

SENATE BILL 2109

By Stewart

AN ACT to repeal Chapter 13 of the Acts of 1907; and all other acts amendatory thereto, the same being the charter of the City of Winchester, and to provide a new Charter for such corporation.

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

SECTION 1. Chapter 13 of the Acts of 1907; and all other acts amendatory thereto which contained the charter of the City of Winchester are repealed and a new charter is enacted for the city to read as follows:

**ARTICLE I. CHARTER DEFINITIONS, CITY LIMITS, AND CORPORATE POWERS**

**Section 1.01. Act constitutes city charter.** The City of Winchester, Tennessee, shall continue as a body politic and corporate by the name and style of City of Winchester, Tennessee, and this act shall constitute its complete charter. The City of Winchester shall have perpetual succession, may sue and be sued, plead and be impleaded, in all the courts of law and equity, and in all actions whatsoever, and may have and use a common seal and change it at pleasure.

**Section 1.02. Definitions.** As used in this Charter the following words and terms shall have the following meanings:

- (a) "At large" means the entire city, as distinguished from representation by wards or other districts;
- (b) "City" means the City of Winchester, Tennessee;
- (c) "City administrator" means the chief administrative officer of the city appointed by the city council;
- (d) "Code" means any publication or compilation of rules, regulations, specifications, standards, limitations, or requirements relating to any aspect of

municipal affairs, prepared or recommended by an agency of the federal or state government, or by a trade association or other organization generally recognized as an authority in its field of activity;

(e) "Council" and "city council" means the legislative body of the City, which shall be composed of the mayor and five (5) councilmen elected as provided in this Charter and any incumbent councilman until the expiration of their current terms of office. Council shall include councilman or council member;

(f) "Councilman" and "member of council" means a person elected to the office of councilman as provided in this Charter, and shall include the mayor. "Nonpartisan" means without any designation of candidates as members or candidates of any state or national political party or organization;

(g) "Department" means a principal administrative division of local government such as a finance department, police department, fire department, public works department, or recreation department;

(h) "Division" means a section or division within a department such as the traffic control division, or investigative division of the police department. A division shall also mean a section or division of the city administrator's office such as the division of purchasing, personnel, or building codes if it is not placed under another department; and

(i) "Elector" means a qualified voter living within the city, or a qualified voter who does not live within the City of Winchester, but owns real property within the city that meets the non-resident property owner requirements of this charter.

The masculine shall include the feminine, and the singular shall include the plural and vice versa, except when the contrary intention is manifest.

**Section 1.03. City limits.** The boundaries of the city are those outlined in the Private Acts of Tennessee, on record in the register of deeds office, and the ordinances of the city available in the office of the city recorder.

**Section 1.04. Corporate powers.** The City shall have power to:

(1) Assess property for taxation, and to levy and provide for the collection of taxes on all property subject to taxation in accordance with the Constitution of Tennessee and general law;

(2) Levy and collect privilege taxes on businesses, privileges, occupations, trades, and professions, and to levy and collect any other kind of tax not prohibited to cities by the constitution or general law;

(3) Appropriate and borrow money as authorized in this charter and by state law, and to authorize the expenditure of money for legitimate municipal purposes;

(4) Acquire land, including improvements thereon, easements, or limited property rights thereto, by purchase, gift, or condemnation, for public use, for present or future use by the city, to reserve industrial sites, to provide open spaces, to encourage proper development of the community, or for the general welfare of the community. Such acquisitions may be within or outside the city;

(5) Grant to any person, firm, association, or corporation franchises for public utilities and public services to be furnished the city and those therein. The power to grant franchises shall embrace the power hereby expressly conferred, to grant exclusive franchises to the extent authorized by state or federal law, and whenever an exclusive franchise is granted, it shall be exclusive not only as against any other person, firm, association, or corporation, but also as against the city itself. Franchises may be granted for the period of twenty-five (25) years or less, but not longer. The council may prescribe in each grant of a franchise, the rate, fares, charges, and regulations that may be made by the grantee of the franchise. Franchises may by their terms apply to the territory within the corporate limits of the city at the date of the franchises, and as the corporate limits thereafter may be enlarged; and to the then existing streets, alleys, and other thoroughfares that thereafter may be opened;

(6) Provide for the acquisition, construction, building, operation, and maintenance of: public ways, parks, public grounds, cemeteries, markets and

market houses, public buildings, libraries, sewers, drains, sewage treatment plants, airports, hospitals, water works, docks, gas works, marinas, city forests, tree and shrub nurseries, heliports, terminals, parking garages and lots, industrial sites and buildings; charitable, educational, recreational, sporting, cultural, curative, corrective, detention, penal, and medical institutions, agencies, and facilities; and any other public improvements; inside or outside the city; and to regulate the use thereof; and for such purposes property may be either acquired or taken as authorized by applicable law;

(7) Require property owners to repair and maintain in a safe condition the sidewalks adjoining their lots or lands, including removal of snow, debris or other materials;

(8) Make regulations to secure the general health of the inhabitants and to prevent, abate, and remove nuisances, including, but not limited to, old or dilapidated buildings which are so out of repair as to be unsafe, unsanitary or unsightly;

(9) Abate and remove nuisances at the expense of the owner or owners, and the expense, including fines, penalties, and interest, shall be secured by lien upon the property for which the expenditure is made;

(10) Prescribe standards of health and sanitation and to provide for the enforcement of such standards;

(11) Provide for the collection and disposal of garbage, rubbish and refuse. Charges may be imposed to cover the costs of such service which, if unpaid, shall be collectible in the same manner as taxes or other debts. City council by ordinance may prescribe penalties and interest for delinquency;

(12) Define, regulate, and prohibit any act, practice, conduct, or use of property, that would be detrimental, or likely to be detrimental, to the health, morals, safety, security, peace, or general welfare of inhabitants of the city;

(13) Establish minimum standards for and to regulate building construction and repair, electrical wiring and equipment, gas installations and

equipment, fixed mechanical equipment, plumbing, and housing, for the health, sanitation, cleanliness, safety and comfort of the inhabitants of the city, and to provide for the enforcement of such standards;

(14) Regulate, license and prohibit the keeping or running at large of animals and fowls, and to provide for the impoundment of same in violation of any ordinance or lawful order, and to provide for their disposition by sale, gift, or humane killing when not redeemed as provided by ordinance or general law;

(15) Regulate and license vehicles operated for hire in the city, to limit the number of such vehicles, to license the operator thereof, to require public liability insurance on such vehicles, and to regulate and rent parking spaces in public ways for the use of such vehicles;

(16) Provide that the violation of any ordinance, rule, regulation, or order shall be punishable by fine not to exceed the amount established by general law, penalty or forfeiture;

(17) Plan for the orderly development of the community, including economic, physical, educational and cultural aspects, and to institute programs to effectuate the plans;

(18) Exercise and have all other powers, functions, rights, privileges, and immunities granted by general law or necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, morals, and general welfare of the city and its inhabitants, and all implied powers necessary to carry into execution all powers granted in this charter as fully and completely as if such powers were fully enumerated herein. No enumeration of particular powers in this charter shall be held to be exclusive of others nor restrictive of general words and phrases granting powers, but shall be held to be in addition to such powers unless expressly prohibited to cities by the constitution or general laws of the state;

(19) The enumeration of particular powers in this charter is not exclusive of others, nor restrictive of general words or phrases granting powers, nor shall a

grant or failure to grant power in this chapter impair a power granted in any other part of this charter and whether powers, objects, or purposes are expressed, conjunctively or disjunctively, they shall be construed so as to permit the city to exercise freely any one (1) or more such powers as to any one (1) or more such objects for any one (1) or more such purposes; and

(20) The council shall have the power by ordinance to direct the calling by the county election commission of municipal elections, including all elections respecting bond issues.

## **ARTICLE II. CITY COUNCIL**

**2.01. Number and terms of councilmen.** The mayor and five (5) council members elected under this charter, and the incumbent council members until the expiration of their current terms of office, shall compose the city council, in which is vested all corporate, legislative and other powers of the city, except as otherwise provided in this charter.

**2.02. Date of elections.** Biennial elections shall be held on the first Thursday of August in odd numbered years to elect alternately three (3) and two (2) council members for four-year terms. The mayor shall be elected for a four-year term.

**2.03. Persons eligible as mayor and councilman.** A qualified voter of the City who has been a resident of the city for at least twelve (12) months shall be eligible for elections to the office of council member or mayor. Non- resident property owners eligible to vote in city elections may not serve as a council member or mayor.

**2.04. Disqualification from office.** No person shall become commissioner who has been convicted of malfeasance in office, bribery, or other corrupt practice, or crime, or of violating any of the provisions of Tennessee Code Annotated, Section 6-20-108 in reference to elections. Any council member so convicted shall forfeit such council member's office.

**2.05. Qualifications of voters.**

(a) In any election of mayor and council under this charter, registered voters of the city may vote.

(b) All persons residing outside the city limits, owning taxable real property within the corporation for a period of six (6) consecutive months next preceding the date of said election, and being otherwise qualified, shall also be entitled to vote at said election.

(c) No more than any two (2) owners of such property may vote and the parcel or tract shall be at least seven thousand five hundred square feet (7,500 sq. ft.) or having an appraised value for real property tax purposes of at least five thousand dollars (\$5,000).

**2.06. Declaration of results.** The county election commission shall determine and declare the results of the election. The requisite number of candidates receiving the highest number of votes shall be declared elected. No informality shall invalidate such an election; provided, that it is conducted fairly and in substantial conformity with the requirements of this charter and the general election laws of the state.

**2.07. Reserved.**

**2.08. Beginning terms of office.** The terms of office of the mayor and councilmen shall begin at 12:01 P.M. on the first day of September next following the election, and they shall serve until their successors have been elected and qualified.

**2.09. Vacancies.**

(a) A vacancy shall exist if the mayor or a councilman resigns, dies, moves his residence from the city, is convicted of malfeasance or misfeasance in office, a felony, a violation of this charter or election laws of the state, or a crime involving moral turpitude, fails to attend any meetings of the council for a period of ninety (90) days with no extenuating circumstances, or has been continuously disabled for a period of six (6) months so as to prevent him from discharging the duties of his office. The council shall by resolution declare a vacancy to exist for any of these reasons, and such finding shall be final.

(b) Any vacancy in the board shall be filled by appointment by the remaining members thereof, for that period of the unexpired term, which occurs prior to a regular city election at which time the remainder of the term shall be

filled by the election; provided, however, that no member shall be appointed under this section at any time when the board already has one (1) member so appointed, but in case of any additional vacancy the board shall forthwith, by ordinance or resolution call upon the county election commission to call a special election for the purpose of filling such additional vacancy. At no time shall there be more than two (2) members of council appointed to fill vacancies. If a vacancy occurs more than six (6) months prior to a regular election and while two (2) appointed members are on the council, a special election shall be held by the county commissioners of elections on the eighth Thursday following occurrence of the vacancy, at which election a councilman shall be elected to serve the unexpired term of the vacant office. The provisions in this article for regular elections shall govern special elections.

### **ARTICLE III. MAYOR AND COUNCIL**

**3.01. Election of mayor.** The mayor shall be elected for a four-year term of office.

**3.02. Absence or disability of mayor.** Appointment of vice-mayor. The council, at the first regular meeting after the newly elected councilmen have taken office following each biennial election, shall elect from its membership a vice-mayor for a term of two (2) years.

**3.03. Duties of the vice-mayor.** The vice-mayor shall perform the duties of the mayor during his absence or inability to act, and shall fill out any unexpired term in the office of mayor, in which case a councilman shall be selected by majority vote of the council to serve the unexpired term as vice-mayor. The vice-mayor shall have the option of serving out the term of the mayor or retaining his council seat.

**3.04. Compensation of mayor and council.** The city council is authorized to set the salary of the mayor and of members of the council by ordinance. The salary of the mayor and of members of the council may not be altered prior to the end of the term for which such person was elected.

**3.05. Legislative powers of council.**



Conflict of interest.

(a) The legislative and all other powers except as otherwise provided by this charter are delegated to and vested in the city council. The council 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, and do all things necessary within or without the city or state to protect the rights of the city.

(b)

(1) Any member of the city council may vote on matters in which he has a conflict of interest if the member informs the governing body immediately prior to the vote as follows: "Because I am a council member of the City of Winchester, I have, or may 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 the council has a conflict of interest in a matter to be voted upon by the council, he may abstain for cause by announcing such to the presiding officer. Any member of the council, 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 council of such conflict as provided in subdivision (b)(1) shall be void if challenged in a timely manner. As used in this subdivision, "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the council.

**3.06. Exercise of council's powers.** The council shall act in all matters as a body, and no member shall seek individually to influence the official acts of the mayor or

any other officer or employee of the city, or to direct or request the appointment of any person to, or his removal from, any office or position of employment, or to interfere in any way with the performance of duties by the mayor or any other officer or employee. The council shall deal with the various agencies, officers and employees of the city, except councils or commissioners authorized by this charter, solely through the city administrator and shall not give orders to any subordinates of the city administrator, either publicly or privately. Nothing herein contained shall prevent the council from conducting such inquiries into operation of the city government and the conduct of the city's affairs as it may deem necessary. The office of any council member violating any provision of this section or the general law of the state shall immediately become vacant upon his conviction in a court of competent jurisdiction.

**3.07. Regular meetings.** The council shall meet regularly at least once every month at the times and places prescribed by ordinance.

**3.08. Special meetings.**

(a) Special meetings. Whenever, in the opinion of the mayor or city administrator, or of any two (2) council members, the welfare of the city demands it, the mayor or the recorder shall call special meetings of the council upon at least twelve (12) hours written notice to each council member, the city administrator, recorder, and city attorney, served personally or left at his usual place of residence, and upon adequate public notice being given the citizens of the city. Each call for a special meeting shall set forth the character of the business to be discussed at the meeting and no other business shall be considered at such meeting.

(b) Informal meetings of the council may be held for the purpose of fact finding and conducting investigations; provided, that the meetings shall not be in violation of the open meetings law codified at Tennessee Code Annotated, Title 8, Chapter 44; however, there shall be no official action taken by the council in the meetings.

**3.09. Mayor presiding.** The mayor shall preside at meetings of the council, and shall have a tie breaking vote on all matters but no veto power. He shall be recognized as the ceremonial head of the city. He shall be the officer to accept process against the city, and shall perform other duties imposed by this charter and by ordinances not inconsistent with this charter.

**3.10. Quorum.** Three (3) voting members of the council shall constitute a quorum.

**3.11. Procedural powers and duties of the council.** The council may by ordinance adopt rules and bylaws to govern the conduct of its business, including procedures and penalties for compelling the attendance of absent members. The council may subpoena and examine witnesses and order the production of books and papers.

**3.12. Council session's public.** The council shall exercise its powers only in public meetings.

**3.13. Designation of official newspaper.** The council by resolution shall designate a newspaper of general circulation in the city as the official city newspaper for publication of official notices of the city.

**3.14. Powers and duties of the mayor.**

The Mayor:

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

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

(3) Shall make appointments to councils and agencies as provided by general law, the charter and shall report such appointments to the council at its next regular meeting;

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

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

(6) May countersign checks and drafts drawn upon the treasury by the treasurer and shall sign all contracts, ordinances and resolutions, except purchase orders, to which the municipality is a party;

(7) Shall perform such other duties as may be designated or required by ordinance or state law; and

(8) May conduct inquiries and investigations into the affairs of the city and shall have such other powers and duties as may be provided by ordinance not inconsistent with this charter.

**3.15. Style of ordinances.** Ordinances and resolutions shall be in written form before being introduced, and a copy shall be furnished to each member of the council in advance of the meeting at which introduced. The enacting clause of ordinances shall be, "Be it ordained by the Council of the City of Winchester, Tennessee:"

**3.16. Ordinance procedure.**

(a) No action of the council shall be valid or binding unless approved by the affirmative vote of at least three (3) members of the council.

(b) Any ordinance which repeals or amends existing ordinances shall set forth at length the sections or subsections repealed or amended.

(c) Every ordinance, except an emergency ordinance, shall be approved on three (3) considerations not less than one (1) week apart between the first and second consideration.

(d) Ordinances shall become effective on the date provided in the ordinance.

(e) Only the caption of every ordinance shall be read prior to its consideration for approval. The council may request that the entire ordinance be read at the time it is being considered.

(f) Copies of such ordinances shall be available during regular business hours at the office of the city recorder and during sessions in which the ordinance has its second consideration.

(g) An emergency ordinance shall require only one (1) vote and is effective upon the day of its passage; provided, it shall contain the statement that an emergency exists and shall specify with distinctness the facts and reasons constituting the emergency.

(h) The majority vote of all members of the board present shall be required to pass an emergency ordinance.

(i) No ordinance making a grant, renewal, or extension of a franchise or other special privilege, or regulating the rate to be charged for its service by any public utility shall ever be passed as an emergency ordinance.

(j) No ordinance shall be amended except by a new ordinance.

(k) The council shall have the general and continuing ordinances of the city assembled into an official code of the city, a copy of which shall be kept currently up to date by the city recorder and shall be available to the public.

(l) After adoption of the official code all ordinances shall be adopted as additions to, deletions from, or amendments to the code.

(m) Standard codes may be adopted by ordinances which contain only references to titles, dates, issuing organizations, and changes to the standard codes as the council may deem desirable. Procedures prescribed by general law shall be followed when adopting standard codes.

(n) Copies of the official code and any standard codes so adopted by reference shall be available to the public at prices fixed by the council.

(o) The original copies of ordinances, resolutions, contracts, and other documents shall be filed and preserved by the city recorder.

**3.17. Voting by the council.** The ayes and nays shall be recorded in the minutes for all ordinance considerations. Resolutions and actions of the council may be

approved by majority vote of the council using rules adopted by the council, unless otherwise required by state regulations.

**3.18. Recording of ordinances.** Every ordinance shall be immediately taken charge of by the recorder and numbered, copied in an ordinance book, filed and preserved by the recorder in his office. The original copies of ordinances, resolutions, contracts, and other documents shall be filed and preserved by the city recorder.

**3.19. Removal of officers.**

(a) The mayor or any council member may be removed from office by the council for crime or misdemeanor in office, for grave misconduct showing unfitness for public duty, or for permanent disability, by a majority vote of the other members of the council voting for the removal.

(b) The proceedings for such removal shall be predicated upon specific charges in writing, which, with a notice stating the time and place of the hearing, shall be served on the accused or published at least three (3) times on three (3) successive days in a local newspaper circulating in the city.

(c) The hearing shall be public and the accused shall have the right to appear and defend in person or by counsel and have process of the council to compel the attendance of witnesses in the accused's behalf. The vote shall be determined by yeas and nays, and the names of the members voting for or against such removal shall be entered in the journal.

(d) Immediately upon the vote for removal, the term of the accused shall expire and the accused's official status, power and authority shall cease without further action.

(e) Anyone removed under this section shall have the right of appeal to a court of competent jurisdiction.

(f) Any person convicted of malfeasance or misfeasance in office, a felony, or a crime involving moral turpitude shall be prohibited from holding office or employment with the city for a period of ten (10) years thereafter.

(g) The remaining councilmen shall appoint a qualified person to fill a vacancy in the office of councilman for the remainder of the unexpired term.

(h) If the vacancy is not so filled within thirty (30) days, the mayor shall appoint a qualified person to fill the vacancy.

#### **ARTICLE IV. ORGANIZATION AND ADMINISTRATION**

**4.01. General.** The city government shall be organized into departments of finance, police, fire, and public works, unless otherwise provided by ordinance. The council shall determine by ordinance the functions and duties of all departments and offices. The council by ordinance may establish, abolish, merge, or consolidate offices, positions of employment, departments, and agencies of the city, may provide that the same person shall fill any number of offices and positions of employment, and may transfer or change the functions and duties of offices, positions of employment, departments, and agencies of the city, subject to the following limitations:

(a) The number of members and authority of the council, as provided in this charter, shall not be changed; and

(b) All officers and employees of the city, except as otherwise specifically provided in this charter, shall be appointed and removed by and shall be under the direction and supervision of the city administrator, but all department heads shall be approved by the council before employment.

**4.02. Administration.** The council shall appoint a city administrator who shall be under the control and direction of the council. The city administrator shall be the chief administrative officer of the city reporting and responsible to the council. In the absence of a city administrator, the council shall appoint an interim city administrator.

**4.03. Duties of the city administrator.** The city administrator shall:

- (1) Administer the business of the municipality;
- (2) Prepare and recommend a municipal budget to the city council;
- (3) Make recommendations to the council for improving the quality and quantity of public services to be rendered by the officers and employees;

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

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

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

(7) Recommend specific personnel positions, as may be required for the needs and operations of the municipality;

(8) Employ, promote, discipline and discharge employees in accordance with council-approved personnel policies. Council approval shall be required for the employment and discharge of a department head;

(9) Serve as municipal purchasing agent;

(10) The city administrator may serve in any position within the city where certification is not required and shall have jurisdiction over all ordinances of the city; and

(11) Perform such other duties as may from time to time be designated or required by the council.

**4.04. City recorder.** The city administrator shall appoint a city recorder who shall have the following powers and duties:

(1) To keep and preserve the city seal and all official records not required by law or ordinance to be filed elsewhere.

(2) To attend all meetings of the council and to maintain a journal showing the proceedings of all such meetings, the councilmen present and absent, each motion considered, the title of each resolution and ordinance considered, and the vote of each councilman on each question. This journal shall be open to the public during regular office hours of the city, subject to reasonable restrictions exercised by the city recorder.



(3) To prepare and certify copies of official records in the recorder's office. Fees for such services may be established by ordinance, to be deposited into the city treasury.

(4) The recorder shall have custody of, and preserve in the recorder's office, the city seal, the public records, original rolls of ordinance, ordinance books, minutes of the board of commissioners, contracts, bonds, title deeds, certificates, and papers, all official indemnity or security bonds (except the recorder's bond, which shall be in the custody of the mayor), and all other bonds, oaths, and affirmations, and all other records, papers, and documents not required by this charter or by ordinance to be deposited elsewhere, and register them by numbers, dates, and contents, and keep an accurate and modern index thereof.

(5) To perform other duties as may be required by the city administrator.

**4.05. City attorney.** The council shall appoint a city attorney, and assistant city attorneys as may be authorized by ordinance. The city attorney, or an assistant city attorney designated by him, shall be responsible for representing and defending the city in all litigation in which the city is a party; prosecuting cases in the city court; attending all meetings of the council as requested; advising the council, mayor, city administrator, and other officers and employees of the city concerning legal aspects of their duties and responsibilities; approve as to form and legality all contracts, deeds, bonds, ordinances, resolutions, motions, and other official documents; and perform other duties as may be prescribed by the council, mayor or city administrator.

**Duties and compensation.** The city attorney shall:

(1) Direct the management of all litigation in which the city is a party, including the functions of prosecuting attorney in the city courts;

(2) Represent the city in all legal matters and proceedings in which the city is a party or interested, or in which any of its officers are officially interested;

(3) Attend any meetings of the council when requested by the council or the city administrator;

(4) Advise the council and committees or members thereof, the city administrator, and the heads of all departments and divisions, as to all legal questions affecting the city's interest;

(5) Approve as to form and legality all contracts, deeds, bonds, ordinances, resolutions and other documents to be signed in the name of or made by or with the city; and

(6) Receive a salary to be fixed by the city council.

**4.06. Chief of police department.**

(a) **Appointment.** The city administrator, with the concurrence of the city council, shall appoint a chief of police. All police officers and staff shall be appointed by the chief of police with the concurrence of the city administrator. The chief of police shall report to the city administrator.

(b) **Duties.** It shall be the duty of the chief of police and the members of the police force to:

(1) Preserve order in the city;

(2) Protect the inhabitants and property owners therein from violence, crime, and all criminal acts;

(3) Prevent the commission of crime, violations of law and of the city ordinances; and

(4) Perform a general police duty, execute and return all processes, notices, and orders of the mayor, city administrator, city attorney, and recorder, and all other processes, notices, and orders as may be provided in this charter or by ordinance.

(c) **General.** Members of the police force, whenever necessary for the purpose of enforcing the ordinances of the city, shall procure the issuance of warrants, serve the same, and appear in the city courts to assist in the prosecution of cases, relieving complaining citizens insofar

as practical of the burden of instituting cases involving the violation of city ordinances; but this section shall not be construed to relieve any person from the duty of appearing in court and testifying in any case.

**4.07. Chief of the fire department.**

(a) **Appointment.** The city administrator, with the concurrence of the city council, shall appoint a chief of the fire department. The fire chief, with the concurrence of the city administrator, shall appoint all firefighters and department staff. The fire chief shall report to the city administrator.

(b) **Duties.** It shall be the duty of the chief of the fire department and the members thereof to take all proper steps for fire prevention and suppression.

(c) **General. Emergency powers.** When any fire department or company recognized as duly constituted by the Commissioner of Commerce and Insurance pursuant to Tennessee Code Annotated, Title 68, Chapter 102, Part 1 is requested to respond to a fire, hazardous materials incident, natural disaster, service call, or other emergency, it may, proceed to the emergency site by the most direct route at the maximum speed consistent with safety. While responding to, operating at, or returning from such emergency, the chief of the responding fire department or company, or any member serving in capacity of fire officer in charge, shall also have the authority:

(1) To control and direct the activities at the scene of the emergency;

(2) To order any person or persons to leave any building or place in the vicinity of the scene for the purpose of protecting the person or persons from injury;

(3) To blockade any public highway, street or private right-of-way temporarily while at the scene;

(4) To trespass at any time of the day or night without liability while at the scene;

(5) To enter any building or premises, including private dwellings, where a fire is in progress, or where there is reasonable cause to believe a fire is in progress, for the purpose of extinguishing the fire;

(6) To enter any building or premises, including private dwellings, near the scene of the fire for the purpose of protecting the building or premises, or for the purpose of extinguishing the fire which is in progress in another building or premises;

(7) To inspect, for preplanning, all buildings, structures, or other places in his fire district, except the interior of a private dwelling, where any combustible material, including waste paper, rags, shavings, waste, leather, rubber, crates, boxes, barrels, rubbish, or other combustible material that is or may become dangerous as a fire menace to the buildings, structures, or other places has been allowed to accumulate, or where such chief or his designated representative has reason to believe that the combustible material has accumulated or is likely to accumulate;

(8) To direct without liability the removal or destruction of any fence, house, motor vehicle, or other thing, if he deems such action necessary to prevent the further spread of the fire;

(9) To request and be furnished with additional materials or special equipment at the expense of the owner of the property on which the emergency occurs, if deemed necessary to prevent the further spread of the fire or hazardous condition; and

(10) To order disengagement or decouplement of any convoy, caravan, or train of vehicles, craft, or railway cars, if deemed necessary in the interest of safety of persons or property.

(11) When any fire department or company responds to any emergency outside its fire district, however, it shall at all times be subject

to the control of the fire chief or designated representative in whose district the emergency occurs. The council shall by ordinance establish policies on responding to fires and emergencies outside the corporate limits.

**4.08. Fire marshal.** The fire chief, with the concurrence of the city administrator, may appoint a fire marshal whose duty shall be, subject to the chief of the fire department, to investigate the cause, origin, and circumstances of fires and the loss occasioned thereby, and assist in the prevention of arson. The fire marshal may also perform duties as fire inspector and other duties as assigned by the fire chief.

**4.09. Finance director-duties of finance director.** The city administrator, with concurrence of the city council, may appoint a finance director. The city administrator may serve as finance director. The duties of the finance director shall be to:

(1) Exercise a general supervision over the fiscal affairs of the city and general accounting supervision over the entire city's property, assets, and claims and the disposition thereof;

(2) Be the general accountant and auditor of the city;

(3) Have custody of all records, papers, and vouchers relating to the fiscal affairs of the city, and the records in his office shall show the financial operations and conditions, property, assets, claims, and liabilities of the city, all expenditures authorized and all contracts in which the city is interested;

(4) Require proper fiscal accounts, records, settlements, and reports to be kept, made, and rendered to him by the several departments and officers of the city, including all deputies or employees of his department charged with the collection or expenditures of money, and shall control and audit the same;

(5) At least monthly, adjust the settlements of officers engaged in the collection of the revenue;

(6) The assessment, levy, and collection of taxes and special assessments shall be in charge of the department of finance, subject to the limitations elsewhere found in this charter and state law; and

(7) Prepare monthly finance statements for council review.

## **ARTICLE V. CITY COURT**

### **5.01. City judge.**

(a) City judge-appointment, term. A city judge, who shall constitute the city court, may be appointed by the council to serve at the will of the council or for a term to be fixed by ordinance. He shall be not less than twenty-five (25) years of age.

(b) City judge. The officer designated by the charter to handle judicial matters within the municipality shall preside over the city court and be known as the city judge. If a city judge is unable to preside over city court for any reason, then the judge shall appoint a designee.

(c) The jurisdiction of the city judge shall extend to the trial of all offenses against the ordinances of the city, and costs in such trials shall be fixed by ordinance. The city judge shall have power to levy fines, penalties, forfeitures not to exceed fifty dollars (\$50.00) for each violation, and to impose such costs as the mayor and city council may by ordinance provide, to issue all necessary process, to administer oaths, and to maintain order including the power to punish for contempt in accordance with the Municipal Court Reform Act of 2004, codified at Tennessee Code Annotated, Section 16-18-301 et seq. The sole compensation for serving as city judge shall be a salary fixed by the council, and all fees for actions or cases in his court shall belong to the city and shall be paid into the city treasury. In addition to the powers and duties heretofore enumerated, if the city judge receives approval to be vested with concurrent General Sessions jurisdiction pursuant to the Municipal Court Reform Act, and only if the city judge is elected in accordance with Article VI, Section 4 of the Tennessee Constitution, the city judge shall be vested with concurrent jurisdiction with judges of the General Sessions Courts in all cases charging a violation of the criminal laws of the state of Tennessee which occur within the corporate limits of the City of Winchester. He shall have the power to bind over

to the grand jury, for indictment of all persons who are accused of committing felonies in such municipality.

(d) Fines and costs. Fines and costs may be paid by installments to be fixed and security determined as provided by ordinance. Receipts of the city court shall be deposited daily with the city finance director and the city judge shall make monthly reports thereof to the council.

(e) Docket. The city judge shall keep a docket of all cases handled by him.

(f) Separation of powers. The city judge shall be exclusive judge of the law and the facts in every case before him, and no officer or employee of the city shall attempt to influence his decision except through pertinent facts presented in open court.

## **ARTICLE VI. FISCAL AFFAIRS**

**6.01. Taxes and assessments under department of finance.** The assessment, levy, and collection of taxes and special assessments shall be in charge of the department of finance, subject to the limitations found elsewhere in this charter.

**6.02. Property and privileges taxable.**

Property Taxes. All property subject to taxation shall be subject to the property tax levied by the city. Property assessments shall be made in accordance with state law.

Taxes Not to be Excused. No officer or employee of the city shall have the authority to excuse taxes, penalties, interest, special assessments, or other charges due the city, but errors may be corrected by the tax collector.

**6.03. Reserved.**

**6.04. Certification of assessments-assessments.** Property tax records shall be certified to the finance director of the city upon the completion of the work of the boards of equalization, after they have been copied by the county clerk or the department of revenue.

**6.05. Tax books.**

Books.

(a) As soon as practicable in each year after the assessment books for the state and county are complete, which shall be after equalization boards provided for by general laws shall have finished their work, it shall be the duty of the finance director to prepare or cause to be prepared, from the assessment books of the county and of the comptroller of the treasury, a tax book similar in form to that required by laws of the state to be made out for the county trustee, embracing, however, only such property and persons as are liable for taxes within the city.

(b) The tax books, when certified to be true, correct, and complete by the finance director, shall be the assessment for taxes in the city for all municipal purposes; provided, that there may be an assessment by the finance director at any time, of any property subject to taxation found to have been omitted, and the assessment shall be duly noted and entered on the assessment books of the city; and further provided, that, instead of the assessment made by county and state officials as herein provided, the city may, by ordinance insofar as not prohibited by general laws, provide for and regulate an assessment to be made by its own tax assessor.

**6.06. Statement of taxable property tax levy.**

Tax Levy. The council shall make a tax levy, expressed as a fixed rate per one hundred dollars (\$100) of assessed valuation, not later than ninety (90) days prior to the tax due date. In event of council's failure to do so, the prior year's tax rate shall continue in effect.

**6.07. Effective date of levy.** The council shall have full power to levy and collect taxes as of January 1 of each and every year.

**6.08. Extension of levy on tax books.** It shall be the duty of the finance director, immediately after the levy of taxes by the council, to cause the levy to be extended upon the tax book prepared by the finance director in the same manner that extensions are made upon the tax books in the hands of the county trustee.



**6.09. Due date of taxes, tax collector, distress warrants.**

(a) All taxes due the city, except privilege and merchant's ad valorem taxes shall, until otherwise provided by ordinance, be due and payable on October 1 of the year for which the taxes are assessed.

(b) The finance director shall be custodian of the tax books and shall be the tax collector of the city.

(c) Distress warrants may be issued for the collection of delinquent taxes as provided by ordinance.

(d) Tax Due Dates and Tax Bills. The due dates of property taxes shall be the same as used by the county trustee's office. The city may request that the county trustee collect all property taxes.

**6.10. Tax liens, errors and irregularities in assessment.**

(a) All municipal taxes on real estate in the city, and all penalties and costs accruing thereon, are hereby declared to be a lien on such realty from and after January 1 of the year for which same are assessed, superior to all other liens except the liens of the United States, the state of Tennessee and the county, for taxes legally assessed thereon, with which it shall be a lien of equal dignity.

(b) No assessment shall be invalid because the size and dimensions of any tract, lot or parcel of land shall not have been precisely named nor the amount of the valuation or tax not correctly given, nor because the property has been assessed in the name of a person who did not own the same, nor because the same was assessed to unknown owners, nor on account of any objection or informality merely technical, but all such assessments shall be good and valid.

(c) The board of commissioners shall have power to correct any errors in the tax assessments upon a certificate filed by the assessor or assessing body.

**6.11. Delinquency penalties, discount.** Property taxes shall become delinquent on March 1, at which time a penalty and interest as permitted by law shall be

added. On and after the date when the taxes become delinquent, the tax records of the city shall have the force and effect of a judgment of a court of record.

The council may provide by ordinance for the collection of delinquent taxes by the county trustee as provided by general law; or by the city attorney acting in accordance with general laws providing for the collection of delinquent city or county taxes; by garnishment; by suits in chancery; or by any two (2) or more of the foregoing methods, or by the use of any other available legal processes and remedies. If not otherwise collected, the city attorney, or other attorney designated by the council, shall file suit for collection of all delinquent taxes not later than eighteen (18) months following date of delinquency.

**6.12. Change of due dates.** If the council elects not to use the county trustee for the collection of taxes, it may change the property tax due date.

**6.13. Sale of real property for delinquency.** The finance director shall, under the provisions of the state law for the collection of delinquent taxes, certify to the trustee of the county a list of all real estate upon which municipal taxes remain due and unpaid, or which is liable for sale for other taxes and the same shall be sold in like manner and upon the same terms and conditions as real estate is sold for delinquent state and county taxes.

**6.14. Complaints in chancery to collect special assessments.** The board of commissioners shall have the power, and is hereby given authority, to file complaints in the chancery court in the name of the city for the collection of assessments and levies made for payment for improvements or service in the city, such as paving, sidewalks, curbing, guttering, sewers and other improvements, or services for which assessments may be made under the charter, or by any other acts of the legislature, and the cost of which is made a charge on property owners abutting the improvements and a lien on abutting property, the suits commenced by such complaints to be conducted as other suits in chancery for the enforcement of like liens and under the rules of law and practice provided for the same; provided, that the complaints shall not be objectionable because the owners of different parcels or lots of land are made parties thereto, it being the

intention that all persons in the same improvement district, or liable for portions of the same assessment and levy for improving a portion of the city as aforesaid, and on whose property the assessment or levy is a lien, shall be made parties defendant to one (1) complaint.

**6.15. License taxes.** License taxes may be imposed by ordinance upon any and all privileges, businesses, occupations, vocations, pursuits, or callings, or any class or classes thereof, now or hereafter subject to such taxation under the laws of Tennessee; and a separate license tax may be imposed for each place of business conducted or maintained by the same person, firm, or corporation.

The treasurer shall enforce the collection of merchants' taxes and all other license taxes, and shall have and exercise the powers of law vested in, and follow the procedure and methods prescribed for, county clerks.

**6.16. Accounting system.** The financial records of the city shall be established and maintained in general conformity with the accounts and procedures recommended by the Comptroller of the Treasury.

**6.17. Fiscal forms.** The finance director shall cause all forms used in connection with either the receipt or disbursement of city funds to be numbered consecutively, and all spoiled or unused forms shall be accounted for.

**6.18. Appointment and duties of treasurer.**

(a) The city administrator shall appoint a treasurer.

(b) It shall be the duty of the treasurer to collect, receive and receipt for the taxes and all other revenue (and bonds) of the city, and the proceeds of its bond issues, and to disburse the same.

(c) The city administrator may appoint the finance director as treasurer.

**6.19. Depositories of city funds.** The council shall designate an official depository or depositories for deposit and safekeeping of funds of the city, with such collateral security as required by state and federal law.

**6.20. Budget – fiscal year.** The city's fiscal year shall begin on July 1 and end on June 30 of each year.

## **6.21 Budget estimate submitted to council members.**

Annual Budget. The city administrator, not later than forty-five (45) days prior to the beginning of each fiscal year, shall submit to the council a proposed budget for the next fiscal year, showing separately for the general fund, each department, and each other fund the following:

- (a) Revenue and expenditures during the preceding year;
- (b) Estimated revenue and expenditures for the current fiscal year;
- (c) Estimated revenue and recommended expenditures for the next fiscal year, not to exceed the amount of estimated revenue;
- (d) A comparative statement of the cash surplus (or deficit) at the end of the preceding year and the estimated surplus (or deficit) at the end of the current fiscal year; and
- (e) Any other information and data, such as work programs and unit costs, in justification of recommended expenditures that may be considered necessary by the city administrator or requested by the council.

The city administrator may recommend and estimate receipts from additional revenue measures; provided, that such estimates are separated clearly from normal revenue estimates. The budget shall be accompanied by a message from the city administrator containing a statement of the general fiscal policies of the city, the important features of the budget, explanations of major changes recommended for the next fiscal year as compared with the current fiscal year, a general summary of the budget, and other comments and information as he may deem pertinent. A sufficient number of copies of the city administrator's message shall be reproduced to furnish a copy to any person desiring a copy. A copy of the budget in full shall be filed with the city recorder for public inspection and a copy shall be furnished to each councilmember.

Capital Improvement Budget. A capital improvement budget shall also be prepared to include a description of projects recommended for the ensuing fiscal year and the five (5) fiscal years thereafter, the estimated cost of each project, and the recommendations of the city administrator for financing the projects proposed for the

ensuing year. The capital improvement budget shall be prepared by or reviewed by the local planning commission, and the recommendations of the planning commission shall be submitted by the city administrator to the council concurrently with the annual budget. The council may accept, reject or revise the capital improvement budget as it deems desirable.

**6.22. Public hearing.** After receiving the city administrator's proposed budget, the council shall fix a time and place for a public hearing thereon, and shall cause a public notice thereof and an announcement of where and when the full budget may be examined to be published in the official city newspapers, the last publication to be at least ten (10) days in advance of the date of the hearing. The public hearing shall be held before the council at the stated time and place, and all persons present shall be given a reasonable opportunity to be heard.

**6.23. Appropriation ordinance, publication, amendments, action by council on budget.** After the public hearing and before the beginning of the ensuing fiscal year the council shall adopt an appropriation ordinance, based on the city administrator's proposed budget with modifications as the council considers necessary or desirable. Appropriations shall be reasonably detailed. The council shall not make any appropriations in excess of estimated revenue, except to provide for an actual emergency threatening the health, property or lives of the inhabitants of the city declared by a vote of all members of council. If emergency conditions prevent the adoption of an appropriation ordinance before the beginning of the new fiscal year, the appropriations for the last fiscal year shall become the appropriations for the new fiscal year, subject to amendment as provided in this section. Amendments may be made to the original appropriation ordinance at any time during a current fiscal year after ten (10) days notice published in the newspaper and a public hearing before the council. Appropriations, except emergency appropriations as provided above, may be increased during the year only after the city administrator certifies in writing that a sufficient amount of unappropriated revenue will be available. Any portion of an annual budget remaining unexpended and unencumbered at the close of a fiscal year shall lapse and be subject

to appropriation for the following year. Any balance remaining in any fund other than the general fund at the end of a fiscal year may remain to the credit of such fund and be subject to further appropriation. At the end of each month the city administrator shall submit to the council a budget report showing revenue receipts, encumbrances and expenditures for that month and for the fiscal year to the end of that month.

**6.24. Control of expenditures.** The city administrator shall be responsible for controlling expenditures of the various departments and agencies of the city government to accomplish maximum efficiency and economy. No expenditures shall be made in excess of appropriations.

**6.25. Reversion of appropriations to general fund.** At the end of the fiscal year all appropriated fund balances shall revert to the general fund.

**6.26. Issuance of checks.** All disbursements, except for any agency of the city administered by a council or commission, shall be made by checks signed by the city administrator and counter-signed by the mayor. The council may by resolution designate other officers to sign such checks in the absence or disability of the mayor or city administrator.

**6.27. Sale of city property.** The council may by ordinance provide for the disposition of city property.

**6.28. Certification of availability of funds to meet contract.** The finance director shall certify as to the availability of funds to meet contracts and other city obligations.

**6.29. Unauthorized contract of expenditures.** Any contract or agreement made in violation of the provisions of this charter or ordinances of the city shall be void and no expenditure under the contract shall be made. Every officer and employee who shall knowingly make or participate in any such contract or agreement, or authorize or make any expenditure under contract, and their sureties on their official bonds, and every person who shall knowingly receive such a payment, shall be jointly and severally liable to the city for the full amount so paid or received. A violation of this section by any officer or employee shall be cause for his removal.

**6.30. Certification of availability of funds to meet contract obligations.** No contract, agreement, or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution, or order for the expenditure of money be passed by the board of commissioners or be authorized by any officer of the city, unless the finance director shall first certify to the board of commissioners or the proper officer, as the case may be, that the money required for the contract, agreement, obligation, or expenditure, is in the treasury or safely assured to be forthcoming and available in time to comply with, or meet the contract, agreement, obligation or expenditures, and no contract, agreement or other obligation involving the expenditure of money payable from the proceeds of bonds of the city, shall be entered into until the issuance and sale of the bonds have been duly authorized in accordance with the provisions of this charter in reference to the city.

**6.31. Emergency expenditures.** Emergency appropriations may be approved by the council by ordinance.

**6.32. Annual operating budget, publication, budgetary comparison.**

Notwithstanding the provisions of any other law to the contrary, the council shall publish the annual operating budget and budgetary comparisons of the proposed budget with the prior year (actual) and the current year (estimated) which information shall include the following:

(a) Revenues and expenditures for the following governmental funds: general, streets/public works, state street aid, sanitation, drug fund and any other fund and debt service;

(b) Revenues for each fund shall be listed separately by local taxes, State of Tennessee, federal government and other sources;

(c) Expenditures for each fund shall be listed separately by salaries and other costs;

(d) Beginning and ending fund balances shall be shown for each fund;

(e) The number of full-time equivalent employee positions shall be shown for each fund;

(f) The publication shall be in a newspaper of general circulation and shall be published not less than ten (10) days prior to the meeting where the governing body will consider final passage of the budget. Upon receipt of such estimate, the board of commissioners shall prepare a tentative appropriation ordinance;

(g) The appropriation ordinance for each fiscal year shall be finally adopted before the first day of the fiscal year; and

(h) Amendments may be made to the original appropriations ordinance at any time during a current fiscal year. Except for emergency expenditures as provided in Tennessee Code Annotated, Section 6-22-129, increased appropriations may be made only after the city administrator has certified in writing that sufficient unappropriated revenue will be available.

**6.33. Annual audit.** The council shall provide for an annual audit in accordance with state regulations.

**6.34. Bonds for public works contracts.** Each bid on a contract for any public works or improvement shall be accompanied by a cash or surety company bid bond in the amount of five percent (5%) of the amount of the bid. Before any contract is awarded, the contractor shall give a bond for the faithful performance of the contract, with a surety company authorized to transact business in Tennessee, in an amount equal to one hundred percent (100%) of the contract price. The council may waive these requirements for contracts under five thousand dollars (\$5,000). All contracts for over twenty-five thousand dollars (\$25,000) shall require a payment bond.

**6.35. Officers and employees.** Only the offices and positions of employment provided for in the annual budget or amended budget, as approved by the council, shall be filled. Emergency appointments may be approved by the council by ordinance. Salaries for all positions shall be in accordance with a pay plan adopted by ordinance.



In determining salaries, due consideration shall be given to duties, responsibilities, technical knowledge and skill required to satisfactorily perform the work, and availability of persons having the qualifications desired.

**6.36. Official bonds.** The mayor and every officer, agent, and employee of the city having duties embracing the receipt, disbursement, custody, or handling of money, and other officers and employees designated by the council, shall give a fidelity bond or faithful performance bond, as determined by the council, with some surety company authorized to do business in the State of Tennessee as surety, in the amount as shall be prescribed by the council. All such bonds and sureties thereto shall be subject to approval by the council. The cost of such bonds shall be paid by the city. The bonds shall be blanket bonds covering offices and positions to be bonded, and individual bonds may be secured only when blanket bonds are not obtainable.

## **ARTICLE VII. GENERAL-PERSONNEL**

**7.01. Personnel actions.** The appointment and promotion of employees of the city shall be on a basis of merit, considering technical knowledge.

**7.02. Personnel rules.** The council may, by resolution, adopt supplementary rules and regulations governing employment by the city, not inconsistent with the provisions of this charter.

**7.03. Oath of office.** Before a person takes any office in the city government, he shall subscribe to the following oath or affirmation, administered by the city recorder or any other person authorized to administer oaths:

"I solemnly swear (or affirm) that I will support the constitution and will obey the laws of the United States and of the State of Tennessee, that I will, in all respects, observe the provisions of the charter and ordinances of the City of Winchester, and that I will faithfully discharge the duties of the office of \_\_\_\_\_."

**7.04. Political activity prohibited.** No employee of the city shall continue in the employment of the city after becoming a candidate for nomination or election to any public office, but this provision shall not apply to the mayor, councilmen, members of councils or commissions, or the city attorney. No person shall directly or indirectly give,

render or pay any money, service or other valuable consideration to any person for, or on account of, or in connection with employment by the city government in violation of Tennessee Code Annotated, title 2, chapter 19, part 1. No person shall orally, by letter or otherwise, solicit or be in any manner concerned in soliciting any assessment, subscription or contribution from any employee of the city in connection with any city election.

Any person who by himself or with others willfully or corruptly violates any provision of this section shall, if convicted thereof, be subject to the penalty provisions of § 2-19-128, and upon conviction thereof he shall immediately forfeit and vacate the office or position he holds, and be ineligible to hold any office or position of employment in the city government for a period of five (5) years thereafter.

Employees may participate in political elections in the same manner that other citizens participate; however, they may not do so while on duty, in uniform, or in a city vehicle.

**7.05. At will employment.** All employees are employees at will as provided by state law.

**7.06. Employee grievances.** Employment grievances shall be heard by the department head and the city administrator. The decision of the city administrator shall be final.

## **ARTICLE VIII. INTERGOVERNMENTAL COOPERATION AND CONTRACTING**

**8.01. Intergovernmental cooperation and contracts.** In addition to other powers granted in this charter, the city council shall have power to contract and cooperate with any other municipality or other political subdivision of the state, or with an elective or appointive official thereof, or with any duly authorized agency of the federal or state government, for the exercise of any power or function which the city is authorized to undertake by this charter.

**8.02. Execution of such powers.** The city council may exercise the powers conferred in this article by ordinance or resolution setting out the terms to be included in any contract or cooperative action. The parties to the contract or cooperative action, or

any of them, may acquire, by gift or purchase, or by the power of eminent domain exercised by one (1) or more of the parties, the lands, buildings, and other property necessary or useful for the purposes of the contract or cooperative action, either within or without the corporate limits of one (1) or more of the contracting parties, and shall have the power to hold or acquire such property jointly. The city may provide for the financing of its share or portion of the cost or expenses of the contract or cooperative action in the same manner as if it were acting alone and on its own behalf. The contract also may provide for the establishment and selection of a joint commission, officer, or officers to supervise, manage, and have charge of a joint service or project, and may provide for the powers and duties, terms of office, compensation, if any, and other provisions relating to the members of a joint commission, officer, or officers. The contract may include and specify terms and provisions relative to the termination or cancellation of the contract or cooperative action by ordinance or resolution, and the notice, if any, to be given of such termination or cancellation. Such cancellation or termination shall not relieve any party participating in the contract or cooperative action from any obligation or liability for its share of the cost or expense incurred prior to the effective date of the cancellation or termination.

**8.03. Immunities and liabilities of officers.** All public officers and employees acting under the authority of a contract or undertaking cooperative action under the provisions of this article shall enjoy the same immunities and be subject to the same liabilities as if they were acting entirely within the territorial limits of their respective governmental units.

**8.04. Handling of funds.** All money received pursuant to any contract or cooperative action, under the provisions of this article, unless otherwise provided by law, shall be deposited and disbursed in accordance with the provisions of the contract or cooperative action.

## **ARTICLE IX. UTILITIES**

(a) For the purpose of operating, administering and maintaining the electric power system, the water system and other public utilities now owned or that may

hereafter be acquired by the City of Winchester, there is hereby created an administrative body to be known as the Board of Public Utilities for the City of Winchester, Franklin County, Tennessee. Such board shall consist of five (5) members, each of whom shall be a qualified resident voter of the City of Winchester. Members presently serving on the board shall serve until the expiration of their respective terms, but the term of the members of the board shall thereafter be four (4) years. As soon as practical, the terms shall be placed on a rotating system with one (1) term expiring on August 31 of each succeeding year. At least one (1) member of the city council shall be elected by the council to serve as a member of the board of public utilities at its regular meeting in September of each year. The city council shall elect all members of the board of public utilities and fill any vacancies that may occur on the board in the same manner additional members are elected.

(b) The city council may set the compensation for utility board members by ordinance.

(c) The rates and charges imposed by the City of Winchester for electricity, water, and other utilities shall always be fully sufficient to pay the reasonable and necessary costs of maintaining and operating the respective systems, to pay principal of and interest on all bonds and other obligations payable from the revenues of the respective systems, and to establish an adequate depreciation fund for the respective systems. No free electricity, water, or other utility service shall be given to the City of Winchester or any department thereof, or to any other consumers, but all utilities and services furnished the City of Winchester shall be charged at rates fixed by the council of the City of Winchester, and the revenues so received shall be treated as are other revenues of the respective utilities systems.

(d) The revenues to be derived from the operation of such systems shall be used solely for the payment of the expense for operating and maintaining each separate system, principal of and interest on bonds issued payable from the revenues from each separate system, the extension and improvements of the systems, the payment of other obligations incurred in the operation and maintenance of the systems, the purchase and

redemption of bonds issued by the systems in the event such bonds can be obtained for redemption, the creation and maintenance of a cash working fund, the payment of an amount to the general fund of the City of Winchester, which shall be a tax equivalent not in excess of one hundred percent (100%) of realty tax on property owned or controlled by the systems in lieu of ad valorem taxes on the properties of the systems, and the payment of taxes to other taxing bodies having jurisdiction, if such taxes are legally imposed. Any surplus remaining at the end of each fiscal year, after the making of the above payments and the establishing of proper reserves may be invested in outstanding obligations of the City of Winchester, which obligations may be liquidated from time to time as additional funds are needed for the making of improvements and extensions to the respective systems.

(e) The city council shall, by ordinance, establish the maximum amount that can be purchased by the Board of Public Utilities without letting bids.

#### **ARTICLE X. HOTEL-MOTEL TAX**

As used in this act unless the context otherwise requires:

##### **Section 10.01.**

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

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

(3) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel;

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

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

(6) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than ninety (90) continuous days.

**Section 10.02.** The city council is authorized to levy a privilege tax upon the privilege of occupancy in any hotel or each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided by this act.

**Section 10.03.** The tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of his hotel and to be given directly or transmitted to the transient, and shall be collected by such operator from the transient and remitted to the city.

When a person has maintained occupancy for ninety (90) continuous days, he shall receive from the operator a refund or credit for the tax previously collected from or charged to him, and the operator shall receive credit for the amount of such tax if previously paid or reported to the city.

**Section 10.04.** The tax hereby levied shall be remitted by all operators who lease, rent or charge for any rooms within the city to the trustee or such other officer as may, by resolution of the municipal legislative body, be charged with the duty or collection thereof. The tax shall be remitted to the trustee or other officer not later than the twentieth (20th) day of each month for the preceding month. The operator is hereby required to collect the tax from the transient at the time of the presentation of the invoice

for such occupancy whether prior to occupancy or after occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the city entitled to the tax shall be that of the operator.

**Section 10.05.** The trustee or other authorized collector of the tax authorized by this act shall be responsible for the collection of the tax. A monthly tax return under oath shall be filed with the trustee by the operator with the number of copies thereof as the trustee may reasonably require for the collection of the tax. The report of the operator shall include facts and information as may be deemed reasonable for the verification of the tax due. The form of the report shall be developed by the trustee and approved by the municipal legislative body prior to use. The trustee shall audit each operator in the city at least once per year and shall report on the audits made on a quarterly basis to the municipal legislative body. The city council is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this act.

**Section 10.06.** No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that if added, any part will be refunded.

**Section 10.07.** Taxes collected by an operator which are not remitted to the trustee on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition for penalty of one percent (1%) for each month or fraction thereof, such taxes are delinquent. The interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of willful refusal of an operator to collect or remit the tax, or the willful refusal of a transient to pay the tax imposed, is a misdemeanor pursuant to § 67-4-1408 and shall be punishable by a civil penalty not in excess of fifty dollars (\$50.00).

**Section 10.08.** It is the duty of every operator liable for the collection and payment to the city of any tax imposed by this act to keep and preserve for a period of

three (3) years all records as may be necessary to determine the amount of the tax as he may have been liable for the collection of and payment to the city, which records the trustee shall have the right to inspect at all reasonable times.

**Section 10.09.** The trustee or other authorized collector of the tax, in administering and enforcing the provisions of this act, shall have as additional powers, those powers and duties with respect to collecting taxes as provided by law for the county clerks.

For his services in administering and enforcing the provisions of this act, the trustee shall be entitled to retain as a commission, one percent (1%) of the taxes collected.

Upon any claim of illegal assessment and collection, the taxpayer shall have all remedies provided in Tennessee Code Annotated, Title 67, it being the intent of this act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected shall also apply to the tax levied under the authority of this act. The trustee shall also have those powers and duties as provided in Tennessee Code Annotated, Section 67-1-707(b), for the county clerks with respect to the adjustment and settlement with taxpayers all errors of taxes collected by him under authority of this act, and to direct the refunding of same. Notice of any tax paid under protest shall be given to the trustee, and the resolution authorizing levy of the tax shall designate an officer against whom suit may be brought for recovery.

**Section 10.10.** The trustee is hereby charged with the duty of collection of the tax herein authorized and shall remit the proceeds of the tax to the general fund of the City of Winchester or such other fund as the municipal legislative body may specify by ordinance.

## **ARTICLE XI. MISCELLANEOUS PROVISIONS**

**11.1. Penalties.** The violation of any provision of this charter, for which a penalty is not specifically provided herein, shall be subject to a civil penalty of not more than fifty dollars (\$50.00).



**11.2. Repeal of acts.** The provisions of this act shall not repeal Chapter 404 of the Private Acts of 1953, as amended by Chapter 165 of the Private Acts of 1988, and any other acts amendatory thereto, creating the Board of Public Utilities for the City of Winchester.

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

SECTION 2. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of City of Winchester not less than sixty (60) days nor more than one hundred twenty (120) days after the passage of this Act by the General Assembly. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified to the secretary of state.

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