excess of the applicable height herein established for such zone. Additionally, no structure shall be erected or altered within the conical surface zone to a height in excess of the height limit herein established for zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

(1) Approach Zone - Runway Larger Than Utility With A Visibility Minimum Greater Than ¾ Mile Nonprecision Instrument Approach Zone. Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

(2) Transitional Zones - Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 860 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90 degree angles to the extended runway centerline.

(3) Horizontal Zone - Established at a height of 150 feet above the airport elevation or at a height of 1010 feet above mean sea level.

(4) Conical Zone - Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone

and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

(5) Excepted Height Limitations - Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to 50 feet above the surface of the land.

6.6.5 Use Restrictions

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

6.6.6 Nonconforming Uses

(1) Regulations Not Retroactive--- the regulations prescribed in this Ordinance are not retroactive and the ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming use in place prior to the ordinance. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure; the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.

(2) Marking and Lighting - Notwithstanding the preceding provision of the Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Airport Manager to indicate to the operators of aircraft in the vicinity of the airport, the presence of such airport obstruction. Such markers and lights shall be installed,

operated, and maintained at the expense of the Cleveland Municipal Airport Authority.

6.6.7 Permits (1) Future Uses - In addition to any prerequisites for obtaining any permit already established by the City of Cleveland and/or Bradley County, all permits issued by the City of Cleveland and Bradley County will additionally be reviewed for conformity with the requirements of this Ordinance. Furthermore, nothing in this ordinance shall require a permit not otherwise required for any tree or structure meeting the provisions of a, b, and c hereunder.

a. In the area lying within the limits of the horizontal zone and conical zone, any tree or structure less than seventy-five feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limit prescribed for such zones.

b. In areas lying within the limits of the approach zones but at a horizontal distance of not less than 4,200 feet from each end of the runway, any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

c. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, for any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by the Ordinance except as set forth in

this ordinance (see Section 6.6.4). Additionally, no permit for any use inconsistent with the provisions of this resolution shall be granted unless a variance has been approved in accordance with the provisions of this ordinance [see Section 6.6.7(4)].

(2) Existing Uses - No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation, than it was on the effective date of this Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for a permit otherwise complying with all of the requirements of the permitting jurisdiction, the City of Cleveland or Bradley County as the case may be, will be granted.

(3) Nonconforming Uses Abandoned or Destroyed - Whenever the City of Cleveland Building Official determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure to be reconstructed or replaced to exceed the applicable height limit or otherwise deviate from the zoning regulations.

(4) Variances- Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Zoning Appeals for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of the Ordinance. Additionally, no application for variance to the requirements of this Ordinance may be considered by the Board of Zoning Appeals unless a copy of the application has been furnished to the Airport Manager for advice as to the

aeronautical effects of the variance. If the Airport Manager does not respond to the application within 15 days after receipt, the Board of Zoning Appeals may act on its own to grant or deny said application.

(5) Obstruction Marking and Lighting - Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Board of Zoning Appeals, this condition may be modified to require the owner to permit the Cleveland Municipal Airport Authority, at its own expense, to install, operate, and maintain the necessary markings and lights.

6.6.8 Violations Unlawful, Enforcement, and Penalties

Violations of this ordinance are declared to be unlawful. It shall be the duty of the City of Cleveland Community Development Department to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the City of Cleveland Community Development Department upon a form published for that purpose. Applications required by this ordinance to be submitted to the City of Cleveland Community Development Department shall be promptly considered and granted or denied. Application for action by the Board of Zoning Appeals shall be forthwith transmitted by the City of Cleveland Community Development Department. Each violation of this ordinance or of any regulation, order, or ruling promulgated hereunder shall be punishable in accordance with the guidelines established elsewhere in the City of Cleveland, Tennessee zoning regulations.

6.6.9 Board of Zoning Appeals and Judicial Review

In addition to the powers and duties elsewhere conferred upon the Board of Zoning Appeals by the City of Cleveland, Tennessee's zoning ordinance, the Board of Zoning Appeals shall also have and exercise the following powers:

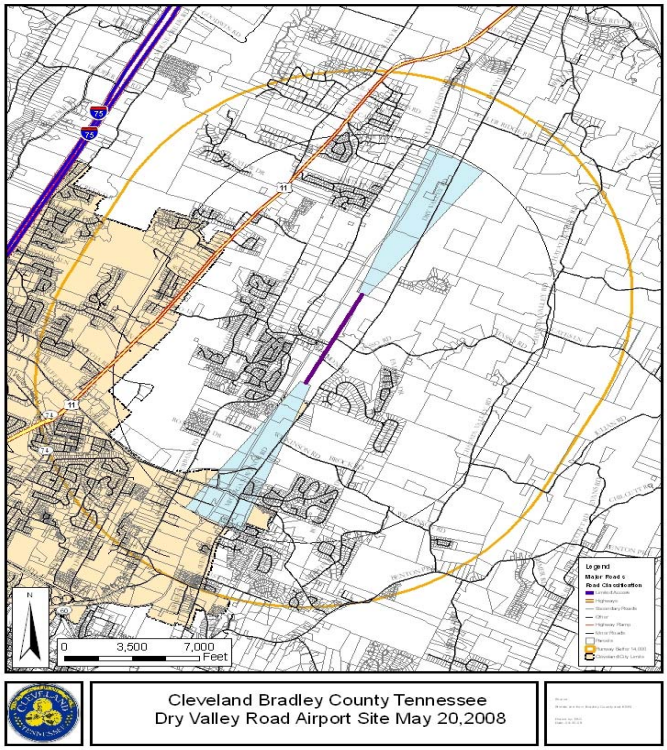
(1) To hear and decide appeals from any order, requirement, decision, or determination made by the Community Development Department staff, including but not limited to

the Building Official, or their agents in the enforcement of this ordinance; and

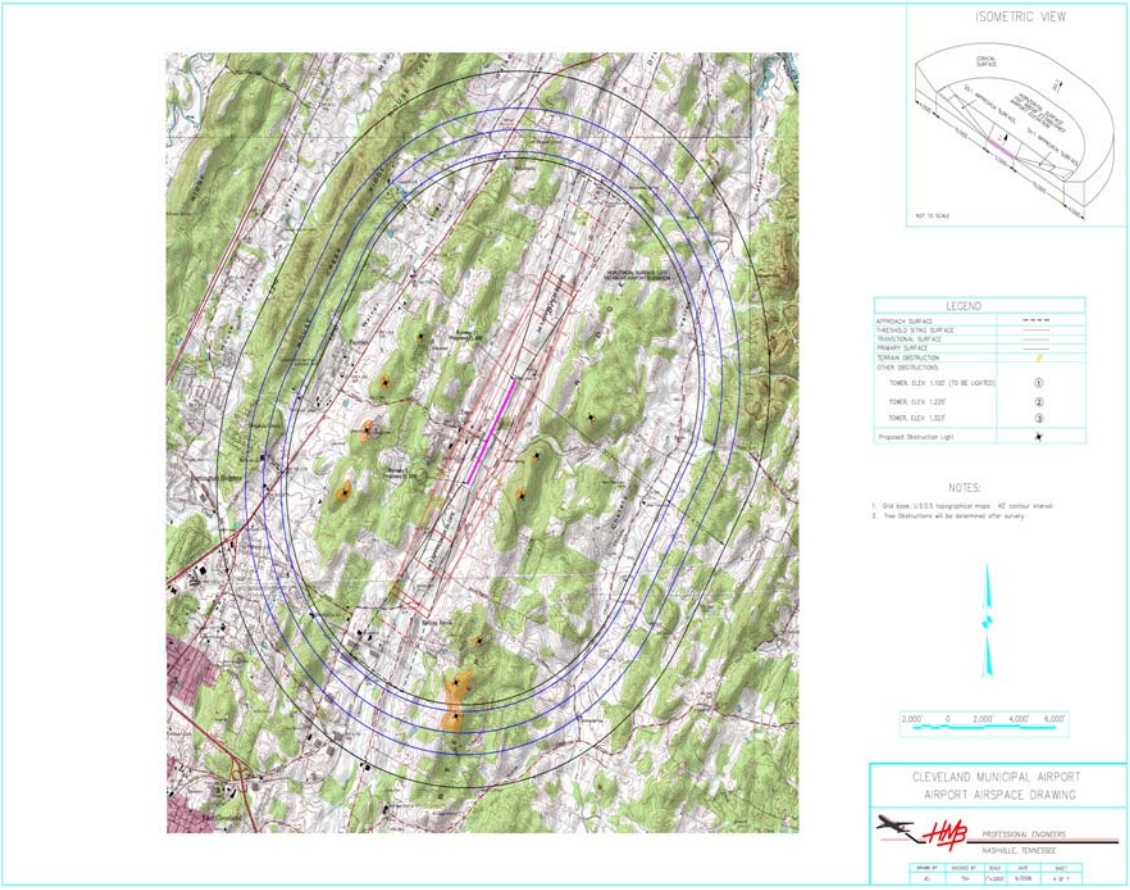
(2) To hear and decide special exceptions to the terms of this ordinance upon which such Board of Zoning Appeals under such regulations may be required to pass; and

(3) To hear and decide specific variances.

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Zoning Appeals, may appeal to either the Circuit Court or Chancery Court as provided in Tennessee Code Annotated, Title 27 Chapter 9.



Cleveland Bradley County Tennessee
Dry Valley Road Airport Site May 20,2008



(Ord. #4-26-60, July 1998, as replaced by Ord. #2008-29, June 2008, and Ord. #2010-09, April 2010)