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NEWSPAPER BUT MAY BE FOUND AT WWW.FAIRVIEW-TN.ORG

**CITY OF FAIRVIEW
BOARD OF COMMISSIONERS**

JUNE 16, 2016

7:00 P.M.

AGENDA

- 1. Call to order by Mayor Carroll**
 - A. Prayer and Pledge
- 2. Approval of the Agenda**
- 3. Citizen Comments (Limited to the first 5 citizens to sign in and a limit of 3 minutes each).**
- 4. Awards and/or Recognitions**
- 5. Public Announcements**
- 6. Staff Comments**
- 7. Approval of the Minutes (only needed if removed from consent agenda)**
- 8. Consent Agenda Consisting of Items as Follows**
 - A. Approval of the Minutes from the June 2, 2016 Board of Commissioners Meeting
 - B. Second and Final Reading of Bill #2016-15, Ordinance No. 929, An Ordinance for an Amendment to the City of Fairview, Tennessee, Budget for Fiscal Year 2015-2016 Budget
- 9. Old Business**
 - A. Discuss and/or Take Action on Second and Final Reading of Bill #2016-05, Ordinance No. 919, An Ordinance to Change the Zoning of Certain Property in the City of Fairview, Tennessee, Located at 2652 Fairview Boulevard, Owned by Gary Jaworski and Wife, Glenda Jaworski, as Shown on, Williamson County, Tax Map 69, Parcel 32.00, From RS-40 to CG (Commercial General) - Hall
 - B. Discuss and/or Take Action on Expiring Board Seats - Carroll
 - (1) One Beer Board Seat
 - (2) One Tree Commission Seat
 - (3) Recall Vote on Planning Commission Seat
 - (4) One Planning Commission Seat
 - C. Discuss and/or Take Action on City Manager Hiring – Carroll
 - D. Discuss and/or Take Action on Status of Investigation – Carroll
- 10. New Business**
 - A. Discuss and/or Take Action on MTAS Recommendations for Conflict of Interest - Sutton
 - B. Discuss and/or Take Action on Retiree Insurance Contribution – Bissell
 - C. Discuss and/or Take Action on Collection Agreement with American Municipal Services – Daugherty
 - D. Discuss and/or Take Action on Engagement Letter with Yeary, Howell & Associates for Audit Services – Daugherty
 - E. Discuss and/or Take Action on Bill #2016-18, Ordinance No. 932, An Ordinance to Establish an Updated Occupational Safety and Health Program Plan, Devise Rules and Regulations, and to Provide for a Safety Director and the Implementation of such Program Plan - Hall
- 11. City Manager Items for Discussion**
 - A. Miscellaneous Updates
 - B. City Attorney Comments
- 12. Communications from the Mayor and Commissioners**
- 13. Adjournment**

8B

Bill # 2016-15

ORDINANCE NO. 929

**AN ORDINANCE FOR AN AMENDMENT TO THE CITY OF FAIRVIEW,
TENNESSEE, BUDGET FOR FISCAL YEAR 2015 – 2016 BUDGET**

Be it Ordained by the City of Fairview, Tennessee as follows:

WHEREAS, the Board of Commissioners of the City of Fairview, Tennessee, have determined that the Budget for Fiscal Year 2015 - 2016 (beginning July 1, 2015 and running through June 30, 2016) should be amended to reflect the final expenditures for the Fiscal Year, and:

WHEREAS, the Board of Commissioners of the City of Fairview, Tennessee adopted the fiscal year 2015 – 2016 budget by passage of Ordinance Number 891 on June 30, 2015, and

WHEREAS, pursuant to the Tennessee state Constitution, Article II, Section 24, no public money shall be expended except pursuant to appropriations made by law, and

WHEREAS, pursuant to Tennessee Code Annotated § 6-56-209, the Board of Commissioners has the authority to authorize the Finance Director to transfer money from one appropriation to another within the same fund, and

NOW THEREFORE BE IT ORDAINED BY THE CITY OF FAIRVIEW, TENNESSEE THAT CHANGES BE MADE TO THE FISCAL YEAR 2015-2016 BUDGET AS FOLLOWS:

Section 1. Ordinance 891 is hereby amended to appropriate \$12,000 out of the Drug Fund to pay for shortfalls in the salary, overtime, tuition and machinery line items.

Drug Fund

Reallocate From

Account #	Current Balance	Reallocation Amt.	New Balance
619-27100	\$64,202.00	\$ 12,000.00	\$52,202.00

Expenditures

Account #	Current Budget	Amended Amt	New Budget
619-42129-110	\$ 35,619.00	\$ 1,500.00	\$ 37,119.00
619-42129-112	\$ 500.00	\$ 5,000.00	\$ 5,500.00
619-42129-235	\$ 500.00	\$ 1,500.00	\$ 2,000.00
619-42129-940	\$ 6,000.00	\$ 4,000.00	\$ 10,000.00

Section 2. The Financial Officer is hereby authorized to make said changes in the accounting system.

BE IT FURTHER ORDAINED, If any sentence, clause, phrase or paragraph of this Ordinance is declared to be unconstitutional by any Court of competent jurisdiction; such holding will not affect any other portion of this Ordinance.

BE IT FINALLY ORDAINED, that this Ordinance shall take effect fifteen days (15) days after its first passage or upon second reading, whichever is later, the public welfare requiring it.

MAYOR

CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

Passed First Reading

May 19, 2016

Passed Second Reading

ORDINANCE NO. 919

AN ORDINANCE TO CHANGE THE ZONING OF CERTAIN PROPERTY IN THE CITY OF FAIRVIEW, TENNESSEE, LOCATED AT 2652 FAIRVIEW BOULEVARD, OWNED BY GARY JAWORSKI AND WIFE, GLENDA JAWORSKI, AS SHOWN ON, WILLIAMSON COUNTY, TAX MAP 69, PARCEL 32.00, FROM RS - 40, TO CG (COMMERCIAL GENERAL).

WHEREAS, a public hearing before the Board of Commissioners of the City of Fairview, Tennessee was held on the 7th day of April, 2016, pursuant to a resolution adopted on March 17th, 2016; and

WHEREAS, it appears to the Board of Commissioners of the City of Fairview, Tennessee that the owners Gary Jaworski and Wife, Glenda Jaworski, have requested a changing of the Zoning Classification relative to the property below described and that the said request is well taken and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FAIRVIEW, TENNESSEE, AS FOLLOWS;

THE ZONING CLASSIFICATION FOR ALL THE BELOW DESCRIBED PROPERTY IS DESIGNATED AS AND CHANGED FROM ITS PRESENT ZONING DESIGNATION RS - 40, TO CG (COMMERCIAL GENERAL). THE PROPERTY FOR WHICH THE ZONING CHANGE IS MADE AND OR ADOPTED IS DESCRIBED AS FOLLOWS:

Williamson County, Tennessee, **Tax Map 69, Parcel 32.00**, Recorded in **Deed Book 983, Page 920**, Register's Office for Williamson County, Tennessee. The description is hereby Incorporated into and made a part of This Ordinance by reference as fully as if copied into This ordinance verbatim.

This Ordinance shall take effect at the earliest date provided by law following its final reading and approval, the public welfare requiring it.

MAYOR

CITY RECORDER

Approved as to form:

City Attorney

Passed first reading: March 17, 2016

Passed second reading: _____

Public Hearing Held on: April 21, 2016

City of Fairview

7100 CITY CENTER WAY
FAIRVIEW, TN. 37062



Phone: 615-799-1585
Email: codes@fairview-tn.org

RECOMMENDATIONS

2016 – 2

DATE: FEBRUARY 16, 2016

TO: FAIRVIEW BOARD OF COMMISSIONERS

FROM: FAIRVIEW MUNICIPAL PLANNING COMMISSION

On February 16, 2016 the following items were voted on by the Fairview Municipal Planning Commission with a recommendation to be forwarded to the Board of Commissioners for consideration.

8.1 DISCUSS AND/OR TAKEN ACTION ON REZONING PROPERTY LOCATED AT 2652 FAIRVIEW BLVD. FROM RS-40 (RESIDENTIAL) TO CG (COMMERCIAL GENERAL). MAP 69, PARCEL 32.00. 1.1 ACRES. GARY & GLENDA JAWORSKI OWNERS.

Mangrum made a motion for approval. Mitchell Seconded. Vote was taken all in favor except Carroll and Butler. Motion passes.

**CITY OF FAIRVIEW
MUNICIPAL PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 9, 2016**

CITY STAFF REPORT

5. RECOMMENDATIONS

ITEM 5.1 DISCUSS AND/OR TAKE ACTION ON REZONING APPLICATION FOR PROPERTY LOCATED AT DRAGSTRIP ROAD FROM CI (COMMERCIAL INTERCHANGE) TO RM-8 (MULTI FAMILY RESIDENTIAL). MAP 18, PARCEL 006.00, 21.5 ACRES. EMMA GENE CLEMENT PEERY OWNER.

Beata made a motion for approval. Butler Seconded. All were in favor.

No Staff Comments

ITEM 5.2 DISCUSS AND/OR TAKE ACTION ON REZONING OF PROPERTY LOCATED OFF COX PIKE (POLSTON PLACE II) FROM RS-20 TO RS-20 P.U.D. OVERLAY (RESIDENTIAL). MAP 21, PARCEL 61.06 (40.69 ACRES); MAP 43, PARCEL 32.04 (2 ACRES) AND PARCEL 37.01 (0.5 ACRES). BILLY POMEROY OWNER.

Sutton made a motion for approval. Mitchell Seconded. All were in favor.

No Staff Comments

6. BONDS

ITEM 6.1 WESTERN WOODS VILLAGE – PERFORMANCE BOND TO COVER THE ROADS, SIDEWALKS, AND STORM DRAINAGE – \$155,300.00. PLANNING COMMISSION SET THE BOND ON FEBRUARY 12, 2008. THE BOND WAS REDUCED TO \$106,000.00 AT THE FEBRUARY 10, 2009 MEETING. THE BOND WAS REDUCED TO \$80,240.00 AT THE FEBRUARY 12, 2013 MEETING. BOND EXPIRES MARCH 14, 2016.

No Staff Comments

7. OLD BUSINESS – NO AGENDA ITEMS

8. NEW BUSINESS

ITEM 8.1 DISCUSS AND/OR TAKE ACTION ON REZONING PROPERTY LOCATED AT 2652 FAIRVIEW BLVD. FROM RS-40 (RESIDENTIAL) TO CG (COMMERCIAL GENERAL). MAP 69, PARCEL 32.00. 1.1 ACRES. GARY & GLENDA JAWORSKI OWNERS.

1) The Proposed Land Use Map designates this area on the west side of Fairview Boulevard as RM (Medium Density Residential). As such, any proposed commercial rezoning would also require an amendment to the Proposed Land Use Map.

2) The subject property is bounded on three (3) sides (north, west, and south) by parcels that are zoned RS-40. The subject parcel as well as parcels to the west and south currently have single family dwellings on them. The parcel to the north is home to Fairview Elementary School. There are approximately six (6) parcels in the vicinity of the subject parcel on the east side of Fairview Boulevard that are zoned CG including a parcel directly across Fairview Boulevard. The six (6) commercially zoned parcels in the area include a convenience gas station, offices for a construction

company, a child care facility, a hair salon, a multi-tenant commercial building, and self-storage facility.

3) It is important to note that if the subject parcel is rezoned to commercial that there will be some potentially limiting physical development restraints in the form of increased building setbacks and buffers as a result of the subject parcel being adjacent to residentially zoned parcels.

ITEM 8.2 DISCUSS AND/OR TAKE ACTION ON REVISED DEVELOPMENT PLANS FOR MEETING PLACE ASSEMBLY OF GOD. LOCATED ON HIGHWAY 96. MAP 41, PARCEL 46.17. 3.00 ACRES. ZONED RS-40. OWNER CHURCH MEETING PLACE ASSEMBLY OF GOD.

1) The revised pond location indicates a pond discharge point that is significantly closer to the adjacent property boundary and poses a potential risk of overwhelming the storm water conveyance that the discharge will be directed towards. It is suggested that the site plan be revised to include a drainage swale from the pond outlet pipe to the receiving conveyance to accommodate the newly created point source discharge that is directed toward the adjacent storm water conveyance. The drainage swale should be appropriately sized to accommodate the anticipated maximum pond discharge amount. Please note that if the swale is not installed at this time, the City will monitor the site during the 1 year bonding period and if channelization is observed between the pond discharge and the adjacent receiving conveyance, the swale will be required to be installed prior to releasing the bond.

City of Fairview

7100 City Center Way
Fairview, TN 37062-0069



Phone: 615-799-1585
Fax: 615-799-5599
Email: codes@fairview-tn.org

REZONING REQUEST APPLICATION

For a Rezoning Request, the City of Fairview **requires** the following:

1. Completion of this application. Please type or print the information in blue or black ink.
2. A map of the property.
3. A list of Names and addresses of all adjacent property owners.
4. A legal description of the property, if available.
5. If the applicant is not the property owner, a letter from the property owner must be attached giving the authority to request the zoning.
6. A letter summarizing the project proposal, including the proposed usage of the land, reason for the rezoning request and justification for the rezoning request.
7. Payment of a Non-Refundable \$200.00 application fee (Checks should be made payable to "City of Fairview")

.....
Request No. _____ Date Submitted 1-15-2016

SECTION 1 – Applicant Information

(Any correspondence from the City will be addressed to the applicant)

- Property Owner Purchaser of Property Engineer Trustee
 Architect Other _____

Name: Glenda & Gary Jaworski Phone: _____

Business: _____ E-mail: _____

Address: 2652 Fairview Blvd Best Way to Contact: _____
(Mail, E-mail, Phone)

City: Fairview State: TN Zip: 37062

.....

SECTION 2 – Property Information for the Rezoning Request

Project Name: _____

Project Address: 2652 Fairview Blvd.

Existing Land Use: Residential

Proposed Land Use: Commercial

Total Acreage of Project/Rezoning: 1.1 ACRES

TAX MAP	PARCEL(S)	CURRENT ZONING DISTRICT	REQUESTED ZONING DISTRICT	# OF ACRES	PROPERTY OWNER
69	3 2	RS40	CG	1.1	Gary Jaworski

***Reason for Rezoning must be included on an attached sheet.

The rezoning process takes approximately three to four months depending on when the application is received by the City. The request must go to the Planning Commission where it receives a recommendation to go to the Board of Commissioners. The Planning Commission reserves the right to make a recommendation on the application as submitted, or an amended application requested at the time of deliberation. The Board of Commissioners must approve a Rezoning Ordinance on two readings and hold a Public Hearing before the rezoning request is considered approved.

I certify that all of the above statements are true to the best of my knowledge.

Applicant's Signature: Glenda Jaworski Date: 1/15/2016



FOR OFFICE USE ONLY

APPLICATION RECEIVED AND FILING FEE PAID 1-15-2016

DATE OF FAVORABLE RECOMMENDATION BY PLANNING COMMISSION

DATE OF CONCURRENCE /FINAL APPROVAL BY BOARD OF COMMISSIONERS

THE PLANNING COMMISSION HAS DETERMINED THAT THE FOLLOWING FINDINGS ARE APPLICABLE;

- _____ 1. The Amendment is in agreement with the general plan for the area.
- _____ 2. It has been determined that the legal purposes for which zoning exists are not contravened.
- _____ 3. It has been determined that there will be no adverse effect upon adjoining property owners, unless such effect can be justified by the overwhelming public good or welfare.
- _____ 4. It has been determined that no property owner or small group of property owners will benefit materially from the change to the detriment of the general public.
- _____ 5. It has been determined that conditions affecting the area have changed a sufficient extent to warrant an amendment to the zoning map.

.....

This instrument prepared by:
MID-STATE TITLE & ESCROW, INC.
128 HOLIDAY COURT, SUITE 125, FRANKLIN, TN 37064

SEND TAX STATEMENTS TO:

NAME OF MORTGAGEE:

SECURITY FINANCIAL AND MORTGAGE CORPORATION
P. O. BOX 31912
ST. LOUIS, MO 63131

SECURITY FINANCIAL AND MORTGAGE CORPORATION
P. O. BOX 31912
ST. LOUIS, MO 63131

ADDRESS NEW OWNERS:

MAP 069, GROUP , PARCEL 03200
Dist 01

Gary Jaworski
1736 Fairview Blvd., West
Memphis, Tenn. 38163

WARRANTY DEED

BOOK 983

PAGE 920

FOR AND IN CONSIDERATION OF THE SUM Seventy-Two Thousand and 00/100'S ***
(\$72,000.00) DOLLARS, cash in hand paid, the receipt of all of which is
hereby acknowledged, LLOYD E. YEARGAN and WIFE, LENA YEARGAN have/has this
day bargained and sold and do/does hereby transfer and convey unto GARY
JAWORSKI and WIFE, GLENDA JAWORSKI, his/her/their heirs and assigns, the
following described property:

Lying and being in the First Civil District of Williamson County, State of
Tennessee, and being more particularly described as follows:

Beginning at a stake on the west side and in the right-of-way line of Highway
100, said point being the southeast corner of the Fairview Elementary School
property; thence with same North 87-1/2 degrees West 309 feet to a stake, the
southwest corner of the School property; thence South 13 degrees West, a new
line 186 feet to a gate post; mentioned in the previous conveyance of 5.8
acres off Daugherty to King; thence South 65 degrees East 228 feet to a stake
in the right-of-way line of Highway 100; thence with same, North 30 degrees
East 147 feet to a stake; thence with same north 27 degrees East 150 feet to
the beginning, containing 1.1 acres, more or less.

Being the same property conveyed to Lloyd E. Yeargan and wife, Lena Yeargan
by warranty deed of Barbara D. Berry, unmarried of record in Book 282, page
204, Register's Office of Williamson County, Tennessee.

TO HAVE AND TO HOLD the said lands, with the improvements and
appurtenances thereunto belonging to the said GARY JAWORSKI and WIFE, GLENDA
JAWORSKI, his/her/their heirs and assigns, forever.

AND GRANTOR(S) COVENANT(S) with the said GARY JAWORSKI and WIFE, GLENDA
JAWORSKI, that he/she/they is/are lawfully seized and possessed of said land,
in fee simple, has/have a good right to convey it, and that it is
unencumbered, except as follows:

1. 1992 County and City of Fairview Taxes constitute a lien against said
property, but are not yet due and payable. Map 069 Parcel 03200

AND GRANTOR(S) FURTHER COVENANT(S) and binds himself/herself/themselves,
his/her/their heirs, successors and assigns, to warrant and forever defend
the title to said property, to the said GARY JAWORSKI and WIFE, GLENDA
JAWORSKI, his/her/their heirs and assigns, against the lawful claims of all
persons, whomsoever.

Witness our/my hand(s), on this the 9 day of June, 1992.

Lloyd E. Yeargan
LLOYD E. YEARGAN
Lena Yeargan
LENA YEARGAN

STATE OF TENNESSEE
COUNTY OF WILLIAMSON

Before me, the undersigned, a Notary Public in and for said State and County, personally appeared LLOYD E. YEARGAN and WIFE, LENA YEARGAN, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that (s)he/they executed the foregoing instrument for the purposes therein contained.

9 Witness my hand and official seal at Franklin, Tennessee, on this the day of June, 1992.

Cynthia M. Beard
Notary Public

(SEAL)
NOTARY PUBLIC
AT LARGE
My Commission Expires:
Jan. 24, 1994

STATE OF TENNESSEE
COUNTY OF WILLIAMSON

The actual value or consideration, whichever is greater, for this transfer is \$72,000.00.

Stan Jaworski

Sworn to and subscribed before me, on this the 9 day of June, 1992.

(SEAL)
NOTARY PUBLIC
AT LARGE
My Commission Expires:
Jan. 24, 1994

Cynthia M. Beard
Notary Public

TRANSFERRED

JUN 10 1992
DENNIS ANGLIN PROP. ASSESSOR
WILLIAMSON COUNTY

State of Tennessee, County of WILLIAMSON
Received for record the 10 day of
JUNE 1992 at 10:52 AM. (RECH 15816)
Recorded in official records
Book 983 Page 920-921
Notebook: 49 Page 328
State Tax \$ 266.40 Clerks Fee \$ 1.00,
Recording \$ 8.00. Total \$ 275.40,
Register of Deeds SARIE WARE
Deputy Register PAM BREER



DAUGHERTY ESTATES "A"

1 "A"-69-C

ENRIEN BLVD

66-46

1.1AC

8.07AC

3.64AC

8

7

5

5

6

6

"A"

"A"

"A"

33

31

66-46

"A"

"A"

5

4

29

3

30

2

31

32

"A"

30



Municipal Technical Advisory Service
INSTITUTE FOR PUBLIC SERVICE

November 19, 2015

City of Fairview Tennessee
Mayor Patti Carroll
7100 City Center Way
Fairview, Tennessee 37062

VIA ELECTRONIC MAIL

Dear Mayor Carroll:

You have indicated that the city is working on a nepotism policy and have asked for an example of such a policy for potential use. In addition, you have posed several scenarios regarding situations that could involve a conflict of interest. In response to your several questions regarding conflicts of interest, the following is provided by MTAS Legal Consultant Elisha Hodge.

Question: When does a direct or indirect conflict need to be declared by a board member?

- Any time before a vote?
- Any time during the meeting of the vote?
- Discussion period directly prior to the vote (when discussion is opened)?

Response - Except in situations where a commissioner is also an employee of the municipality, the statute does not specifically set out how and when the disclosure of a direct or indirect conflict should be made. However, I think that the best time to put on record that a commissioner has a direct or indirect conflict of interest in a matter that is about to be discussed, is when an agenda item is called up for discussion, prior to the discussion beginning. While the conflict of interest statutes applicable to the commissioners, Tenn. Code Ann. §§ 6-20-205 and 12-4-101 et seq. speak only to voting, I think that the commissioners should consult with the city attorney when these issues arise regarding whether it is a good idea to refrain from the voting and taking part in the discussion/deliberation related to the issue when a board member has a direct conflict of interest.

Question: Should direct or indirect interest be declared in the following scenarios?

- Board member voting for spouse's city employee health insurance benefits?

Response - I do not think that this scenario involves a direct or indirect conflict of interest, as it is not related to a direct financial benefit being provided through a contract with the commissioner. However, I do suggest that out of an abundance of caution, any commissioner who might be voting on a spouse's health insurance benefits, disclose on the record, when the agenda item is brought up, that he/she is married to an employee of the city that takes part in the city's health insurance plan.

- Board member voting for spouse or child's pay raises?

Response - If the commissioner and the spouse or child do not commingle funds, I do not think that this scenario constitutes a direct or indirect conflict of interest. However, if funds are commingled, I think that the commissioner likely has an indirect conflict of interest that would need to be disclosed. Again, out of an abundance of caution, even if funds are not commingled, I suggest that the commissioner disclose on the record, when the agenda item is called up, that his/her spouse or child works for the city and the vote on this issue will impact the spouse's or child's income.

- Board member voting on purchase of city vehicle to be issued to child?

Response - I do not think that this constitutes a direct or indirect conflict of interest, as the scenario does not involve a direct financial benefit being provided through a contract to the commissioner. However, just as

226 Capitol Boulevard, Suite 606 • Nashville, TN 37219-1804
Phone: (615) 532-6827 • Fax: (615) 532-4963 • www.mtas.tennessee.edu

... in cooperation with the Tennessee Municipal League

with all of the other scenarios, I do suggest that the commissioner make a statement on the record when the agenda item is called up disclosing that the outcome of the vote will impact his/her child who works for the whatever department is being issued the cars.

- Board member voting on budget/expenses for department in which he works or volunteers?
Response - For commissioners who are also employees, this scenario is addressed in the Section 6-20-205 of the city's charter. Employees are required to make the following disclosure before taking a vote on such an issue:

(b)(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality may vote on matters in which such member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows:

"Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

I suggest that a commissioner voting on a budget/expenses for a department in which he/she volunteers (presumably without financial compensation or benefits), disclose that fact on the record when the agenda item is called up for consideration.

Note: In all of the scenarios, a commissioner is free to recuse himself/herself from the discussion and vote on an issue, if he/she feels it is appropriate in order to avoid the appearance of impropriety.

Question: If a direct or indirect interest on a voting matter is NOT disclosed during discussion or prior to the vote, what process can be used to challenge the validity/lawfulness of the vote.

- As a member of the governing body?

Response - The city's charter, in section 6-20-205(b)(3) reads:

The vote of any person having a conflict of interest who does not inform the governing body of such conflict as provided in subdivision (b)(1) shall be void if challenged in a timely manner. As used in this subdivision (b)(3), "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

- As a citizen of the city?

Response - The language above is the only language that I can find that speaks to this issue; however, after looking through a number of cases in Tennessee, it appears that citizens can file a lawsuit in chancery court as well. This issue is still being researched and more information will be provided as appropriate.

Please find enclosed two very good opinion letters that Sid Hemsley, former MTAS legal consultant, released on the topic of conflicts of interest. You might find this helpful. I have also enclosed T.C.A. §§ 6-20-205 and 12-4-101 *et seq.*, for ease of reference.

Finally, please find enclosed a draft nepotism policy for your consideration and potential use.

In closing, it is recommended that the city's employment application contain a provision for a candidate to identify if he/she has a relative working for the city. If the box YES is checked, the candidate should be provided space to identify the employee relative by name, as well as the relationship. This will assist the city in identifying potential conflicts where a prospective employee will be in violation of the nepotism policy if hired.

Mayor Patti Carroll
November 19, 2015
Page 3

Please let us know if you have further questions regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey J. Broughton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeffrey J. Broughton
Municipal Management Consultant

Cc: Elisha Hodge

Conflicts of Interest In Tennessee

Sid Hemsley
MTAS
EOA-2008

Conflicts of interests in Tennessee are governed principally by two statutes, and a common law doctrine:

1. Tennessee's Conflicts of Interest Law, codified at Tennessee Code Annotated, § 12-4-101 et seq.
2. Tennessee also appears to recognize common law conflicts of interest.
3. Tennessee's new Ethics Law codified at Tennessee Code Annotated, § 8-17-101 et seq.

For the purposes of simplicity, I will try to address each of those separately.

Tennessee's Conflict of Interest Law

The Tennessee Conflicts of Interest Law is found in Tennessee Code Annotated, section 12-4-101. It covers many public officials and employees, including municipal officials and employees. Always confusing, the answer to the question of whether a conflict of interest exists in a particular case is highly fact dependent. Contracts, including employment contracts, in which family members of municipal officials are financial beneficiaries, are particularly troublesome. In addition, the Conflicts of Interest Law does not do a good job of addressing the problem of public officials and employees who have oversight and supervisory responsibilities over municipal contracts, but have no duty to vote on them.

KEY TO CONFLICTS OF INTEREST LAW

The key to the Tennessee Conflicts of Interest Law is personal financial interest. If the municipal official in question has no personal financial interest in the municipal contract or work that raised the question of a conflict of interest, there is no violation of the Conflicts of Interest Law.

WHO AND WHAT INTERESTS DOES IT COVER?

Who Does It Cover?

Officers, committeemen, directors, or other persons who have certain duties with respect to municipal contracts and work in which a covered official or person has either a direct or an indirect interest. Those duties include any one or more of the following duties:

- vote for,
- let out,
- overlook, or
- in any manner to superintend any such contract or work.

Alders and many mayors have a duty to vote for, let out, overlook, and in most cases, superintend, a wide variety of municipal contracts and work. A recorder might have the general duty to overlook and superintend a broad range of municipal contracts and work. A street superintendent might have a specific duty to overlook and superintend municipal street work. Lower ranking city employees might not have any of those duties.

What Does It Cover?

1. Direct Interests.

A direct interest is a contract between the city official himself, or a business of which the official is the sole proprietor or has controlling interest. Controlling interest means ownership of the largest number of outstanding shares owned by any single individual or corporation.

2. Indirect Interests.

There are two important kinds of indirect interests:

- A contract in which the municipal official is interested, but not directly so.
- A contract in which the municipal official is directly interested, but where he or she is the sole supplier of the goods or services in question in the municipality.

HANDLING DIRECT AND INDIRECT INTERESTS

Direct Interests Are Generally Prohibited.

Generally, municipal officials covered by the Conflicts of Interest Law cannot have a direct interest; that is, they cannot provide goods and services to the municipality. That is true even if they provide the goods and services at considerably less cost than the municipality could have gotten them elsewhere.

Exception: Where the municipal official is the sole supplier of the goods and services in question in the municipality. In that case the direct interest is converted to an indirect interest. Another exception for certain municipal employees who are municipal officials is covered below.

Indirect Interests Are Allowed If They Are Acknowledged.

Generally, municipal officers covered by the Conflicts of Interest Law can be indirectly interested in a municipal contract if they publicly acknowledge their interest. How the public interest is acknowledged is not prescribed in the Conflicts of Interest Law. Presumably, an elected official would acknowledge an indirect interest at a public meeting of the municipal body of which he is a member at the time or times the contract in which he has an indirect interest is an issue. The requirement that indirect interests be acknowledged apparently includes cases in which the public official in question is the sole supplier of goods and services in the municipality.

SPECIAL PROVISIONS OF CONFLICTS OF INTEREST LAW

Rule For Certain Officials Not Members of Governing Bodies.

A provision of the Conflicts of Interest Law appears to permit a municipal official except a member of a municipal governing body to vote on whole budgets, appropriation and tax rate resolutions, or their amendments, where the official has a direct interest in a part of the budget, appropriation or tax rate resolution. However, the official cannot vote specifically on a specific amendment to the budget or a specific appropriation or resolution in which he or she is directly interested.

Rule For Municipal Employees Serving On Municipal Governing Bodies.

- **When the employee was hired before his or her initial election or appointment to the governing body:** The employee/member of the governing body may vote on matters in which he or she has both a direct and an indirect interest, by uttering certain magic words contained in the Conflicts of Interest Law:

Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents.

If the employee/member of the governing body fails to utter the magic words, his or her vote must be challenged at the same meeting and before any other business is transacted.

- **When the employee was hired after his or her initial election or appointment to the municipal governing body:** The employee/member of the governing body may not vote on matters in which he or she has either a direct or an indirect interest.

ABSTINENCE FROM VOTING

A member of a municipal governing body may abstain from voting on any matter in which he has either a direct or an indirect conflict of interest. If he does so, he is not counted for purposes of determining a majority vote..

Common Law Conflicts of Interest

Common law conflicts of interest generally arise in two contexts: public officials and employees holding *incompatible offices*, and public officials having a *financial conflict of interest*. This paper will deal only with common law conflicts of interest in the context of public officials having a financial conflict of interest.

As far as I can determine, there is only one Tennessee case that involves the application of the common law conflicts of interest doctrine where the financial interest of a public official or employee is involved. . In Ramsey v. Gibson County, 7 Tenn.Civ. App. (7 Higgins) 53 (1916), a cook in a county workhouse supplied food for the workhouse from a store he owned. The Court denied him payment for the food, declaring:

That it is not material to determine whether Ramsey [the cook] was such an official as cannot deal with the county under Shannon's Code, Section 1133 [what is now Tennessee Code Annotated, § 12-4-101.] We think that under no circumstances can the Courts recognize the right of a man occupying the position of Ramsey to recover upon his contracts. Sound public policy forbids this...The rule forbids the giving of any validity to such contracts because of the vast opportunities open for fraud and because such contracts are in flat contradiction of the soundest ethical and judicial principles. See Madison County v. Alexander, 116 Tenn., 689, and cases there cited...The law forbids the assumption by anyone of a position where his interest and his duty will conflict. [At 54-55]

At that time, Shannon's Code, § 1133, much the same as it does now, provided that: "It shall not be lawful for any officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner superintend, any work or any contract in which any

public municipal corporation...shall or may be interested, to be directly or indirectly interested in such contract." Note that at that time, the statute entirely prohibited both direct and indirect interests."

The Ramsey Court sounded unsure that Shannon's Code, § 1133, covered the workhouse cook. He certainly had no duty to vote for the contract, and arguably as a cook he had no duty to overlook or to in any manner superintend the contract. He was on the bottom of the employment totem pole, so to speak. But even if that was true, the contract was a violation of public policy. That case appears to indicate that the common law conflict of interest is alive in Tennessee.

But at the time of Ramsey, Tennessee's Conflicts of Interest Law entirely prohibited both direct and indirect conflicts of interest—very strict law. Indeed, it was so strict, the law was subsequently changed to allow indirect conflicts of interest as long as they were disclosed. The purpose for changing the law was to allow directors and employees of banks and other private entities to serve as public officials and employees. In such cases the business itself may have a financial relationship with the government, but the directors or employees of the business may have only an indirect interest in that relationship. But it still appears that under Ramsey, even such a person could have common law conflict of interest in a matter in which he had the ability to influence the outcome to his financial advantage, especially if he were a public officer who had a right to vote on such matters.

A number of Tennessee Attorney General's Opinions also opine that the common law conflict of interest applies in Tennessee, even as to financial conflicts of interest on the part of public officials, even though those opinions point to no Tennessee cases for support. It is said in TAG 94-073 that:

There exists a strong public policy which opposed an official placing himself in a position in which personal interest may conflict with public duty...A public office is a trust conferred by the public. The duties of that office must be exercised with fairness and impartiality. The good faith of the officer is not a consideration, for the policy exists to prevent an officer from being influenced by anything other than the public good. (Op. Tenn. Att. Gen. 83-278 (August 15, 1983). See also Op. Tenn. Att. Gen. 90-73 (July 27, 1990); Op. Tenn. Atty. Gen. 85-036 (February 14, 1985). Thus, if gifts received by a county official put him or her in a position in which personal interest may conflict with public duty there would be common law conflict of interest. If the gift is so trivial that it would not have the potential for affecting the official's impartiality in fulfilling his or her duties, there may be no conflict of interest.

It is also said in TAG U93-48, that

Whenever a legislator or other public official has placed himself in a position where, for some advantage gained or to be gained for himself, he finds it difficult if not impossible to devote himself with complete energy, loyalty and singleness of purpose to the general public interest. The advantage that he seeks is something over and above the salary, the experience, the chance to serve the people, and the public esteem that he gains from public office. Op. Tenn. Atty. Gen. 85-036 (February 14, 1985), quoting 1958 Minnesota Governor's Committee on Ethics and Government Report 17, quoted in Note: Conflict of Interest: State Government Employees, 47 Va. L. Rev. 1034 (1961) (footnote 1).

But it is difficult to determine what kind of financial conflict of interest it would take in Tennessee to trigger the common law conflict of interest doctrine. As the TAG opinions above

indicate, that doctrine might be triggered even when the public official or employee acted in good faith on a matter in which he had a financial interest; some common law conflict cases from other jurisdictions declare that it is the *appearance* of absence of impartiality that triggers the doctrine. As indicated above, Ramsey involved a low-ranking employee; it does not tell us how the common law conflict of interest doctrine applies to, say, members of a planning commissions or members of other public bodies who have a financial interest in the matters in which they have a voice and a vote.

However, such issues have arisen in other states, although most of them involve public officers who have the right to vote on issues and contracts; few of them involve public employees. An Illinois Court in Midwest Television, Inc. v. Champaign-Urbana Communications, Inc., 347 N.E.2d 34 Ill. App. (1976) observed that the statutory conflicts of interest law applied to public officers, and refused to find that the common law conflict of interest doctrine applied to public employees, reasoning that:

If potential conflicts of interest are interpreted broadly [sic.] and such prohibitions reach both officers and employee, these restrictions can work a severe hardship, especially at the municipal level. Many persons might be discouraged from working at that level since it would require divestment of substantial business interests so that the government may make an intermittent or even uncompensated use of their service. 'Conflicts of Interests; State Government Employees,' 47 Va. L. Rev. 1034, at 1051.] [At 38]

The question of whether the city manager could fire a city police officer where the officer established his wife in a non-emergency ambulance transfer service and gave the city notice he planned to work during his off-duty hours in that service, arose in Marsh v. Town of Hanover, 313 A.2d 411 (N.H. 1973). The state's statutory conflicts of interest law did not prohibit the police officer's employment in that capacity. However, the Court observed that, "The common law of New Hampshire identifies a conflict of interest where a potential exists for a public officer to influence the outcome of a matter in which he has a *direct personal and pecuniary interest*." [Citations omitted by me.] Such conflict normally arises in context where an official is acting in a judicial or legislative capacity. [citations omitted by me.] However, the general principle underlying this law applies to all public servants. [Citations omitted by me.] [At 414]

The court went on to declare that the city provided both emergency and non-emergency ambulance service, and that if the city got out of the non-emergency ambulance service the officer would not receive a pecuniary benefit from his dual position, but that if the city stayed in the non-emergency ambulance service, the officer's promotion of his wife's interest in the ambulance service would reflect a clear conflict of interest with the city's interest.

But there are a significant number of common law conflict of interest cases where it is alleged that the public official in question voted or otherwise took some other action, on a matter in which he had a financial interest, but where that interest did not involve a municipal contract. A number of such cases involve votes on zoning issues. [See Griswold v. City of Homer, 925 P.2d 1015 (Alaska 1996) (zoning); Raynes v. City of Leavenworth, 821 P.2d 1024 (Wash. 1992) (zoning); Helmke v. Board of Adjustment, City of Ruthven, 418 N.W.2d 346 (Iowa 1988) (zoning); Care of Tenafly, Inc. v. Tenafly Zoning Board of Appeal, 704 A.2d 1032 (N.J. 1998) (zoning); Hanig v.

City of Winner, 692 N.W.2d (S.D. 2005); Friends Retirement Concepts v. Board of Education of the Borough of Somerville, 811 A.2d 962 (N.J. 2002).]

Those cases give guidance on what financial interests trigger the common law conflict of interest doctrine. The answer is: It depends upon the circumstances. Indeed, the cases are not even in agreement on what happens when a person who has such an interest votes.

Tennessee's Ethics Law

Tennessee's new ethics law governing local governments is a product of Public Acts 2006 (Extraordinary Session), Chapter 1. That law is codified at Tennessee Code Annotated, § 8-17-101, and covers both municipal officers and employees. That law requires municipalities to adopt ethical standards by July 1, 2007, which, at a minimum, must include two things:

1. Rules setting limits on and/or providing for reasonable and systematic disclosure of gifts or other things of value received by officials or employees that appear to affect their discretion.
2. Rules requiring reasonable and systematic disclosure by officials and employees of personal interest that affect or appear to affect their discretion.

The Ethics Law does not define what is a “personal interest.” The MTAS Model Ethics Policy is broader than is Tennessee’s Conflicts of Interest Law, requiring the disclosure by officials entitled to vote on any personal interest that might affect their discretion, and public officials who have discretion in matters that do not require a vote to disclose their personal interests.

MEMORANDUM

FROM: Sid Hemsley, Senior Law Consultant
DATE: March 18, 2002
RE: Conflicts of Interest

You have several questions related to potential conflicts of interest in the city.

Let me handle the easy one first:

Can the city recorder, with at least the knowledge of the mayor and I assume her husband, who is a city commissioner, lend the fire chief \$1,500 from city funds?

The answer is clearly no, and is so obvious that I do not think the answer even needs the support of legal citations. Common sense tells any municipal official that he or she cannot lend the municipality's money to municipal employees.

The conflicts of interest questions stem from the following facts: The mayor's wife was appointed city manager. She is not a full-time city manager. The mayor's two teenage sons have been employed on a part-time basis picking up trash on the sides of the streets. Another son of the mayor, who apparently does not live at home and is "on his own" has been employed from time to time to make repairs at city hall. The city also has a part-time city recorder, who is the wife of one of the city commissioners. That city commissioner is also the assistant fire chief and is paid both as a commissioner and as a volunteer firefighter. The City has the general law manager-commission charter codified at Tennessee Code Annotated, ' 6-18-101 et seq.

Potential conflict of interest in the city's employment of the mayor's wife as city manager

Tennessee's Conflict of Interest Law entirely prohibits direct interests and regulates indirect interests in the following language:

Direct Interests:

It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation...shall or may be interested, to be *directly interested* in any such contract. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest... [Tennessee Code Annotated, ' 12-4-101]

Indirect Interests:

It is unlawful for any officer, committee member, director or other person whose duty it is to vote for, let out, overlook, or in any manner superintend any work or any contract in which any municipal corporation...shall or may be interested to be *indirectly interested* in any such contract unless the officer publically acknowledges such officer's interest. "Indirectly interested," means any contract in which the officer is interested, but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county. [Tennessee Code Annotated, ' 12-4-101]

In addition, the general law manager-commission charter itself contains the following provision:

Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality may vote on matters in which such member has conflict of interest if the member informs the governing body immediately prior to the vote as follows: [There follows the prescribed language]. [Tennessee Code Annotated, ' 6-20-205(b)(1)]

The trigger to Tennessee's Conflict of Interest Law, whether the interest at issue is a direct interest or an indirect interest, is the city official's personal financial interest in any contract with the city subject to that Law. But in this case the contract is between the city and the mayor's wife, rather than the mayor. Under the Conflicts of Interest Law, is that interest on the part of the mayor a direct interest, indirect interest, or no interest at all?

Conflicts of interest questions frequently arise in similar contexts, but unfortunately, the Conflicts of Interest Law does not do a good job of addressing them. The Tennessee Attorney General takes the position that if the contract in question is between the city and the wife of a member of the city's governing body, and those two commingle their funds, the member of the city's governing body has at most an indirect interest. If they do not commingle their funds, the member of the city's governing body does not even have an indirect interest in the contract. [TAG U93-86, 333 (dated October 5, 1983), 85-120, and 84-30.] I have never been unable to find any statutory or case law support for that theory, but it makes sense. But if it applies, and the mayor and his wife (the city manager) commingle their funds, at most the mayor has an indirect interest. Indirect interests must be publically acknowledged. It is not clear how an indirect interest is publically acknowledged. Presumably, the best time would have been when the city commissioners voted on appointing the mayor's wife to the position of city manager.

Potential conflict in the city's employment of a city commissioner's wife as city recorder

The same analysis that applies to the city's employment of the mayor's wife as the city manager applies to the city's employment of the city commissioner's wife as the city recorder.

Potential conflict in the city's employment of the city commissioner

as the assistant fire chief and as a volunteer fireman

The facts do not indicate the order in which the city commissioner became an employee. The Conflicts of Interest Law creates an escape hatch for city employees serving on municipal governing bodies based on when the employee in question was hired. If the employee was hired before his initial election or appointment to office, the member-employee may vote on matters in which he or she has a direct or an indirect interest, by uttering certain magic words in Tennessee Code Annotated, ' 12-4-101(c). If the employee was hired after his initial election or appointment to the municipal governing body, the member-employee may not vote on matters in which he or she has either a direct or an indirect interest. The similar provision contained in Section 6-20-205(b)(1) of the general law manager-commission charter (and quoted above), does not make that distinction, but presumably, under the rules of statutory construction both Tennessee Code Annotated, ' 12-4-101 and 6-20-205(b)(1) would be read together.

In an opinion I wrote to the City of Millersville on June 18, 1999, I covered in considerable detail the question of whether a volunteer firefighter was an employee for the purposes of the Conflicts of Interest Law and other purposes. I have attached that letter.

Potential conflict of interest in the city's employment of the mayor's sons

In theory, under the general law city manager-commission charter, the city manager has the exclusive authority to hire, supervise and fire city employees. I assume that the city manager has no personal direct or indirect financial interest in the contract of employment between the city and the mayor's sons, and the contract of employment between the city and the city recorder. For that reason, their employment does not necessarily come within the confines of that Law.

But there may be two things wrong with that theory:

First, even in the case where the city manager intervenes between the city's governing body and the hiring decisions, the city's governing body still has the duty to "overlook" the work the city does and the contracts it makes. In the case of the mayor and his two minor sons who do periodic work for the city, he still has the duty of oversight over their work. In addition, because they are minors, he probably has a financial interest in their employment notwithstanding the fact that he did not hire them. For those reasons, an argument can be made that the city manager could not legally hire the mayor's minor sons.

Second, some cities chartered under the general law city manager-commission charter function more as general law mayor-aldermanic cities in which the city's governing body, rather than the city manager, actually makes decisions. If that is the case in your city, the city's hiring of the mayor's two minor sons probably violates the Conflicts of Interest Law.

The mayor has the same oversight duties with respect to his grown son as he does his two minor sons, but the same analysis that applies to the question of whether he has a conflict of interest in the case of his wife, the city manager, applies in this case.

As far as I can determine, there have been no cases that have ironed out the application of the Conflict of Interest Law in such cases. However, it is said in State ex rel. Abernathy v. Robertson, 5 Tenn. Civ. App. (1914), that the law ought to be given a liberal construction because its purpose is to protect the public against official corruption and oppression. A liberal

construction arguably brings at least the mayor's two minor sons into the scope of the Conflicts of Interest Law.

§ 6-20-205. Delegated board powers; conflict of interest, TN ST § 6-20-205

West's Tennessee Code Annotated

Title 6. Cities and Towns

City Manager-Commission Charter

Chapter 20. Commissioners and Mayor Under City Manager-Commission Charter

Part 2. Powers and Duties of Board

T. C. A. § 6-20-205

§ 6-20-205. Delegated board powers; conflict of interest

Effective: July 10, 2015

Currentness

(a) The legislative and all other powers, except as otherwise provided by this charter, are delegated to and vested in the board of commissioners. The board may by ordinance or resolution not inconsistent with this charter prescribe the manner in which any powers of the city shall be exercised, provide all means necessary or proper therefor, and do all things needful within or without the city or state to protect the rights of the city.

(b)(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality may vote on matters in which such member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows:

"Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

(2) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, the member may abstain for cause by announcing such to the presiding officer. Any member of a local governing body of a county or municipality, who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

(3) The vote of any person having a conflict of interest who does not inform the governing body of such conflict as provided in subdivision (b)(1) shall be void if challenged in a timely manner. As used in this subdivision (b)(3), "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(4) Nothing in this subsection (b) shall be construed as altering, amending or otherwise affecting § 12-4-101(a). In the event of any conflict between this subsection (b) and § 12-4-101(a), § 12-4-101(a) shall prevail.

§ 6-20-205. Delegated board powers; conflict of interest, TN ST § 6-20-205

Credits

1921 Pub.Acts, c. 173, art. 4, § 5; 1986 Pub.Acts, c. 765, §§ 1 to 3.

Formerly Shannon's Code Supp., § 1997a137; 1932 Code, § 3534; § 6-2016.

T. C. A. § 6-20-205, TN ST § 6-20-205
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§ 12-4-101. No direct interests by officials; public..., TN ST § 12-4-101

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Tennessee Code Annotated

Title 12. Public Property, Printing and Contracts

Chapter 4. Public Contracts (Refs & Annos)

Part 1. General Provisions (Refs & Annos)

T. C. A. § 12-4-101

§ 12-4-101. No direct interests by officials; public acknowledgement of indirect interests; conflicts of interest

Effective: July 1, 2013

Currentness

(a)(1) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation. This subdivision (a)(1) shall not be construed to prohibit any officer, committee person, director, or any person, other than a member of a local governing body of a county or municipality, from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested.

(2)(A) Subdivision (a)(1) shall also apply to a member of the board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to title 7, chapter 54 or 58.

(B) Subdivision (a)(2)(A) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more, according to the 1980 federal census or any subsequent federal census.

(b) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.

§ 12-4-101. No direct interests by officials; public..., TN ST § 12-4-101

(c)(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment predates the member's initial election or appointment to the governing body of the county or municipality may vote on matters in which the member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows: "Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents." The vote of any such member having a conflict of interest who does not so inform the governing body of such conflict shall be void if challenged in a timely manner. As used in this subdivision (c)(1), "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(2) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment began on or after the date on which the member was initially elected or appointed to serve on the governing body of the county or municipality shall not vote on matters in which the member has a conflict of interest.

(3)(A) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, such member may abstain for cause by announcing such to the presiding officer.

(B)(i) Any member of a local governing body of a municipality who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

(ii) This subdivision (c)(3)(B) shall in no way be construed to apply to any county having a metropolitan form of government and having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census.

(d) This section shall apply to a member of the board of directors or officer of any nonprofit corporation required under § 8-44-102 to conduct all meetings of its governing body as open meetings.

Credits

1869-1870 Acts, c. 92, § 1; 1977 Pub.Acts, c. 102, § 1; 1983 Pub.Acts, c. 388, §§ 4, 6; 1984 Pub.Acts, c. 831, § 1; 1986 Pub.Acts, c. 765, §§ 1 to 3; 1988 Pub.Acts, c. 908, §§ 4, 5; 1989 Pub.Acts, c. 366, §§ 1 to 3; 1998 Pub.Acts, c. 774, § 1, eff. July 1, 1998; 2006 Pub.Acts, c. 923, § 4, eff. June 20, 2006; 2013 Pub.Acts, c. 403, § 71, eff. July 1, 2013.

Formerly Shannon's Code, § 1133; 1932 Code, § 1874; § 12-401.

Notes of Decisions (87)

§ 12-4-101. No direct interests by officials; public..., TN ST § 12-4-101

T. C. A. § 12-4-101, TN ST § 12-4-101

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§ 12-4-102. Direct or unlawful indirect interests; penalties, TN ST § 12-4-102

West's Tennessee Code Annotated

Title 12. Public Property, Printing and Contracts

Chapter 4. Public Contracts (Refs & Annos)

Part 1. General Provisions (Refs & Annos)

T. C. A. § 12-4-102

§ 12-4-102. Direct or unlawful indirect interests; penalties

Currentness

Should any person, acting as such officer, committee member, director, or other person referred to in § 12-4-101, be or become directly or unlawfully indirectly interested in any such contract, such person shall forfeit all pay and compensation therefor. Such officer shall be dismissed from such office the officer then occupies, and be ineligible for the same or a similar position for ten (10) years.

Credits

1869-1870 Acts, c. 92, §§ 2, 3; 1983 Pub. Acts, c. 388, § 5.

Formerly Shannon's Code, §§ 1134, 1135; 1932 Code, §§ 1875, 1876; § 12-402.

Notes of Decisions (63)

T. C. A. § 12-4-102, TN ST § 12-4-102

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Ordinance No. _____

**An Ordinance to Amend Title 4 of the Code of Ordinances
Regarding Nepotism**

WHEREAS, Section 4-208 of the Code of Ordinances establishes a nepotism policy; and

WHEREAS, it is deemed in the best interest of the organization that said policy be amended to provide clarity to work place situations that could occur related to the nepotism policy.

NOW THEREFORE BE IT ORDAINED by the City of Fairview, Tennessee that Section 4-208 of the Code of Ordinances is hereby amended to read in its entirety as follows:

4-208. Nepotism Policy.

- (a) No two persons who are relatives shall be placed within the same line of supervision due to a new appointment, promotion, demotion, departmental transfer, or other employment action.
- (b) For purposes of this policy, the following definitions shall apply:
 - “Relative” shall mean a spouse, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, brother, brother-in-law, step-brother, sister, sister-in-law, step-sister, aunt, uncle, niece, nephew, step-parent, or stepchild.
 - “Line of supervision” shall mean any supervisory relationship within the organization, irrespective of the presence of intervening levels of supervision between the two persons.
- (c) When a violation results from the marriage of two employees, the violation shall be resolved by means of dismissal, resignation, or if made available and offered, transfer to a suitable position within the city. The city manager shall advise the employees of the alternatives available to remove such violation. Such employees shall be given the opportunity to select among such available alternatives. If no such selection is made, such violation shall be cured by the city manager.
- (d) An application for employment submitted by a relative of a current employee will not be considered when the position applied for falls within the same line of supervision of the related employee, unless:
 - (1) the current employee has tendered a resignation from city employment,
 - (2) said resignation has been accepted by the city, and
 - (3) there will be no overlap of employment of the current employee and the relative.

This ordinance shall take effect from and after its final passage, the general welfare of the city requiring it.

WHEREUPON, the Mayor declared the Ordinance adopted, affixed a signature and the date thereto, and directed that the same be recorded.

Mayor
Date: _____

City Recorder

Approved as to Form and Legality
this _____ day of _____ 2015

City Attorney

Passed on 1st Reading: _____
Passed on 2nd Reading: _____



10C

American Municipal Services
Corporate Office
3724 Old Denton Road
Carrollton, Texas 75007
Phone: 888-290-5660
Fax: 469.568.1119
www.amsintl.us

COLLECTION AGREEMENT

The City of Fairview, Tennessee hereinafter referred to as "Municipality" desires to utilize the services of American Municipal Services, ("AMS"), to perform collection services for the Municipality, and American Municipal Services desires to undertake such collection services. Accordingly, the parties agree that their relationship be governed by the terms of this Collection Agreement.

The Municipality agrees to periodically refer to AMS citations, fees, fines and/or warrants for collection. No specific number or dollar amount of citations that will be sent to AMS is represented or guaranteed by the Municipality. AMS agrees to use their best efforts to collect those citations sent to AMS by the Municipality. AMS agrees to skip trace those accounts where it is determined a good address is not known, to send each defendant a minimum of four letters, and to contact each defendant by telephone in an effort to have the defendant pay any fine and or court costs due to the Municipality. AMS will limit all telephone calls to between the hours of 8:00 am and 7:00 pm from Monday through Friday, and between the hours of 8:00 am and 2:00 pm on Saturdays. No defendant is to be phoned on Sundays. All contacts between AMS staff and defendants are to be by telephone or by mail. No personal contacts are to ever occur. AMS agrees to honor a defendants request to contact the defendant during specified hours, or at a specified location.

AMS will arrange for all defendants to send their payments directly to AMS. AMS will process and deposit all payments and will, within 15 days from final Municipality confirmation of payments for the previous month's collections, forward to the Municipality a check in the amount equal to all payments received for the previous month minus the AMS collection fee. AMS may accept payment by credit card and charge the defendant the standard AMS fee for that service. AMS will provide the Municipality with reports on payments received, as payments are received on a daily basis and provide a monthly payment report showing all payments for the previous month. In the event a defendant makes a payment directly to the court, whether in person or by mail, on a case AMS is in the process of collecting, the Municipality will notify AMS of such payment and the collection fee is due from said payment.

AMS is authorized to arrange payment schedules with defendants and to authorize partial payments provided the entire amount to be paid by the defendant equals the total of the fine, costs and collection fees established by the Municipality. AMS agrees that they will first request payment in full from each defendant, and only when it appears a defendant is unable to make the full payment will AMS negotiate a payment plan. When a payment plan is established, AMS agrees to provide each defendant with a schedule of their payments, payment coupons and envelopes addressed to AMS. AMS agrees to monitor each payment plan, and to telephone and write each defendant who fails to comply with the plan.

All expenses in the collection process including labor, postage, telephone, skip tracing, etc. shall be paid for by AMS. AMS is an independent contractor, and is not in any way considered an employee, agent, or representative of the Municipality. AMS agrees to constantly monitor its employees to insure all contacts with defendants are done in a polite, courteous, and helpful manner.

Pursuant to Tennessee Code 40-24-105 that allows a Municipality to add up to a Forty Percent (40%) collection fee to the amount a defendant owes a Municipality to cover the costs of utilizing a collection service such as AMS, Municipality will add Thirty Percent (30%) to the amount a defendant owes for each offense as a collection fee. AMS, for its collection services with these accounts, is to be paid the Thirty Percent (30%) that is added to each offense. The Municipality agrees to review with AMS on a weekly basis the amounts paid on those accounts referred to AMS. AMS agrees to invoice within 15 days from final Municipality confirmation of payments for the previous month's collections, said invoices being due and payable within thirty (30) days. AMS will not be paid on an account if the case is dismissed by the court for whatever reason, or the defendant is arrested.

The Municipality may withdraw any citation at any time from AMS, and either party to this Collection Agreement may terminate this Collection Agreement upon thirty (30) days written notice.

Municipality: Fairview, TN

Address: _____

Contact person: _____

Phone: _____ Fax: _____

City of Fairview, Tennessee

Signature: _____ Date: _____

Print Name: _____ Title: _____

American Municipal Services:

By: _____ Date: _____

Gregory L. Pitchford, Chief Financial Officer

INDEMNIFICATION AGREEMENT

WHEREAS, American Municipal Services has agreed to use its best efforts to collect Warrants and Citations for the below named Municipality; and,

WHEREAS, the below named Municipality desires to be released from and indemnified from any and all liability from the actions of American Municipal Services, its employees, staff, officers, and agents in the collection of the Municipality Warrants and Citations; and,

WHEREAS, American Municipal Services, in order to obtain the business of collecting Warrants and Citations of the Municipality, is agreeable to indemnify the Municipality from any such liability;

IN CONSIDERATION THEREOF, American Municipal Services hereby agrees to indemnify, defend and hold harmless the below named Municipality from and against any and all losses, claims, demands, damages, suits or actions resulting from any activity of American Municipal Services, its agents, officers, staff, servants or employees in the handling and/or collecting of the below named Municipality's Warrants, Citations or monies.

Agreed to this the _____ day of _____, 2016.

American Municipal Services:

By: _____

Gregory L. Pitchford, Chief Financial Officer

MUNICIPALITY:

City of Fairview, Tennessee

100

YEARY, HOWELL & ASSOCIATES

Certified Public Accountants

501 East Iris Drive

Nashville, Tennessee 37204

Telephone (615) 385-1008

Fax (615) 385-1208

E-mail yhanash@comcast.net

Hubert E. (Buddy) Yeary

Gregory V. Howell

May 31, 2016

To the Mayor, Board of Commissioners, City of the Fairview, TN
Waverly, Tennessee

We are pleased to confirm our understanding of the services we are to provide the City of Fairview (the City) for the year ended June 30, 2016. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, if any, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the City as of and for the year ended June 30, 2016. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis.
2. GASB required supplementary schedules related to pensions and OPEB, if applicable.

We have also been engaged to report on supplementary information other than RSI that accompanies the City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the

financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole:

1. Combining and Individual Fund Statements and Schedules
2. Schedule of Expenditures of Federal Awards (if applicable)

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that other information:

1. Introductory Section
2. Statistical Section, if applicable
3. Certain Schedules to be marked unaudited

Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States, and will include tests of the accounting records of the City and other procedures we consider necessary to enable us to express such opinions. We will issue a written report upon completion of our audit of the City's financial statements. Our report will be addressed to the Mayor and Board of Commissioners of the City of Fairview, Tennessee. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or may withdraw from this engagement.

We will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by Government Auditing Standards. The report on internal control and on compliance and other matters will include a paragraph that states (1) that the purpose of the report is solely to describe the scope of testing of internal control and compliance, and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control on compliance, and (2) that the report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the entity's internal control and compliance. The paragraph will also state that the report is not suitable for any other purpose. If during our audit we become aware that the City is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in Government Auditing Standards may not satisfy the relevant legal, regulatory, or contractual requirements.

Audit Procedures-General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of abuse is subjective, Government Auditing Standards do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and Government Auditing Standards. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. Our responsibility as auditors is limited to the period covered by our audit and does not extend to later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institution. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures-Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedure. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and,

accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

Audit Procedures-Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Other Services

We will also assist in preparing the financial statements and related notes of the City of Fairview in conformity with U.S. generally accepted accounting principles based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services

are limited to the financial statement services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for establishing and maintaining effective internal controls, including evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; following laws and regulations; and ensuring that management is reliable and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles, for the preparation and fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles, and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period

presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants and for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts or grant agreements, or abuse that we report.

You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any of the supplementary information that includes our report thereon OR make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements and related notes and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, Mr. Tom Daughtery, City Finance Director, which we believe has suitable skill, knowledge, and experience to evaluate the adequacy and results of those services and accept responsibility for them.

Engagement Administration, Fees, and Other

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing. We will provide copies of our reports to the City however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Yearly Howell & Associates and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the Tennessee State Comptroller or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Yearly, Howell & Associates personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the Tennessee State Comptroller.

If we are aware that a federal awarding agency or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit in June 2016 and to issue our reports no later than December 31, 2016. Hubert E. Yearly is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

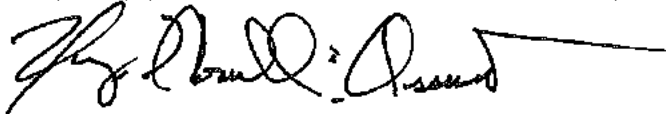
Our fee for these services is set forth in the State Contract to Audit. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 45 days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will

City of Fairview
Engagement Letter
June 8, 2016

be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to the City and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,



Yeary Howell & Associates

RESPONSE:

This letter correctly sets forth the understanding of City of Fairview.

Title: City Finance Director

Date _____

Title: Mayor

Date _____

**CONTRACT TO AUDIT ACCOUNTS
OF
City of Fairview**

FROM July 01, 2015 TO June 30, 2016

This agreement made this 2nd day of June 2016, by and between Yearly, Howell and Associates, 501 East Iris Drive, Nashville, TN 37204, hereinafter referred to as the "auditor" and City of Fairview, of PO Box 69, Fairview, TN 37062, hereinafter referred to as the "organization", as follows:

1. In accordance with the requirements of the laws and/or regulations of the State of Tennessee, the auditor shall perform a financial and compliance audit of the organization for the period beginning July 01, 2015, and ending June 30, 2016 with the exceptions listed below:

2. The auditor shall conduct the audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and requirements prescribed by the Comptroller of the Treasury, State of Tennessee, as detailed in the *Audit Manual*. Additional information and procedures necessary to comply with requirements of governments other than the State of Tennessee are permissible provided they do not conflict with or undermine the requirements previously referenced. If applicable, the audit is to be conducted in accordance with the provisions of the Single Audit Act and U.S. Office of Management and Budget (OMB) *Circular A-133* for fiscal years ending prior to December 25, 2015 and the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* for fiscal years ending December 25, 2015 or later. The audit is also to be conducted in accordance with any other applicable federal management circulars. It is agreed that this audit will conform to standards, procedures, and reporting requirements established by the Comptroller of the Treasury. It is further agreed that any deviation from these standards and procedures will be approved in writing by the Comptroller of the Treasury prior to the execution of the contract. The interpretation of this contract shall be governed by the above-mentioned publications and the laws of the State of Tennessee.

3. The auditor shall, as part of the written audit report, submit to the organization's management and those charged with governance:

- a) a report containing an expression of an unqualified or modified opinion on the financial statements, as prescribed by the *Audit Manual*. This report shall state the audit was performed in accordance with *Government Auditing Standards*, except when a disclaimer of opinion is issued. If the organization is a component unit or fund of another entity, it is agreed that: (a) the financial statements may be included in the financial statements of the other entity; (b) the principal auditor for the other entity may rely upon the contracted auditor's report; and (c) any additional information required by the principal auditor of the other entity will be provided in a timely manner.
- b) a report on the internal control and on compliance with applicable laws and regulations and other matters. This report shall be issued regardless of whether the organization received any federal funding. Audit reports of entities which are subject to the provisions of the Single Audit Act and OMB *Circular A-133* or the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* shall include the additional report required by that guidance. The reports will set forth findings, recommendations for improvement, concurrence or nonconcurrence of appropriate officials with the audit findings, comments on corrective action taken or planned, and comments on the disposition of prior year findings.

4. If a management letter or any other reports or correspondence relating to other matters involving internal controls or noncompliance are issued in connection with this audit, a copy shall be filed with the Comptroller of the Treasury by the auditor. Such management letters, reports, or correspondence shall be consistent with the findings published in the audit report (i.e., they shall disclose no reportable matters or significant deficiencies not also disclosed in the findings found in the published audit report).

5. The auditor shall file one (1) electronic copy of said report with the Comptroller of the Treasury, State of Tennessee. The auditor shall furnish amount needed of printed copies and/or an electronic copy of the report to the organization's management and those charged with governance. It is anticipated that the auditor's report shall be filed prior to December 31, 2016, but in no case, shall be filed later than six (6) months following the period to be audited, without explanation to the Comptroller of the Treasury, State of Tennessee and the organization. Requirements for additional copies, including those to be filed with the appropriate officials of granting agencies, are listed below:

contact auditor's office

6. The auditor agrees to retain working papers for no less than five (5) years from the date the report is received by the Comptroller of the Treasury, State of Tennessee. In addition, the auditor agrees that all audit working papers shall, upon request, be made available in the manner requested by the Comptroller for review by the Comptroller of the Treasury or the Comptroller's representatives, agents, and legal counsel, while the audit is in progress and/or subsequent to the completion of the report. Furthermore, at the Comptroller's discretion, it is agreed that the working papers will be reviewed at the office of the auditor, the entity, or the Comptroller and that copies of the working papers can be made by the Comptroller's representatives or may be requested to be made by the firm and may be retained by the Comptroller's representatives.

7. Any reasonable suspicion of fraud, (regardless of materiality) or other unlawful acts including, but not limited to, theft, forgery, credit/debit card fraud, or any other act of unlawful taking, waste, or abuse of, or official misconduct, as defined in *Tennessee Code Annotated*, § 39-16-402, involving public money, property, or services shall, upon discovery, be promptly reported in writing by the auditor to the Comptroller of the Treasury, State of Tennessee, who shall under all circumstances have the authority, at the discretion of the Comptroller, to directly investigate such matters. Notwithstanding anything herein to the contrary, the Comptroller of the Treasury, State of Tennessee, acknowledges that the auditor's responsibility hereunder is to design its audit to obtain reasonable, but not absolute, assurance of detecting fraud that would have a material effect on the financial statements, as well as other illegal acts or violations of provisions of contracts or grant agreements having a direct and material effect on financial statement amounts. If the circumstances disclosed by the audit call for a more detailed investigation by the auditor than necessary under ordinary circumstances, the auditor shall inform the organization's management and those in charge of governance in writing of the need for such additional investigation and the additional compensation required therefor. Upon approval by the Comptroller of the Treasury, an amendment to this contract may be made by the organization's management and those charged with governance and the auditor for such additional investigation.

8. **Group Audits.** The provisions of Section 8, relate exclusively to contracts to audit components of a group under SAS 122, Section AU-C 600. (See definitions in AU-C 600, Paragraph 11.) Section 8 is only applicable to an auditor that audits a component (e.g. a fund, component unit, or other component) of a county government that is audited by the Division of Local Government Audit (LGA). Section 8 is intended to satisfy the communication requirements for the group auditor (LGA) to the component auditor under AU-C 600.

- a) The Division of Local Government Audit (LGA) shall be considered the "group auditor" for any contract to audit a component of an applicable county government. LGA shall present the county's financial statements in compliance with U.S. Generally Accepted Accounting Principles (GAAP) as promulgated by the Governmental Accounting Standards Board (GASB). LGA shall conduct the audit in accordance with auditing standards generally accepted in the United States of America and the auditing standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States.
- b) The contracting auditor shall be considered the "component auditor" for purposes of this section.
- c) The financial statements audited by the component auditor should be presented in accordance with GAAP as promulgated by GASB. If the financial reporting framework for any component does not conform to this basis, the financial reporting framework should be disclosed in Section 9 (Special Provisions). (Component financial statements that are not presented using the same financial reporting framework as the county's financial statements may cause this contract to be rejected.)
- d) The component auditor shall conduct the component audit in accordance with auditing standards generally accepted in the United States of America and the auditing standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States.
- e) The component auditor shall cooperate with LGA to accomplish the group audit. It is anticipated that LGA will make reference to the component auditor's report in the group audit report. Should LGA find it necessary to assume responsibility for the component auditor's work, the terms, if any, shall be negotiated under a separate addendum to this contract.
- f) The component auditor shall follow the ethical requirements of *Government Auditing Standards* and affirms that the component auditor is independent to perform the audit and will remain independent throughout the course of the component audit engagement.
- g) The component auditor affirms that the component auditor is professionally competent to perform the audit. LGA may confirm certain aspects of the component auditor's competence through the Tennessee State Board of Accountancy.
- h) The component auditor will be contacted via email by the LGA's Audit Review Manager with the estimated date of the conclusion of LGA's audit of the county government. The component auditor agrees to update subsequent events between the date of the component auditor's report and the date of the conclusion of LGA's audit of the county government. Additional subsequent events should be communicated via email to LGA's Audit Review Manager.
- i) The component auditor shall read LGA's audited financial statements for the county government for the previous fiscal year noting in particular related parties in the notes to the financial statements, and material misstatement findings in the Findings and Questioned Costs Section. The previous year audited financial statements can be obtained from the Comptroller's website at www.comptroller.tn.gov <<http://www.comptroller.tn.gov>>. As required by generally accepted auditing standards, we have identified Management Override of Controls and Improper Revenue Recognition as presumptive fraud risks. The component auditor shall communicate to LGA (i.e. group management) on a timely basis related parties not previously identified by the group management in LGA's prior year audited financial statements. Related parties should be communicated via email to LGA's Audit Review Manager.
- j) The component auditor's report should not be restricted as to use in accordance with AU-C, 25 (b) and AU-C, 905.
- k) Sections 1-7 and Sections 9-13 of this contract are also applicable to the component auditor during the performance of the component audit.

9. (Special Provisions) The fixed auditor fee does not include costs relative to single audit, new construction costs, grants or bond projects.

10. In consideration of the satisfactory performance of the provisions of this contract, the organization shall pay to the auditor a fee of (Fees may be fixed amounts or estimated.) (Fixed Amount: 11,900-12,900) or (Estimated gross fee:)

(If not fixed amount, an estimated gross fee should be furnished to the governing unit for budgetary purposes. A schedule of fees and/or rates should be set forth below. Interim billings may be arranged with consent of both parties to this contract.) Provision for the payment of

fees under this agreement has been or will be made by appropriation of management and those charged with governance.

SCHEDULE OF FEES AND/OR RATES:

11. As the authorized representative of the firm, I do hereby affirm that:
- our firm and all individuals participating in the audit are in compliance with all requirements of the Tennessee State Board of Accountancy and;
 - our firm has participated in an external quality control review at least once every three (3) years, conducted by an organization not affiliated with our firm, and that a copy of our most recent external quality control review report has been provided to the organization and the office of the Tennessee Comptroller of the Treasury approving this contract;
 - all members of the staff assigned to this audit have obtained the necessary hours of continuing professional education required by *Government Auditing Standards*;
 - all auditors participating in the engagement are independent under the requirements of the American Institute of Certified Public Accountants and *Government Auditing Standards*.

12. This writing, including any amendments or special provisions, contains all terms of this contract. There are no other agreements between the parties hereto and no other agreements relative hereto shall be enforceable, unless entered into in accordance with the procedures set out herein and approved by the Comptroller of the Treasury, State of Tennessee. In the event of a conflict or inconsistency between this contract and the special provisions contained in paragraph 9 of this contract, the special provision(s) are deemed to be void. Any changes to this contract must be agreed to in writing by the parties hereto and must be approved by the Comptroller of the Treasury, State of Tennessee. All parties agree that the digital signatures, that is, the electronic signatures applied by submitting the contract, are acceptable as provided for in the Uniform Electronic Transaction Act. Any paper documents submitted related to this contract will be converted to an electronic format and such electronic document(s) will be treated as the official document(s).

13. If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

Yeary, Howell and Associates

City of Fairview

Audit Firm

Governmental Unit or Organization

 **Hubert E. Yeary**

 **Thomas Daugherty**

By _____

By _____

Signature

Signature

Title/Position: **Partner**

Title/Position: **Finance Director**

E-mail address: **lgoodwin@yearyhowell.com**

E-mail address: **cityhall@fairview-tn.org**

Date: **June 02, 2016**

Date: **June 07, 2016**

Approved by the Comptroller of the Treasury, State of Tennessee

For the Comptroller:

 **Jean Suh**

Date: **June 09, 2016**

Bill # 2016-18ORDINANCE NO. 932

AN ORDINANCE TO ESTABLISH AN UPDATED OCCUPATIONAL SAFETY AND HEALTH PROGRAM PLAN, DEVISE RULES AND REGULATIONS, AND TO PROVIDE FOR A SAFETY DIRECTOR AND THE IMPLEMENTATION OF SUCH PROGRAM PLAN. AN ORDINANCE TO AMEND BILL #2013-09, ORDINANCE NO. 804.

Be it Ordained by the City of Fairview, Tennessee as follows:

WHEREAS, in compliance with Public Chapter 561 of the General Assembly of the State of Tennessee for the year 1972, the City of Fairview hereby updates the Occupational Safety and Health Program Plan for our employees.

WHEREAS, due to various changes in subsequent years, it has become necessary to amend the program plan to comply with more recent state requirements.

Therefore, Be it Ordained by the Board of Commissioners of the City of Fairview, Tennessee that there be and is hereby amended as follows:

Chapter 4, Section 4-301. Title. Is hereby repealed in its entirety and the following substituted there for.

Chapter 4, Section 4-301. Title. This section shall be known as "The Occupational Safety and Health Program Plan" for the employees of the City of Fairview.

Chapter 4, Section 4-302. Purpose. Is hereby repealed in its entirety and the following substituted there for.

Chapter 4, Section 4-302. Purpose. The City of Fairview, Tennessee, in electing to update the established program plan will maintain an effective and comprehensive Occupational Safety and Health Program Plan for its employees and shall;

- (1) Provide a safe and healthful place and condition of employment that includes:
 - a. Top Management Commitment and Employee Involvement;
 - b. Continually analyze the worksite to identify all hazards and potential hazards;
 - c. Develop and maintain methods for preventing or controlling existing or potential hazards; and

- d. Train managers, supervisors, and employees to understand and deal with worksite hazards.
- (2) Acquire, maintain and require the use of safety equipment, personal protective equipment and devices reasonably necessary to protect employees.
- (3) Make, keep, preserve, and make available to the Commissioner of Labor and Workforce Development, or persons within the Department of Labor and Workforce Development, to whom such responsibilities have been delegated, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.
- (4) Consult with the Commissioner of Labor and Workforce Development with regard to the adequacy of the form and content of records.
- (5) Consult with the State Commissioner of Labor and Workforce Development, as appropriate, regarding safety and health problems which are considered to be unusual or peculiar and are such that they cannot be achieved under a standard promulgated by the State.
- (6) Provide reasonable opportunity for the participation of employees in the effectuation of the objectives of this Program Plan, including the opportunity to make anonymous complaints concerning conditions or practices injurious to employee safety and health.
- (7) Provide for education and training of personnel for the fair and efficient administration of occupational safety and health standards, and provide for education and notification of all employees of the existence of this Program Plan.

Chapter 4, Section 4-303. Coverage. Is hereby repealed in its entirety and the following substituted there for.

Chapter 4, Section 4-303. Coverage. The provisions of the Occupational Safety and Health Program Plan for the employees of the City of Fairview, Tennessee shall apply to all employees of each administrative department, commission, board, division, or other agency of the City of Fairview, Tennessee whether part-time, or full-time, seasonal or permanent.

Chapter 4, Section 4-304. Standards Authorized. Is hereby repealed in its entirety and the following substituted there for.

Chapter 4, Section 4-304. Standards Authorized. The Occupational Safety and Health Standards adopted by the City of Fairview, Tennessee are the same as, but not limited to, the State of Tennessee Occupational Safety and Health Standards promulgated, or which may be promulgated, in accordance with Section 6 of the Tennessee Occupational Safety and Health Act of 1972 (T.C.A. Title 50, Chapter 3).

Chapter 4, Section 4-305. Variances From Standards Authorized. Is hereby repealed in its entirety and the following substituted there for.

Chapter 4, Section 4-305. Variances From Standards Authorized. Upon written application to the Commissioner of Labor and Workforce Development of the State of Tennessee, we may request an order granting a temporary variance from any approved standards. Applications for variances shall be in accordance with Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, VARIANCES FROM OCCUPATIONAL SAFETY AND HEALTH STANDARDS, CHAPTER 0800-01-02, as authorized by T.C.A. Title 50. Prior to requesting such temporary variance, the City of Fairview, Tennessee, shall notify or serve notice to employees, their designated representatives, or interested parties and present them with an opportunity for hearing. The posting of notice on the main bulletin board shall be deemed sufficient notice to employees.

Chapter 4, Section 4-306. Administration. Is hereby repealed in its entirety and the following substituted there for.

Chapter 4, Section 4-306. Administration. For the purposes of this Ordinance, Roy Russell is designated as the Safety Director of Occupational Safety and Health to perform duties and to exercise powers assigned to plan, develop, and administer the Program Plan. The Safety Director shall develop a plan of operation for the Program Plan in accordance with Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, SAFETY AND HEALTH PROVISIONS FOR THE PUBLIC SECTOR, CHAPTER 0800-01-05, as authorized by T.C.A., Title 50.

Chapter 4, Section 4-307. Funding. Is hereby repealed in its entirety and the following substituted there for.

Chapter 4, Section 4-307. Funding. Sufficient funds for administering and staffing the Program Plan pursuant to this Ordinance shall be made available as authorized by the City of Fairview, Tennessee, Board of Commissioners.

BE IT FURTHER ORDAINED, If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

BE IT FINALLY ORDAINED, that this Ordinance shall take effect having been passed, properly signed, certified, and has met all other legal requirements, and as otherwise provided by law, fifteen days (15) days after its first passage or upon second reading, whichever is later, the general welfare of the City of Fairview requiring it.

MAYOR

CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

Passed First Reading

Passed Second Reading
