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Technical Bulletins: Procedures for Issuance of Ordinance Summonses in Lieu of Arrest Warrants

Randy Williams

Municipal Technical Advisory Service

Dennis Huffer

Municipal Technical Advisory Service

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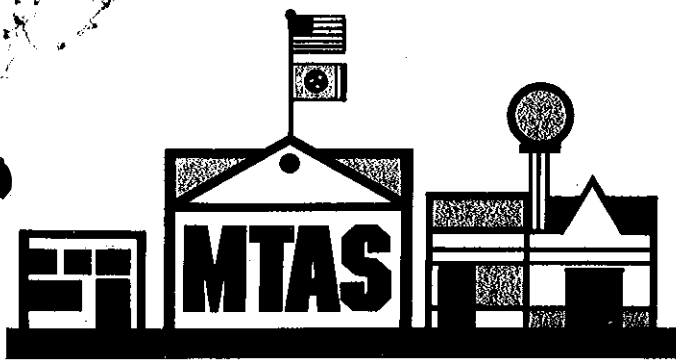
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Recommended Citation

Williams, Randy and Huffer, Dennis, "Technical Bulletins: Procedures for Issuance of Ordinance Summonses in Lieu of Arrest Warrants" (1987). *MTAS Publications: Technical Bulletins*.
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TECHNICAL BULLETIN



MUNICIPAL TECHNICAL ADVISORY SERVICE
THE UNIVERSITY OF TENNESSEE
IN COOPERATION WITH THE TENNESSEE MUNICIPAL LEAGUE

Bulletin No. 5

August 1, 1987

PROCEDURES FOR ISSUANCE OF ORDINANCE SUMMONSES IN LIEU OF ARREST WARRANTS

by Randy Williams and Dennis Huffer

In April, 1986, Tennessee Code Annotated, Sections 7-63-201 through 7-63-204 became effective, authorizing municipalities to appoint enforcement officers by resolution or ordinance to issue ordinance summonses in the areas of sanitation, litter control, and animal control. Tennessee Code Annotated, Section 7-63-202 provides that ordinance summonses shall be treated as citations in lieu of arrest. However, Tennessee Code Annotated, Sections 7-63-201 and 7-63-203 make it very clear that enforcement officers who have been given the authority to issue ordinance summonses do not have the authority to arrest offenders for refusing to sign the agreement to appear on ordinance summons while police officers may arrest offenders who refuse to sign the agreement to appear on citations in lieu of arrest.

If the offender refuses to sign the agreement to appear on the ordinance summons issued by an enforcement officer, the enforcement officer may either get the clerk of the municipal court to issue a summons, or get a police officer to witness the violation; he cannot himself arrest the offender. If the police officer witnesses the violation, he may make an arrest or issue a citation in lieu of arrest. If the police officer decides to issue a citation in lieu of arrest, and the offender refuses to sign the agreement to appear, the police officer may arrest the offender for failure to sign the agreement. But the offender who is issued either an ordinance summons or a citation in lieu of arrest and has signed the agreement to appear, then fails to appear, shall be issued a warrant for his arrest. In that respect, an ordinance summons is treated as a citation in lieu of arrest. The key thing to remember is that an enforcement officer who has only the authority to issue ordinance summons cannot arrest anyone.

There are three distinct advantages to cities who designate municipal enforcement officers: (1) there are fewer time delays, more convenience, less paperwork; (2) police officers spend less of their time on these matters; and (3) citizens do not have to be arrested, but only served a summons, which gives them the flexibility to settle the charges before the court date. The governing body may designate the municipal enforcement officers by ordinance or resolution. MTAS recommends that this be done by ordinance.

Attached to this bulletin are sample ordinance and resolution formats for your convenience. Please note that the ordinance or resolution format or wording may need to be changed in some instances to meet the specific requirements of the respective city charter. Also attached is a sample format for the ordinance summons that could be issued. The ordinance summons may be printed in carbon quadruplicate much the same size and format as traffic citations. A copy of the ordinance summons is required to be given to the offender after being signed by the issuing officer and offender. It is recommended that city officials review and understand Tennessee Code Annotated, Sections 7-63-201 through 7-63-204 and their specific references to other sections of Tennessee Code Annotated, prior to adopting this procedure.

If you have questions regarding any matter relating to the procedures for the issuance of summons in lieu of arrest warrants, please contact your MTAS Management Consultant, Randy Williams, or Dennis Huffer in Nashville at (615) 256-8141.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER _____ OF TITLE _____ OF THE MUNICIPAL CODE TO DESIGNATE CERTAIN MUNICIPAL ENFORCEMENT OFFICERS AS HAVING THE AUTHORITY TO ISSUE ORDINANCE SUMMONSES AS PROVIDED IN Tennessee Code Annotated, 7-63-201.

BE IT ORDAINED by the _____ of the _____, that:

Section 1. Chapter _____ of Title _____ of the Municipal Code is hereby amended by adding a new section to read as follows:

DESIGNATION OF CERTAIN MUNICIPAL ENFORCEMENT OFFICERS AS HAVING THE AUTHORITY TO ISSUE ORDINANCE SUMMONSES

The _____ (governing body) hereby designates the _____ as having the authority to issue ordinance summons in the area of sanitation and the _____ as having the authority to issue ordinance summons in the area of litter control and the _____ as having authority to issue ordinance summons in the area of animal control as provided in Tennessee Code Annotated, Sections 7-63-201 through 7-63-204.

Section 2. Such enforcement officers who witness a violation of any ordinance, law or regulation in those areas in which they have been given the authority to issue ordinance summonses may issue an ordinance summons and give the summons to the offender.

The ordinance summons shall contain the name and address of the person being summoned and such other information necessary to identify and give the person cited notice of the charge against him and state a specific date and place for the offender to appear and answer the charges against him. The ordinance summons shall also contain an agreement to appear, which shall be signed by the offender. If the offender refuses to sign the agreement to appear, the enforcement officer in whose presence the offense occurred may have a summons issued by the clerk of the city court or may seek the assistance of a police officer to witness the violation. The police officer who witnesses the violation may issue a citation in lieu of arrest for the violation or arrest the offender for failure to sign the citation in lieu of arrest. If the police officer makes an arrest, he shall dispose of the person arrested as provided for in citations in lieu of arrest in non-traffic cases.

It shall be unlawful for any person to violate his agreement to appear in court, regardless of the disposition of the charge for which the citation in lieu of arrest was issued.

Section 3. Each section, subsection, paragraph, sentence, and clause of this ordinance is hereby declared to be separable and severable. The validity of any section, subsection, paragraph, sentence, or clause shall not affect the validity of any other portion of this ordinance, and only any portion declared to be invalid by a court of competent jurisdiction shall be deleted herefrom.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall take effect from and after its final passage and required waiting period or publication, or both, if required, the public welfare requiring it.

Passed 1st reading: _____
Passed 2nd reading: _____
Passed 3rd reading: _____

Mayor

City Recorder or Clerk

Attest: Date of Publication: (if required)

Effective Date:

RESOLUTION NO. _____

A RESOLUTION designating certain municipal enforcement officers in the areas of sanitation, litter control, and animal control who, upon witnessing a violation of any ordinance, law or regulation of the City/Town of _____, may issue an ordinance summons, leaving a copy with the offender, showing the offense charged and the time and place when such offender is to appear in court.

WHEREAS, the municipality needs certain municipal enforcement officers other than sworn police officers; and

WHEREAS, Tennessee Code Annotated, Sections 7-63-201 through 7-63-204 provide the authority and procedures for the Mayor and Board of Commissioners to designate by resolution certain municipal enforcement officers in the areas of sanitation, litter control, and animal control to issue ordinance summonses; therefore:

BE IT RESOLVED that the Mayor and Board of Commissioners of the City/Town of _____ hereby designate animal control officers, code enforcement officers, and the city manager as municipal enforcement officers as provided in Tennessee Code Annotated, Sections 7-63-201 through 7-63-204.

BE IT FURTHER RESOLVED that this resolution is a part of this meeting and considered effective upon its passage.

Approved this _____ day of _____, 1987.

Mayor

Attest:

City Recorder or Clerk

Municipal Technical Advisory Service
The University of Tennessee
891 20th Street
Knoxville, TN 37996-4400
E14-1050-00-001-88

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The Municipal Technical Advisory Service (MTAS), one of four operating units of The University of Tennessee's Institute for Public Service, works closely with the Tennessee Municipal League. MTAS was created in 1949 by the General Assembly at the request of Tennessee cities. The mission of MTAS is to assist Tennessee city officials in responding effectively to changing municipal needs. MTAS consultants work daily with city officials in an effort to provide practical assistance where and when it is most needed.

ORDINANCE SUMMONS
in Lieu of Arrest Warrant

STATE OF TENNESSEE
County of _____
City of _____
Address _____

No. _____

COMPLAINT

The undersigned, upon his oath deposes and says:

On the _____ Day of _____, 19__ At _____ m.;

Name: _____

Residence: _____ Phone: _____

Bus. Address: _____ Phone: _____

City: _____ State: _____ Zip _____ I.D. _____

D.O.B: _____ Age: _____ Sex: _____ Race: _____ Occupation: _____

Did: _____

Constituting the Offense of: _____

in violation of (City Ordinance) _____

At (Location) _____

Sworn and Ascribed Before me

This _____ day of _____, 19__ _____
Mun. Enforcement Officer

You are hereby notified to appear in _____ court at

_____ on _____ at _____ P.:

Address

Date

Time

For a hearing of the indicated charges. Failure to appear at the appointed time and place or otherwise to make settlement of the charges against you by paying \$ _____ as forfeiture of bond to _____ before the Court date shall cause the court

Address

to immediately issue an arrest warrant against you for the offense in accordance with TCA 7-63-204.

I HEREBY AFFIX MY SIGNATURE WITH THE UNDERSTANDING THAT SUCH IS NOT A PLEA OF GUILTY, BUT TO CERTIFY THAT I RECEIVED A COPY OF THIS SUMMONS AND AGREE TO APPEAR AT THE INDICATED PLACES ON THE INDICATED DATES AND TIMES WITHOUT ISSUANCE OF A WARRANT, AS PROVIDED BY TCA 7-63-201 through TCA 7-63-204.

SIGNED: _____

NOTE: The ordinance summons should be printed in carbon quadruplicate much the same size (3 3/4 x 9") and format as traffic citations, etc. A copy of the Ordinance Summons is required to be given to the offender after being signed by the issuing officer and offender.