

IN THE CHANCERY COURT FOR COFFEE COUNTY, TENNESSEE
AT MANCHESTER

FILED
CHANCERY COURT, COFFEE CO, TN

OCT 30 2020

DONNY N. PARSLEY,

Plaintiff,

v.

CITY OF MANCHESTER, TENNESSEE,

Defendant.

TIME 10:45 AM

No. 2020-CV-300

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND
TEMPORARY RESTRAINING ORDER

COMES NOW the Plaintiff, Donny N. Parsley, by and through undersigned counsel and pursuant to T.C.A. § 29-14-103 and Rule 65.03 of the Tennessee Rules of Civil Procedure and for his Verified Complaint for Declaratory Judgment and Temporary Restraining Order in this matter states as follows:

1. Plaintiff, Donny N. Parsley (hereinafter "Parsley"), is an adult citizen and resident of Manchester, Coffee County, Tennessee, residing at 954 Emerson Street, Manchester, Tennessee.
2. Defendant, City of Manchester, Tennessee (hereinafter "Defendant") is a governmental entity and may be served through its Mayor, Marilyn Howard, at her office located at 200 West Fort Street, Manchester, Tennessee 37355.
3. Defendant is governed pursuant to the provisions of a corporate charter (hereinafter "the Charter") approved and adopted by the Tennessee General Assembly and Governor. A

true and accurate copy of relevant portions of the Charter are attached hereto as **Exhibit A**.

4. Pursuant to the provisions of the Charter, there exists a Board of Alderman (hereinafter "the Board") responsible for governance decisions related to Defendant.
5. The Board is comprised of six (6) members who are duly elected by the citizens of Manchester, Tennessee. *See Charter, §1(a)*.
6. The Charter further prescribes certain minimum eligibility requirements which must be met for individuals desiring to serve as Mayor or Alderman in Manchester. *See Charter, Article IV, §1(b)*.
7. Board members are elected to staggered 4-year terms, with three (3) Board positions standing for election every two years. *See Charter, Article IV, §1(c)*.
8. The top three (3) qualified candidates standing for election to the Board and receiving the most votes are elected to fill the three (3) Board positions up for election during the general election held in August of even-numbered years. *See Charter, Article IV, §1(c)*.
9. Lonnie Norman, the duly elected Mayor of the City of Manchester, died on October 12, 2019, leaving a vacancy in the mayoral office.
10. Pursuant to the provisions of the Charter, the Board elected then-Alderwoman and Vice-Mayor Marilyn Howard to assume the role of Mayor and fill the balance of Mr. Norman's term in office until the next regular election cycle.
11. The transition of Ms. Howard to the Mayor position left a vacancy on the Board.
12. Pursuant to the provisions of the Charter, there exists a potential conflict among the provisions which set out the proper procedure for filling a vacancy on the Board.

13. Specifically, the Charter provides multiple mechanisms by which a vacant Alderman position may be filled until such time as the next regular election including: a) by majority vote of the remaining members of the Board; b) appointment by the Mayor; c) special election; or d) filled by the “next highest vote getter” from the previous election. See Charter, Article IV, §6(c).
14. Parsley was a candidate for election to the Board of Alderman during the last election cycle concluding in August 2020.
15. Parsley finished the election as the “next highest vote getter,” behind now-current Aldermen Ryan French, Chris Elam and Robert Bellamy.
16. Parsley remains qualified in all respects to serve in the role as Alderman for the City of Manchester as required by the Charter.
17. Pursuant to the provisions of the Charter, Parsley should be sworn in immediately to fill the vacant position on the Board, as the other methods prescribed by the Charter for filling a vacant Alderman term should only apply in the event there is no remaining qualified “highest vote getter” from the previous election.
18. However, the Mayor and remaining Board have stated their intentions to accept applications for the vacant Alderman position and fill the vacancy by majority vote among the Mayor and present Alderman.
19. Upon information and belief, the Mayor and Board will vote to fill the vacancy at their next regularly scheduled meeting on November 2, 2020.
20. Parsley will suffer immediate and irreparable injury should the Mayor and Board be allowed to fill the vacant Alderman position prior to further hearing before this Court to

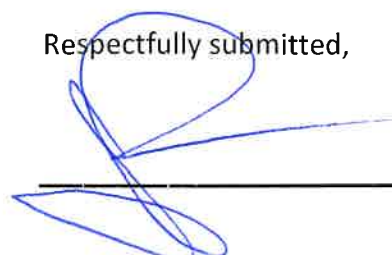
determine the parties' respective rights and obligations pursuant to Article IV, §6(c) of the Charter.

21. Specifically, Parsley may be deprived of his right to serve as Alderman having stood for election to the position and garnering the next highest number of votes.
22. Further, immediate and irreparable injury may occur to Parsley as a citizen of Manchester, Tennessee should the Board take action by majority vote which would include the potential tie-breaking vote of an Alderman which might otherwise be appointed in violation of the provisions of the Charter.
23. Any potential action taken by the Board which would include the vote of an improperly seated Alderman may then be subject to review and/or be stricken as improper.

WHEREFORE, BASED UPON THE FOREGOING, Plaintiff prays for the following relief:

- (1) That summons issue and Defendant be required to answer in accordance with Tennessee law and the Rules of Civil Procedure.
- (2) That this Court enter a temporary restraining order prohibiting Defendant from filling the vacant Alderman seat by majority vote of the Board of Mayor and Alderman or by unilateral selection by the Mayor pending further hearing.
- (3) That, upon final hearing, the Court declare the proper procedure for filling the vacant Alderman position pursuant to the provisions of the Charter.
- (4) That Plaintiff be awarded the costs of this action.
- (5) For such other, general relief as may be appropriate.

Respectfully submitted,



Jeremy W. Parham, BPR #022222
Mary Henderson, BPR #026696
Parham Law Offices, LLC
1806 B Memorial Blvd
Murfreesboro, TN 37129

We go surety for the costs of this action not to exceed \$500.00



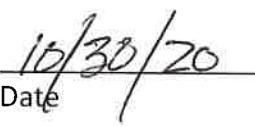
Jeremy W. Parham

AFFIRMATION

I, the undersigned Donny N. Parsley, hereby affirm under penalty of perjury pursuant to Rule 72 of the Tennessee Rules of Civil Procedure that the allegations set forth in the foregoing Verified Complaint are true and accurate to the best of my knowledge, information and belief.



Donny N. Parsley



Date

CHARTER OF THE CITY OF MANCHESTER, TENNESSEE¹

PRIVATE CHAPTER NO. 21

HOUSE BILL NO. 1434

By Representative Matheny

Substituted for: Senate Bill No. 1449

By Senator Bowling

AN ACT to amend Chapter 65 of the Acts of 1905; and any other acts amendatory thereto, relative to the charter of the City of Manchester.

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ARTICLE I - CORPORATE CAPACITY

SECTION

1.	Incorporation	C-5
2.	Boundaries	C-6

¹Priv. Acts 2017, ch. 21, is the current basic charter act for the City of Manchester, Tennessee. The text of the basic charter act set out herein includes all its amendments through the 2017 session of the Tennessee General Assembly. Sections of the charter which have been amended contain at the end of those sections the citation to the official act or acts constituting the amendment or amendments. No other changes have been made to the charter except the addition of a table of contents to facilitate its use. A list of all the acts appears at the end of the charter.

Acts which did not expressly or in effect amend any particular section or part of the basic charter, but which supplemented it, have been placed after the basic charter act as "Related Acts."

Acts of a temporary nature with no general or continuing application, such as bond authorization and validation acts have not been included in this compilation.

²See page C-32 for other acts affecting the City of Manchester not included in the charter.

Ex. A.

pursuant to the procedures set forth in and shall be governed by Title 9, Chapter 21, including provisions dealing with covenants permitted in bond resolutions, security and remedies of bondholders; and

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

ARTICLE III

ELECTIONS

Section 1. Date of general non-partisan city election. A general city election shall be held on the first Thursday in August in each even-numbered year.

Section 2. General election laws apply. All elections shall be conducted by the Commissioners of Elections of Coffee County in accordance with the general election laws and this Charter.

Section 3. Voter qualification requirements. Persons meeting the residency requirements prescribed by the election laws of the State of Tennessee and non-resident individuals owning at least fifty percent (50%) fee simple interest in a parcel of real property of at least six thousand (6,000) square feet within the City of Manchester for a period of six (6) months prior to an election and who are otherwise qualified to vote in state elections shall be eligible to vote in city elections, provided the person is properly registered in accordance with the applicable laws of the State of Tennessee.

Section 4. Referenda. The Board of Mayor and Aldermen of the City of Manchester, Tennessee, may direct the County Election Commission to place certain questions on the ballot to be submitted to the voters of the City of Manchester, Tennessee, on matters of general and vital concern in order to obtain the advice and direction of the voters as to such matters. Such referenda will be advisory in nature and nonbinding.

ARTICLE IV

BOARD OF MAYOR AND ALDERMEN

Section 1. Composition, eligibility, election, terms and re-election.

(a) Composition. There shall be a Board of Mayor and Aldermen composed of the Mayor and six (6) Aldermen.

(b) Eligibility. To be eligible for and to hold the office of Mayor or Alderman, a person must be a registered voter of the city, be a citizen of the State of Tennessee, and a resident of the City of Manchester for one (1) year next preceding the day of the election and be at least eighteen (18) years of age. No person shall be eligible for the office of Mayor or Alderman who shall have been convicted of malfeasance in office, bribery or other corrupt practice, or crime, or violating any of the provisions of this Act, and if the Mayor or an Alderman shall be so convicted, he shall forfeit his office.

(c) Election and Terms.

(1) Three (3) Aldermen shall be elected in the general city election held on the first Thursday of August in even-numbered years and shall continue to hold office until their successors are elected in the general city election held on the first Thursday in August of 2018 and are qualified and have taken their oath of office. The Mayor and three (3) Aldermen elected in the general city election held on the first Thursday in August of 2016 shall continue to hold office until their successors are elected in the general city election held on the first Thursday in August of 2020 and are qualified and have taken their oath of office.

(2) It is the intent of this Charter to continue the existing pattern of staggered four year terms for the positions of Mayor and Alderman. The term of office for those city officials elected and qualified in August of 2016 and in all even-numbered years thereafter shall commence with them taking their oath of office, administered by the City Judge, or someone authorized to administer oaths, as soon as practical, but no later than on the first Monday following the certification of the election by the Coffee County Election Commission.

Section 2. Compensation; expenses. Until otherwise established by ordinance by the Board of Mayor and Aldermen, the Mayor and the Aldermen shall each receive compensation in an amount set by ordinance. Any ordinance increasing salaries must be preceded by public notice of intent to adopt and must receive final approval ninety (90) days prior to the next general city election and shall become effective for those officials elected at the next general city election and for the remaining officials elected two (2) years later. The Board of Mayor and Aldermen may receive their actual and necessary expenses incurred in the performance of their duties of office, if authorized by ordinance.

Section 3. Duties of the Mayor.

(a) The mayor:

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

(2) Shall administer oaths;

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

(4)

(A) Shall make temporary appointments of any officer or department head in case of absence, sickness or temporary disability; and

(B) The board may confirm the mayor's appointment or otherwise appoint a person to fill the vacant office unless this duty has been delegated as authorized in this Charter;

(5)

(A) May call special meetings of the board upon adequate notice to the board and adequate public notice; and

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

(6) Shall countersign checks and drafts drawn upon the treasury by the treasurer and sign all contracts to which the municipality is a party unless this duty has been assigned to some other officer of the city by the board;

(7) Except in the event of a tie, shall have no vote on matters coming before the board; and

(8) Shall make appointments to boards and commissions as authorized bylaw.

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

(1) Those duties set forth in Article V, Section 1 (b) of this Charter, if the board does not appoint a city manager or if someone else is not designated by the board to perform those duties;

(2)

(A) As provided by ordinance, employ, promote, discipline, suspend and discharge all employees, except department heads who shall be appointed by the Board of Mayor and Aldermen, in accordance with personnel policies and procedures, if any, adopted by the board; and

(B) Nothing in this Charter or in any personnel policies and procedures adopted by the Board of Mayor and Aldermen shall be construed as granting a property interest to employees or department heads in their continued employment, and all such employees shall serve at the pleasure of the Mayor, as provided by ordinance and such department heads shall serve at the pleasure of the Board of Mayor and Aldermen or any other city official who is authorized by this Charter to exercise the personnel powers of the Mayor contained in Article IV, Section (3)(b);

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

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

(5) Such other duties as may be designated or required by the Board.

Section 4. Vice-mayor.

(a) The Board of Mayor and Aldermen at the first regular meeting in September following each regular city election shall elect a member of the Board to the office of Vice-mayor who shall serve as Mayor

when the Mayor is absent or unable to discharge the duties of the Mayor's office, but, in case of a vacancy in the office of Mayor, the Board of Mayor and Aldermen shall fill the vacancy with the Vice-mayor or from the remaining members of the Board until the next regular election, at which time someone will be elected for the balance of the term, if any, or for a new term.

(b) In the absence of the Mayor and Vice-mayor the Board of Mayor and Aldermen shall designate one of its number to preside at meetings, and who shall retain all of the voting rights of an Alderman. The Vice-mayor or Alderman filling the vacancy shall receive the Mayor's salary in lieu of their Alderman salary for the duration of the vacancy.

Section 5. Prohibitions. Holding Other Office. No member of the Board of Mayor and Aldermen shall hold any compensated appointive city office or employment with the city during the term for which elected or appointed to the Board of Mayor and Aldermen. Nothing in this section shall be construed to prohibit the Board of Mayor and Aldermen from selecting any current or former member of the Board of Mayor and Aldermen to represent the city on the governing board of any regional or other intergovernmental agency.

Section 6. Vacancies; forfeiture of office; filling of vacancies.

(a) Vacancies. The office of Mayor or Alderman shall become vacant upon the member's death, resignation, removal from office or forfeiture of office in any manner authorized by law.

(b) Forfeiture of Office. The Mayor or Alderman shall forfeit that office if the Mayor or Alderman:

(1) Lacks at any time during the term of office for which elected any qualification for the office prescribed by this Charter or by law;

(2) Violates any express prohibition of this Charter;

(3) Is convicted of a state or federal felony, appeals notwithstanding; or

(4) Fails to maintain bona fide residence within the city.

(c) Filling of Vacancies. A vacancy in the office of Alderman shall be filled until the next regular election, by a majority vote of all of the remaining members of the Board of Mayor and Aldermen. If the

Board of Mayor and Aldermen fails to do so within sixty (60) days following the occurrence of the vacancy, the Mayor shall fill the vacancy until the next election. If the Mayor fails to fill the vacancy within sixty (60) days, either the Mayor or any two Aldermen shall notify the Coffee County Election Commission, who shall call a special election to fill the vacancy for the unexpired term. A special election shall be held not sooner than seventy-five (75) days and not later than eighty (80) days thereafter, and shall be governed by the general election laws of the state, except that no special election shall be held within one hundred and eighty (180) days of the next regular election. All appointments, until the next regular election, shall at the time of the next regular election, be filled by electing someone for the balance of term, if any, or for a new term. Aldermanic positions being filled for the balance of the term shall go to the next highest vote getter, with the top highest vote getters being elected to the regularly rotating aldermanic seats.

Section 7. Investigations. The Board of Mayor and Aldermen may make investigations into the affairs of the city and the conduct of any city department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence.

Section 8. Time and place of meetings. The Board of Mayor and Aldermen shall, by ordinance, fix the time and place at which the regular meetings of the Board of Mayor and Aldermen shall be held. Until otherwise provided by ordinance, the regular meeting of the Board of Mayor and Aldermen shall be held at 6:30 P.M. on the first Tuesday of each month. When such day falls on a legal holiday, the meeting shall be on the following Tuesday unless otherwise prescribed by the Board of Mayor and Aldermen. Whenever in the opinion of the Mayor, the Vice-mayor when acting as Mayor or of any two (2) Aldermen, the welfare of the city demands it, the Recorder shall call a special meeting of the Board of Mayor and Aldermen, by serving personal notice to the remaining members of the Board, and by publishing or broadcasting a notice at least three (3) business days before the meeting. The notice shall state the matters to be considered at the special meeting and the action of the Board shall be limited to those matters.

Section 9. Oath of office. The Mayor and Aldermen, before entering upon their duties, shall take an oath before the City Judge or someone authorized to administer oaths, to support the Constitution of the United States and of the State of Tennessee and the Charter and Ordinances of the City of Manchester and that they will faithfully discharge the duties of their office.

Section 10. Quorum. Four (4) Aldermen shall constitute a quorum for the transaction of business, but any smaller number may adjourn from day to day.

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AT MANCHESTER

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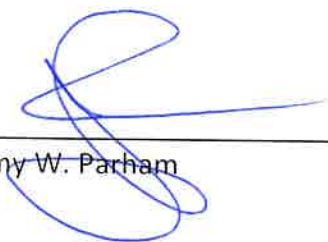
No. 2020.CV. 300

DECLARATION OF JEREMY W. PARHAM
PURSUANT TO RULE 65.03

COMES NOW THE DECLARANT, Jeremy W. Parham, pursuant to Rule 65.03 of the Tennessee Rules of Civil Procedure and hereby states the following:

1. My name is Jeremy W. Parham and I am over the age of eighteen and a duly licensed attorney in the State of Tennessee.
2. I represent the Plaintiff, Donnie N. Parsley, in this action.
3. I have submitted a copy of the Verified Complaint to Mayor Marilyn Howard at her office located at 200 W. Fort Street, Manchester, Tennessee prior to filing with the Court on October 30, 2020 at approximately 10:35 a.m.
4. Further notice should not be required prior to this Court granting *ex parte* relief as the Plaintiff may be irreparably injured by vote of the Mayor and Board of Alderman otherwise believed to be scheduled for November 2, 2020 as set forth in the Verified Complaint.

5. I affirm the foregoing statements under penalty of perjury.



Jeremy W. Parham

10/30/20
Date