

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

1. REAL PROPERTY TAXES.
2. PRIVILEGE AND BUSINESS TAXES GENERALLY.
3. WHOLESALE BEER TAX.
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CHAPTER 1**REAL PROPERTY TAXES****SECTION**

5-101. When due and payable.

5-102. When delinquent--penalty and interest.

5-101. When due and payable. Taxes levied by the town against real property shall become due and payable and delinquent on the dates prescribed in the charter.¹ (1991 Code, § 5-101)

5-102. When delinquent--penalty and interest. All real property taxes becoming delinquent shall be subject to such penalty and interest as is authorized and prescribed by the charter. (1991 code, § 5-102)

¹Charter references
Finance: art. XI.
Taxation: art. XII.

CHAPTER 2

PRIVILEGE AND BUSINESS TAXES GENERALLY**SECTION**

5-201. Tax levied.

5-202. License required.

5-201. Tax levied. Except as otherwise specifically provided in this code, there is hereby levied on all vocations, occupations, and businesses declared by the general laws of the state to be privileges taxable by municipalities, an annual privilege tax in the maximum amount allowed by said state laws.

The taxes provided for in the state's "Business Tax Act"¹ are hereby expressly enacted, ordained, and levied on the businesses, business activities, vocations, and occupations carried on within the Town of Smyrna at the rates and in the manner prescribed by the said act. (1991 Code, § 5-301)

5-202. License required. No person shall exercise any such privilege within the Town of Smyrna without a currently effective privilege license, which shall be issued by the town clerk to each applicant therefor upon the applicant's compliance with all regulatory provisions in this code and payment of the appropriate privilege or business tax. Violations of this section shall be punished under the general penalty provisions of this code of ordinances. (1991 Code, § 5-302, modified)

¹State law reference

Tennessee Code Annotated, § 67-4-701, et seq.

CHAPTER 3

WHOLESALE BEER TAX

SECTION

5-301. To be collected.

5-301. To be collected. The town clerk is hereby directed to take appropriate action to assure payment to the town of the wholesale beer tax levied by the "Wholesale Beer Tax Act," as set out in Tennessee Code Annotated, title 57, chapter 6. (1991 Code, § 5-401)

CHAPTER 4

HOTEL/MOTEL TAX

SECTION

- 5-401. Definitions.
- 5-402. Levy of tax.
- 5-403. Tax added to room invoice.
- 5-404. Remittance to director of finance.
- 5-405. Offer to absorb tax prohibited.
- 5-406. Penalties and interest for delinquency.
- 5-407. Records.
- 5-408. Administration.
- 5-409. Reports and records of paid funds.
- 5-410. Proceeds to become part of town's general fund.
- 5-411. Tax is additional tax.
- 5-412. Annual audits.

5-401. Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(2) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist court, tourist camp or campground, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.

(3) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodging, or accommodations in a hotel for a period of less than thirty (30) continuous days.

(4) "Transient" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodging, or accommodations in a hotel room or campground for a period of less than thirty (30) days.

(5) "Consideration" means the consideration charged whether or not received, for the occupancy of a hotel valued in money whether received in money, goods, labor or otherwise, including all receipts, cash, credits, property and service of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged or received from any person.

(6) "Operator" means the person operating the hotel whether as owner, lessee, or otherwise.

(7) “Tax collection official” means the town clerk/coordinator. (1991 Code, § 5-501)

5-402. Levy of tax. A privilege tax is hereby levied in the Town of Smyrna, Tennessee, upon the privilege of occupancy in any hotel by a transient in an amount not to exceed the limits established in Tennessee Code Annotated, § 67-4-1401, et seq., of the consideration charged by the operator. The rate of the tax shall be set by the annual fee schedule ordinance of the Town Council of the Town of Smyrna. The tax imposed is a privilege tax upon the transient occupying such room and is to be collected and distributed as herein provided. (1991 Code, § 5-502, modified)

5-403. Tax added to room invoice. The tax shall be added by each operator to each invoice prepared by the operator for the occupancy of their hotel. Such invoice is to be given directly or transmitted to the transient, a copy thereof filed by month and retained by the operator as provided in § 5-407 hereof. (1991 Code, § 5-503)

5-404. Remittance to director of finance. (1) The tax hereby levied shall be remitted by all operators who lease, rent, or charge for any rooms or spaces in hotels to the town clerk/coordinator no later than the twentieth (20th) day of each month next following such collection from the transient. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to, during or after occupancy, as may be the custom of the operator. The obligation to the town shall be that of the operator.

(2) For the purpose of compensating the operator in accounting for and remitting the tax levied by this chapter, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the city clerk/coordinator in the form of a deduction in submitting his report and paying the amount due by him, provided, however, that the amount due was not delinquent at the time of payment.

(3) Refunds or credits are given to persons and operators for occupancies lasting more than thirty (30) continuous days. (1991 Code, § 5-504, modified)

5-405. Offer to absorb tax prohibited. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded. (1991 Code, § 5-505, modified)

5-406. Penalties and interest for delinquency. Taxes collected by an operator which are not remitted to the town clerk/coordinator on or before the

due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of 12% per annum, and in addition for a penalty on such taxes of 1% for each month or fraction thereof that such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of knowing and willful refusal of an operator to collect or remit the tax is a Class A misdemeanor, punishable upon conviction by a fine that doesn't exceed state authorized maximums. Each occurrence (each day), shall constitute a separate offense. (1991 Code, § 5-506, modified)

5-407. Records. It is the duty of every operator liable for the collection and payment of any tax imposed by this chapter, to keep and preserve for a period of three (3) years, beginning December 31st of the year of the taxable event, all records necessary to determine the amount of such tax, which records the tax collection official shall have the right to inspect at all reasonable times. (1991 Code, § 5-507)

5-408. Administration. In administering and enforcing the provisions of this chapter, the tax official shall have as additional power the powers and duties with respect to collection of taxes provided in Tennessee Code Annotated, title 67, or otherwise provided by law.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in Tennessee Code Annotated, § 67-1-911, it being the intent of this chapter that the provisions of law which apply to the recovery of taxes illegally assessed and collected shall apply to the tax collected under the authority of this chapter; provided, the tax collection official shall possess those powers and duties as provided in Tennessee Code Annotated, § 67-1-707(a), with respect to the adjustment and settlement with taxpayers of all errors of taxes collected by him under the authority of this chapter and to direct the refunding of the same. Notice of any tax paid under protest shall be given the tax collection official. Any suit for recovery shall be brought against such tax collection official. (1991 Code, § 5-508)

5-409. Reports and records of paid funds. The city clerk/coordinator shall faithfully account for, make proper reports of, and maintain records of all funds paid to and received by such clerk for the privilege tax. (1991 Code, § 5-509)

5-410. Proceeds to become part of town's general fund. The proceeds of the tax imposed by the Act, when collected and paid to the city clerk/coordinator, shall become part of the Town of Smyrna general fund. (1991 Code, § 5-510)

5-411. Tax is additional tax. The privilege tax levied by this chapter shall be in addition to all other taxes levied or authorized to be levied whether

in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied. (1991 Code, § 5-511)

5-412. Annual audits. Pursuant to Tennessee Code Annotated, § 67-4-1406, an annual audit is required to be done by the Town of Smyrna, of all operators, and quarterly reports made to council about these audits.

CHAPTER 5

IMPACT FEES

SECTION

5-501. General impact fee provisions.

5-502. Road impact fees.

5-503. Park impact fees.

5-504. Fire impact fees.

5-501. General impact fee provisions. (1) Purpose. This chapter is intended to ensure timely construction of off-site public capital improvements that are necessary to serve new development by ensuring that necessary financing is available for such improvements. The impact fees to be paid by each new development pursuant to this chapter are to be proportional to the impact that the new development will have on the types of facilities for which the fees are charged.

(2) Applicability. Until any impact fee required by this chapter has been paid in full, no certificate of occupancy shall be issued. A stop work order shall be issued on any development for which the applicable impact fee has not been paid in full. The collection of impact fees shall apply to all new development in the town, unless otherwise provided herein.

(a) The movement of a structure onto a lot shall be considered development and shall be subject to the impact fee provisions, unless otherwise provided herein.

(b) The impact fee provisions shall not apply to the following actions:

(i) Placing on a lot in the town a temporary construction trailer or office, but only for the life of the building permit issued for the construction served by the trailer or office;

(ii) Any development, including but not limited to the mere subdivision of land, installation of utilities, or the use of land for limited recreational, agricultural, filling or dredging purposes, which, in the opinion of the administrator, will not result in a significant net increase in the demand for public facilities subject to this chapter.

(iii) The park impact fee shall not apply to nonresidential development;

(iv) Any project or development paid for by the Rutherford County School System.

(3) Definitions. (a) "Administrator" shall be the director of planning or persons designated by the town to administer this chapter.

(b) "Industry" means a building principally used in connection with mining; construction; manufacturing; scientific research,

investigation, testing, or experimentation; or transportation, communication, electric, gas and sanitary services; excluding buildings associated with these activities but principally used for office purposes as defined herein.

(c) "Major roadway system" means all existing or planned collector or arterials roadways that are identified on the town's adopted major thoroughfare plan map and are or will be the responsibility of the town to improve and maintain.

(d) "Mobile home/RV park" means a lot principally used, designed, or adapted for use to accommodate more than one mobile home or recreational vehicle on individual pad sites.

(e) "Multi-family" means a building used for two or more dwelling units, in which individual living accommodations are provided for each family.

(f) "Nonresidential development" means any development that does not principally consist of residential dwelling units and accessory uses.

(g) "Office" means a building principally used, designed or adapted for the provision of executive, management, administrative or professional services. Typical uses include administrative offices and services, including real estate, insurance, property management, investment, personnel, travel, secretarial services, telephone answering, professional or consulting services in the fields of law, architecture, design, engineering, accounting and similar professions, business offices of public utilities, organizations and associations, or other use classifications when the service rendered is that customarily associated with administrative office services, but not involving medical or dental services or the sale of merchandise, except as an incidental use.

(h) "Retail/commercial/public" means a shopping center or any other nonresidential development not fitting the categories of office, industrial or warehouse as herein defined.

(i) "Single-family detached" means a detached dwelling on an individual lot principally used, designed, or adapted for use by a single family.

(j) "Warehouse" means a building primarily devoted to the storage of materials.

(4) Benefit district. (a) There shall be one impact fee benefit district, which encompasses the entire town.

(b) The appropriateness of the designation and boundaries of the benefit district shall be reviewed by the town as part of the impact fee revision process set forth in § 5-501(16). Following such review and a public hearing, the benefit district may be amended.

(c) Impact fees collected within the benefit district shall be spent within the benefit district.

(5) Phase-in schedule. The impact fees shall be assessed at 50 % of the maximum amounts determined according to subsection (7) and (8) below. This percentage may be subsequently increased, but only by action of the town council amending this chapter.

(6) Calculation based on fee schedule. Impact fees shall be calculated as follows.

(a) Unless an applicant requests an administrative determination or individual assessment as set forth in the following subsections, the impact fees shall be calculated for the proposed development based on the development plan approval or permit allowing the use, according to the applicable fee schedule.

(b) The following impact fee schedules are hereby adopted and incorporated herein by reference:

- (i) Road impact fee schedule (§ 5-502(1));
- (ii) Park impact fee schedule (§ 5-503(1));
- (iii) Fire impact fee schedule (§ 5-504(1)).

(c) The units of development specified in the fee schedule shall be interpreted as follows:

(i) A hotel or motel "room" shall include any space that is part of the same rental unit and that does not have a separate entrance.

(ii) Building square footage shall be measured in terms of gross floor area, as defined in Section 2.020, Definitions, of the town's zoning ordinance.

(d) For categories of uses not specified in the applicable impact fee schedule, the administrator shall apply the category of use set forth in the applicable fee schedule that is deemed to be most similar to the proposed use.

(e) If the development plan approval or permit for the proposed development indicates a mix of uses in the development, the impact fees shall be calculated separately for each use according to the fee schedule, and the results aggregated.

(f) For an addition to or replacement of existing structures, or a change of use, the impact fee to be paid shall be the difference, if any, between

(i) The fee, if any, that would be payable for existing development on the site or, in the case of demolition or removal of a structure or the reuse of a vacant structure, the previous development and use on the site, provided that the demolition or removal of the structure or the discontinuation of the previous use has occurred within five (5) years of the date of submittal of the application for which impact fees are assessed; and

(ii) The fee, if any, that would be payable for the total development on the site after the new development.

(g) Upon written request of an applicant, the administrator shall provide an estimate of the current fee based on the data provided by the applicant. However, the administrator shall not be responsible for determining at such preliminary date the accuracy of the information provided.

(7) Individual assessments. If any person submitting an application for which payment of an impact fee is a prerequisite to approval believes that the impacts of the proposed development will be substantially less than would be indicated by using a strict interpretation of the fee schedule or an administrative determination of the fee, such person may submit an individual assessment of the impact of the proposed development, consistent with the methodology set forth in subsection (a) below. A request for an individual assessment must be made prior to submittal of an application for a building permit.

(a) The individual assessment shall be subject to the following special standards and procedures:

- (i) Road impact fees: as set forth in § 5-502(2);
- (ii) Park impact fees: as set forth in § 5-503(2);
- (iii) Fire impact fees: as set forth in § 5-504(2).

(b) The town shall accept the calculations of the individual assessment if the administrator finds that:

- (i) The proposed development is in fact so unique in the impacts it will generate that the strict application of the fee schedule or administrative determination would result in inaccurate impact projections; and
- (ii) The individual assessment results in a fee that differs by at least five percent (5%) from the fees calculated under the fee schedule or administrative determination.

(c) If the town accepts the computations of the individual assessment under this section, the applicable fee shall be determined from the individual assessment, regardless of whether it is higher or lower than the fee calculated under the fee schedule or administrative determination.

(8) Collection of fees. The collection of impact fees shall be as follows:

(a) Except as set forth in the following paragraph, the impact fees for all new development shall be calculated and collected in conjunction with the application for the certificate of occupancy issued on or after January 1, 2000, provided that the accompanying building permit shall also have been issued on or after December 15, 1999.

(b) For other uses not ultimately requiring a building permit, electrical permit, certificate of compliance or occupancy, or other permit subsequent to development plan approval, the fee shall be calculated and collected at the time of approval of the development plan.

(9) Fund accounting. (a) The town shall establish a separate accounting fund in which the impact fees collected for a particular type of facility within the benefit district shall be credited. Such fees shall be invested by the town and the yield on such fees, at the actual rate of return to the town, shall be credited to such accounting fund periodically in accordance with the accounting policies of the town. Such funds shall be segregated from other town monies for accounting purposes.

(b) Any yield on such accounting fund into which the fees are deposited shall accrue to that fund and shall be used for the purposes specified for such fund.

(c) The town shall maintain and keep financial records for such accounting fund showing the revenues to such fund and the disbursements from such fund, in accordance with normal town accounting practices. The records of such fund shall be open to public inspection in the same manner as other financial records of the town.

(10) Expenditure of fees. Impact fees may only be spent on qualifying improvements, as follows:

(a) Road impact fees: as set forth in § 5-502(3);

(b) Park impact fees: as set forth in § 5-503(2);

(c) Fire impact fees: as set forth in § 5-504(3).

(11) Refunds. (a) Any impact fee or portion thereof collected pursuant to this chapter, which has not been committed for a use permitted by § 5-501(10) within six (6) years from the last day of the fiscal year in which it was received by the town, shall be refunded to the current record owner of the property upon written application. Impact fees shall be deemed to be "committed" when they have been spent or encumbered by contract. Impact fees shall be deemed to be committed in the order in which they are received and committed by the town. The refund shall include accrued interest at the rate of return on investments earned by the town on such amount. In disbursing such funds the town may rely on the written certification of the current record owner of the property as to his entitlement to the refund, in the absence of a written assertion by another party that such proposed payee is not the proper payee. If in doubt, the town may deposit such funds in an appropriate court for disposition as the court may determine. In such event, the town may deduct from the funds deposited an amount equal to the reasonable cost of causing the funds to be deposited with the court, including reasonable attorney's fees.

(b) If development for which an impact fee has been paid has not begun, the impact fee and any accrued interest thereon shall be returned to the applicant provided that the applicant applies for the refund in writing within sixty (60) days after the expiration of the building permit or other approval (or any extension thereof) on which it was assessed.

(c) The town shall charge an administrative fee for verifying and computing the refund of three percent (3%) of the amount of the refund.

(12) Offsets. Offsets, which are reductions from the impact fee that would otherwise be due from a development, shall be subject to the following provisions. Offsets adjustments shall be credited at the same percent of the maximum impact fee rate assessed per fee type.

(a) The administrator shall grant an offset only for qualifying improvements, as defined in § 5-501(10), or cash contributions for such improvements, that are required to be made by the fee payer as a condition of development approval for the type of facility against which such offset is claimed.

(b) Offsets shall be allowable and payable only to offset impact fees otherwise due for the same category of improvements and shall not result in reimbursements from, nor constitute a liability of, the town.

(c) Offsets shall be given only for the value of any construction of improvements or contribution or dedication of land or money by a fee payer or his predecessor in title or interest for qualifying improvements of the same category for which an impact fee was imposed.

(d) No offset shall be provided under this section for contributions, payments or construction made more than ten (10) years prior to the effective date of this chapter.

(e) The person applying for an offset shall be responsible for providing appraisals of land and improvements, construction cost figures, and documentation of all contributions and dedications necessary to the computation of the offset claimed. The administrator shall have no obligation to grant offsets to any person who cannot provide such documentation in such form as the administrator may reasonably require.

(f) The value of land dedicated or donated shall be based on the appraised land value of the parent parcel (which land value is based on the date of transfer of ownership to the town) as determined by a certified appraiser who was selected and paid for by the applicant, and who used generally accepted appraisal techniques. If the town disagrees with the appraised value, the town may engage another appraiser at the town's expense, and the value shall be an amount equal to the average of the two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by the property owner and the town. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties.

(g) Offsets provided for qualifying improvements meeting the requirements of this section shall be valid from the date of approval until ten (10) years after the date of approval or until the last date of construction within the project, whichever occurs first.

(h) The right to claim offsets shall run with the land and may be claimed only by owners of property within the development for which the qualifying improvement was required.

(i) Any claim for offsets must be made no later than the time of submittal of a building permit application or application for another permit subsequent to development plan approval that is subject to impact fees. Any claim not so made shall be deemed waived.

(13) Developer agreements. (a) Where a development includes or requires a qualifying improvement, as defined in § 5-501(10), the town and the developer may agree in writing to have the developer participate in the financing or construction of part or all of the qualifying improvements. Such agreement may provide for cash reimbursements, offsets, or other appropriate compensation to the developer for the developer's participation in the financing and/or construction of the improvements.

(b) The agreement shall include:

(i) The estimated cost of the qualifying improvements, using the lowest responsive bid by a qualified bidder, which bid is approved by the administrator; or, if no bid is available, the estimated cost certified by a licensed engineer and approved by the administrator;

(ii) A schedule for initiation and completion of the improvement;

(iii) A requirement that the improvement be designed and completed in compliance with any applicable town ordinances; and,

(iv) Such other terms and conditions as deemed necessary by the town.

(14) Appeals. (a) A feepayer affected by a decision of the administrator under this chapter may appeal such decision to the town council, by filing with the administrator within ten (10) working days of the date of the decision, a written notice stating and specifying briefly the grounds of the appeal. The administrator shall place the appeal on the town council's agenda for the next regularly scheduled meeting.

(b) The town council, after a hearing, shall have the power to affirm or reverse the decision of the administrator. In making its decision, the town council shall apply the standards of the relevant sections of this chapter. If the town council reverses the decision of the administrator, it shall direct the administrator to recalculate the fee, offset or refund in accordance with its findings. In no case shall the town council have the authority to negotiate the amount of the fee.

(15) Supplemental regulation. (a) Except as herein otherwise provided, impact fees are in addition to any other requirements, taxes, fees, or assessments imposed by the town on development or the issuance of building permits or certificates of occupancy which are imposed on and

due against property within the jurisdiction of the town. Such fees are intended to be consistent with the town's comprehensive plan, capital improvements program, development regulations and other town policies, ordinances and resolutions by which the town seeks to ensure the provision of capital facilities in conjunction with development.

(b) In addition to the use of impact fees, the town may finance qualifying capital improvements through the issuance of bonds, the formation of assessment districts or any other authorized mechanism, in such manner and subject to such limitations as may be provided by law.

(16) Updates. Not less often than every five (5) years, the town council, following a public hearing, shall review and, if warranted, recommend changes in the schedules of impact fees. Factors to be considered may include, without limitation, past and projected growth in residential and nonresidential development, qualifying improvements actually constructed, changing levels of service, revised cost estimates for qualifying improvements, changes in the availability of other funding sources, changes in demand generation characteristics, sources of non-town funds and such other factors as may be relevant. (1991 Code, § 5-601, as amended by Ord. #07-07, Feb. 2007, and Ord. #07-10, April 2007, modified)

5-502. Road impact fees. (1) Road impact fee schedule. At the option of the applicant, the road impact fee may be calculated based on the fee schedule adopted with the annual budget ordinance. The administrator shall determine the land use category in the fee schedule that best represents the proposed use in terms of trip generation characteristics. The definitions of the land use categories in the Institute of Transportation Engineers (ITE) Trip Generation manual shall be used as a guide in determining the appropriate land use category for the proposed use. In the event that the administrator determines that the land use categories in the fee schedule do not accurately reflect the proposed development, the administrator shall determine the fee based on the land use categories, trip generation rates or equations and/or primary trip data contained in the most current edition of the ITE Trip Generation manual and the ITE Trip Generation Handbook. The administrator shall make the determination of the appropriate land use category, trip generation rate or equation and primary trip factor based on the appropriateness and quality of the data, the guidelines for determining whether to use trip generation rates or equations set forth in the ITE manual, and other relevant considerations. Once the appropriate land use and travel demand factors have been determined, the administrator shall calculate the fee using the following formula.

MAXIMUM FEE = PK HR VMT x NET COST/VMT

PK HR VMT = PK HR TRIPS x % NEW x LENGTH ÷ 2

Where:

PK HR TRIPS	=	Trip ends during PM peak hour of adjacent street traffic
% NEW	=	Percent of trips that are primary, as opposed to passby or diverted-link trips
LENGTH	=	Average length of a trip on the major roadway system
÷ 2	=	Avoids double-counting trips for origin and destination
NET COST/VMT	=	Average net cost to accommodate a new vehicle-mile of travel during the peak hour. Until recalculated by an update of the impact fee study, this shall be \$1,445.

(2) Individual assessments of road impact fees. Individual assessments of road impact fees shall be allowed as follows:

(a) The traffic study shall be signed by the traffic engineer submitting the assessment and shall include, without limitation, the following elements:

(i) A projection of the number of vehicular trips entering and departing from the project during an average weekday.

(ii) If the site is already developed, and some or all of the existing development will be replaced by the completed project, a calculation of the number of vehicular trips for that portion of the existing development which will be replaced by the completed project.

(iii) The percentage of those trips identified in (i) and (ii) above, which are “primary trips” (as opposed to “pass-by trips” or “diverted-link trips” for which the project is not the primary destination).

(iv) The assumptions and conclusions from which any projections are made. If the assumptions or conclusions are derived from the current edition of the ITE manual or other standard reference materials, the materials shall be identified and appropriate excerpts or specific references provided. Otherwise, the reasoning underlying the assumptions and conclusions shall be clearly stated in writing.

(v) Such other information as the administrator shall reasonably request.

(b) The administrator shall determine the fee based on the review of the independent assessment and the guidelines and formula described in the preceding section § 5-502 (1), Road impact fee schedule.

(3) Use of road impact fees. (a) The revenues from road impact fees collected within the benefit district and accrued interest on such revenues shall be used to finance project costs of capacity-expanding improvements to the major roadway system, as determined by the town council, provided that the improvements are located within the same benefit district. Such revenues may also fund the cost of consultants used in updating the transportation portion of the capital improvements program and in updating the road impact fee computations.

(b) Capacity-expanding improvements are those that increase the capacity of the major roadway system to accommodate additional traffic. Such improvements include, but are not limited to, widening of roadways to increase land and/or shoulder width or to add additional travel lanes, signalization, addition of turn lanes and other intersection improvements. Improvements such as intersection improvements or acceleration/deceleration lanes that primarily serve traffic entering or exiting a development project shall not be considered capacity-expanding improvements.

(c) Qualifying project costs include project engineering costs; the acquisition cost of rights-of-way and easements, including legal costs; the construction cost of improvements, including, but not limited to, public street travel lanes, public pedestrian and bicycle pathways, turning lanes or the portion thereof located within the right-of-way of a public street, lighting, signalization, signage and landscaping improvements that are required for the road improvement to function effectively; and the principal, interest and other financing costs of bonds, notes or other obligations issued by or on behalf of the town to finance qualified improvements.

(d) Monies collected as road impact fees shall not be used to pay for any of the following:

(i) Construction, acquisition or expansions of public facilities other than qualifying major roadway system improvements;

(i) Repair, operation or maintenance of existing or new public street or pathway improvements;

(ii) Town personnel and consultants hired for purposes other than those expressly permitted under this section;

(iii) Streets, pathways and related transportation improvements that are within and intended to serve only a specific development such as a new residential subdivision. (1991 Code, § 5-602, modified)

5-503. Park impact fees. (1) Park impact fee schedule. At the option of the applicant, the park impact fee may be calculated based on the fee schedule adopted with the annual budget ordinance. The administrator shall determine the land use category in the fee schedule that best represents the proposed use.

(2) Individual assessments of park impact fees. Individual assessments of part impact fees shall be allowed as follows:

(a) The individual assessment shall include, without limitation, the following elements:

(i) A projection of the number of persons residing in the development project during an average day.

(ii) If the site is already developed, and some or all of the existing development will be replaced by the completed project, a calculation of the number of occupants for that portion of the existing development that will be replaced by the completed project.

(iii) The percentage of usage of the town’s park and recreational facilities by the residents of the project compared to the usage by a typical development in the town with the same mix of housing types.

(iv) A written description of the assumptions, data and calculations used to support the conclusions, including appropriate excerpts and specific references for all data sources.

(v) Such other information as the administrator shall reasonably request.

(b) The administrator shall determine the fee based on the review of the independent assessment and the following formula

$$\text{MAXIMUM FEE} = \text{PERSONS} \times \text{NET COST/PERSON}$$

Where:

PERSONS = Average number of persons expected to be residing in the development during an average day

NET COST/PERSON = Average net cost to accommodate a new person with town parks and recreation facilities at the existing level of service. Until recalculated by an update of the impact fee study, this shall be \$220.10 per person.

(3) Use of park impact fees. (a) The revenues from park impact fees collected within the benefit district and accrued interest on such revenues shall be used to finance project costs of capacity-expanding improvements

to the town's parks and recreation facilities, as determined by the town council, provided that the improvements are located within the same benefit district. Such revenues may also fund the cost of consultants used in updating the parks and recreation portion of the capital improvements program and in updating the park impact fee computations.

(b) Capacity-expanding improvements are those that add land and facilities to the town's park and recreation system that are available to be used by town residents. Such improvements include, but are not limited to, acquiring or developing new parks and recreation facilities, improvements to existing parks that add new facilities, and expansions of existing recreation facilities.

(c) Qualifying project costs include project design and engineering costs; the acquisition cost of land and easements, including legal costs; the construction cost of improvements; and the principal, interest and other financing cost of bonds, notes or other obligations issued by or on behalf of the town to finance qualified improvements.

(d) Monies collected as park impact fees shall not be used to pay for any of the following:

- (i) Construction, acquisition or expansion of public facilities other than qualifying parks and recreation improvements;
- (ii) Repair, operation, maintenance or replacement of existing parks and recreation facilities;
- (iii) Private parks and recreational facilities that are not open to the public. (1991 Code, § 5-603, modified)

5-504. Fire impact fees. (1) Fire impact fee schedule. At the option of the applicant, the fire impact fee may be calculated based on the fee schedule adopted with the annual budget ordinance. The administrator shall determine the land use category in the fee schedule that best represents the proposed use.

(2) Individual assessments of fire impact fees. Individual assessments of fire impact fees shall be allowed as follows:

(a) The individual assessment shall include, without limitation, the following elements:

- (i) A projection of the functional population (calculated according to the formula below) residing in the development project during an average day.
- (ii) If the site is already developed, and some or all of the existing development will be replaced by the completed project, a calculation of the functional population for that portion of the existing development that will be replaced by the completed project.
- (iii) The percentage by which the development project should be expected to place more or less demand on town fire

facilities than a typical development with the same mix of land use types.

(iv) A written description of the assumptions, data and calculations used to support the conclusions, including appropriate excerpts and specific references for all data sources.

(v) Such other information as the administrator shall reasonably request.

(b) The administrator shall determine the fee based on the review of the independent assessment and the following formula

$$\text{MAXIMUM FEE} = \text{FUNC POP} \times \text{NET COST/FUNC POP}$$

$$\text{FUNC POP} = \text{RES FUNC POP} + \text{NONRES FUNC POP}$$

Where:

RES FUNC POP = One-half of the average number of persons expected to be residing in the development during an average day

NONRES FUNC POP = The sum of hours spent by employees and visitors on the site of the development during an average weekday, divided by 16

NET COST/FUNC POP = Average net cost to accommodate a new functional person with town fire facilities at the existing level of service. Until recalculated by an update of the impact fee study, this shall be \$258.34 per functional population.

(3) Use of fire impact fees. (a) The revenues from fire impact fees collected within the benefit district and accrued interest on such revenues shall be used to finance project costs of capacity-expanding improvements to the town's fire facilities, as determined by the town council, provided that the improvements are located within the same benefit district. Such revenues may also fund the cost of consultants used in updating the fire facilities portion of the capital improvements program and in updating the fire impact fee computations.

(b) Capacity-expanding improvements are those that add land and facilities to the town's fire facilities that are available to serve town residents. Such improvement include, but are not limited to, acquiring or developing new fire stations, including land acquisition, expansions to existing fire stations that add additional space for firefighters or firefighting equipment, and acquisition of new firefighting apparatus or support vehicles.

(c) Qualifying project costs include project design and engineering costs; the acquisition cost of land and easements, including legal costs; the construction cost of improvements; and the principal, interest and other financing costs of bonds, notes or other obligations issued by or on behalf of the town to finance qualified improvements.

(d) Monies collected as fire impact fees shall not be used to pay for any of the following:

(i) Construction, acquisition or expansion of public facilities other than qualifying fire facilities;

(ii) Repair, operation, maintenance or replacement of existing fire stations or equipment;

(iii) Acquisition of apparatus, vehicles or equipment that essentially replaces existing or older equipment that is being taken out of service; provided that if the new equipment will provide better service than the comparable equipment being retired and is more costly than the current replacement cost of the existing equipment, the difference in cost may be funded out of fire impact fees. (1991 Code, § 5-604, modified)

CHAPTER 6

**CONTRIBUTIONS TO NONPROFIT CHARITABLE
AND NONPROFIT CIVIC ORGANIZATIONS¹**

SECTION

- 5-601. Authority.
- 5-602. Definitions.
- 5-603. Appropriations to promote general welfare.
- 5-604. Procedure for requesting appropriations.
- 5-605. Requirements for budget document.
- 5-606. Town council to adopt special resolution.
- 5-607. Limitations on amount and use of appropriations.
- 5-608. Filing of annual report required with request for financial assistance.
- 5-609. Filing of financial statement required of organizations receiving financial assistance.
- 5-610. Publication of notice required for appropriation to non-charitable organization.

5-601. Authority. According to Tennessee Code Annotated, § 6-54-111, the Town of Smyrna has the authority to appropriate funds for the financial aid of any nonprofit charitable organization or any nonprofit civic organizations in accordance with the guidelines required by the comptroller of the treasury. (Ord. #02-07, March 2002)

5-602. Definitions. For the purpose of this chapter, the following terms shall have the meaning given herein:

(1) "Audit." The methodical examination of records with intent to verify their accuracy.

(2) "Nonprofit charitable organization." An organization classified under §§ 501(c)(3), (4), or (6) by the Internal Revenue Service in which no part of the net earnings inures or may lawfully inure to the benefit of any private shareholder or individual and which provides year-round services benefitting the general welfare of the residents of the Town of Smyrna.

(3) "Nonprofit civic organization." A civic organization exempt from taxation pursuant to § 501(c)(4) or (c)(6) of the Internal Revenue Code of 1954, as amended, which operates primarily for the purpose of bringing about civic betterments and social improvements through efforts to maintain and increase employment opportunities in the Town of Smyrna by promoting industry, trade,

¹Municipal code references

Charitable solicitation: title 9, chapter 2.

Roadblocks: § 16-114.

commerce, tourism and recreation by inducing manufacturing, industrial, governmental, educational, financial, service, commercial, recreational, and agricultural enterprises to locate in or remain in the Town of Smyrna. (Ord. #02-07, March 2002)

5-603. Appropriations to promote general welfare. Any funds appropriated shall be used to promote the general welfare of the residents of the Town of Smyrna.

5-604. Procedure for requesting appropriations. Contribution requests shall be accepted by the finance director's office through March 15th each year and considered annually during budget deliberations by the town council. Requests received after March 15th, shall be considered on an as needed basis by the town council. (Ord. #02-07, March 2002, modified)

5-605. Requirements for budget document. The budget document of the Town of Smyrna shall include the name of each nonprofit charitable or nonprofit civic organization and the specific amount appropriated for each organization. (Ord. #02-07, March 2002)

5-606. Town council to adopt special resolution. The town council shall adopt a special resolution, stating the purpose for which funds are being appropriated, for each nonprofit charitable organization or nonprofit civic organization that is to receive town funds. (Ord. #02-07, March 2002)

5-607. Limitations on amount and use of appropriations. Payments to nonprofit charitable or nonprofit civic organizations shall be limited to the amounts appropriated for such purposes and in keeping with the town's guidelines for how the appropriated funds may be spent. (Ord. #02-07, March 2002)

5-608. Filing of annual report required with request for financial assistance. The Town of Smyrna shall require any nonprofit charitable or nonprofit civic organization which desires financial assistance from the town to file with the town clerk a copy of an annual report of its business affairs and transactions which includes, but is not limited to, a copy of an annual audit, its program which serves the residents of the Town of Smyrna and the proposed use of the financial assistance. Such report will be open for public inspection during regular business hours of the town clerk's office. Requests that are unaccompanied by said annual report are incomplete and will not be considered by the town council. The town council, upon consideration of the relevant facts and circumstances surrounding the organization and the appropriation of town funds, and in consultation with the finance director or other independent financial consultant to the town, shall have the authority to determine whether

any such annual report and audit contains sufficient financial information and has been prepared with sufficient formality to satisfy the requirements of Tennessee Code Annotated, § 6-54-111(c). (Ord. #02-07, March 2002)

5-609. Filing of financial statement required of organizations receiving financial assistance. The Town of Smyrna shall require each nonprofit charitable or nonprofit civic organization receiving financial assistance from the town to file with the finance director a copy of the organization's annual report of its business affairs and transactions and the proposed use of the contributed funds. The annual report shall include, but is not limited to, the organization's financial statement, including financial information about the program that serves the Town of Smyrna's residents. (Ord. #02-07, March 2002)

5-610. Publication of notice required for appropriation to non-charitable organization. Appropriations to nonprofit organizations other than charitable organizations may be made only after notices have been published in a newspaper of general circulation in the Town of Smyrna of the intent to make an appropriation to a nonprofit, but not a charitable, organization specifying the intended amount of the appropriation and the purpose for which the appropriation will be spent. (Ord. #02-07, March 2002, modified)

CHAPTER 7

FINANCE DEPARTMENT¹**SECTION**

5-701. Establishment.

5-702. Director.

5-703. Director duties and responsibilities.

5-701. Establishment. There is hereby created a finance department for the purpose of maintaining the financial operations of the town. (Ord. #02-08, April 2002)

5-702. Director. The functions of the finance department shall be executed under the supervision and control of the director of finance. The director of finance shall be appointed by the town manager for an indefinite term. The director of finance shall be subject to the personnel policies established by the town. (Ord. #02-08, April 2002)

5-703. Director duties and responsibilities. The director of finance shall have charge of the administration of the financial affairs of the town. The director of finance shall have the following powers and duties:

(1) To supervise all disbursements and expenditures to assure that payment has been legally authorized and appropriated, and that sufficient encumbered appropriations exist for the payment of all claims and expenditures;

(2) To develop, supervise and maintain the general accounting system for the town government;

(3) To regularly, at least once a month and at the end of each fiscal year, prepare and submit to the town manager a report indicating the financial condition of the town;

(4) To establish, supervise, and maintain a system of data processing for the handling of accounting information and other reports and tabulations required by the town;

(5) To compile the preliminary budget data, including capital and operating expenditure projections, and revenue projections for the town manager;

(6) To prepare and maintain a current inventory of all equipment of the town;

(7) To audit and approve, before payment, all bills, invoices, payrolls, demands, or charges against the town, and determine the regularity,

¹Charter reference

Annual departmental budgets required: § 11.02.

correctness, and, with the advice of the town attorney, the legality of such claims, demands, and charges;

(8) To supervise the work of preparing the town payroll and to maintain records of all payroll data; and

(9) To perform such other duties as may be imposed by ordinance or resolution of the town council, or as the town manager may direct. (Ord. #02-08, April 2002)

CHAPTER 8

PURCHASE, SALE, AND INVENTORY OF TOWN PROPERTY

SECTION

- 5-801. Compliance with Municipal Purchasing Law of 1983.
- 5-802. Office of purchasing agent created.
- 5-803. Definitions.
- 5-804. Terms, conditions and procedures for purchasing.
- 5-805. Exceptions to competitive bids.
- 5-806. Advertising and bidding.
- 5-807. Specifications and quality standards.
- 5-808. Notice inviting bids.
- 5-809. Submittal and opening of bids.
- 5-810. Acceptance or rejection of bids.
- 5-811. Determination of lowest responsible bidder.
- 5-812. Awards to other than lowest bidder.
- 5-813. Bid bonds or deposits.
- 5-814. Performance and payment bond.
- 5-815. Contract approval and change orders.
- 5-816. Public inspection of records.
- 5-817. Conflicts of interest.
- 5-818. Items consumed in the course of work or items thought to be worthless.
- 5-819. Inventory of property required.
- 5-820. Transfer and sale of materials and equipment.
- 5-821. Procedure for sale of materials and equipment.

5-801. Compliance with Municipal Purchasing Law of 1983. The Town of Smyrna shall comply in all respects with the Municipal Purchasing Law of 1983, Tennessee Code Annotated, §§ 6-56-301 through 6-56-307. (Ord. #02-09, April 2002, modified)

5-802. Office of purchasing agent created. The town manager or his designee is the purchasing agent for the town and will operate under the rules, regulations, and requirements of this chapter. The purchasing agent is hereby authorized to execute purchase orders on behalf of the town for supplies, equipment, materials or services as approved and funded in the budget, without regard to amount. (Ord. #02-09, April 2002)

5-803. Definitions. The following definitions will apply with respect to the provisions of this chapter:

- (1) "Department head." Director, manager and supervisor level personnel;

(2) "Purchase." The authorized single acquisition of supplies, equipment, materials or services for and on behalf of the Town of Smyrna and for which there is a clearly defined budgetary authorization;

(3) "Responsible." A bidder who has the capacity in all respects to perform fully the contract requirements, and who has the integrity and reliability which will assure good faith performance; and

(4) "Responsive." A bid that conforms in all material respects to all documents, whether attached or incorporated by reference, utilized for soliciting such bid. (Ord. #02-09, April 2002)

5-804. Terms, conditions and procedures for purchasing. The purchasing agent and suppliers in the procurement of goods and services for the Town of Smyrna shall comply with the following terms, conditions and procedures:

(1) All purchases of supplies, materials, equipment and services shall be pursuant to a request from a department head whose budgetary appropriation will be charged therewith, and such supplies, materials, equipment and services shall conform to specifications approved by the purchasing agent;

(2) All supplies, materials, equipment and services obtained by purchase, lease or lease-purchase agreements shall be made or entered into in accordance with the prescribed limits contained herein, and the purchase or contract awarded to the lowest responsive and responsible bidder, provided that any or all bids may be rejected as prescribed in this chapter;

(3) The practice of "split bidding" is hereby declared to be improper, illegal and against the public interest. The practice of "split-bidding" is defined to be the practice of submitting multiple purchase requests for the same supplies, materials, equipment or services where the sum of the cost of the several purchases is equal to the bid limits contained herein and splitting the department's requirements into several purchases would thereby avoid the necessity for the purchasing agent to require competitive bids;

(4) The purchasing agent shall not accept the bid of any vendor or contractor who is in default on the payment of any taxes, licenses, fees or other monies of whatever nature that may be due the town by such vendor or contractor; and

(5) The town manager may reject all bids and authorize the making of public improvements or accomplishment of any other town work by a town department. (Ord. #02-09, April 2002, modified)

5-805. Exceptions for competitive bids. Except as otherwise provided in this chapter, all purchases, leases or lease-purchase agreements shall be made or entered into only after public advertisement and competitive bid, except as follows:

(1) When any goods or services may not be procured by competitive means because of the existence of a single source of supply or because of a

proprietary product that is required by the town. Department heads will notify the purchasing agent of the intent to purchase from a sole source or proprietary vendor. A record of all such sole source or proprietary purchases shall be made by the purchasing agent and shall specify the amount paid, the items purchased, and from whom the purchase was made. A report of such sole source or proprietary purchases shall be made as soon as possible to the town manager by the purchasing agent and shall include all items of information as required for the record;

(2) To purchases or leases of any supplies, materials, or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work. Department heads will notify the purchasing agent of the intent to make an emergency purchase. A record of any such emergency purchase shall be made by the purchasing agent authorizing such emergency purchase and shall specify the amount paid, the items purchased, from whom the purchase was made and the nature of the emergency. A report of any emergency purchase shall be made as soon as possible to the town council and town manager by the purchasing agent and shall include all items of information as required in the record;

(3) To purchase, lease, or lease-purchase real property;¹

(4) To purchase, lease, or lease purchase from any federal, state, or local government unit or agency of secondhand articles or equipment or other materials, supplies, commodities, and equipment;

(5) To purchase from other local governments in conformity with Tennessee Code Annotated, § 12-3-1001;

(6) Fuel and fuel products may be purchased in the open market without public advertisement, but shall whenever possible be based on at least three (3) competitive bids. Fuel and fuel products may be purchased from the Tennessee Department of General Services contract where available;²

(7) To purchase through the Tennessee Department of General Services;

(8) To secure professional service contracts under Tennessee Code Annotated, § 12-4-106;

(9) To obtain tort liability insurance purchases as provided in Tennessee Code Annotated, § 29-20-407;

¹State law reference

Tennessee Code Annotated, § 6-56-304(5) and (6).

²State law reference

Tennessee Code Annotated, § 6-56-304(7).

(10) To purchase, for resale, of natural gas and propane gas;¹

(11) To any other purchase, lease or lease-purchase exempt from the requirements of public advertisement and competitive bidding pursuant to applicable federal or state law; and

(12) To purchase through the U.S. Communities Government Purchasing Alliance. (Ord. #02-09, April 2002, modified)

5-806. Advertising and bidding. All supplies, materials, equipment and services obtained by purchase, lease or lease-purchase agreements shall be made or entered into accordingly;

(1) All purchases, leases or lease-purchases with expenditures of four thousand dollars (\$4,000) or less in any fiscal year shall not require any public advertisement or competitive bidding.

(2) All purchases, leases, or lease-purchase arrangements with expenditures of less than ten thousand dollars (\$10,000) but more than four thousand dollars (\$4,000) in any fiscal year may be made in the open public market without public advertisement, but shall, whenever possible, be based upon at least three (3) competitive bids; provided, however, that this exemption shall not apply to purchases of like items which individually cost less than ten thousand dollars (\$10,000), but which are customarily purchased in lots of two (2) or more, if the total purchase price of such items would exceed ten thousand dollars (\$10,000) during any fiscal year and, provided further, that this exemption shall not apply to leases of like or related items which individually may be leased or lease-purchased with total payments of less than ten thousand dollars (\$10,000) in any fiscal year, but which are customarily leased or lease purchased in numbers of two (2) or more, if the total lease or lease purchase of the payments for such items under a single agreement would be ten thousand dollars (\$10,000) or more in any fiscal year.

(3) All purchases, leases or lease-purchase agreements with expenditures of ten thousand dollars (\$10,000) or more in any fiscal year shall be made or entered into only after public advertisement and sealed competitive bid. Any such transaction shall be evidenced by a written contract. (Ord. #02-09, April 2002, modified)

5-807. Specifications and quality standards. Each department head shall have the right to request goods or services that meet whatever standards they consider necessary for efficient operation, however, specifications must not be unduly restrictive for the purpose of favoring a particular brand or manufacturer, but shall be so written that the town will try to receive three (3) competitive bids. It will be the responsibility of the department head to provide

¹State law reference

Tennessee Code Annotated, § 6-56-304(8).

specifications where at least two (2) vendors can competitively bid or provide written documentation why the purchase is a sole source or proprietary purchase. (Ord. #02-09, April 2002)

5-808. Notice inviting bids. Notice inviting bids shall be published at least once in a local newspaper as the purchasing agent may direct and may be published in other publications. Such notice shall include a general description of the articles to be purchased, shall state where bid blanks and written specifications may be secured, and the time and place for opening bids. (Ord. #02-09, April 2002)

5-809. Submittal and opening of bids. Bids shall be submitted sealed, as prescribed in bid specifications, and shall be identified as bids on the envelope. Such bids shall be opened in public in the presence of at least two (2) town employees at the time and place stated in the public notice, and a tabulation of all bids so received shall be made available upon request. (Ord. #02-09, April 2002)

5-810. Acceptance or rejection of bids. The purchasing agent shall have and hereby is granted the authority to reject any or all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby. The purchasing agent shall have the right to reject any bid in any instance where there are not at least two (2) bidders on the same invitation to bid; however, this shall not prevent the purchasing agent from accepting a bid where there is only one (1) bidder, if, in the opinion of the purchasing agent, the best interest of the town will be served by doing so. (Ord. #02-09, April 2002)

5-811. Determination of lowest responsible bidder. In determining the lowest responsible bidder, in addition to price, the purchasing agent shall consider:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the services required;
- (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (4) The quality or performance of previous contracts or services;
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required;

- (8) The ability of the bidder to provide future maintenance and services;
- (9) The number and scope of conditions attached to the bid;
- (10) All prices, quality, merchandise, or services being equal, the Town of Smyrna will favor local suppliers when they are gross receipts taxpayers of the Town of Smyrna; and
- (11) Compliance with applicable state law. (Ord. #02-09, April 2002)

5-812. Awards to other than lowest bidders. When the award is not recommended by the purchasing agent to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the department head and filed with all the other papers relating to the transaction. Award to other than the lowest bidder must be approved by the town council. (Ord. #02-09, April 2002)

5-813. Bid bonds or deposits. When deemed necessary, bid bonds or deposits shall be prescribed and noted in the public notices inviting bids. Any such bond or deposit shall be in such amount as the purchasing agent shall determine and unsuccessful bidders shall be entitled to return of the bonds or deposits where such has been required. A successful bidder shall forfeit any required deposit upon failure on such bidder's part to enter into a contract within thirty (30) days after the award, if a specified time is not otherwise stated in the bid specifications. The terms and approval of such bonds or deposits shall be in accordance with applicable law. (Ord. #02-09, April 2002)

5-814. Performance and payment bond. The purchasing agent may and is hereby granted the authority to require a bond, before entering into a contract, in such amount as he shall find reasonably necessary to protect the best interests of the town. The terms and approval of such a bond shall be in accordance with applicable law. (Ord. #02-09, April 2002)

5-815. Contract approval and change orders. All contracts shall be approved by the town council and executed by the mayor. All contract change orders of ten thousand dollars (\$10,000) or more shall be approved by the town council prior to execution. Contract change orders for less than ten thousand dollars (\$10,000), or change orders that require immediate attention in order to not jeopardize the timing of the project, may be administratively approved by the town manager, provided that the town council has approved the funds for it. The town manager and/or the purchasing agent shall notify the town council of all such change orders. (Ord. #02-09, April 2002, modified)

5-816. Public inspection of records. The purchasing agent shall keep a complete record of all quotations, bids, and purchase orders. Such records shall be open to public inspection. (Ord. #02-09, April 2002)

5-817. Conflicts of interest. No purchase shall be made from, nor any contract for purchase of services made with, any person, firm, or corporation in which any elected official, officer or employee of the town is financially interested except when such person, firm, or corporation is the sole source for such goods or services in Rutherford County, Tennessee, and then in such instance all purchases shall be subject to prior approval by the town council and in accordance with applicable state law. No officer or employee of the town shall accept directly or indirectly any fee, rebate, money, or other thing of value from any person, firm, or corporation employed by or doing business with the town, except on behalf of and for the use of the town. (Ord. #02-09, April 2002, modified)

5-818. Items consumed in the course of work or items thought to be worthless. Town property which may be consumed in the course of normal town business and items thought to be worthless shall be disposed of in a like manner to any other refuse. Said items shall be simply charged off as a routine cost of doing business. (Ord. #02-09, April 2002)

5-819. Inventory of property required. The purchasing agent shall assist the finance director in maintaining an inventory of all public property and equipment according to the fixed asset policy. When possible, each item of such property shall be labeled, serially numbered, or identifiable in some way as town property. When such inventory is made, one (1) copy thereof shall be filed in the finance department. The inventory shall be adjusted annually as additional properties are acquired or disposed of by the town. (Ord. #02-09, April 2002)

5-820. Transfer and sale of materials and equipment. The purchasing agent may transfer to or between departments supplies, materials and equipment. When it is determined by the purchasing agent that material and/or equipment exists which is not needed by any town department, the town council may authorize the purchasing agent to direct the sale thereof, and the proceeds from any sale or sales shall be deposited in the appropriate fund of the town. (Ord. #02-09, April 2002)

5-821. Procedure for sale of materials and equipment. The disposal of surplus, obsolete, or unused materials or equipment shall be by competitive sealed bid or public auction including by internet auction in accordance with the following:

(1) The purchasing agent shall cause notice of sale to be published in a newspaper of general circulation, giving a general description of the items to be sold, where bids are to be received and time and place of the sale. The purchasing agent may, in addition, solicit competitive sealed bids from prospective buyers, by telephone, by sending them copies of newspaper notices,

or by any other method or methods designed to reach the greatest number of prospective buyers;

(2) Surplus is to be sold to the highest and best bidder with the right retained by the town to reject any or all bids or to waive any informalities or immaterial defects contained in said bids;

(3) Competitive sealed bids shall be submitted to the purchasing agent, and shall be identified as bids on the envelope. Sealed bids shall be opened in public in the presence of at least two (2) town employees;

(4) Depending upon the nature of such surplus offered, the purchasing agent may require that cash or a cashier's check in an amount equal to ten percent (10%) of the price bid be deposited by the bidder at the time of making or submitting the bid. The person to whom property is sold, either by sealed bid or at public auction, shall consummate the purchase within fourteen (14) days from and excluding the date of the award of such bid, or such person shall lose the deposit; and

(5) The provisions of this section shall not apply when the town is selling surplus, obsolete, or unused materials or equipment to any other federal, state or local governmental unit or agency. (Ord. #02-09, April 2002)

5-822. Transfer and sale of surplus real property. When it is determined by the purchasing agent that real property exists, which is not needed by any town department and which property is not the subject of a planned development project of the town, the town council may declare such real property as surplus. The town council may authorize the purchasing agent to direct the sale thereof, and the proceeds from any sale or sales shall be deposited in the appropriate fund of the town.

5-823. Procedure for sale of surplus real property. The disposal of surplus real property shall be by competitive sealed bid or public auction, including by internet auction, in accordance with the following:

(1) The purchasing agent shall cause notice of the sale to be published in a newspaper of general circulation, on Channel 3, and on the town's website, giving a general description of the surplus real property to be sold, where bids are to be received and the time and place of the sale. The purchasing agent may, in addition, solicit competitive sealed bids from prospective buyers, by telephone, by sending them copies of notices, or by any other method or methods designed to reach the greatest number of prospective buyers. The purchasing agent shall specifically send notice of the sale to any and all property owners which border the surplus real property to be sold;

(2) Surplus real property is to be sold to the highest and best bidder with the right retained by the town to reject any or all bids or to waive any informalities or immaterial defects contained in said bids;

(3) The town shall obtain a property appraisal prior to the advertisement of the sale of the surplus real property. In no event shall the

surplus real property be sold for less than the fair market value as determined by the appraisal;

(4) Competitive sealed bids shall be submitted to the purchasing agent and shall be identified as bids on the envelope. Sealed bids shall be opened in public in the presence of at least two (2) town employees;

(5) Sales of surplus real property shall be in accordance with the "Terms and Conditions for Sale of Surplus Real Property Policy Statement" adopted by resolution by the town council;

(6) The provisions of this section shall not apply when the town is selling surplus real property to any other federal, state, or local governmental unit or agency.